

## TITLE 5. SPECIAL PROCEEDINGS

### Chapter 5.13

#### SEXUAL ASSAULT PROTECTION ORDERS

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**5.13.1. Legislative Declaration.** Sexual assault inflicts humiliation, degradation, and terror on victims. Federal government studies have consistently shown that Native Americans experience much higher levels of sexual violence than all others in the United States. (Res. 2017-156(b), passed July 10, 2017)

**5.13.2. Sexual Assault Protection Order Purpose.** The Suquamish Tribe finds that there are times when a victim of a sexual assault or unwanted sexual conduct is neither an intimate partner nor family member of the perpetrator and, therefore, does not qualify for a domestic violence protection order as provided in STC 5.12. Nevertheless, the victim deserves all the same protections afforded to domestic violence victims. Sexual assault and unwanted sexual conduct are not acceptable and are contrary to traditional Suquamish Tribal culture and values and are contrary to the interest of our community and our sense of well-being and growth. Sexual assault and unwanted sexual conduct will not be tolerated. The Tribe finds that sexual assault and unwanted sexual conduct imperil the very existence of the Tribal community and the residents of the reservation. A community response to sexual assault and unwanted sexual conduct is necessary because these acts impact the community as a whole. Sexual assault and unwanted sexual conduct are crimes that redirect Tribal resources, whether personnel, financial,

public safety, or other resources, elsewhere and require an immediate response. Sexual assault and unwanted sexual conduct not only drain Tribal resources, but are heinous acts that impact the victims as well as the Tribal community as a whole. Therefore, the availability of sexual assault protection orders for these victims is of paramount importance. (Res. 2017-156(b), passed July 10, 2017)

**5.13.3. Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) “Nonconsensual” means a lack of freely given agreement.

(b) “Petitioner” means any named petitioner for the sexual assault protection order or any named victim of nonconsensual sexual conduct on whose behalf the petition is brought.

(c) “Nonphysical contact” includes, but is not limited to: regular or electronic mail; telephonic communication; or a posting on an electronic communication site, medium, or social website; fax or written notes.

(d) “Fear of future harm” means a reasonable fear that past sexual abuse or unwanted sexual conduct of petitioner by respondent may occur in the future or that the petitioner may suffer physical or psychological harm resulting from the respondent harassing, intimidating or being in the presence of the respondent.

(e) “Sexual conduct” means the knowing touching or display of the petitioner’s intimate parts by the respondent, or the respondent’s intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the petitioner’s or of respondent’s intimate parts if that sexual conduct can be reasonably construed as being for the purposes of sexual arousal, gratification or abuse. Any intentional or knowing touching of the clothed or unclothed body of a child under the age of sixteen (16) if done for the purpose of sexual gratification or arousal is also sexual conduct.

(f) “Sexual assault” includes but is not limited to the crimes enumerated in STC 7.17.4 – 7.17.9.

(g) “Intimate parts” means the external genitalia or the perineum or the anus or the buttocks or the pubes or the breast of any person.

(h) “Judicial days” means calendar days except weekends, tribal holidays and tribal office closure days. (Res. 2017-156(b), passed July 10, 2017).

**5.13.4. Persons Protected.** (a) The following persons are protected:

(1) any victim of non-consensual sexual conduct or sexual assault on whose behalf the petition is brought;

(2) any family or household member of the named victim, including minor children.

(b) A petition for a sexual assault protection order may be filed:

(1) By a person who does not qualify for a domestic violence protection order and who is a victim of nonconsensual sexual conduct or sexual assault, including a single incident of non-consensual sexual conduct or sexual assault; or

(2) On behalf of any of the following persons who are victims of non-consensual sexual conduct or sexual assault and who do not qualify for a domestic violence protection order:

(A) A minor child; or

(B) A vulnerable adult as defined in STC 8.7.2(f); or

(C) Any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition.

(c) A person under the age of eighteen (18) years of age but who is sixteen (16) years of age or older may seek relief under this chapter and is not required to seek relief through a guardian.

(d) The court will have discretion whether or not to appoint a guardian or guardian ad litem on behalf of a respondent to an action under this chapter who is under eighteen (18) years of age if such respondent is sixteen (16) years of age or older.

(e) The Court may, if it deems it necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter. The appointment will be at no cost to either party.

