

TITLE 15

DOMESTIC VIOLENCE

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Chapter 15.01 Purpose and Definitions

15.01.01 Purpose

Violence within families is not a Port Gamble S'Klallam norm. It is not acceptable within the Port Gamble S'Klallam community. Exposure to family violence can be transmitted over generations. By ending domestic violence now, the Port Gamble S'Klallam Tribe (PGST) is taking a step toward protecting future generations of S'Klallam people.

The purpose of this title is to recognize domestic violence and family violence as serious crimes against society, the Tribe, and the family. The purpose of this title is also to provide the victims of domestic violence or family violence the maximum protection from further violence that the law can provide. Furthermore, the purpose of this title is to recognize that the strength of the Tribe is founded on healthy families, and to ensure the safety of victims of domestic and family violence, especially children, by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.

The Port Gamble S'Klallam Tribe intends that the official response to domestic violence and family violence shall stress the enforcement of laws to protect the victim and to hold the perpetrator accountable. The Tribe's position is that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. The Tribe intends to promote the healing of families and the Tribe where possible, to motivate perpetrators to change, and to promote cultural teachings and traditional Tribal values so as to nurture nonviolence and respect within families. This title shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

This Title may also be used to issue domestic violence protection orders during divorce or child custody proceedings under Chapters 21.04 and 21.05.

[HIST: Source – Port Gamble S'Klallam Law and Order Code. Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018. In adopting Title 15 Domestic Violence into tribal law, the Pt. Gamble S'Klallam Tribe begins its exercise of special domestic violence criminal jurisdiction over all persons within the Tribe's jurisdiction. Special DV jurisdiction is defined under 25 U.S.C. §§ 1302 through 1304 (2013). Under the Port Gamble S'Klallam Law and Order Code, the new Title 15 Domestic Violence replaced the old Title 15 Civil Infractions. The old Title 15 is now in Title 8 Juveniles where the 2 active civil infractions under tribal law both apply to minors. Additionally, Chapter 2.10 Domestic Violence Criminal Procedure and Chapter 16.06 Domestic Violence were repealed and incorporated into the new Title 15 by Res. 18-A-101.]

15.01.02 Definitions

As used in this code, the following terms shall have the meanings given below:

ADVOCATE: A person who is employed to provide services to victims of domestic violence and/or sexual assault or who volunteers to do so after receiving training, and is bound by confidentiality policies.

CALENDAR DAY: Consecutive days of the year, excluding recognized holidays.

COERCION: To restrain, compel, persuade, or dominate by force or threat.

CONTACT: Includes but is not limited to:

- A. Repeatedly coming into and/or remaining in the visual or physical presence of the victim;
- B. Following the victim;
- C. Waiting outside the home, property, place of work or school of the victim;
- D. Sending or making written communications in any form, including text messaging, instant messaging, and social media, to the victim;
- E. Speaking with the victim by any means, including leaving a voicemail message;
- F. Communicating with the victim through a third person;
- G. Committing a crime against the victim;
- H. Communicating with a third person who has some relationship to the victim with the intent of impacting the third person's relationship with that victim;
- I. Communicating with business entities with the intent of affecting some right or interest of the victim;
- J. Damaging the victim's home, property, place of work or school; or
- K. Delivering directly or through a third person any object to the home, property, place of work, or school of the victim.

COURSE OF CONDUCT: A pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

COURT: The Port Gamble S'Klallam Tribal Court.

DATING PARTNERS: Persons who are or have been in a social relationship of a romantic or intimate nature as determined by the length of the relationship, the type and nature of the relationship, and the frequency of interaction between the persons involved in the relationship.

DOMESTIC VIOLENCE: Any act or attempted act that is an offense defined in Title 5 of the Law and Order Code if any of the following applies:

- A. The relationship between the victim and the defendant is one of marriage or former marriage or of one person residing or having resided in the same household as intimate or dating partners;
- B. The victim and the defendant have a child in common;
- C. The victim or the defendant is pregnant by the other; or
- D. The victim and the defendant are or have been in a social relationship of a romantic or intimate nature as determined by the length of the relationship, the type and nature of the relationship, and the frequency of interaction between the persons involved in the relationship.

DWELLING: A place where a person resides, regardless of who has title to the property or whose name is on the lease, rental agreement, or other housing agreement.

ELDER: A person 55 or more years old.

ELECTRONIC COMMUNICATIONS: 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, and other electronic forms.

ELECTRONIC SURVEILLANCE: Monitoring the behavior, activities, or whereabouts of a person or persons by electronic means.

ESSENTIAL PERSONAL EFFECTS: Those items necessary for a person's health, welfare, and livelihood.

EX PARTE: For the purpose of this code, this term means that only the requesting party is heard by the Court, and the notice and an opportunity to contest the facts are not available to the party who is adversely affected by the Court's action until after the Court has taken action.

FAMILY OR HOUSEHOLD MEMBER:

- A. Persons who are related by blood, marriage, court order, or adoption.
- B. Minor children by blood, marriage, or adoption.
- C. Minor children who are part of the household.
- D. Persons who reside or have resided together in the past who are not or have not been intimate partners.

FAMILY VIOLENCE: The same or similar act or attempted act committed in

domestic violence that is an offense defined in Title 5 of the Law and Order Code when such an act is directed towards a family or household member instead of an intimate partner. The dynamics of power and control may not be present.

FIREARM: Any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon constructed to include any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion, except any smooth bore rifle or handgun designed and manufactured exclusively for propelling BBs not exceeding .177 caliber by means of spring, gas or air.

FOLLOWS — Intentionally maintaining visual or physical proximity to a specific person over a period of time. A finding that an alleged stalker repeatedly and intentionally appeared at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that an alleged stalker followed the person.

FOREIGN PROTECTION ORDER: An injunction or other order related to domestic violence or family 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, the District of Columbia, any United States military tribunal, or any Tribal Court, in a civil or criminal action.

FOLLOWS — Intentionally maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and intentionally appeared at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker followed the person.

HARASSES — Engaging in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or is detrimental to such person, and that serves no lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the victim, or, when the course of conduct is contact to a minor child by a person over age 18, that would cause a reasonable parent to fear for the well-being of that child.

IMMEDIATE FAMILY: A spouse, parent, child, step-child, sibling, half-sibling, live-in partner, or any other person who regularly resides in the household or who in the past regularly resided in the household.

INDIAN COUNTRY:

- A. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
- B. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state;
- C. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and
- D. The territory of the Tribe shall encompass the Tribe's historical land base known as the Port Gamble S'Klallam Reservation, and all lands now held or hereafter acquired by or for the Tribe, or held in trust for the Tribe by the United States, including lands in which rights have been reserved or never ceded by the Port Gamble S'Klallam Tribe, or as may otherwise be provided under federal law.

INTIMATE PARTNERS: Persons who are spouses, former spouses, persons who are or have been in a marital-like relationship, including same-sex relationships, or 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.

JUVENILE or MINOR: Any person under the age of 18 years of age.

