

TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.28

DOMESTIC VIOLENCE

Sections:

- 7.28.1 Purpose.
- 7.28.2 Legislative Findings.
- 7.28.3 General Jurisdiction.
- 7.28.4 Special Domestic Violence Criminal Jurisdiction.
- 7.28.5 Special Domestic Violence Jurisdiction – Criminal Conduct Applicable.
- 7.28.6 Statute of Limitations.
- 7.28.7 Definitions.
- 7.28.8 Immunity from Liability.
- 7.28.9 Law Enforcement Officer Immunity.
- 7.28.10 Mandatory Arrest.
- 7.28.11 Authority to Seize and Hold Weapons.
- 7.28.12 Mandatory Arrest for Violations of Civil Protection Orders or Criminal No Contact Orders.
- 7.28.13 Law Enforcement Records on Domestic Violence to be Identifiable.
- 7.28.14 Judgments and Convictions.
- 7.28.15 Interfering with the Reporting of Domestic Violence.
- 7.28.16 Interfering with the Prosecution of Domestic Violence.
- 7.28.17 Victims' Rights.
- 7.28.18 Advocates – Present During Prosecution or Defense Interviews.
- 7.28.19 Habitual Domestic Violence Offender.
- 7.28.20 Nonwaiver of Sovereign Immunity.
- 7.28.21 Severability.
- 7.28.22 Savings.

7.28.1. Purpose. The purpose of this chapter is to recognize domestic violence crimes as serious crimes against the Suquamish Tribal community and the family, and to provide victims of domestic violence with the maximum protection from further violence that the law, and those who enforce the law, can provide. Furthermore, the purpose of this chapter is to recognize that the strength of the Suquamish Tribe is founded upon healthy families, and that the safety of victims of domestic violence, including children who witness domestic violence, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.

It is the intent of the Suquamish Tribe that the official response to domestic violence will stress the enforcement of laws to protect victims and to hold perpetrators accountable, which will communicate the Tribe's policy that violent

behavior against intimate partners or family members is criminal behavior that will not be excused or tolerated. This official response will encourage healing of families and the Tribal community, where possible, and also promote cultural teachings and traditional Tribal values of nonviolence and respect within families. This chapter will be interpreted and applied to give it the broadest possible scope to carry out these purposes. (Res. 2019-040, passed Mar. 11, 2019)

7.28.2. Legislative Findings. The Suquamish Tribe recognizes the United States Department of Justice findings that more than half of Native women have experienced physical violence by intimate partners in their lifetimes. A community response to domestic violence is necessary because domestic violence crimes and incidents impact the community as a whole.

The Suquamish Tribal Council declares that the official response to domestic violence is that the Tribe will neither tolerate nor excuse violent behavior under any circumstances. Domestic violence is not acceptable and is contrary to traditional Suquamish culture and values honoring the family, and is contrary to the interests of the community and its sense of well-being and growth. (Res. 2019-040, passed Mar. 11, 2019)

7.28.3. General Jurisdiction. Jurisdiction over domestic violence matters will be in accordance with § 3.2. In addition, the Suquamish Tribal Court will retain jurisdiction over members of Federally-recognized Indian Tribes and any violations of orders of protection entered pursuant to this chapter that are alleged to have occurred outside of the boundaries of the Port Madison Indian Reservation, where such orders are entitled to recognition outside reservation boundaries as a matter of full faith and credit. (Res. 2019-040, passed Mar. 11, 2019)

7.28.4. Special Domestic Violence Criminal Jurisdiction. (a) The Suquamish Tribe hereby exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as defined within 25 U.S.C. § 1304.

(b) In all proceedings in which the Suquamish Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by § 3.8 and Title 6, as well as those enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302, will apply to all defendants. Should there be any inconsistency between § 3.8 and S.T.C. Title 6, and 25 U.S.C. § 1302, then the U.S. Code will apply.

