

PERSONAL PROTECTION ORDERS

I. PURPOSE

The purpose of a personal protection order is to insure the safety and protection of all persons from violence or threats of violence and from harassment, to insure the right of the public to a safe and secure community, to protect the community from the effects of violent and harassing acts, and to insure that whenever an offense of violence or harassment occurs, including domestic abuse, the offender incurs an obligation to the community. [Although this Code provides for specific remedies to prevent acts of Domestic Abuse, this code shall not be limited to protect only victims of Domestic Abuse, but shall also be interpreted to give effect to the protection of all victims of violence and abuse.](#) This Code shall be interpreted and followed to give effect to these purposes.

II. JURISDICTION **

The Tribal Court shall have jurisdiction to issue personal protection orders and injunctions as provided in this Chapter in any case in which [either the petitioner or respondent resides within tribal territory at the time the petition is filed](#) unless both the petitioner and respondent are not Indians.

III. DEFINITION PERSONAL PROTECTION ORDER

Personal Protection orders are restraining orders issued by the Tribal Court which require one person to stop harming another. The Tribal Court has the authority to order both domestic and non-domestic personal protection orders. Domestic orders are generally orders to family or household members to refrain from doing something that harms or threatens harm to petitioner. Non-domestic orders are generally orders issued to respondents who have no familial or household relationship to the petitioner. Personal Protection Orders (hereinafter PPO's) are generally issued to respondents who have threatened or engaged in domestic abuse, stalking or sexually abusive behavior or have done an act or acts that reasonable place the petitioner in reasonable apprehension of same.

IV. WHO MAY OBTAIN A PPO

An individual may petition the Tribal Court to enter a personal protection order on their behalf if they have been:

- 1) Subjected to stalking behavior by respondent.
- 2) Threatened with, or placed in reasonable apprehension of a sexual assault by the respondent.
- 3) Sexually assaulted by respondent
- 4) Subjected to obscene material caused by respondent
- 5) Subjected to domestic abuse or placed in reasonable apprehension of domestic abuse by the respondent.
- 6) Subjected to harassment as defined under Tribal Criminal Code.

V. PETITION

1. An action under this section may only be commenced by the filing of a petition.
2. The petition shall allege facts sufficient to show the following:
 - a) The name of the petitioner and that the petitioner is the alleged victim.
 - b) A statement that the victim lives on tribal land or does not live on tribal land.
 - c) The name and residence of the respondent.
 - d) A statement that the Respondent lives on tribal land or does not live on tribal land.
 - e) An indication of whether each of the parties is an Indian, and of the tribe in which that person is enrolled, if any.
 - f) That the respondent engaged in or attempted to engage in any of the following behavior:
 - i) Domestic abuse or placed victim in reasonable apprehension of domestic abuse.
 - ii) Stalking
 - iii) Sexual Misconduct or threatened sexual misconduct.
 - iv) subjected individual to obscene material
 - v) Harassment

3. Notification to the Court of Weapons:

If the respondent is a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment (including police and corrections officers from all jurisdictions), the petitioner shall notify the court of the respondent's occupation prior to the issuance of the personal protection order. This subsection does not apply to a petitioner who does not know the respondent's occupation.

4. Address may be omitted:

A petitioner may omit his or her address of residence from documents filed with the court under this section. If omitted, the petitioner shall provide the court with a mailing address.

5. Charges or Convictions Not Necessary

PPO's can be obtained regardless of whether respondent was charged or convicted of the behavior which is alleged in the petition. Petitioner, must, however, prove that the allegations contained within the petition are true by a preponderance of the evidence.