NONCONSENSUAL SEXUAL CONTACT: A lack of mutual consent in touching any of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire or either party or a third party. A lack of verbal or physical resistance does not constitute consent. There is a presumption that a sleeping, unconscious, or incompetent person cannot consent to sexual contact.

PERPETRATOR: The person who has committed an act of domestic violence or family violence. The perpetrator may also be referred to as "defendant" in a criminal case or "respondent" in a civil case.

POLICE OFFICER (PEACE OFFICER, LAW ENFORCEMENT OFFICER, or OFFICER): Any person employed or commissioned as a police or law enforcement officer by the Port Gamble S'Klallam Tribe, Kitsap County, State of Washington, any agency of the federal government, or any law enforcement agency having jurisdiction within the PGST Indian Reservation, including non-Tribally deputized officers who may make arrests on the Reservation.

PROBABLE CAUSE: When a police officer, acting as a person of reasonable caution, has reasonable grounds to believe that the person to be arrested has committed an offense as defined by this code, based on all the facts known to the officer, including the officer's personal observations, statements made by

the parties involved in the incident(s), statements made by witnesses, if any, and any other reliable information.

PROTECTION ORDER:

- A. A temporary or permanent civil or criminal court order, injunction, restraining order, or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking. A court grants this type of order 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 or family violence, dating violence, sexual assault or stalking; and
- B. Includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as part of another or pending court proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

REPEATED: Two or more times.

SAFE HOUSE: A safe home/safe house that provides temporary refuge and other services on a twenty-four-hour, seven-days-per-week basis, to victims of domestic violence and their children.

SCHOOL: A public or private institution of learning or a childcare facility.

TRIBAL OR STATE CERTIFIED DOMESTIC VIOLENCE PERPETRATOR TREATMENT PROGRAM: A state or tribally certified program for abusers in which they are held accountable for their abusive actions and/or controlling behavior and in which their belief systems are sought to be changed that adopts at a minimum the Washington State Domestic Violence Perpetrator Treatment Standards, (WAC 388-60).

VICTIM IMPACT STATEMENT: A confidential sworn statement that is submitted to the judge by the victim of domestic violence which may include, but is not limited to, information assessing the financial, medical, social, psychological, and long-term impact of the offense on the victim and recommendations of the victim regarding the terms of the protection order or the conditions of sentencing if used in a criminal proceeding. The victim or a third party may make the statement in court or may give the statement, either written or verbal, to the judge, and the judge must then enter it into the court record. It is intended to help the Court fashion a protection order or sentencing appropriate to the parties' situation. The Victim Impact Statement may be a written version of what the judge might learn during an ex-parte, in-chambers discussion with the victim. The Prosecutor may assist the victim to provide the statement, or the victim's advocate may also assist. The Victim Impact Statement is not intended to contain allegations that should be in the

petition or to take the place of direct evidence.

If the victim is a minor, the statement can come from a parent or guardian.

WEAPON: Any instrument, firearm, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily harm.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

Chapter 15.02 Jurisdiction

15.02.01 Domestic Violence Court Established

There is established for the Port Gamble S’Klallam Community Court a division of Tribal Court known as the “Domestic Violence Court.” The jurisdiction of the Domestic Violence Court includes right to issue all order necessary to carry out the purposes of this code.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.02.02 General Jurisdiction

Jurisdiction over domestic and family violence matters shall be in accordance with the Port Gamble S’Klallam Tribal Law and Order Code and applicable Port Gamble S’Klallam Court rules. In addition, the Port Gamble S’Klallam Tribal Court shall retain jurisdiction over any violations of Orders of Protection entered under this code that are alleged to have occurred outside of the boundaries of the Port Gamble S’Klallam Tribal Reservation where such orders are entitled to recognition outside Reservation boundaries as a matter of full faith and credit.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.02.03 Special Domestic Violence Criminal Jurisdiction

- A. The Port Gamble S’Klallam Tribe hereby exercises special domestic violence jurisdiction as a participating tribe, as defined within 25 U.S.C. §§ 1302 through 1304 (2013), subject to applicable exceptions defined therein, in the Port Gamble S’Klallam Domestic Violence Court.
- B. Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by 25 U.S.C. §§ 1302 through 1304, the powers of self-government of PGST include the inherent power to exercise special domestic violence criminal jurisdiction over all persons.
- C. In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all defendants shall

have all rights afforded by the Tribe's criminal procedure code, both in Title 15 and in Title 2, in addition to the rights enumerated in the Indian Civil Rights Act, 25 U.S.C. §§ 1302 through 1304 (2013). Should there be any inconsistency between the Tribe's criminal procedure code and 25 U.S.C. §§ 1302 through 1304, those of 25 U.S.C. §§ 1302 through 1304 (2013) shall apply.

D. Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the PGST and may petition the Court to stay further detention pending the habeas proceeding.

1. A court shall 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 the community if released.

E. The Port Gamble S'Klallam Tribe hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

1. Resides within Indian country of the PGST; or

2. Is employed within the Indian country of the PGST; or

3. Is a spouse, intimate partner, or dating partner of:

a) A member of the Port Gamble S'Klallam Tribe; or

b) A member of another federally recognized Indian tribe who resides within the Indian country of the PGST.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.02.04 Special Jurisdiction; Criminal Conduct Applicable

PGST exercises the special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

A. Domestic violence. An act of domestic violence that occurs within the Indian country of the PGST against Native American victims.

B. Violations of protection orders. An act that occurs within the Indian country of the PGST, and:

1. Violates the portion of a protection order that:
 - a) 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;
 - b) Was issued against the defendant;
 - c) Is enforceable by the PGST; and
 - d) Is consistent with 18 U.S.C. § 2265(b).

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

Chapter 15.03 Criminal Procedure

15.03.01 Statute of Limitations

For purposes of this chapter, the statute of limitations shall be consistent with and follow Title 2 Criminal Procedure.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.03.02 Nonwaiver of Sovereign Immunity

Nothing in this code shall be deemed to constitute a waiver by the Port Gamble S'Klallam Tribe of its sovereign immunity for any reason whatsoever.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.03.03 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 family violence or a crime involving domestic violence or family violence:

- A. Law enforcement officers;
- B. Victim advocates; or
- C. Mandatory reporters.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

Chapter 15.04 Power and Duties of Law Enforcement

15.04.01 Law Enforcement Duties to Victims

A law enforcement officer who responds to a report of possible domestic violence or family violence shall use all reasonable means to protect the victim and any family or household member, and to prevent further violence, including but not limited to:

- A. Taking necessary actions to provide for the safety of the victim and any family or household members or witnesses, including arresting the alleged perpetrator or dominant aggressor, if there is probable cause to support that arrest;
- B. Transporting or obtaining transportation for the victim and any child(ren) to a domestic violence safe house or other place of safety within a reasonable distance of the Tribe's jurisdiction at the victim's request;
- C. Providing a peace officer or civil standby to allow the victim to safely remove essential personal effects from the victim's residence, at the victim's request;
- D. Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility in Kitsap or surrounding counties;
- E. Giving the victim immediate and adequate written notice of the rights of victims, the remedies available, and the name, address, and telephone number of local services available to victims of domestic violence and family violence;
- F. Advising each person of the availability of a shelter or other services in Kitsap and surrounding Counties;
- G. Confiscating any weapon as provided within this Chapter; and/or
- H. Providing assistance on who to contact in order to obtain a temporary protection order or emergency no-contact order.
- I. Giving the victim the following notice:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, you have the right to go to the tribal court and file a petition requesting a protection order. A protection order can provide the following relief: (a) restraining your attacker from contacting you or your children; (b) directing your attacker to leave your household; (c) preventing your attacker from entering your residence, school, business or place of employment; (d) awarding you or the other parent temporary custody of a minor child or children; or (e) ordering your attacker to timely pay any existing debts, including mortgage or rental payments, that are necessary to maintain you in your residence. Other forms of relief are also available through a court issued protection order. You can obtain a copy of the officer's report at no cost to you.

