

TITLE 5. SPECIAL PROCEEDINGS

Chapter 5.11

(RESERVED)

Chapter 5.12

DOMESTIC VIOLENCE PROTECTION

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5.12.1. Definitions. As used in this chapter, the following terms shall have the meanings given them:

(a) “Domestic violence” means:

(1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(2) Sexual assault of one family or household member by another.

(b) “Family or household members” means spouses, former spouses, adult persons related by blood or marriage, persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(c) “Court” means the Suquamish Tribal Court.

(d) “Judicial day” does not include Saturdays, Sundays, or legal holidays. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.2. Commencement of Action — Jurisdiction — Venue. Any person may seek relief under this chapter by filing a petition with the Tribal Court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of him- or herself and on behalf of minor family or household members. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.3. Petition for an Order for Protection — Availability of Forms and Instructional Brochures — Filing Fee, When Required — Bond Not Required. There shall exist an action known as a petition for an order for protection in cases of domestic violence.

(a) A petition for relief shall allege the existence of domestic violence and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(b) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(c) The court clerk shall make available simplified forms and instructional brochures. Any assistance or information provided by the clerk under this section does not constitute the practice of law, and clerks are not responsible for incorrect information contained in a petition. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.4. Hearing — Service — Time. Upon receipt of the petition, the Court shall order a hearing which will be held not later than twenty (20) days from the date of the order. Personal service shall be made upon the respondent not less than seven (7) judicial days prior to the hearing. If timely service cannot be made, the Court may set a new hearing date. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.5. Relief — Realignment of Designation of Parties. (a) Upon notice and after hearing, the Court may provide relief as follows:

- (1) Restrain a party from committing acts of domestic violence;
- (2) Exclude the respondent from the dwelling which parties share or from the residence of the petitioner;
- (3) Make residential provision with regard to minor children of the parties;

(4) Order the respondent to participate in treatment or counseling services;

(5) Order other relief as it deems necessary for the protection of a family or household member, including orders or directives to a peace officer; or

(6) Require the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee. If the petitioner has been granted leave to proceed in forma pauperis, the Court may require the respondent to pay the filing fee and costs, including service fees, to the Tribe.

(b) In providing relief under this section, the Court may realign the designation of the parties as "petitioner" and "respondent" where the Court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.6. Ex Parte Temporary Order for Protection. (a) Where an applicant under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the Court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the Court deems proper, including an order:

(1) Restraining any party from committing acts of domestic violence;

(2) Excluding any party from the dwelling shared or from the residence of the other until further order of the Court; and

(3) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the Court.

(b) Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.

(c) The Court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

(d) An ex parte temporary order for protection shall be effective for a fixed period not to exceed thirty (30) days but may be reissued. A full hearing, as provided in this chapter, shall be set for not later than thirty (30) days from the issuance of the temporary order. The respondent shall be served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. (Res. 93-025

(part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.7. Issuance of Order — Assistance of Peace Officer — Designation of Appropriate Law Enforcement Agency. When an order is issued under this chapter upon request of the petitioner, the Court may order a peace officer to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence or otherwise assist in the execution of the order of protection. Orders issued under this chapter shall include a designation of the appropriate law enforcement agency to execute, serve, or enforce the order. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.8. Order — Service — Fees. (a) An order issued under this chapter shall be personally served upon the respondent, except as provided in §5.12.8(f).

(b) The chief of police or his or her designee of the reservation on which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(c) If service by a peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(d) If the peace officer cannot complete service upon the respondent within ten (10) days, the peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

(e) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(f) If an order entered by the Court recites that the respondent appeared in person before the Court, the necessity for further service is waived, and proof of service is waived, and proof of service of that order is not necessary. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.9. Order — Transmittal to Law Enforcement Agency — Record in Law Enforcement Information System — Enforceability. A copy of an order for protection granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available to the Tribe. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in

any county in the state. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.10. Violation of Order. (a) Whenever an order for protection is granted under this chapter and the respondent or person to be restrained knows of the order, a violation of the restraint provisions or of a provision excluding the person from a residence is a misdemeanor.

(b) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter that restrains the person or excludes the person from a residence, if the person restrained knows of the order.

(c) A violation of an order for protection shall also constitute contempt of court and is subject to the penalties prescribed by law.

(d) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order for protection granted under this chapter, the Court may issue an order to the respondent requiring the respondent to appear and show cause within twenty (20) days why the respondent should not be found in contempt of court and punished accordingly. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.11. (Reserved)

5.12.12. Title to Real Estate — Effect. Nothing in this chapter may affect the title to real estate, provided that the Court may order a lien on real estate for costs or fees awarded under this chapter except where prohibited by applicable law. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.13. Proceedings Additional. Any proceeding under this chapter is in addition to other civil or criminal remedies. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

5.12.14. Police Arrest Authority. (a) Felonies. Officers shall arrest without benefit of a warrant based on probable cause for assaults and threats involving physical action in domestic cases and having occurred within four (4) hours.

(b) Misdemeanors. Officers shall arrest without benefit of a warrant based on probable cause for assaults and threats involving physical action in domestic cases and having occurred within four (4) hours.

(c) Court Orders. Officers shall arrest based on probable cause that a court order has been violated in a domestic incident.

(d) Warrants. If, when officers arrive on the scene and the offender has left the area or four (4) hours have elapsed and probable cause exists that a domestic violence crime has been committed, the officer will obtain an arrest warrant. (Res. 93-025 (part), passed Mar. 8, 1993; recodified in Title 5 from Title 7 by Res. 2017-156B, passed Jul. 10, 2017)

Note: All subsections in this chapter were renumbered for consistency by Res. 2016-090, passed Jun. 20, 2016. Res. 2017-156B, passed Jul. 10, 2017, recodified chapter 7.28 as chapter 5.12. The following example reflects both changes.

All Arabic numerals (1, 2, 3, etc.) used as subsection headings have been changed to lower case letters (a, b, c, etc.)

All lower case letters have been changed to Arabic numerals

Example: What was previously 7.28.1(1)(a) is now 5.12.1(a)(1)