VI. WHAT THE COURT MAY ORDER

1. If the Court finds that the petitioner has proven by a preponderance of evidence that the petitioner has been subjected to prohibited conduct, it may order the respondent is prohibited from the following:

- a) Entering onto premises
- b) Assaulting, attacking, beating, molesting, or wounding a named individual
- c) Engaging or attempting to engage in domestic abuse against a named individual.
- d) Following a named individual.
- e) Contacting a named individual by any means, including by writing, telephone, other electronic means or by a third person
- f) Sending objects to a named individual.
- g) Threatening to kill or physically injure a named individual.
- h) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.
- i) Purchasing or possessing a firearm or ammunition

- j) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
- k) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.
- l) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.
- m) Engaging in stalking conduct
- n) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of domestic abuse, harassment, stalking or sexually inappropriate behavior.
- o) Approaching or appearing within 1500 feet of petitioner

2. A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection VI(1)(A) - entering onto premises, if all of the following apply:

- a) The individual to be restrained or enjoined is not the spouse of the moving party.
- b) The individual to be restrained or enjoined or the parent, guardian, or custodian of the minor to be restrained or enjoined has a property interest in the premises.
- c) The moving party or the parent, guardian, or custodian of a minor petitioner has no property interest in the premises.

3. A court shall not issue a personal protection order that restrains or enjoins conduct described in section VI if any of the following apply:

- a) The respondent is the unemancipated minor child of the petitioner.
- b) The petitioner is the unemancipated minor child of the respondent.
- c) The respondent is a minor child less than 10 years of age.

VII. REASONABLE CAUSE DETERMINATION:

1. The Court shall issue a personal protection order if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit one (1)

or more of the acts listed in section IV. In determining whether reasonable cause exists, the court shall consider all of the following:

- a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.
 - b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit one (1) or more of the acts listed in subsection IV.
2. A court shall not refuse to issue a personal protection order solely due to the absence of any of the following:
- a) a police report
 - b) a medical report
 - c) A report or finding of an administrative agency.
 - d) Physical signs of abuse or violence
3. If the Court refuses to grant a personal protection order, it shall state immediately in writing the specific reasons it refused to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons it refuses to issue a personal protection order.
4. A personal protection order shall not be made mutual. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court pursuant to subsection IV.
5. **Ex Parte Orders** - An ex parte personal protection order shall be issued and effective without written or oral notice to the individual restrained or enjoined or his or her attorney if it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued.
- 6) An ex parte order issued under (5) above is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the [Tribal Court rules](#). The motion to modify or rescind the personal protection order shall be filed within 14 days after the order is served or after the individual restrained or enjoined has received actual notice of the personal protection order unless good cause is shown for filing the motion after the 14 days have elapsed.

7) Except as otherwise provided in this section, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 14 days after the filing of the motion to modify or rescind. If the respondent is a person described in section V(3) and the personal protection order prohibits him or her from purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 5 days after the filing of the motion to modify or rescind.

VIII. PERSONAL PROTECTION ORDER SHALL INCLUDE:

1) A personal protection order shall include all of the following, and to the extent practicable the following shall be contained in a single form:

a) a statement that the personal protection order has been entered to restrain or enjoin conduct listed in the order and that a violation of the personal protection order will subject the individual restrained or enjoined to 1 or more of the following:

i) If the respondent is 17 years of age or more, immediate arrest and the civil and criminal contempt powers of the Court, and that if he or she is found guilty of criminal contempt, he or she shall be imprisoned for not more than 90 days and may be fined up to \$1,000.00.

ii) If the respondent is less than 17 years of age, immediate apprehension or being taken into custody, and subject to the dispositional alternatives listed in the juvenile section(s) of the Tribal Code.

iii) If the respondent violates the personal protection order in a jurisdiction other than this Tribal Court, the respondent is subject to the enforcement procedures and penalties of the state, Indian Tribe, or United States territory under whose jurisdiction the violation occurred.

iv) A criminal charge of violation of a personal protection order which is a felony or misdemeanor and punishable by up to 2 years in custody if the conduct constitutes a felony and by up to 1 year in custody if the conduct violates any provision of the PPO that is not felony conduct.

2) A statement that the personal protection order is effective and immediately enforceable anywhere in this Tribal Court's Jurisdiction when signed by a Judge or Magistrate; and that, upon service, a personal protection order also may be enforced by a state, an Indian tribe, or a territory of the United States.