You also have the right to obtain a protection order in state court.

The forms you need to obtain an order for protection can be obtained from the clerk of the court or from the Domestic Violence Advocate.”

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.04.02 Duty to Preserve Evidence

- A. The purpose of this section is to assist in the prosecution of perpetrators of crimes involving domestic violence and family violence and to recognize that victims of crimes involving domestic violence or family violence are often reluctant to cooperate or testify at subsequent hearings for many reasons, including but not limited to economic, emotional, and psychological factors.
- B. All law enforcement officers who respond to a report of possible domestic violence or family violence shall take reasonable steps to collect sufficient evidence to enable the Prosecutor to secure a conviction of the perpetrator without the testimony of any victim. Reasonable steps include:
 - 1. Photographing injuries to any victim, any damage to property and the location and surroundings of the alleged incident;
 - 2. Describing both the physical and emotional condition of the victim in detail;
 - 3. Noting the identity of any witnesses to the incident and determining what they observed;
 - 4. Identifying all persons present at the location at the time of the incident, including children, whether or not they witnessed the incident;
 - 5. Obtaining the 911-dispatcher recording, if any;
 - 6. Gathering a history of the relationship and its duration;
 - 7. Describing the scene of the alleged crime on first contact and other physical evidence; and
 - 8. Gathering statements and interviewing responding medical personnel or following up with medical personnel if the victim is transported to a facility for medical treatment.
- C. A law enforcement officer who responds to an allegation of domestic violence or family violence shall encourage any victim to make an oral statement concerning the incident and shall take one from any perpetrator, if possible.

- D. The law enforcement officer shall prepare a written incident report detailing the event, and the officer's observations.
- E. If a child is present, the officer shall make any reports, as required by Tribal Law, to an appropriate tribal or other governmental agency responsible for investigating allegations of abuse or neglect.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.04.03 Mandatory Arrest

- A. When a law enforcement officer responds to a domestic disturbance incident and has probable cause to believe that an offense of domestic violence, family violence, or dating violence has occurred, the officer shall arrest and take into custody the predominant aggressor. The officer is not required to arrest both persons. A law enforcement officer shall arrest a person whom the officer has probable cause to believe violated a protection order. The officer shall make an arrest upon probable cause regardless of the express wishes of the victim, but those wishes shall be noted in the report.
- B. If a law enforcement officer receives a report of possible domestic violence or family violence involving two or more persons, the officer shall 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 must consider the following as well as any other relevant factors:
 - 1. Prior complaints of domestic or family 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.
- C. 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 or family violence against the predominant physical aggressor.
- D. Persons arrested shall be held without bail until their first appearance before a judge.
- E. Whenever a police officer investigates an allegation of domestic violence or family violence, the officer shall make a detailed written report of the alleged abuse and submit that report to the Prosecutor as soon as possible. If an arrest is made, the report shall be submitted immediately.

- F. A police officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties in order to discourage a party requesting future intervention by law enforcement.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.04.04 Emergency No-Contact Order

If an officer has probable cause to believe that a crime involving domestic violence or family violence has occurred, then the officer shall have the authority to request from the on-call Judge an emergency no-contact order prohibiting the perpetrator from contacting the victim, including third-party contact.

If the officer takes the perpetrator to jail, the officer shall call the on-call Judge from jail at the time of booking and provide the Judge with enough information for a finding of probable cause. The officer must record the phone call.

The order shall be effective until the first court appearance or as vacated or amended by court order.

Upon issuance of such an order, the officer shall serve a copy on the perpetrator and file the order with the Court by noon on the next calendar day that the Court is open. The officer shall provide a copy of the order to the victim and assist the victim in securing any essential personal effects.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.04.05 Violations of Conditions of Release

If an officer has probable cause to believe that a person has violated a condition of release from arrest or judgment in a domestic violence or family violence case, the officer may, without a warrant, arrest the alleged violator.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.04.06 Duty to Expedite Service of Protection Orders

The Port Gamble S'Klallam Tribal Police shall serve orders of protection on an expedited basis and shall attempt to complete service within forty-eight (48) hours and provide a declaration of service to the Court by the next calendar day in which the Court is open.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.04.07 Authority to Seize and Hold Weapons

When making an arrest for a crime involving domestic violence or family violence, Tribal Police shall seize all weapons that are alleged to have been involved or were threatened to be used in the commission of the crime.

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

Tribal Police are authorized to confiscate weapons from a person who is prohibited from possessing or using them.

Upon order of the Tribal Court, such weapon may be destroyed, retained by the Tribal Police Department, or sold at public sale after appropriate public notice, under the direction of the Tribal Court.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.04.08 Arrest Without a Warrant for Violations of Protection Orders or No-Contact Orders

A law enforcement officer may, with or without a warrant, arrest a person if the officer has probable cause to believe that the person is in violation of disobeying or resisting an order issued under this Title, regardless of whether such violation occurred in the presence of the officer.

The defendant shall be held without bail pending the first hearing at which time bail and conditions of release shall be established.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.04.09 Law Enforcement Records on Domestic Violence or Family Violence

The Port Gamble S'Klallam Police Department shall maintain written records of arrests, incident reports, and initial contacts in such a manner as to allow tracking and identification of them as related to domestic violence or family violence.

The PGST Police Department is not required to provide records of police contacts alleging incidents of domestic violence, family violence, or stalking to the alleged perpetrator. Records may be obtained by Court order after notice to the Prosecutor and a hearing. In ordering disclosure, the Court may order that the victim identification and location be redacted, and may make other orders as necessary to protect the confidentiality of victim and/or witness information.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.04.10 Liability of Law Enforcement Officers

A law enforcement officer or his or her legal adviser shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of any Court order, or any other action or omission made in good faith under this Title arising from an incident of alleged domestic violence or family violence or violations of one of the named criminal or civil protection orders identified within this Title.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.04.11 Officials Who Batter

No special treatment by policy makers or law enforcement officials shall be given to any person because of his or her official capacity as a law enforcement officer, public official, or because of his or her connections to or influence over policy makers, public officials, law enforcement officers, or the community. All procedures and duties set out in this chapter in its current form, or as subsequently modified, shall be strictly adhered to, regardless of any administrative, interagency, or departmental investigation and/or sanctions.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

Chapter 15.05 Power and Duties of the Court

15.05.01 Victim Confidentiality

At all stages of a criminal proceeding under this chapter, the Court shall take steps necessary to ensure that a victim's address or location is kept confidential from members of the public, except that the address or location may be revealed, with the victim's consent, to the attorneys for the parties to the case. Defense counsel may not reveal to his or her client the address or location of the victim without authorization of the Court. The Court may order release of the information to other persons upon a showing of good cause.

