

Title 7 – Domestic Relations

Chapter 11 – Domestic Violence

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Legislative History

Enacted:

Ord. 325 Amending STC Title 4, Chapters 1, 2 & 12 and Title 7, Chapter 11 (5/7/13), BIA (5/10/13).

Ord. 202 Domestic Violence Protection Orders (11/24/03), BIA (11/28/03).

Repealed or Superseded:

Ord 142 Domestic Violence Ordinance (9/12/00), BIA (10/2/00).

7-11.010 Title.

This Chapter shall be known as the “Swinomish Domestic Violence Code.”

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.020 Purpose and Scope.

- (A) The purpose of the Swinomish Domestic Violence Code is to recognize domestic violence as a serious crime against society, the tribal community and the family, and to ensure that the victim of domestic violence receives the maximum protection from abuse 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 Tribe is founded on healthy families, and that families damaged by domestic violence, including children, must be healed by immediate intervention of law enforcement, prosecution, education, counseling and other appropriate services.
- (B) It is the intent of the Senate that the official response to cases of domestic violence shall stress the enforcement of laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Intoxication of the abuser is irrelevant. Furthermore, it is the intent of the Senate that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.030 Authority.

This Chapter is enacted pursuant to Article VI, Section 1(k), (l) and (o) of the Swinomish Constitution.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.040 Definitions.

For purposes of this Chapter, unless otherwise expressly provided, the following definitions shall apply:

- (A) **“Domestic Violence”** means: (A) attempting to cause or causing physical harm, bodily injury, or assault on a family or household member; (B) placing a family or household member in fear of the infliction of physical harm, bodily injury, or assault; (C) causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress; (D) stalking of one family or household member by another family or household member; and/or (E) any act found by a court to be a crime of domestic violence.
- (B) **"Family or Household Members"** means spouses, former spouses, persons who have children in common regardless of whether they have been married or lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen (16) years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen (16) years of age or older with whom a respondent sixteen (16) years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.
- (C) **"Court"** means the Swinomish Tribal Court.
- (D) **"Judicial Day"** means any day during which the Swinomish court clerk’s office is open for business, but does not include Saturdays, Sundays or legal holidays.
- (E) **"Electronic Monitoring"** means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment.
- (F) **"Essential Personal Effects"** means those items necessary for a person's immediate health, welfare, and livelihood. Essential personal effects includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.
- (G) **"Victim"** means a family or household member who has been subjected to domestic violence.
- (H) **"Enforcement Officer"** means a Swinomish Tribal Police Officer.
- (I) **"Protection Order”** or **“Order for Protection"** means a restraining order, *ex parte* temporary order, no contact order, or other such comparable court order whose purpose includes the protection of victims or potential victims of domestic violence.
- (J) **"Stalking"** shall have the same meaning as set forth in Title 4.

(K) “**Senate**” means the Swinomish Indian Senate.

(L) “**Tribe**” means the Swinomish Indian Tribal Community.

[History] Ord. 325 (5/7/13); Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.050 Nonwaiver of Sovereign Immunity.

Nothing in this Chapter shall be deemed to constitute a waiver by the Tribe of its sovereignty, rights, powers or privileges, including its immunity from lawsuits brought without its consent.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

Subchapter I – Civil Orders For Protection

7-11.060 Jurisdiction – Commencement of Action.

- (A) Any person who resides within the exterior boundaries of the Swinomish Indian Reservation may seek relief under this Chapter by filing a petition with the Tribal Court under Section 7-11.070. The person may petition on behalf of himself or herself and on behalf of minor family or household members.
- (B) A person under eighteen (18) years of age who is sixteen (16) years of age or older and resides within the exterior boundaries of the Swinomish Indian Reservation may seek relief under this Chapter and is not required to seek relief by a guardian or other adult.
- (C) A person’s right to petition for relief under this Chapter is not affected by the person leaving the residence or household on the Reservation to avoid abuse.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.070 Petition for Protection Order.

- (A) The Tribal Court shall develop and adopt a standard form for petitions and protection orders.
- (B) The petition for a protection order 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. The petitioner and respondent shall disclose the existence of any other litigation concerning the custody or residential placement of a child of the parties and the existence of any other restraining, protection, or no contact orders between the parties.