(f) The Court may appoint counsel to represent the petitioner, if the respondent is represented by counsel. (Res. 2017-156(b), passed July 10, 2017)

**5.13.5. Petition for Sexual Assault Protection Order.** (a) A petition requesting relief under this Chapter must allege the existence of nonconsensual sexual conduct or sexual assault. The petition must be accompanied by an affidavit made under oath stating the specific statements or actions made at the same time as the nonconsensual sexual conduct or the sexual assault or, subsequently, that give rise to a fear of future harm for which relief is sought. Petitioner must disclose the existence of any other litigation or of any other restraining, protection, or relevant no contact orders.

(b) A petition for relief may be made regardless of whether there is a pending lawsuit, criminal complaint, petition, or other action between the parties.

(c) Forms and instructional brochures and the necessary number of certified copies of court documents will be provided to the petitioner free of charge.

(d) A person is not required to post a bond to obtain relief in any proceeding under this Chapter.

(e) If the petition states that disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household by the respondent, that address may be omitted from all documents filed with the Court. If the petitioner has not disclosed an address under this subsection, the petitioner must designate an alternative address at which the respondent may serve notice of any motions. (Res. 2017-156(b), passed July 10, 2017)

**5.13.6. Statute of Limitations.** There is no time limit within which a party must file for a sexual assault protection order. (Res. 2017-156(b), passed July 10, 2017)

**5.13.7. Fees Not Permitted.** No fees for filing or service of process may be charged by a tribal agency to petitioners seeking relief under this chapter. (Res. 2017-156(b), passed July 10, 2017)

**5.13.8. Victim Advocates.** A victim advocate will be allowed to accompany the petitioner and confer with the petitioner in court, and to assist the petitioner in preparation of a petition for sexual assault protection orders, unless otherwise directed by the Court. (Res. 2017-156(b), passed July 10, 2017)

**5.13.9. Temporary Sexual Assault Protection Order Ex Parte.** (a) An ex parte temporary sexual assault protection order will be heard by the court within one judicial day and will issue if the Court finds by a preponderance of the evidence that:

(1) The petitioner has been a victim of nonconsensual sexual conduct or sexual assault by the respondent; and

(2) There is good cause to grant the temporary remedy because the remedy is intended to prevent imminent harm until a hearing can be held with both parties present.

(b) If the Court declines to issue an ex parte temporary sexual assault protection order, the Court must state the particular reasons for the Court's denial and set a hearing on the petition within five (5) judicial days. The Court's denial of a motion for an ex parte temporary protection order will be filed with the Court.

(c) An ex parte temporary sexual assault protection order will be effective for a fixed period not to exceed fourteen (14) judicial days, unless extended by the Court, as set forth in STC 5.13.9(e). A full hearing, as provided in this chapter, will be set no later

than fourteen (14) judicial days from the issuance of the temporary order, unless a continuance is ordered by the Court, as set forth in STC 5.13.9(e).

(d) The respondent must be personally served with a copy of the ex parte temporary sexual assault protection order along with a copy of the petition and notice of the date set for the hearing. The court will provide a copy of the ex parte temporary sexual assault protection order along with a copy of the petition and notice of the date set for the hearing to the Suquamish Tribal Police Department, which will personally serve the respondent. If personal service is not possible, the Court may authorize service according to STC 4.2 or its successor code. Any ex parte temporary sexual assault protection order issued under this section must contain the date and time of issuance and the expiration date of the conditions of the order and will be transmitted to the Suquamish Police Department within one judicial day after issuance.

(e) The Suquamish Tribal Court is authorized to continue the date for a full hearing pursuant to this chapter upon a showing that either the respondent's constitutional rights in a criminal matter or the integrity of an ongoing criminal investigation may be compromised by the fourteen (14) judicial day full hearing requirement. The Court's order continuing the hearing must contain specific findings and conclusions regarding the reason(s) for the continuance, including the time period required to resolve the issue. In no event will a continuance under this section extend longer than six (6) months from the date of the issuance of the temporary sexual assault protection order, except upon agreement of the parties. The ex parte temporary sexual assault protection order will remain in full force and effect during the time of any continuance ordered pursuant to this section. (Res. 2017-156(b), passed July 10, 2017)

**5.13.10. Evidence.** (a) In proceedings for a sexual assault protection order and prosecutions for violating a sexual assault protection order, the prior sexual activity or the reputation of the petitioner is inadmissible except as evidence concerning the past sexual conduct of the petitioner with the respondent when this evidence is offered by the respondent upon the issue of whether the petitioner consented to the sexual conduct with respect to which the offense is alleged;