3. A statement listing the type or types of conduct enjoined.

4. An expiration date stated clearly on the face of the order.

5. A statement that the personal protection order is enforceable anywhere in the United States by any law enforcement agency, under full faith and credit laws.
6. The agency designated by the court to enter the personal protection order into the law enforcement information network.
7. Upon entry of a qualifying personal protection order, the court must provide oral or written notice to the respondent that he or she is prohibited from shipping, transporting, possessing, or purchasing any firearm or ammunition for the duration of the qualifying personal protection order pursuant to 18 USC 922(g)(8).

IX. DURATION OF ORDER:

- 1) An order issued pursuant to this section is effective according to its terms, but not for less than six (6) months nor more than two (2) years.
- 2) Extensions:
 - a) When an order is set to expire, the Court may extend the personal protection order upon motion of the petitioner, with notice to the respondent, showing good cause. The Court may extend the order for up to two (2) years after the expiration of the initial order, thereafter each extension may be for up to 5 years, upon the request of the petitioner and at the discretion of the Court.
 - b) A defendant shall have the right to a hearing on the extension of any order under this paragraph upon the filing of a response to the motion to extend the order. The hearing must be held within 14 days of the defendant's response.
 - c) The Court shall state on the record and in writing the specific reasons for issuing or refusing to extend the personal protection order.

X. FULL FAITH AND CREDIT & ENTRY INTO L.E.I.N. ([18 USC 2265](#))

- 1) A personal protection order is effective and immediately enforceable anywhere on [Sault Tribe lands](#) when signed by a Judge or Magistrate. Upon service, a personal protection order may also be enforced by a state, an Indian Tribe, or a territory of the United States. [See 18 USC 2265](#)
- 2) The court shall designate Sault Tribe Law Enforcement as the agency that is responsible for entering the personal protection order into the law enforcement information network as provided by the L.E.I.N. policy.

XI. PROCEDURES FOR COURT CLERK AND LAW ENFORCEMENT/NOTIFICATION/LEIN

1. The Clerk of the court that issues a personal protection order shall do all of the following immediately upon issuance and without requiring a proof of service on the individual restrained or enjoined:

a) File a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order.

b) Provide the petitioner with not less than 2 true copies of the personal protection order.

c) If respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the personal protection order.

d) If the personal protection order prohibits respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in respondent's county of residence about the existence and contents of the personal protection order.

e) If the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the personal protection order.

f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the personal protection order.

2. [The law enforcement agency that receives a true copy of the personal protection order shall immediately and without requiring proof of service enter the personal protection order into the law enforcement information network.](#)

3. A personal protection order issued under this section shall be served personally or by the Clerk of the Court by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by [any other manner provided in the Tribal Court rules](#). If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the respondent is less than 18 years of age, the parent, guardian, or custodian of that individual

shall also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the parent, guardian, or custodian of the individual restrained or enjoined. A proof of service or proof of oral notice shall be filed with clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or its immediate enforcement.

4. The clerk of the court shall immediately notify the law enforcement agency that received the personal protection order if either of the following occurs:

a) The clerk of the court has received proof that the individual restrained or enjoined has been served.

b) The personal protection order is rescinded, modified, or extended by court order.

5. [The law enforcement agency that receives information under subsection 5 shall enter the information or cause the information to be entered into the law enforcement information network.](#)

6. Subject to subsection 7, a personal protection order is immediately enforceable [in this state, any state, Indian country or United States territory](#) by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the law enforcement information network.

7. If the individual restrained or enjoined has not been served, the law enforcement agency or officer responding to a call alleging a violation of a personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the law enforcement information network that the individual restrained or enjoined has actual notice of the personal protection order. The law enforcement officer also shall file a proof of service or proof of oral notice with the clerk of the court issuing the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined shall be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. The failure to immediately comply with the personal protection order shall be grounds for an immediate arrest.

