

Title 25
CIVIL PROTECTION ORDERS

[INSERT TABLE OF CONTENTS]

25.01 GENERAL PROVISIONS

25.01.01 Civil Action

There shall exist a civil action known as a petition for an order of protection.

25.01.01 General Jurisdiction

Jurisdiction shall be in accordance with the Nisqually Tribe's Constitution and Nisqually Tribal Code. In addition:

- (1) The Nisqually Tribal Court shall retain non-exclusive jurisdiction over any violations of orders of protection entered pursuant to this Title which are alleged to have occurred regardless of the location of the violation.
- (2) The Nisqually Tribal Court shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Nisqually Tribe (as defined in 18 U.S.C. 1151) or otherwise within the authority of the Tribe.
- (3) Each protection order will state clearly the basis of the Court's jurisdiction, including the basis for exercising personal jurisdiction over a restrained party.
- (4) The Court shall have personal jurisdiction over an individual if:
 - a) An individual is a member of the Nisqually Tribe;
 - b) An individual resides on the reservation, or is a Nisqually community member, which may be evidenced by participation at events or receipt of any benefits from the Tribe;
 - c) An individual has consented to the Tribe's jurisdiction by entering into a consensual relationship with the Tribe or a member of the Tribe;
 - d) The act or acts of an individual or the individual's agent giving rise to the petition or enforcement of a protection order occurred within the Tribe's Indian Country as defined in 18 U.S.C. 1151; or
 - e) There is any other basis consistent with Nisqually Tribal Code, the Constitution of the Nisqually Tribe, the Indian Civil Rights Act, or the Violence Against Women Act.

25.01.02 Effect of Other Proceedings Pending

A petition for an order of protection may be filed regardless of whether other court proceedings between the parties have been filed or criminal charges have been filed against the alleged perpetrator.

25.01.03 Effective Date of Title; Effect on Pending Actions

This Title shall be effective upon approval by the Secretary of the Interior and shall govern any civil protection order action pending on that date.

25.01.04 Sovereign Immunity

Nothing in this Title shall be deemed to constitute a waiver by the Nisqually Tribe of its sovereign immunity for any reason whatsoever.

25.01.05 Severability

If any part, or parts, or the application of any part of this Title is held invalid, such holding shall not affect the validity of the remaining parts of this chapter. The Nisqually Tribal Council hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts or application of any part thereof would be declared invalid.

25.02 DEFINITIONS

Domestic Violence includes (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking of one family or household member by another family or household member.

Domestic violence may also take other forms such as but not limited to use of intimidation, unwanted contact, manipulation, isolation, coercion, fear and/or violence, as well as other tactics of power and control to establish and maintain a relationship of dominance over a family or household member. The Court shall consider all evidence of these forms of domestic violence.

Family or Household Members means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have 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 who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons who have or have had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

Intimate Partner means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person as a spouse or intimate partner.

Stalking means purposely or knowingly causing another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly following a person, or harassing, threatening, or intimidating the stalked person, in person or by phone, mail, electronic communication, or by any other action, device, or method.

Harassment means threatening (a) to cause bodily injury in the future to the person threatened or to any other person; (b) to cause physical damage or destruction to the property of a person other than the actor; or (c) to subject the person threatened or any other person to physical confinement or restraint; or (d) to maliciously do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety.

Sexual Assault means unwanted sexual contact, which includes any touching of the sexual or other intimate parts of a person whether clothed or unclothed for the purpose of gratifying sexual desire of either party. Under this Title, a petition for a sexual assault protection order may be filed to protect a person who does not qualify for a domestic violence protection order because the respondent is not a family or household member.

25.03 PETITIONS

25.03.01 Who May File Petition for Order of Protection

Any one of the following may file a petition for an order of protection on behalf of a victim:

- 1) Any person who alleges that he or she has been the victim of domestic violence, stalking, harassment, or sexual assault;
- 2) A family or household member on behalf of a victim under the age of 18 years;
- 3) The Nisqually Tribal Prosecutor or other Tribal Attorney for the Nisqually Tribe; or
- 4) An individual acting in an official capacity in the protection of domestic violence, stalking, harassment, or sexual assault victims.