Upon Court approval, a petitioner in a civil matter or a victim of domestic violence in a criminal matter may use an address of a home that provides temporary refuge as his or her address for service of process and other purposes.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.05.02 Pretrial and Release Conditions

A. Any person arrested for a crime involving domestic violence, family violence, or violation of a protection order or no-contact order shall be held in custody without bail pending the person's first appearance before the Court, at which time bail and conditions of release shall be established. Thereafter, the Court shall consider the following factors when setting bail:

1. The person has been charged with a crime of violence and:
 - a) The person has been recently convicted of another crime of violence; or
 - b) The person has committed this offense while on probation or other release for another crime of violence;
2. The person has been charged with obstructing justice by having threatened, injured, or intimidated a judge, witness, or juror, or has attempted such threat, injury, or intimidation;
3. There is strong likelihood of flight to escape trial. This requires a documented history of such flight, or evidence or circumstances indicating that such flight is likely to occur;
4. The person represents a danger to the community. This requires a pattern of behavior evidenced by past or present conduct and no conditions for release are available that would reasonably assure the safety of the community; or
5. Any other relevant factor.

B. Protection order. Because of the likelihood of repeated violence directed at those who have been victims of domestic violence or family violence, when any person is arrested for or charged with a crime of domestic or family violence, the Court may issue a protection order prohibiting the defendant from having any contact with the victim. Such an order shall be entered at the first ex-parte hearing with no additional hearing required at that time.

1. In issuing a protection order, the Court shall consider different bail requirements and whether the firearms prohibition provisions of this Title apply.
2. A protection order shall not be vacated without notice to the Prosecutor and a hearing.

C. Other Considerations.

1. No ex parte bench warrant quash. A warrant issued in a domestic violence or family violence crime cannot be quashed without notice to the Prosecutor and a hearing.

2. Bail is not available unless approved by the Court and after input from the Prosecutor.
3. The use of GPS monitoring or other electronic monitoring may be required pretrial or post-trial at the recommendation of the Prosecutor or Probation Officer and at the defendant's expense.
4. The Court may order any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence or family violence, including orders or directives to the PGST Police Department.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.05.03 Powers and Duties of Prosecutor

- A. Communication with victim. In every case in which a person is arrested for or charged with a crime under this chapter, the Prosecutor shall endeavor to maintain contact with the victim throughout the criminal proceedings, either directly or through the Domestic Violence or Crime Advocate, with particular attention to the following:
 1. Hearing dates, continuances, sentencing. The Prosecutor shall assure that the victim is informed of all hearing dates, continuances, and of the right to address the Court at any hearing, in person or in writing, regarding the victim's assessment of the impacts of the criminal offense on the victim, the risk of further acts of domestic violence or family violence, and the conditions of sentencing necessary to ensure the safety of the victim and the victim's family and household members.
 2. Prosecutorial decisions. The Prosecutor shall inform the victim of every major prosecutorial decision, including a decision to decline prosecution of the crime, to dismiss the charges, or to enter into a plea agreement, within five (5) calendar days of the decision and should include available resources for the victim.
 3. Restitution. The Prosecutor shall obtain information from the victim regarding costs and losses sustained as a result of the defendant's act(s) of domestic violence or family violence and seek restitution for the victim.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.05.04 Special Court Rules for Domestic Violence or Family Violence Crimes

In addition to the rules of the Court generally applicable to criminal proceedings, the Court may take the following actions in proceedings of alleged domestic violence or family violence:

- A. If the alleged perpetrator pleads or is found guilty, the Court, in its discretion, may order the tribal Probation Department to prepare a pre-sentence report prior to sentencing.
- B. If it appears to the Court that alcohol or drugs played a part in the crime, a chemical dependency evaluation with a treatment plan may be ordered prior to sentencing immediately after a guilty plea, plea of no contest, or a conviction.
- C. Upon a guilty plea, conviction, or other outcome, the Court may issue an order of protection prohibiting the defendant from having any contact with the victim irrespective of whether the victim consents.
 1. If a perpetrator is excluded from the residence of or ordered to stay away from the victim, an invitation by the victim to the perpetrator, and any acceptance of that invitation, does not waive or nullify an order for protection. Further, the victim cannot be considered by such invitation as having violated, or be subject to arrest for a violation of, his/her own ex parte or permanent order of protection.
- D. Upon a guilty plea, conviction, or other outcome, the Court shall order the perpetrator to participate in any tribe or State certified domestic violence perpetrator treatment program. The perpetrator is responsible for the following:
 1. The perpetrator shall attend and cooperate in an intake session for a domestic violence perpetrator's treatment program.
 2. The perpetrator treatment program shall complete the intake not later than 10 calendar days after entry of the order requiring treatment, unless the Court extends that time period upon showing of good cause.
 3. A copy of the recommended treatment plan shall be provided to the Court.
 4. The domestic violence program or other services provider shall submit written progress reports to the Court at least every six (6) calendar weeks.

The Court has discretion to order the perpetrator to participate in treatment sessions as part of the domestic violence program's treatment plan instead of sentencing the perpetrator to confinement and/or fine. The Court has discretion to suspend penalty of confinement and/or fine pending the completion of the treatment ordered by the Court. However, once the Court

issues an order, it must be completed prior to dismissal unless probation is revoked.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.05.05 Judgments and Convictions

When entering a judgment upon conviction for a crime involving domestic violence or family violence, the Court shall:

- A. Consider the entry of orders for the protection of the victim, including those set out within this chapter;
- B. Order restitution as warranted; and
- C. Order appropriate domestic violence perpetrator's treatment.