XII. PENALTIES

9. An individual who is 18 years of age or more and who refuses or fails to comply with a personal protection order under this section is subject to the criminal contempt powers of the court and/or a criminal charge for violating the protection order. The criminal penalties provided for under this section may be imposed in addition to a penalty that may be imposed for another criminal offense arising from the same conduct. An individual who is less than 18 years of age who refuses or fails to comply with a personal protection order issued under this section is subject to juvenile delinquency proceedings and the dispositional alternatives listed in the Juvenile section of the Tribal Code.

10. An individual who knowingly and intentionally makes a false statement to the court in support of his or her petition for a personal protection order is subject to the contempt powers of the court in addition to any applicable criminal charge.

XIII. VIOLATION OF A PPO - CRIMINAL CHARGE

A person commits the crime of violation of a PPO if:

the person violates any provision of a PPO that was issued against them; that was issued by a court of competent jurisdiction; and was in effect at the time of the violation.

PENALTY:

A violation of a PPO is a felony or misdemeanor depending on the circumstances.

I. The violation of a PPO is a felony offense punishable by up to 2 years incarceration and/or a \$2,500 fine, if:

- 1) the conduct which constitutes the violation is felonious conduct (by a preponderance of the evidence and a conviction for same is not necessary);
- 2) The defendant has been convicted of violating a PPO in the past (from any jurisdiction)
- 3) The Defendant violates the PPO while there is a pending criminal charge against him/her.
- 4) The Defendant has a prior conviction for domestic abuse from any jurisdiction.

II. The violation of a PPO is a misdemeanor offense, if not covered by 1-4 above, and is punishable by up to 1 year incarceration and/or a \$1,000.00 fine.

XIV. Notice to Victim in Domestic Abuse Incident: (Judge PPO)

After investigating or intervening in a domestic abuse incident, a law enforcement officer shall provide the victim with a copy of the notice in this section. The notice shall be written and shall include all of the following:

1. The name and telephone number of the responding police agency.
2. The name and badge number of the responding law enforcement officer.
3. The following statement:

"You may obtain a copy of the police incident report for your case by contacting this law enforcement agency at the telephone number provided. The domestic abuse shelter program and other resources in your area are (include local information). Information about emergency shelter, counseling services, and the legal rights of domestic abuse victims is available from these resources. Your legal rights include the right to go to court and file a petition requesting an injunctive order to protect you or other members of your household from domestic abuse which could include an order restraining or enjoining the abuser from:

- a. Entering onto premises.
- b. Assaulting, beating, molesting, or wounding you.
- c. Threatening to kill or physically injure you.
- d. Removing minor children from you, except as otherwise authorized by a custody or visitation order issued by a court of competent jurisdiction.
- e. Engaging in stalking behavior as defined in Tribal Code Chapter 71.

XVI - Arrest Without A Warrant - 4.86 umatilla

**Authority Civil Jurisdiction over non tribal members

Limitations on Civil Tribal Jurisdiction

In the case *Montana v. United States*, 450 U.S. 544 (1981) the United States Supreme Court said that tribes have civil jurisdiction over non-members

who enter into a consensual relationship with the tribe or its members. Tribes also have civil jurisdiction over non-Indians who have threatened the health or welfare, political integrity and economic security of the tribe on reservation fee lands¹. These important exceptions to limitations placed on tribal civil jurisdiction over non-Indians can assist your community in dealing with domestic violence by non-Indians against tribal members on the reservation.

Non-Indian abusers can be held civilly accountable in tribal courts. Some examples of civil remedies include: contempt of court; exclusion from the reservation; fines and fees; restitution; attorney's fees and court costs; batterer re-education programs; community service; forfeiture; and loss of

¹

Justin B. Richland & Sarah Deer, Introduction to Tribal Legal Studies, p. 166 (2004).

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licensure or other privileges. Your tribe may develop other suitable civil

To DO:

Form - Petition for Violation of PPO - and add on Q - Is there an FOC case?

Provision for Separate Judicial Power