(c) Every defendant in proceedings in which the Suquamish Tribal Court is exercising special domestic violence jurisdiction as a participating tribe has the privilege of a writ of habeas corpus to test the legality of his or her detention by the Suquamish Tribe, and may petition the Suquamish Tribal Court to stay further detention pending the habeas proceeding.

(1) The Court will grant a stay if the Court:

(A) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(B) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the Court, the petitioner is not likely to flee or pose a danger to any person or to the community if released.

(d) The Suquamish Tribe hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

(1) Resides within the Indian Country of the Suquamish Tribe; or

(2) Is employed within the Indian Country of the Suquamish Tribe;

or

(3) Is a spouse, intimate partner, or dating partner of:

(A) A member of the Suquamish Tribe; or

(B) A member of another Indian Tribe who resides within the Indian Country of the Suquamish Tribe. (Res. 2019-040, passed Mar. 11, 2019)

7.28.5. Special Domestic Violence Jurisdiction – Criminal Conduct Applicable.

The Suquamish Tribe exercises special domestic violence criminal jurisdiction over a defendant for criminal conduct that is:

(a) Domestic violence or dating violence: An act of domestic violence or dating violence that occurs within the Indian Country of the Suquamish Tribe; or

(b) Violation of a Protection Order: An act that occurs within the Indian Country of the Suquamish Tribe and violates the portion of the protection order that:

(1) Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;

(2) Was issued against the defendant;

(3) Is enforceable by the Suquamish Tribe; and

(4) Is consistent with 18 U.S.C. § 2265(b). (Res. 2019-040, passed Mar. 11, 2019)

7.28.6. Statute of Limitations. For purposes of this chapter, the statute of limitations will be consistent with and follow § 6.1.2 or any successor code section. (Res. 2019-040, passed Mar. 11, 2019)

7.28.7. Definitions. As used in this chapter, the following terms have the meanings given below:

(a) "Contact" includes but is not limited to:

(1) Repeatedly coming into and/or remaining in the visual or physical presence of the other person;

(2) Following the other person, or having that person followed, where "follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time;

(3) Waiting outside the home, property, work or school of the other person or the other person's children, grandchildren, siblings or other household members;

(4) Sending or making written communications in any form, including electronic communications, to the other person;

(5) Using technology to track, monitor, or otherwise gain knowledge of the other person's activity, including but not limited to the use of computer spy ware, surveillance equipment, tracking devices, or long-distance magnification devices;

(6) Speaking with the other person by any means, including leaving a voicemail message;

(7) Communicating with the other person through a third person;

(8) Committing a crime against the other person;

(9) Communicating with a third person who has some relationship to the other person with the intent of impacting the third person's relationship with that other person;

(10) Communicating with business entities with the intent of affecting some right or interest of the other person, or gaining knowledge

of the other person, including identity theft or an attempt to interfere with the victim's credit;

(11) Damaging or defacing the other person's home, real property, personal property, place of work, or school; or

(12) Delivering directly or through a third person any object to the home, property, place of work, or school of the other person.

(b) "Criminal no contact order" means a court order issued pursuant to a criminal case that prohibits a criminal defendant from having contact with the victim.

(c) "Dating relationship" means a social relationship of a romantic nature. In determining whether parties have a "dating relationship," the trier of fact will consider:

(1) The length of time the relationship has existed;

(2) The nature of the relationship; and

(3) The frequency of the interaction between the parties.

(d) "Dating violence" means a crime committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(e) "Domestic violence" means a crime committed by a current or former family member or household member of the victim, that is:

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

(2) Sexual assault or unwanted sexual touching, which includes but is not limited to the crimes enumerated in S.T.C §§ 7.17.4 – 7.17.9; or

(3) Attempting to commit or committing any criminal offense as defined by § 7.7 against an intimate partner or family member;

(f) "Domestic violence protection order" means a temporary or permanent court order, injunction or other order related to domestic violence, granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, who is a victim or alleged victim of domestic violence; and includes any temporary or final order issued by a civil or criminal court.