25.03.02 Contents of Petition

A petition for an order of protection shall include the following information:

- 1) The name and address where the petitioner will accept service;
- 2) An allegation that domestic violence, stalking, harassment, or sexual assault has taken place;
- 3) The names, ages, and Tribal status of all persons that the petitioner is seeking protection for;
- 4) The name, age, Tribal status, and address of the alleged perpetrator, and his or her relationship to each victim;
- 5) A signed statement or separate affidavit filed with the petition stating in the petitioner's own words the specific facts and circumstances of the alleged domestic violence,

stalking, harassment, or sexual assault, including whether the petitioner believes that he or she is in danger of further domestic violence, stalking, harassment, or sexual assault.

- 6) A statement listing each known civil or criminal action or proceeding, past and present, involving both parties or the custodial or residential placement of a child of the parties; the court of record for each action or proceeding; and any identifying information which may enable the Court to access the court records regarding those proceedings.

Every petitioner must complete a Law Enforcement and Confidential Information form and provide the form to the Court at the time of filing a petition.

25.03.03 Omission of Petitioner's Address in Petition

A petitioner may omit his or her address from the petition and instead provide contact information on a confidential information sheet provided by the court, which shall be kept under seal.

25.03.04 Filing Fee

A petition for an order of protection shall be filed with the Court Clerk. There shall be no fee for filing the petition.

25.03.05 Notice of Hearing

Upon receipt of a petition for an order of protection, the Court shall set a date for hearing to be held within 30 days.

25.03.06 Service of Process

- 1) A petition, notice of hearing, and any temporary order of protection issued shall be served on the respondent at least 72 hours before the hearing scheduled pursuant to subsection 25.03.05. If service has not been made within 72 hours of the hearing, the Court may set a new hearing date and reissue a temporary order of protection as appropriate.
- 2) Service may be made by law enforcement or by any officer of the Court by handing a copy to the respondent.
- 3) If, after a diligent effort has been made to personally serve the respondent, personal service cannot be made, the Court may order that the respondent be served by certified mail, return receipt requested. Such service is complete upon delivery of the mail.
- 4) If the certified mail is returned with a notation by postal authorities that the respondent refused to accept the mail, or that the mail was unclaimed, the Court may order that the respondent be served by mailing a copy by first class mail to the respondent at his or her last and best known address. Service by first class mail shall be complete three days after mailing.

25.04 ORDERS

25.04.01 Temporary Order of Protection

- 1) When the Court finds probable cause to believe that there is a danger of domestic violence, stalking, harassment, or sexual assault to the petitioner, based on an allegation that domestic violence, stalking, harassment, or sexual assault has occurred or is about to occur, the Court may enter a temporary order of protection on an ex parte basis, without notice to the respondent, pending a full hearing.
- 2) A temporary order may be issued by telephone or electronic communication. A telephone order shall be followed by a written order from the judge mailed, emailed, or faxed to the Court within three working days from the date of the telephone order.
- 3) Following the entry of a temporary order of protection, the Court shall:
 - a. Set a date for a hearing on the petition for an order of protection in accordance with subsection 25.03.05.
 - b. Cause the order to be delivered to the Nisqually Police Department for enforcement purposes and for service upon the respondent.
 - c. Transmit a copy of the order to any additional appropriate law enforcement or other agency designated by the petitioner.
- 4) If a hearing is not held within the time required by subsection 25.03.05, the temporary order shall expire after 30 days unless it is reissued by the Court for good cause.

25.04.02 Protection Order

Upon notice and after hearing, if the Court finds by a preponderance of the evidence that domestic violence, stalking, harassment, or sexual assault has occurred or is likely to occur in the future, the Court may issue an order of protection containing these provisions:

- 1) Prohibiting the respondent from committing or threatening to commit acts of domestic violence, stalking, harassment, or sexual assault against the victim(s).
- 2) Prohibiting the respondent from contacting, harassing, annoying, telephoning, or otherwise communicating with the victim(s), directly or indirectly, through friends, relatives or co-workers.
- 3) Prohibiting the respondent from making any attempts to contact the victim(s).
- 4) Prohibiting the respondent from making any attempts to monitor the victim(s) by actual or electronic surveillance.
- 5) Requiring the respondent to vacate, or stay away from, the victim(s) residence, even if it is a shared residence or principally owned by the respondent.
- 6) Requiring the respondent to stay away from any well-defined geographic area, including, but not limited to, a residence, workplace, school or daycare of the victim(s) or the victims' family or household members.
- 7) Prohibiting the respondent from possessing or using any firearm or other weapon specified by the Court, and ordering the respondent to turn such weapon over to law enforcement for safekeeping, in accordance with subsection 25.04.03, below.
- 8) Establishing possession of the parties' residence and use of vehicles or other essential personal effects, regardless of ownership, and directing law enforcement to accompany

the victim(s) to the residence of the parties to ensure that the victim(s) is safely restored to the possession of the residence, vehicle, and other personal effects or to supervise the victims' or respondent's removal of personal belongings.