(b) No evidence admissible under this section may be introduced unless ruled admissible by the Court after an offer of proof has been made at a hearing held *in camera* to determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof must include reasonably specific information as to the date, time, and place of the past sexual conduct between the petitioner and the respondent. Unless the court finds that reasonably specific information as to date, time, or place, or some combination thereof, has been offered as to prior sexual activity with the respondent, the respondent or counsel for the respondent will be ordered to refrain from inquiring into prior sexual activity between the petitioner and the respondent. The Court may not admit evidence under this section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice or harm to the petitioner. (Res. 2017-156(b), passed July 10, 2017)

**5.13.11. Burden of Proof.** If the Court finds by a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual assault or nonconsensual sexual conduct by the respondent, the Court will issue a sexual assault protection order. (Res. 2017-156(b), passed July 10, 2017)

**5.13.12 Relief Provided.** The Court may provide relief as follows:

(a) Restrain the respondent from having any contact, including nonphysical contact, with the petitioner or the petitioner's family and household members including minor children or grandchildren, directly, indirectly, or through third parties regardless of whether those third parties know of the order;

(b) Exclude the respondent from the petitioner's residence, workplace, or school, or from the daycare or school of a minor child victim or the petitioner's minor children or grandchildren and from any facilities or events within the boundaries of the Port Madison Indian Reservation where the minor child victim or the petitioner's minor children are likely to be present;

(c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) Order that the respondent not obtain or possess any firearms, ammunition, other dangerous weapons, or concealed pistol license;

(e) Order that the respondent surrender to the Suquamish Police Department any firearms, ammunition, other dangerous weapons and concealed pistol license;

(f) Order any other injunctive relief as necessary or appropriate for the protection of the petitioner; and

(g) Order that the records related to the Sexual Assault Protection Order be sealed. The proponent of sealing must make some showing of a serious and imminent threat to some other important interest. The opposing party may object to having the records sealed and the court should analyze whether the motion to seal is the least restrictive means to protect the threatened interest. The court should also weigh the competing interests of the parties and the public. (Res. 2017-156(b), passed July 10, 2017)

**5.13.13. Final Sexual Assault Protection Order Duration.** (a) Except as otherwise provided in this section, a final sexual assault protection order may be a permanent order or may be effective for a fixed period of time.

(b) Any final sexual assault protection order for a fixed period of time may be renewed one or more times, as necessary for victim safety. The petitioner may apply for renewal to extend the expiration date of the order by filing a petition for renewal at

any time within the three (3) months before the order expires. The motion for renewal must state the reasons why the petitioner seeks to renew the protection order.

(c) The court will grant the motion for renewal unless the respondent proves by a preponderance of the evidence that there has been a material change in circumstances such that the respondent is not likely to engage in or attempt to engage in physical or nonphysical contact with the petitioner when the order expires.

(d) For purposes of subsection (c), the Court will determine whether there has been a material change in circumstances by considering only factors which address whether the respondent is likely to engage in or attempt to engage in physical or nonphysical contact with the petitioner when the order expires. The passage of time and compliance with the existing protection order will be insufficient to meet this burden of proof. The court may renew the sexual assault protection order for another fixed time period or may enter a permanent order as provided in this section.

(e) In determining whether there has been a material change in circumstances, the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:

(1) Whether the respondent has committed or threatened to commit sexual assault, domestic violence, stalking, or other violent acts since the protection order was entered;

(2) Whether the respondent has violated the terms of the protection order and the time that has passed since the entry of the order;

(3) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;

(4) Whether the respondent has been convicted of criminal activity since the protection order was entered;

(5) Whether the respondent has either acknowledged responsibility for acts of sexual assault that resulted in entry of the protection order or successfully completed sexual assault perpetrator treatment since the protection order was entered;

(6) Whether the respondent has a continuing involvement with drug or alcohol abuse;

(7) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of sexual assault may be committed from any distance such as via cybercrime;

(8) Other factors relating to a material change in circumstances.

(f) Renewals may be granted only in open court and must be personally served on the respondent or, if not possible, served in a manner consistent with STC § 4.2.

(g) Upon a motion with notice to all parties and after a hearing, the court may terminate or modify the terms of an existing sexual assault protection order.

(h) A respondent's motion to terminate or modify a sexual assault protection order must include a declaration setting forth facts supporting the requested order for termination or modification. The nonmoving parties to the proceeding may file opposing declarations. The court must deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the respondent established adequate cause, the court will set a date for hearing the respondent's motion.

(i) The court may terminate or modify the terms of a sexual assault protection order, if the respondent proves by a preponderance of the evidence that there has been a material change in circumstances such that the respondent is not likely to engage in or attempt to engage in physical or nonphysical contact with the persons protected by the protection order if the order is terminated or modified. The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.