The Court may, in its discretion, order any other lawful relief as it deems necessary for the protection of any claimed, alleged, or potential victim of domestic violence or family violence, including orders or directives to the Port Gamble S'Klallam Police Department.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.05.06 Additional Conditions for Crimes Involving Domestic Violence or Family Violence

- A. Upon conviction of a crime of domestic violence, the Court may, at the request of the Prosecutor or as provided in Title 22 the Exclusion code, forward a petition for exclusion to the Tribal Council.
- B. Upon conviction of a crime of domestic violence, the Court may request under Title 28 the Banishment Code that Tribal Council prepare a petition of banishment for the perpetrator.
- C. The Court has discretion to order publication of a convicted perpetrator's name and photograph in the Port Gamble S'Klallam Tribe's weekly memo and in the monthly Syecem newspaper with the description of a domestic violence or family violence perpetrator. The Court must not publish the victim's name(s).
- D. The Court has discretion to order any combination of the following: confinement, publication, fines, fees, costs, restitution, petitions for exclusion, and requests for banishment petitions.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.05.07 Factors to Consider in Sentencing

- A. In sentencing for a crime of domestic violence or family violence, the Court shall consider, among other factors, whether:
1. The firearms prohibitions of this Title apply;
 2. The defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and if the offense is a response to that coercion, control, or abuse;
 3. 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; and
 4. The offense occurred within sight or sound of the victim's or the offender's minor children.
- B. In sentencing for the crime designated as domestic violence or family violence as defined in this code, the Prosecutor shall provide for the Court's review:
1. The defendant's criminal history, if any, that occurred under the laws of the Port Gamble S'Klallam Tribe, or of any state, federal, territory, Tribe, or United States military tribunal.
 2. For the purposes of subsection B(1) of this section, "criminal history" includes all previous convictions and orders of deferred prosecution and stipulated orders of continuance, as otherwise available to the Court or Prosecutor, before the date of sentencing.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.05.08 Witness Testimony

- A. Upon the request of the Prosecutor or the defense, the Court may issue a material witness warrant compelling a witness to appear before the Court. In making the request, the party must certify that:
1. The witness is material to the party's case;
 2. The witness has failed or refused to appear before the Court; and
 3. Other means of securing the witness's presence at trial have proved futile.
- B. Prior statement. A prior statement, either oral or written, is admissible as substantive evidence at trial if the victim appears and testifies inconsistently with the statement. In determining the admissibility of the statement, the Court shall consider whether the statement was made subject to the following provisions:

1. The witness voluntarily made the statement;
2. When the statement was made, there were minimal guaranties of truthfulness, such as a sworn declaration, a statement made during interview with law enforcement, or affidavit signed before a notary. The statement should include the following:

“I have read the attached statement or it has been read to me, and I know the contents of the statement. I understand that my written statement is made under penalty of perjury by signing below.”

This statement shall be followed by a signature and date.

1. The statement was taken under the standard procedure; and
2. The witness whose statement is being offered is subject to cross-examination when giving the subsequent statement.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

Chapter 15.06 Criminal Actions and Remedies

15.06.01 Domestic Violence or Family Violence Sentencing Designation

This section provides for the designation of a crime as domestic violence or family violence, which gives notice that the Port Gamble S'Klallam Tribal prosecutor may seek additional conditions at sentencing.

- A. Any crime that is an offense defined in either Title 5 or within this chapter, in which the defendant and victim have a relationship defined under the definition of domestic violence under this Title, is considered a domestic violence crime.
- B. Any crime that is an offense defined in either Title 5 or within this chapter, in which the defendant and victim have a relationship defined under the definition of family violence under this Title, is considered a family violence crime.

The minimum sentence for a domestic violence crime is a misdemeanor 1.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.06.02 Aggravated Domestic Violence or Family Violence

A crime will be designated as aggravated domestic violence or family violence if the person used a weapon during the commission of the domestic or family violence.

The minimum sentence for an aggravated domestic violence crime is a felony 2.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.06.03 Strangulation or Suffocation

A person commits strangulation or suffocation by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of another person by either:

- A. Applying pressure on the throat or neck of the other person, regardless of whether that conduct results in loss of consciousness, visible injury, or whether there is any intent to kill or injure the victim; or
- B. Blocking the nose or mouth, or both, of the other person, or applying weight to the other person's chest, regardless of whether that conduct results in loss of consciousness, visible injury, or whether there is any intent to kill or injure the victim.

A violation of this section is a felony 1.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.06.04 Habitual Domestic Violence or Family Violence Offender

Any person with three or more separate convictions for crimes of domestic violence or family violence from any federal, state, or tribal court shall be deemed a habitual domestic violence or family violence offender, and any subsequent violation shall be a felony 2, except where inconsistent with federal laws.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.06.05 Interfering with Reporting of Domestic Violence or Family Violence

Any person who prevents or attempts to prevent a victim or witness of domestic violence or family violence from calling 911, the PGST Tribal Police, or other law enforcement agency, or from obtaining medical assistance or making a report to any Tribal, state or federal law enforcement official, has committed the crime of interfering with the reporting of domestic violence or family violence.

Interfering with the reporting of domestic violence or family violence is a misdemeanor 1.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.06.06 Crime of Stalking

- A. A person commits the crime of stalking if, without lawful authority:
1. He or she intentionally and repeatedly harasses or repeatedly follows another person; and
 2. The person being harassed or followed is placed in fear that the stalker intends to harm the person, another person, or property of the person or of another person.
- B. A person who stalks another person is guilty of a misdemeanor 1, except that the person is guilty of a felony 2 if any of the following applies:
1. The stalking violates any protective order protecting the person being stalked;
 2. The person has previously been convicted of an offense under this section or of a misdemeanor or felony stalking offense under tribal, federal, or state law; or
 3. The person was armed with a dangerous weapon while stalking the person.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018. Cross-reference 5.01.14 Stalking.]

15.06.07 Advocates Present During Prosecution or Defense Interviews

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 shall be present at any interview with the victim and at any judicial proceeding related to criminal acts committed against the victim. The advocate cannot be present if she or he will be a witness in the case.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.06.08 Victim Rights

Notwithstanding other provisions of the Domestic Violence Code, a victim of a crime under this Title shall 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, or any probation proceeding, involving the crime or of any release or escape of the accused;

- C. The right to be reasonably heard at any public proceeding in Court involving release, plea, sentencing, or any parole proceeding;
- D. The reasonable right to confer with the Prosecutor in the case;
- E. The right to full and timely restitution as provided by tribal law;
- F. The right to proceedings free from unreasonable delay;
- G. The right to be treated with fairness and with respect for the victim's dignity and privacy;
- H. The right to provide a victim impact statement. The Court shall 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.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.06.09 Probation; Modifications of Conditions

Upon violation of a previously ordered judgment and sentencing order, the Court may modify, reduce, or expand the previously ordered conditions of probation at any time prior to the expiration or termination of the probation.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.06.10 Violations by Juveniles

The Port Gamble S'Klallam Tribal Court shall take all reasonable steps to offer juvenile offenders sentencing options that focus on rehabilitation. The Court may order any juvenile offender to undergo chemical dependency and mental health assessments regardless of the domestic violence or family violence offense.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

Chapter 15.07 Civil Remedies and Actions

15.07.01 Civil Protection Order—Purpose

A person may seek a protection order whether or not the person has contacted law enforcement officers to report a crime. If a Port Gamble S'Klallam Tribal employee believes a crime has been committed, the employee shall encourage the victim to contact law enforcement or the Domestic Violence or Crime Advocate. Temporary protection orders may be issued without prior notice to the respondent to ensure the immediate

protection of the victim and any family or household member, and to prevent further violence. Temporary orders may be modified or extended, with or without prior notice to the respondent and with or without a hearing, consistent with this purpose. Relief under this chapter may not be denied or delayed on the grounds that the relief is available in another action.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018. If the person filing for a protection order does not qualify for an order under the definition of domestic violence, the person may file for a protection order under Chapter 3.08 of this Code.]