- 9) Prohibiting the destruction, liquidation or disposal of any and all joint assets or property and any and all specific assets and property of the victim(s).
- 10) Granting temporary custody of any minor children to the victim and/or establishing visitation rights. Any temporary custody order shall provide for child support and temporary support of the person having custody of the children in amounts deemed proper by the Court.
- 11) Ordering the respondent to timely pay any existing debts of the respondent including mortgage or rental payment necessary to maintain the victim in his/her residence.
- 12) Ordering the respondent to pay for the support of the victim and any minor children if the respondent is found to have a duty to support the victim or minor children.
- 13) Ordering the respondent to reimburse the victim for any expenses associated with the domestic violence incident, including, but not limited to, medical expenses, counseling, shelter, repair or replacement of damaged property, court costs and attorney fees.
- 14) Ordering the respondent to attend and successfully complete one or more programs, including but not limited to, domestic violence intervention treatment, anger management, mental health counseling, substance abuse treatment, and parenting classes, and to execute all forms and releases that are necessary for the Court to be kept apprised of the respondent's compliance with the Court's order.
- 15) Any other order the Court believes is reasonably necessary to protect and ensure the safety of the alleged victim or a family or household member.

In issuing an order, the Court shall cause the order to be captioned as a Domestic Violence, Harassment, Stalking, or Sexual Assault protection order when so warranted. Orders shall further indicate whether the relationship between the parties is an intimate partner relationship as defined in this Title.

25.04.03 Firearm Prohibitions

During any period of time that a party is subject to a protection order issued under this Title that:

- a) Was issued after a hearing of which the party received actual notice, and at which the party had an opportunity to participate, whether the court then issues a full order or reissues a temporary order (if the court enters an agreed order by the parties without a hearing, such an order meets the requirements of this subsection);
- b) Restrains the party from harassing, stalking, or threatening an intimate partner of the party, the protected person, or child of the intimate partner, party, or protected person, or engaging in other conduct that would place an intimate partner or protected person in reasonable fear of bodily injury to the intimate partner, protected person, or child; and
- c) (i) Includes a finding that the party represents a credible threat to the physical safety of the intimate partner, protected person, or child; or (ii) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner,

protected person, or child that would reasonably be expected to cause bodily injury, the court shall:

- a. Require that the party immediately surrender all firearms and other dangerous weapons;
- b. Require that the party immediately surrender a concealed pistol license;
- c. Prohibit the party from accessing, having custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons; and
- d. Prohibit the party from obtaining or possessing a concealed pistol license.

The court may enter any of the foregoing orders prohibiting firearms or firearms licenses if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual or if the Court finds that the restrained person is ineligible to possess a firearm due to prior conviction.

25.04.04 Service of Order of Protection

- 1) All orders of protection not received in Court shall be served by law enforcement on the respondent by delivering a copy personally to the respondent.
- 2) The Court Clerk shall have a copy of any order forwarded on or before the next judicial day to law enforcement for service upon the respondent.
- 3) If law enforcement cannot complete service on the respondent within 10 days, the petitioner shall be notified. The petitioner shall provide information sufficient to permit notification if possible.
- 4) If the 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 of that order is not necessary.
- 5) Any person who serves an order of protection upon a respondent shall file an affidavit with the Court stating the date, time, place and manner of service, and any other facts necessary for the Court to determine if service has been made.

25.04.05 Duration of Order/Motion to Renew

- 1) An order of protection shall remain in effect for a period of one year unless it is terminated or modified by the Court prior to that time. The Court may make an order of protection for a longer period of time or may make a permanent order of protection if the Court determines that it is necessary for the protection of the victim(s).
- 2) A petitioner may file a written motion to renew an order of protection at any time within three months prior to the expiration of the order. The motion shall be supported by a declaration stating why the movant believes the order should be renewed. The motion shall be served and a hearing scheduled and conducted according to the procedures set forth in subsections 25.03.05 and 25.03.06, above.