(g) “Electronic communications” means any form of expression or exchange of information by speech, photographs, or written form using electronic means. Electronic communication includes, but is not limited to, communication via telephone, facsimile, electronic mail, social media, text messaging, instant messaging, and other electronic forms.

(h) “Electronic surveillance” means monitoring the behavior, activities, or whereabouts of another person by electronic means, including but not limited to the use of computer spy ware, surveillance equipment, tracking devices, or long-distance magnification devices.

(i) “Family or household member” means:

(1) Persons who are related by blood, marriage, or adoption.

(2) Minor children, by blood, marriage, or adoption.

(3) Minor children who are part of the household.

(4) Persons who have a child in common, regardless of whether they have been married or have lived together at any time.

(j) “Foreign Protection Order” means an injunction or other order related to domestic violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, or a tribal court, in a civil or criminal action.

(k) “Indian Country” has the definition found in 18 USC §1151.

(l) “Intimate partner” means:

(1) Spouses;

(2) Former spouses;

(3) Persons who are or have been in a marital-like relationship, including same-sex relationships;

(4) Persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship.

(m) "Minor" or "juvenile" means any person under the age of 18 years.

(n) "Repeatedly" means on two or more separate occasions.

(o) "Tribal or state certified domestic violence perpetrator treatment program" means a state or tribally certified program that adopts, at a minimum, the state standards of Chapter 388-60 WAC or any successor code.

(p) "Victim impact statement" means a written or oral statement given to the sentencing judge by the victim. (Res. 2019-040, passed Mar. 11, 2019)

7.28.8. Immunity from Liability. The following persons have immunity from liability in a civil action brought by a party for any action or omission in good faith under this chapter arising from alleged domestic violence or a crime involving domestic violence:

(a) Law enforcement officers;

(b) Victim advocates;

(c) Suquamish Tribal Child Welfare staff;

(d) Prosecutor's Office staff;

(e) Any Suquamish tribal employee assisting law enforcement, victim advocates, tribal child welfare staff or prosecutor staff. (Res. 2019-040, passed Mar. 11, 2019)

7.28.9. Law Enforcement Officer Immunity. No law enforcement officer will be held criminally or civilly liable for making an arrest under this chapter if the law enforcement officer acted in good faith. (Res. 2019-040, passed Mar. 11, 2019)

7.28.10. Mandatory Arrest. (a) The purpose of mandating arrest of perpetrators is to provide victims with immediate protection from the current violence, to afford them opportunities to consider legal options, to provide victims with time to safely relocate or obtain protection orders, and to ensure adequate and prompt law enforcement response to domestic violence. The person will be held in custody without bail, pending further action by the Court.

(b) A law enforcement officer will, without a warrant, arrest a person and charge him or her for the appropriate crime if the officer has probable cause to believe that the person has committed a crime of domestic violence. The officer must make an arrest upon probable cause regardless of the express wishes of the victim, but those wishes should be noted in the report.

(c) If a law enforcement officer receives a complaint alleging a crime involving domestic violence from two or more persons, the officer will evaluate

each person's account separately to determine who was more likely to have been the predominant physical aggressor. In determining whether a person was the predominant physical aggressor, the officer will consider the following as well as any other relevant factors:

- (1) Prior complaints of domestic violence;
- (2) The relative severity of the injuries inflicted on each person;
- (3) The likelihood of future injury to each person; and
- (4) Whether one of the persons acted in self-defense.

(d) If a law enforcement officer determines that one person was the predominant physical aggressor, the officer need not arrest the other person, even if the officer has probable cause to believe that the other person has committed a crime involving domestic violence against the predominant physical aggressor.

(e) A law enforcement officer who does not make an arrest, or who arrests two or more persons after investigating an alleged crime involving domestic violence, must include in the police report a detailed explanation as to why the officer did not make an arrest or arrested two or more parties.