15.07.02 Civil Protection Order—Who May File

A petition to obtain a protection order under this section may be filed by:

- A. Any person claiming to be the victim of domestic violence, family violence, dating violence, or stalking; or
- B. Any family member or household member on behalf of a minor or vulnerable adult who is alleged to be the victim of domestic violence, family violence, dating violence, or stalking; or
- C. The Tribal Prosecutor; or
- D. Any person acting in an official capacity in the protection of domestic violence, family violence, dating violence, or stalking survivors including but not limited to the Domestic Violence Advocate, Victim Crime Advocate, elder abuse case managers or advocates, case managers on behalf of a child, or other advocate acting in a professional capacity.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.07.03 Petition for Civil Protection Order or Modification

- A. A petition shall allege the existence of domestic violence, family violence, dating violence, or stalking, and shall be supported by a sworn statement made under penalty of perjury stating the specific facts and circumstances justifying the requested order.
- B. A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.
- C. No filing fee shall be required for the filing of a petition under this section.
- D. If an alleged perpetrator has been arrested for the offense of domestic violence, family violence, dating violence or stalking, the Court or the arresting Police Officer shall advise the alleged victim in writing of the right to file a petition under this section without cost.
- E. The petition shall state whether any other action is pending between the

petitioner or victim and the respondent.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.07.04 Procedure for Issue of Protection Order

Protecting alleged victims is a priority to the Tribe.

- A. The Court shall grant an ex parte protection order as soon as possible if, based on the specific facts stated in the petition, the Court has reason to believe that the petitioner or the person on whose behalf the petition has been filed is the victim of an act of domestic violence, family violence, dating violence, or stalking committed by the respondent, and issuance of the ex parte order is necessary to protect the victim from further abuse.
- B. The Court shall make available as soon as possible an ex parte protection order, together with notice of hearing, to the petitioner for service by a police officer or other authorized person.
- C. The Court may hold the record open and request additional information if the submitted information is insufficient at the time of filing. The record must be completed within 4 calendar days and at that time the order is to be granted or denied. The Court may hold a hearing to determine whether to grant an ex parte order.
- D. The Court shall hold a hearing within 14 days after the granting of the ex parte temporary protection order to determine whether the temporary order should be vacated, extended, or modified in any respect, or made a permanent order of protection with or without an expiration date.
- E. At the hearing, both parties may testify, and the Court will review the record and may consider other relevant evidence. Copies of any writings, declarations, affidavits, or other documentary evidence entered as exhibits must be provided to the other party. Rules of evidence may be relaxed in these proceedings and testimony is not required.
- F. Once granted, the protection order may not be dismissed without a Court hearing.
- G. If an ex parte order is not granted, the Tribal Court shall hold a hearing on the petition for protection order within 14 days after the filing of the petition. Both parties must be served notice to appear, and if notice of hearing cannot be personally served, notice shall be provided consistent with Title 3 of the PGST Law and Order Code.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.07.05 Contents of an Ex Parte or of a Final Protection Order

An ex parte protection order or a protection order entered after notice and hearing may, when deemed appropriate by the Court, include provisions:

- A. Restraining the respondent from committing acts of domestic violence, family violence, dating violence, or stalking.
- B. Excluding the respondent from the residence, workplace, school, and grounds of dwelling of the victim or other specific location where the victim can be found on a regular basis, whether or not the respondent and the victim share that residence.
- C. Restraining the respondent from any contact with the victim and his or her minor children.
- D. Awarding temporary custody or establishing temporary visitation rights with regard to minor children of the respondent on a basis that gives primary consideration to the safety of the claimed victim of domestic violence and the minor children. The provisions of Chapter 21.05 shall be followed in child custody determinations.
- E. Ordering temporary guardianship with regard to an elderly or vulnerable adult victim of domestic violence, family violence, sexual assault, or stalking if necessary for the safety of the elderly or vulnerable adult until the matter can be addressed through an action under Chapter 16.07 Protection of Vulnerable Adults of the Port Gamble S'Klallam Law and Order code.
- F. Awarding temporary use and possession of property of the respondent that the petitioner has regular use and possession of and that is necessary for the petitioner to continue with daily activities.
- G. Restraining one or both parties during the pendency of the action from transferring, encumbering, concealing, or disposing of property except as authorized by the Court and requiring that an accounting shall be made to the Court for all such transfers, encumbrances, dispositions, and expenditures.
- H. Ordering the respondent to timely pay any existing debts of the petitioner for a reasonable amount of time, including mortgage or rental payments that are necessary to maintain the claimed victim in his/her residence.
- I. Restraining the respondent from using or possessing a weapon specified by the Court.
- J. Listing any prior orders of the Court in relation to domestic matters that are superseded or altered by the protection order.
- K. Notifying the respondent that the willful violation of any provision of the order constitutes contempt of court and/or a criminal offense that is punishable by a fine or imprisonment or both and constitutes a violation

of this code.

- L. Ordering Tribal Housing to change the locks of the residence within 1 business day of issuance of the order if the victim is awarded temporary use of the residence.
- M. Ordering law enforcement to serve the protection order upon respondent and to provide civil standby when requested or when ordered by the Court.
- N. Ordering, at the Court's discretion, any other lawful relief as it deems necessary.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.07.06 Additional Contents of a Protection Order

A protection order that is entered after notice and hearing may, when deemed appropriate by the Court, include provisions:

- A. Ordering the respondent to:
 - 1. Contact and set an appointment with a domestic violence treatment program that is approved by the court within 72 hours; and
 - 2. Participate in and complete the treatment program recommended.
- B. Restraining the respondent from possessing and/or consuming alcohol, controlled substances, or drugs not taken under a valid and current prescription.
- C. Ordering the respondent to sign a release to allow the Court to receive monthly compliance reports from service providers who give court-ordered treatment or other court-ordered services. The Court may order Port Gamble S'Klallam service providers to report directly to the Court.
- D. Ordering the respondent to complete a substance abuse assessment or a mental health assessment based on factors that may be present. The order shall require the respondent to follow any recommendations included in the final assessment(s).

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.07.07 Duration of Final Protection Order and Modification

- A. The provisions of a protection order shall remain in effect for the period of time as stated in the order.
- B. Either party can petition the Court to modify, extend, renew, or terminate

a protection order.

- C. Request by the Petitioner. Before the Court may modify, reconsider, or dismiss a protection order at the request of the petitioner, if children live in the home, the Court may require petitioner to attend a domestic violence support group, with a session focused on the effects of domestic violence on children.
- D. Request by the Respondent. Before the Court may modify or reconsider a protection order at the request of the respondent, he or she shall provide the Court with all pertinent documents, affidavits, compliance forms, or any other information required by the Court for either reconsideration or modification of protection orders.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.07.08 Service of Temporary Protection Order

Temporary protection orders are to be personally served upon the respondent by a Police Officer immediately possible. If the respondent cannot be located the Court shall hold the regularly scheduled hearing and extend the temporary protection order and schedule a new hearing date.