- (C) No filing fee shall be charged for proceedings under this Chapter. Forms shall be provided free of charge.
- (D) A person is not required to post a bond to obtain relief in any proceeding under this Chapter.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.080 Protection Order.

The protection order shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement printed in bold face type or in capital letters: **"You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the Tribal Court can change the order upon written application."**

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.090 Hearing and Service.

- (A) Upon receipt of the petition, the Tribal Court shall order a hearing that shall be held not later than fourteen (14) days from the date the petition is filed.
- (B) Personal service of the petition and notice of hearing shall be made upon the respondent not less than five (5) court days prior to the hearing. Swinomish Tribal Police shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party. Service under this Chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.
- (C) The Tribal Court may permit service by certified mail or by publication only if personal service has been attempted without any success, and the petitioner pays the cost of the mailing or publication. If the petitioner is indigent, the Tribe may cover the cost of publication if sufficient funds are available.
- (D) Proof of service shall be consistent with Rules of Civil Procedure, Chapter 3-02.
- (E) The Tribal Court may issue an *ex parte* order for protection pending the hearing as provided under this Chapter.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.100 Relief – Protection Order.

- (A) Upon notice and after hearing, if the Tribal Court finds by a preponderance of the evidence that the respondent has committed an act of domestic violence against the petitioner, regardless of whether the respondent appears at the hearing, the Tribal Court may provide relief as follows:
- (1) Restrain the respondent from committing acts of domestic violence;
 - (2) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;
 - (3) Order the respondent to participate in specialized treatment or counseling services;
 - (4) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to an enforcement officer;
 - (5) Require the respondent to pay any court costs and treatment or service fees, and to reimburse the petitioner for costs incurred in bringing the action, including reasonable spokesperson or attorney's fees;
 - (6) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;
 - (7) Require the respondent to submit to electronic monitoring. The order shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order may include a requirement that the respondent pay the costs of the monitoring;
 - (8) Order possession and use of essential personal effects. The Tribal Court shall list the essential personal effects with sufficient specificity to make it clear which property is included; and
 - (9) Order use of a vehicle.
- (B) If the Tribal Court grants an order for a fixed period of time, the petitioner may apply for a renewal of the order by filing a petition at any time within three (3) months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the Tribal Court shall order a hearing, which shall be not later than thirty (30) days from the date of the petition for renewal. Personal service shall be made on the respondent not less than five

(5) days before the hearing. If personal service cannot be made, service by mail or publication shall be permitted. If the order expires because timely service cannot be made, the Tribal Court shall grant an *ex parte* order of protection as provided under this Chapter. The Tribal Court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The Tribal Court may renew the protection order for a fixed time period or may enter a permanent order.

- (C) The Tribal Court shall specify the date the order expires, if any. The Tribal Court shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this Chapter.
- (D) If the court declines to issue an order for protection or declines to renew an order for protection, the Tribal Court shall state in writing the particular reasons for the Tribal Court's denial.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.110 Ex Parte Temporary Order for Protection.

- (A) Where a petition under this Chapter alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the Tribal Court shall grant an *ex parte* temporary order for protection, pending a full hearing, and grant relief as the Tribal Court deems proper, including an order:
 - (1) Restraining any party from continuing acts of domestic violence;
 - (2) Restraining any party from going onto the grounds or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the Tribal Court;
 - (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 Tribal Court; and
 - (4) Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household.
- (B) Irreparable injury, under this Chapter, 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) An *ex parte* temporary order for protection shall be effective for a fixed period not to exceed fourteen (14) days. A full hearing, as provided in this Chapter, shall be set for not later than fourteen (14) 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.
- (D) Any order under this Chapter shall contain the date and time of issuance and the expiration date.
- (E) If the Tribal Court declines to issue an *ex parte* temporary order for protection, the Tribal Court shall state the particular reasons for the Tribal Court's denial. The Tribal Court's denial of a motion for an *ex parte* order for protection shall be filed with the Court Clerk.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.120 Issuance of Order – Assistance of Enforcement Officer.