(j) A respondent may file a motion to terminate or modify pursuant to this section no more than once in every twenty (24) month period that the order is in effect, starting from the date of the order and continuing through any renewal. The court will review a motion to modify or terminate to see if the motion establishes adequate cause for a hearing and, if not, the judge may deny the motion without a hearing.

(k) A court may require the respondent to pay the petitioner for costs incurred in responding to a motion to terminate or modify pursuant to this section, including reasonable attorneys' fees.

(l) Any sexual assault protection order that would expire on a Court holiday will instead expire at the close of the next Court judicial day. (Res. 2017-156(b), passed July 10, 2017)

**5.13.14. Request for Reconsideration or Modification.** Upon motion with notice to all parties and after a hearing, the Court may modify the terms of an existing sexual assault protection order. In any situation where an order is terminated or modified before its expiration date, the Clerk of the Court will, on or before the next judicial day, forward a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or terminated order. Upon receipt of the order, the law enforcement agency will promptly enter it in the law enforcement data base or, if the order is terminated, remove the order from the law enforcement data base. (Res. 2017-156(b), passed July 10, 2017)



**5.13.15. Sexual Assault Protection Orders – Personal Jurisdiction – Nonresident Individuals.**

(a) In a proceeding in which a sexual assault protection order is sought under this chapter, the Suquamish Tribal Court may exercise personal jurisdiction over a nonresident respondent if:

(1) The respondent submits to the Suquamish Tribe's jurisdiction by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction; or

(2) The act or acts of the respondent or the respondent's agent giving rise to the petition or to enforcement of a sexual assault protection order occurred within the Tribe's jurisdiction as defined by STC §3.2.3; or

(3) The act or acts of the respondent or the respondent's agent giving rise to the petition or to enforcement of a sexual assault protection order occurred outside the Tribe's territorial jurisdiction but are part of an ongoing pattern of sexual assault that has an adverse effect on the petitioner or a member of the petitioner's family or household and the petitioner resides within the exterior boundaries of the Port Madison Indian Reservation; or

(4) There is any other basis consistent with the laws of the Suquamish Tribe and/or the laws of the United States.

(b) For jurisdiction to be exercised under subsections (a)(1)-(4) of this section, the respondent must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides within the exterior boundaries of the Port Madison Indian Reservation. Communication on any electronic medium that is generally available to any individual residing in the State of Washington will be sufficient to exercise jurisdiction under subsection (a)(4) of this section if directed at a resident of the Port Madison Indian Reservation. (Res. 2017-156(b), passed July 10, 2017)

**5.13.16. Penalties for Violation of a Sexual Assault Protection Order.** Violation of a sexual assault protection order is a gross misdemeanor.

(a) A first and second violation of a sexual assault protection order is a gross misdemeanor.

(b) A third or subsequent violation of a sexual assault protection order is a felony.

(c) Consent is not a defense to a charge of violation of a sexual assault protection order. (Res. 2017-156(b), passed July 10, 2017)

**5.13.17. Full Faith and Credit.** (a) A sexual assault protection order issued by the Suquamish Tribal Court will be enforceable throughout the State of Washington pursuant to RCW 13.34.240, or RCW 26.52 and Washington Superior Court Civil Rule 82.5(c).

(b) To ensure that sexual assault protection orders issued by the Suquamish Tribal Court are enforced outside the boundaries of the Port Madison Indian Reservation, sexual assault protection orders issued in the courts of the State of Washington, or a tribal court within the State of Washington, will be enforced within the boundaries of the reservation.

(c) Notice of reciprocal enforcement pursuant to this section will be printed on all sexual assault protection orders issued by the Court. (Res. 2017-156(b), passed July 10, 2017)

**5.13.18. Severability; Construction.** If any phrase, clause, part, sentence, provision, or section of this chapter is found to be invalid by a court of competent jurisdiction, the remainder of this chapter will not be affected and will remain in full force and effect and continue to be in effect as if the invalid provision(s) were not a part hereof. If the operation of any clause, part, or section of this chapter is held to impair the obligation of contract or deny any person any right secured to her or him by the Constitution of the Suquamish or the United States Constitution, it is hereby declared that the remainder of the chapter would nevertheless be enacted without such invalid clause, part, or section. (Res. 2017-156(b), passed July 10, 2017)

**5.13.19. Effective Date.** This chapter, as amended, is effective as of August 1, 2017. (Res. 2017-156(b), passed July 10, 2017)