(f) Persons arrested will be held pending a mandatory court appearance. (Res. 2019-040, passed Mar. 11, 2019)

7.28.11. Authority to Seize and Hold Weapons. (a) Incident to arrest for a crime involving domestic violence, the Suquamish Tribal Police will seize all weapons that are alleged to have been involved or were threatened to be used in the commission of the alleged crime.

(b) The Suquamish Tribal Police may also seize weapons that are in plain view of the officer(s) or that are discovered pursuant to a consensual search, an officer safety pat-down or a search incident to arrest as necessary for the protection of the officer(s) or other persons.

(c) Suquamish Tribal Police are authorized to confiscate weapons from a person who is prohibited from possessing or using them. (Res. 2019-040, passed Mar. 11, 2019)

7.28.12. Mandatory Arrest for Violations of Civil Protection Orders or Criminal No Contact Orders. (a) When a law enforcement officer has probable cause to believe that a person has violated a civil protection order or a criminal no contact order, the officer will, without a warrant, arrest the alleged violator. This section applies to all violations of any protection order or no contact order whether civil or

criminal, regardless of whether the issuing authority is the Suquamish Tribal Court or another court of competent jurisdiction.

(b) Persons arrested will be held pending a mandatory court appearance. (Res. 2019-040, passed Mar. 11, 2019)

7.28.13. Records on Domestic Violence to be Identifiable. All documents related to a criminal case where the alleged crime meets the definition of domestic violence should contain the designation of “DV” following the crime alleged, as in “Assault in the Fourth Degree—DV.” This includes, but is not limited to, records held by Suquamish Police Department such as arrest records, or incident reports; Suquamish Prosecutor’s Office records; and Suquamish Tribal Court documents. (Res. 2019-040, passed Mar. 11, 2019)

7.28.14. Judgments and Convictions. (a) When entering a judgment upon conviction for a crime involving domestic violence or stalking, the Court must:

(1) Consider whether the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims, manifested by multiple incidents over a prolonged period of time.

(2) Consider whether the offense occurred within the sight or sound of minor children, especially if the children are related to the defendant or the victim, including foster children and children in guardianships.

(3) Enter orders for the protection of the victim, including those set out within §§ 5.12 and 5.13;

(4) Order restitution as warranted, which includes withholding the Suquamish Tribe per capita payment of any tribal member convicted under this chapter for application to this restitution; and

(5) Order appropriate domestic violence perpetrator’s treatment as warranted.

(A) For the purposes of this section, a domestic violence perpetrator’s treatment assessment should include the following: an official copy of current and past criminal history; all violence history whether or not it resulted in a conviction; family and cultural issues; substance abuse issues; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual. The intake may not be based solely on the defendant’s self-report and the evaluator must make reasonable efforts to contact the victim. The defendant must sign privacy releases for the evaluator to obtain any confidential information that is necessary to the evaluation.

(B) Satisfactory completion of domestic violence treatment required under this section must be based on meeting treatment goals, not merely the completion of a certain period of time or certain number of sessions. The treatment must focus on ending the violence and holding the defendant accountable for his or her behavior. The treatment must include education about the individual, family, and cultural dynamics of domestic violence. Treatment must include education about the effects of domestic violence on children. The defendant must sign privacy releases for the treatment provider to obtain any confidential information that is necessary to the treatment. The defendant must also sign a release for the treatment provider to provide information to the Court, the prosecutor and the probation office in order to monitor compliance with the court order.

(6) Inform the defendant that his or her rights to own or possess a firearm are restricted by tribal and federal law.

(7) Order any other lawful relief it deems necessary for the protection of any claimed, alleged, or potential victim(s) of domestic violence, including orders or directives to the Suquamish Police Department.

(b) Upon conviction of a crime involving domestic violence, the Tribe may commence exclusion proceedings consistent with § 5.3.1.