- (A) When an order is issued under this Chapter upon request of the petitioner, the Tribal Court may order an enforcement officer to accompany the petitioner and assist in placing the petitioner in possession of those items indicated in the order or to otherwise assist in the execution of the order of protection. The order shall list all items that are to be included with sufficient specificity to make clear which property is included.
- (B) Upon order of the Tribal Court, an enforcement officer shall accompany the petitioner who has obtained the protection order to assist the petitioner in gaining possession of all items listed in the order and to otherwise assist in the execution of the order.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.130 Transmittal to Law Enforcement Agency.

- (A) The Court Clerk shall forward, on or before the next judicial day, a copy of any order for protection issued under this Chapter to the Swinomish Police Department.
- (B) Upon receipt of the order, the Swinomish Police Department shall immediately enter the order into any computer-based criminal intelligence information system available for the state of Washington and used by law enforcement agencies to list outstanding warrants.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.140 Violation of Order – Penalties.

- (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 order is a Class C offense except as provided in Subsections (D) and (E) of this Section. Upon conviction, and in addition to any other penalties provided by law, the Tribal Court may require that the respondent submit to electronic monitoring and be responsible for the costs of such monitoring.
- (B) An enforcement officer shall arrest without a warrant and take into custody a person the 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, workplace, school, or day care facility, if the person restrained knows of the order.
- (C) A violation of a protection order shall also constitute contempt of court, and is subject to the penalties prescribed by law.
- (D) Any assault that is a violation of an order issued under this Chapter and does not amount to a Class A offense under tribal law is a Class B offense, and any conduct in violation of a protective order issued under this Chapter that is reckless and creates a substantial risk of death or serious or substantial bodily injury to another person is a Class B offense.
- (E) A violation of an order for protection issued under this Chapter is a Class B offense if the offender has at least two (2) previous convictions for violating the provisions of an order for protection issued under this Chapter, or any federal or state or tribal order that is comparable to a protective order issued under Swinomish law. The previous conviction may involve the same victim or other victims specifically protected by the protection orders the offender violated.
- (F) Upon the filing of an affidavit by the petitioner or any enforcement officer alleging that the respondent has violated an order for protection granted under this Chapter, the Tribal Court may issue an order to the respondent to appear and show cause within thirty (30) days why the respondent should not be found in contempt of court and punished accordingly.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.150 Enforcement of Protection Order.

- (A) When the Tribal Court issues an *ex parte* order under this Chapter, the Tribal

Court shall advise the petitioner that the respondent may not be subjected to the penalties for violation of the order unless the respondent knows of the order.

- (B) When an enforcement officer investigates a report of an alleged violation of an order for protection issued under this Chapter, the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the protection order and the officer is provided a current copy of the order, the officer shall serve the order on the respondent if the respondent is present. If the respondent is not present, the officer shall make reasonable efforts to serve a copy of the order on the respondent. If the officer serves the respondent with the petitioner's copy of the order, the officer shall give the petitioner a receipt indicating that petitioner's copy has been served on the respondent. After the officer has served the order on the respondent, the officer shall enforce future compliance with the order.
- (C) Presentation of an unexpired, certified copy of a protection order with proof of service is sufficient for an enforcement officer to enforce the order.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.160 Violation of Order – Prosecuting Attorney.

- (A) When a party alleging a violation of a protection order issued under this Chapter states that the party is unable to afford private counsel and asks the prosecuting attorney for the Tribe for assistance, the attorney shall initiate and prosecute a contempt proceeding if there is probable cause to believe that a violation occurred.
- (B) The Tribal Court shall require the violator of the order to pay the costs incurred in bringing the action, including reasonable attorney's fees.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.170 Order – Modification or Termination.

- (A) Upon application with notice to all parties and after a hearing, the Court may modify the terms of an existing order for protection.
- (B) Whenever an order for protection is terminated or modified before its expiration date, the court clerk shall forward no later than the next judicial day, a true copy of the modified order or the termination order to the Swinomish Police Department. Upon receipt of the order, the Swinomish Police Department shall promptly enter it into the law enforcement information system.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

Subchapter II – Filing and Enforcement of Foreign Protection Orders

7-11.180 Violence Against Women Act.