If the respondent has been served with notice of the hearing and fails to appear, the petitioner has no further requirement to serve the respondent with the final order entered by the Court at the hearing.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.07.09 Copy to the Police Department and Other Jurisdictions

The Court clerk shall forward each protection order granted under 15.07.01 and each order issued under 15.07.08 within 24 hours to the PGST Police Department, to the Kitsap County superior court, and to any other necessary jurisdiction. The Police Department shall ensure that all officers are aware of the existence and status of each order.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.07.10 Penalties for Violation of a Protection Order

Violation of a protection order is a crime.

Violation of a protection order is a misdemeanor 1. A second or subsequent offense by the offender, whether in the same case or a separate case, is a felony 2.

Consent is not a defense to a charge of violation of a protection order.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.07.11 Unlawful Possession of Firearms

The purpose of this section is to:

- A. Prohibit any person from possessing a firearm who has been convicted of a felony or misdemeanor crime of domestic violence, family violence, sexual assault, stalking, or dating violence, as defined under the laws of the Port Gamble S'Klallam Tribe;
- B. Prohibit any person from possessing a firearm who is subject to a protection order based upon a finding that the person represents a credible threat to the physical safety of the victim;
- C. Prohibit any person from possessing a firearm who is found mentally incompetent to stand trial; and
- D. Prohibit any person from possessing a firearm who is detained for mental health reasons after a domestic violence, family violence, sexual assault, stalking, or dating violence offense, from possessing a firearm.

Any person who is prohibited from possessing or purchasing a firearm under this section and who also claims tribal hunting rights under Title 18 must use a crossbow or other legal, non-firearm weapon for hunting purposes.

It shall be unlawful for any person to possess a firearm who:

- 1. Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact with, or assaulting an intimate partner or family member as defined in this title or engaging in any other conduct that would place an intimate partner or family member in reasonable fear of physical harm to the intimate partner or family member, except that this subsection shall apply only to those orders that:
 - a. Were issued at a hearing at which such person was present and had the opportunity to participate; or at a hearing of which such person had notice and the opportunity to be heard, whether or not the person was present; and
 - b. Include a finding that such person represents a credible threat to the physical safety of such household or family member; and
 - c. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family member.
- 2. Has been convicted under the law of any state, territory, possession, tribe, or United States military tribunal of any crime involving domestic

violence or family violence, as defined by the laws of the Port Gamble S'Klallam Tribe, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against an intimate partner or family member as defined by this chapter.

Violation of this section is a felony 2 and may result in exclusion or banishment from the Port Gamble S'Klallam Tribal jurisdiction. Any violations of related domestic violence or family violence sentences in this section or any violations of other sections of this chapter shall be served consecutively.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

Chapter 15.08 Foreign Protection Orders

15.08.01 Full Faith and Credit Clause

The purpose of this chapter is to ensure compliance 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.

The Port Gamble S'Klallam Tribe recognizes, and the Tribal Police shall enforce, all valid foreign protection orders. If a foreign protection order is from another tribe, the respondent may petition the PGST Court for a hearing if reasonable notice and the opportunity to be heard was not provided by the tribe that issued the original order.

The Court shall coordinate with other agencies and ensure that any Port Gamble S'Klallam Tribal Protection Orders are submitted to any other jurisdiction, whether federal, state, tribal, or local, for the purpose of enhancing full faith and credit enforcement of all protection orders, including provisions to enter a protection order in the National Crime Information Center (NCIC) database.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018. Resolution 19-A-060, passed 7/22/19, modified this section to remove the requirement that a foreign protection order first be provided to the Tribal Court before the Tribe would recognize the order as valid.]

15.08.02 Filing a Foreign Protection Order

The Clerk shall accept and file all foreign protection orders that the Tribal Court receives from an outside jurisdiction. To ensure the proper and timely enforcement of all Port Gamble S'Klallam Tribal protection orders, and of any

foreign orders within the Tribe’s jurisdiction, the Tribal Court shall keep a registry of all protection orders issued by or registered with the Tribal Court. The Court Clerk shall provide tribal law enforcement with copies of protection orders within the same day of issuance or of filing with the Tribal Court.

The Clerk shall also immediately provide to law enforcement any information concerning changes to a protection order, such as modification, revocation, withdrawal, or expiration.

The Tribal Court shall make its record of protection orders available at all times to any court, law enforcement agency, or domestic violence program.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.08.03 Police Officer Immunity

Police officers or other enforcement officers shall not be held criminally or civilly liable for making an arrest under this chapter if the officer acted in good faith and without malice.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

Chapter 15.09 Sexual Assault Protection Orders

15.09.01 Sexual Assault Protection Order

The Port Gamble S’Klallam Tribe finds that there are times when a victim of a sexual assault or unwanted sexual contact is neither an intimate partner nor family member, thus does not qualify for the protections from these types of orders. Nevertheless, the victim deserves all the protections afforded within this chapter because the alleged sexual assault or unwanted sexual contact is such a heinous incident that goes to the heart of the health, safety, and general welfare of the tribal community; therefore, a protection order provided under this chapter is to protect those who have been sexually assaulted.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.09.02 Sexual Assault Protection Order—Who May File

A petition for a sexual assault protection order may be filed:

- A. By a person who does not qualify for a domestic violence or family violence protection order and who is a victim of nonconsensual sexual conduct, including a single incident of nonconsensual sexual conduct; or

- B. On behalf of any of the following who is a victim of nonconsensual sexual conduct and who does not qualify for a domestic violence or family violence protection order:
 - 1. A minor child; or
 - 2. A vulnerable adult as defined in Title 16; or
 - 3. Any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition; or
- C. By the Tribal Prosecutor; or
- D. Any person acting in an official capacity in the protection of the victim, an elder abuse case manager or advocate, a case manager on behalf of a child, or other advocate acting in a professional capacity.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.09.03 Petition for Sexual Assault Protection Order

- A. A petition for relief shall allege the existence of nonconsensual sexual conduct and shall be supported by a sworn statement made under penalty of perjury stating the specific facts and circumstances justifying the requested order.
- B. A petition for relief may be made regardless of the pendency of any other civil or criminal proceeding or other action between the parties, and both parties shall disclose to the Court the existence of any such proceedings or actions.
- C. No filing fee shall be required for the filing of a petition under this section.
- D. A person is not required to post a bond to obtain relief in any proceeding under this section.
- E. If the petition states that disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household, that address may be omitted from all documents filed with the Court. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address at which the respondent may serve notice of any motions.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.09.04 Procedure for Issue of Ex Parte Sexual Assault Protection Order

Protecting alleged victims is a priority to the Tribe.