25.05 MODIFICATION

25.05.01 Request to Terminate or Modify Order by Petitioner

A request by a petitioner to terminate or modify an order of protection shall be subject to the same procedures as the original petition. A temporary modification may be made ex parte upon a showing of immediate danger to the victim or a member of the victim's family or household.

25.05.02 Request to Modify Order by Respondent

- 1) A respondent may request a modification of an order of protection if the order:
 - a. Removes the respondent from a residence that he or she owns;
 - b. Requires the respondent to stay away from a specific residence, school, place of employment or other location;
 - c. Grants the victim possession and use of an automobile and other essential personal items, regardless of ownership;
 - d. Grants the victim temporary custody of a child or children;
 - e. Provides or denies the respondent visitation with his or her minor child or children; or
 - f. Requires the respondent to make payments to the victim, the Court or another party.
 - g. Respondent demonstrates that they did not have actual notice of the hearing where the order of protection was entered.
- 2) Upon receiving the respondent's request, the Court shall set a hearing date as soon as practicable, but in no event later than 15 days after the next day on which Court is in session following the filing of respondent's request. Notice of the request for modification and the hearing date shall be served on the petitioner in accordance with subsection 25.03.06.
- 3) At the hearing, the Court shall consider whether any less restrictive alternatives may be appropriate under the circumstances. The Court may modify the order where the order works an unreasonable hardship upon the respondent; provided, that the safety of the victim and any family or household member remains the primary consideration.

25.06 ENFORCEMENT

25.06.01 Contempt and Violation of Protection Order – Penalties

- 1) Knowing violation of any protection order shall be a Class II offense and subject the respondent to all the penalties of a Class II crime under Title 10 of this Code.
- 2) Violating the terms of a protection order may also, subject to the Court's discretion, cause a party to be held in civil contempt of court, and the Court may impose such sanctions as it deems appropriate.

25.06.02 Entry into Criminal Intelligence Information Databases

Every protection order issued pursuant to this Title shall be forwarded by the Court within 24 hours to the Nisqually Police Department, or any other necessary jurisdiction, and shall be

entered into national and state data systems. When applicable, firearm prohibitors shall be entered into the National Instant Criminal Background Check System (NICS).

25.06.03 Enforcement of Foreign Orders

Policy.

It is the policy of the Tribe to comply with the full faith and credit provision of the Violence Against Women Act of 1994 (VAWA) as set forth in 18 U.S.C. 2265, as it may be amended from time to time, and 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.

Enforcement of Foreign Orders of Protection.

(a) For the purposes of this chapter, a “foreign order” is an order issued by another jurisdiction.

(b) A foreign order of protection that appears authentic on its face is presumed to be valid. Registration or filing of a foreign protection order is not a prerequisite for enforcement of the order.

(c) Any order of protection, except as noted in (b) below, issued by a Court of any Indian tribe, a state of the United States, the District of Columbia, or a commonwealth, territory or possession of the United States, shall be accorded full faith and credit by the Nisqually Tribal Court and shall be enforced as if it were an order of the Court, if:

(1) the issuing Court had jurisdiction over the parties and the matter at the time the order was issued; and

(2) the issuing Court gave reasonable notice and an opportunity to be heard to the person the order is issued against, sufficient to protect that person’s right to due process. in the case of ex parte orders, notice and opportunity to be heard were given within a reasonable time after the order is issued.

(d) A foreign order of protection entered against both a petitioner and a respondent shall not be enforceable against the petitioner unless: (1) The defendant filed a cross or counter petition, complaint or other written pleading seeking such a protection order; and (2) the issuing Court made specific findings of domestic violence or a crime involving domestic violence by both the plaintiff and defendant and determined that each party was entitled to such an order.

Filing Foreign Orders of Protection.

(a) A petitioner who obtains a valid order of protection from another Indian tribe or State of the United States, the District of Columbia, a commonwealth, territory or possession of the United States may file that order by presenting a certified copy of the foreign order of protection to a clerk of the Nisqually Tribal Court.

(b) A person may file a foreign order of protection without fee or cost.

- (c) Upon receipt of a foreign order of protection, the Court clerk shall:
- (1) forward a copy of the foreign order of protection to the Nisqually Police Department;
 - (2) provide the plaintiff with a document bearing proof of filing with the Court; and
 - (3) inform the petitioner of the process for Court review of a foreign order of protection, and take steps to expedite review when the petitioner perceives a risk of further harm.
- (d) Filing of a foreign order shall not be a prerequisite to enforcement of the order.

DRAFT