(c) The Suquamish Tribe per capita payment of any tribal member convicted under this chapter will be withheld by the Suquamish Tribe and applied to any restitution ordered by the Court for the victim and/or the victim's property. (Res. 2019-040, passed Mar. 11, 2019)

7.28.15. Interfering with the Reporting of Domestic Violence. (a) Any person who prevents or attempts to prevent a victim or witness of domestic violence from calling 911, the Suquamish Tribal Police, or any other law enforcement agency, or from obtaining medical assistance or making a report to any tribal, state or federal law enforcement official, commits the crime of interfering with the reporting of domestic violence.

(b) Interfering with the reporting of domestic violence is a gross misdemeanor offense. (Res. 2019-040, passed Mar. 11, 2019)

7.28.16. Interfering with the Prosecution of Domestic Violence. (a) Any person who prevents or attempts to prevent a witness from testifying in a court proceeding, or otherwise impedes the prosecution of a case involving domestic

violence, commits the crime of interfering with the prosecution of domestic violence.

(b) Interfering with the prosecution of domestic violence is a gross misdemeanor offense. (Res. 2019-040, passed Mar. 11, 2019)

7.28.17. Victims' Rights. Notwithstanding other provisions of the Suquamish Tribal Code, victims of a crime under this chapter have the following rights:

(a) The right to be reasonably protected from the accused.

(b) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.

(c) The right not to be excluded from any such public court proceeding, unless the Court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

(d) The right to be reasonably heard at any public proceeding in court involving release, plea, sentencing, or any post-conviction proceeding.

(e) The reasonable right to confer with the prosecutor in the case.

(f) The right to full and timely restitution as provided in law.

(g) The right to proceedings free from unreasonable delay.

(h) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(i) The right to provide a victim impact statement. (Res. 2019-040, passed Mar. 11, 2019)

7.28.18. Advocates – Present During Prosecution or Defense Interviews. (a) If requested by the victim, and if the presence of the advocate does not cause any unnecessary delay in the investigation or prosecution of the case, an advocate of the victim's choosing may be present at any interview with the victim and at any judicial proceeding related to alleged criminal acts committed against the victim.

(b) A victim impact statement may be prepared and presented to the sentencing judge. Such statements may include the impact of the crime on the victim, and how the crime affected the victim psychologically, financially, and physically. The prosecutor or victim advocate will assist the victim in providing this statement. All victim impact statements will be filed in the court file, and copies provided to the parties.

(c) The Court will make all reasonable efforts to accommodate the participation of the victim at the sentencing hearing, being mindful of the unique emotional and psychological barriers victims may experience when facing a perpetrator in court.

(d) The victim has the right to confidentiality of communications between him- or herself and the advocate, such that the advocate will not be examined as to any communication between the two, nor required to provide in discovery any records the advocate maintains. (Res. 2019-040, passed Mar. 11, 2019)

7.28.19. Habitual Domestic Violence Offender. Any person with two or more convictions for crimes of domestic violence assault will be deemed an habitual domestic violence offender and the prosecutor or police department will refer any subsequent violation to the local FBI Office and/or the local United States Attorney's Office for prosecution under 18 U.S.C. § 117 as a federal Habitual DV Offender. Should there be a declination of federal prosecution, the third or subsequent domestic violence charge will be prosecuted in Suquamish Tribal Court, and elevated to a felony charge, except where inconsistent with federal laws. (Res. 2019-040, passed Mar. 11, 2019)

7.28.20. Nonwaiver of Sovereign Immunity. Nothing in this chapter may be deemed to constitute a general or specific waiver by the Suquamish Tribe of its sovereign immunity for any reason whatsoever. (Res. 2019-040, passed Mar. 11, 2019)

7.28.21. Severability. If any part or parts, or the application of any part of this chapter is held invalid, such holding will not affect the validity of the remaining parts of this chapter. (Res. 2019-040, passed Mar. 11, 2019)

7.28.22. Savings. This chapter takes effect thirty (30) days after it is enacted by the Suquamish Tribal Council, and does not extinguish nor modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this chapter. Any such code will be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty therefrom, forfeiture or liability. (Res. 2019-040, passed Mar. 11, 2019)