- A. The Court shall grant as soon as possible an ex parte temporary sexual assault protection order if, based on the specific facts stated in the petition, the Court has reason to believe that the petitioner or the person whose behalf the petition has been filed has been a victim of nonconsensual sexual conduct by the respondent, and issuance of the ex parte order is necessary to protect the victim from further abuse.
- B. The Court shall make available as soon as possible an ex parte sexual assault protection order, together with notice of hearing, to the petitioner for service by a police officer or other authorized person.
- C. The Court may hold the record open and request additional information if the submitted information is insufficient at the time of filing. The record must be completed within four (4) calendar days and at that time the order is to be granted or denied. The Court may hold a hearing to determine whether to grant an ex parte sexual assault protection order.
- D. The Court shall hold a hearing within fourteen (14) days after the granting of an ex parte sexual assault protection order to determine whether the temporary order should be vacated, extended, or modified in any respect, or made a permanent order of protection with or without an expiration date.
- E. At the hearing, both parties may testify, and the Court will review the record and may consider other relevant evidence. Copies of any writings, declarations, affidavits, or other documentary evidence entered as exhibits must be provided to the other party. Rules of evidence may be relaxed in these proceedings and testimony is not required.
- F. Once granted, the sexual assault protection order may not be dismissed without a Court hearing.
- G. If a petition for an ex parte sexual assault protection order is not granted, the Tribal Court shall hold a hearing on the petition within fourteen (14) days after the filing of the petition. Both parties must be served notice to appear.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.09.05 Contents of an Ex Parte or of a Final Sexual Assault Protection Order

An ex parte or a permanent sexual assault protection order entered after notice and hearing may include the following provisions:

- A. Restraining the respondent from committing acts of nonconsensual sexual conduct against the victim.

- B. Excluding the respondent from the victim's residence, workplace, school, property, or other specific location where the victim can be found on a regular basis.
- C. Restraining the respondent from face to face, digital, third-party, or any other type of contact with the victim.
- D. Notifying the respondent that the willful violation of any provision of the order constitutes contempt of court and/or a criminal offense that is punishable by a fine or imprisonment or both and constitutes a violation of this code.
- E. Ordering, at the Court's discretion, any other lawful relief as it deems necessary.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.09.06 Service of Temporary Sexual Assault Protection Order

A tribal police officer shall immediately personally serve the respondent with a temporary sexual assault protection order. If the respondent cannot be located the Court shall hold the regularly scheduled hearing and extend the temporary sexual assault protection order and schedule a new hearing date.

If the respondent has been served notice of the hearing and fails to appear, the petitioner has no further requirement to serve the respondent with the final order entered by the Court at the hearing.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.09.07 Duration of Final Sexual Assault Protection Order

A final sexual assault protection order shall remain in effect for the period of time as stated in the order.

Either party can petition the Court to modify, extend, renew, or terminate a sexual assault protection order. If the order has an expiration date, the petitioner may apply for renewal of the order within three months before the order expires. The Court shall make available the petition for renewal, together with notice of hearing, to the petitioner for service by a police officer or other authorized person.

The Court shall hold a hearing and renewals may only be granted in open court.

Any sexual assault protection order that would expire on a Court holiday shall instead expire at the close of the next Court business day.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.09.08 Copy to Police Departments and Other Jurisdictions

The Court clerk shall forward each sexual assault protection order granted and issued under this chapter within 24 hours to the PGST Police Department, to the Kitsap County superior court, and to any other necessary jurisdiction. The Police Department shall ensure that all officers are aware of the existence and status of each order.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.09.09 Sexual Assault Protection Orders—Personal Jurisdiction—Nonresidents

A. In a proceeding in which a sexual assault protection order is sought under this chapter, the Tribal Court may exercise personal jurisdiction over a nonresident individual if:

1. The individual is personally served with a petition; and
2. The individual submits to the jurisdiction of the Tribe by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction; or
3. The act or acts that caused the petitioner to file for a sexual assault protection order occurred within the Tribe's jurisdiction; or
4. There is any other basis consistent with laws of the Tribe and/or the laws of the United States.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.09.10 Penalties for Violation of a Sexual Assault Protection Order

Violation of a sexual assault protection order is a misdemeanor 1.

A second or subsequent violation of a sexual assault protection order, whether in the same case or a separate case, is a felony 2. Consent is not a defense to a charge of violation of a sexual assault protection order.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.09.11 Full Faith and Credit

A. If it pertains to a child under the age of 18, a sexual assault protection

order issued by the Tribal Court will be enforceable throughout the State of Washington pursuant to RCW [13.34.240](#). If it pertains to an adult, a sexual assault protection order issued by the Tribal Court will be enforceable throughout the State of Washington pursuant to Washington Civil Rule 82.5(c), provided it does not violate policy.

- B. To ensure that sexual assault protection orders issued by the Tribal Court are enforced outside of the boundaries of the Tribe's jurisdiction, sexual assault protection orders issued in the courts of the State of Washington, or a tribal court within the State of Washington, will be enforced within the jurisdiction of the Port Gamble S'Klallam Tribe.
- C. Notice of reciprocal enforcement under this section shall be printed on all sexual assault protection orders issued by the Court.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

Chapter 15.10 Special Rules of Court and Other Matters

15.10.01 Secure Waiting Area

Whenever practical, the Court shall provide a secure waiting area or bailiff supervision prior to, during, and after Court proceedings for a victim, and the victim's family, in order to avoid close proximity between the victim and the defendant or the respondent, including family or friends of both parties.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.10.02 Fees Not Permitted

The Court may not charge a fee for filing or preparation of certified copies to a person entitled to protection who seeks relief under this Title or to a foreign prosecutor or a foreign law enforcement agency seeking to enforce a protection order. The Court shall provide a person entitled to protection and requesting foreign prosecutors or law enforcement agencies the necessary number of certified copies at no cost.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.10.03 Child Custody Disputes

- A. The Tribal Court shall refer to Title 21 the Family Code of the PGST Law and Order Code to resolve any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children.

- B. A police officer, or other Tribal representative, shall not remove a child from his or her current placement unless:
1. The Tribal Court has issued an order to produce the child; or
 2. The Tribal Court has issued an order recognizing another Court of competent jurisdiction as having jurisdiction over the child and that Court has issued an order to produce the child; or
 3. There is probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a Court order under the children's protection code.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.10.04 Mediation Not Allowed

Mediation is not allowed if a protection order is in effect. The Court may allow an exception and permit mediation to take place if it is requested by the victim of the alleged domestic violence after consultation with counsel or an advocate and only if mediation is provided by a certified mediator who is trained in domestic violence in a specialized manner intended to protect the safety of victims. The victim is permitted to have a support person of her or his choice in attendance at the mediation.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

Chapter 15.11 Severability and Savings

15.11.01 Severability

If any part, or parts, or the application of any part of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter. The Port Gamble S'Klallam Tribe hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part, parts, or application of any part thereof would be declared invalid.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]

15.11.02 Savings

This Title takes effect on the date approved by the Port Gamble S'Klallam Tribal Council and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this Title. Previous sections of this code shall 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.

[HIST: Title 15 Domestic Violence, was approved by Tribal Council Resolution 18-A-101 on Sept. 17, 2018.]