In accordance with the provisions of federal law, including the Violence Against Women Act, 18 U.S.C. §§ 2265-2266, the Senate intends to ensure that victims of domestic violence are able to move across state and tribal boundaries without losing the ability to enforce protection orders they have previously obtained to increase their safety.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.190 Filing and Enforcement of Foreign Protection Orders.

- (A) A certified copy of an unexpired protection order issued in another jurisdiction may be filed with the Clerk of the Tribal Court.
- (B) **Protection Order.** A foreign protection order has the same effect and must be enforced in the same manner as a protection order issued by the Tribal Court if:
 - (1) The foreign protection order is filed in accordance with Subsection (A);
 - (2) Such court had, at the time of the order, jurisdiction over the parties and matter under the law of such state or Indian tribe; and
 - (3) Reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right to due process. In the case of *ex parte* orders, notice and opportunity to be heard must have been provided within the time required by state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
- (C) **Cross or Counter Petition.** A protection order issued by a state or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:
 - (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

- (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.
- (D) **Notification and Registration.**
- (1) **Notification.** The Tribal Court according full faith and credit to an order by a court of another state or Indian tribe is not required to notify the party against whom a protection order has been issued that the protection order has been registered or filed unless requested to do so by the party protected under such order.
 - (2) **No Prior Registration or Filing a Prerequisite for Enforcement.** Any protection order that is otherwise consistent with this Section shall be accorded full faith and credit, notwithstanding failure to register or file the order with the Tribal Court.
- (E) When a protection order is filed with the Tribal Court under this Section, the Tribal Court shall have the order delivered to the appropriate local law enforcement agency for entry into the law enforcement information system.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

Subchapter III – Law Enforcement Response

7-11.200 Training & Duties.

- (A) All training relating to the handling of domestic violence complaints by Swinomish law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the area or field of domestic violence shall cooperate in all aspects of training.
- (B) The primary duty of enforcement officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.
- (C) When an enforcement officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter, safe home or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the tribal prosecutor to file a criminal complaint. You also have

the right to file a petition in Tribal Court requesting an order for protection from domestic abuse which could include any of the following: a) an order restraining your abuser from further acts of abuse; b) an order directing your abuser to leave your household; c) an order preventing your abuser from entering your residence, school, business, or place of employment; d) an order awarding you or the other parent custody of or visitation with your minor child or children; and e) an order restraining your abuser from molesting or interfering with the minor children in your custody. The forms you need to obtain a protection order are available in the Tribal Court clerk's office.

Information about shelters and alternatives to domestic violence is available from a twenty-four hour toll free hot line at [insert appropriate phone number]. The battered women's shelter and other resources in Skagit County are [insert local information]."

- (D) The enforcement officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.
- (E) The enforcement officer shall forward the offense report to the tribal prosecutor within ten (10) days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.210 Arrest Authority.

A Swinomish enforcement officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe:

- (A) An order has been issued of which the person has knowledge under this Chapter restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care facility or imposing any other restrictions or conditions upon the person; or
- (B) The person is sixteen (16) years or older and within the preceding four (4) hours has committed an act of domestic violence against a family or household member.
- (C) When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be

the primary physical aggressor. In making the determination, the officer shall make every reasonable effort to consider:

- (1) The intent to protect victims of domestic violence;
- (2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
- (3) The history of domestic violence between the persons involved.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.220 Enforcement Officer Immunity.

No Swinomish enforcement officer may be held criminally or civilly liable for making an arrest under this Chapter if the officer acts in good faith and without malice.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

Subchapter IV – Repealer, Severability and Effective Date

7-11.230 Repealer.

Ordinance No. 142 is hereby repealed.

[History] Ord. 202 (11/24/03).

7-11.240 Severability.

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances shall remain in effect.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).

7-11.250 Effective Date.

This Chapter shall become effective immediately upon approval by the Secretary of the Interior or the Secretary's designated representative.

[History] Ord. 202 (11/24/03); Ord. 142 (9/12/00).