

Chapter 16

DOMESTIC VIOLENCE

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Article I. General Provisions

16.01.01 Purpose.

The purpose of this Chapter is to recognize domestic violence and family violence as serious crimes against society, the Lower Elwha Tribe (Elwha Klallam Tribe), and the family, and to provide the victim of domestic violence or family violence the maximum protection from further violence that the law, and those who enforce the law, can provide. Furthermore, the purpose of this Chapter is to recognize that the strength of the Elwha Klallam Tribe is founded on healthy families, and that the safety of victims of domestic and family violence, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.

16.01.02 Findings.

It is the intent of the Elwha Klallam Tribe's Business Committee and the Tribal community that the official response to domestic violence and family violence shall be that the Elwha Klallam Tribe will not tolerate or excuse violent behavior under any circumstances. All people, whether they are elders, male, female, or children of our Elwha Klallam Tribe, or other individuals residing on the Elwha Klallam Reservation, are to be cherished and treated with respect. The Elwha Klallam Tribe has traditionally referred to itself as the "the Strong People" (nəxʷsłayəm) and as such recognizes that strength as a tribal community is directly linked to the health of its families and specifically, its children. Domestic violence and family violence are not acceptable and are contrary to traditional Elwha Klallam culture and values of honoring the family. Domestic violence and family violence will not be tolerated.

The Elwha Klallam Tribe recognizes the Department of Justice findings that one in three Native women is sexually assaulted in her lifetime and that 70 percent of reported assaults are committed by non-Native men against Native women. A community response to domestic and family violence is necessary because domestic and family violence crimes incidents negatively impact Tribal resources and the community as a whole. The Elwha Klallam Tribe deems it necessary to address domestic violence and family violence to the fullest extent permitted by laws existing now or as may be adopted or amended in the future. Persons who commit acts of domestic violence or family violence will be held accountable for their offenses and will be required to take necessary steps to change their behavior for the welfare of the family and the Elwha Klallam Tribe.

16.01.03 Prior Inconsistent Codes or Ordinances Repealed.

Any Code or Ordinance of the Elwha Klallam Tribe which conflicts in any way with the provisions of this Chapter are hereby repealed to the extent that it is inconsistent with or is contrary to the spirit or purpose of this Chapter. The Lower Elwha Klallam Tribe's Domestic Violence Code adopted on November 7, 2011 by Tribal Council Resolution No. 62-11 is expressly repealed and superseded by this Chapter.

16.01.04 Recodification of Title 2 of the Law and Order Code.

Sections 16.01 through 16.07 constitute a new Chapter in Title 2 of the Elwha Klallam Tribe's Law and Order Code.

16.01.05 General jurisdiction.

Jurisdiction over domestic and family violence matters shall be in accordance with Elwha Klallam Tribe's Judicial Code and Court Procedures (JCCP). In addition, the Elwha Tribal Court shall retain jurisdiction over members of Federally recognized Indian Tribes and any violations of orders of protection entered pursuant to this Chapter which are alleged to have occurred outside of the boundaries of the Elwha Klallam Indian Reservation where such orders are entitled to recognition outside the Elwha Klallam Reservation boundaries as a matter of full faith and credit.

16.01.06 Special domestic violence criminal jurisdiction.

(1) The Elwha Klallam Tribe hereby exercises "special domestic violence criminal jurisdiction" as a "participating tribe" as defined within 25 U.S.C. 1304 (2013), subject to applicable exceptions defined therein, in the Lower Elwha Tribal Court.

(2) In all proceedings in which the Lower Elwha Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by Chapter 6 of the Elwha Klallam Tribe's JCCP shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302, to all defendants. Should there be any inconsistency between the Elwha Klallam Tribe's JJCP and 25 U.S.C. 1302, those of 25 U.S.C. 1302 shall apply.

(3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Lower Elwha Tribal Court and may petition the Lower Elwha Tribal Court to stay further detention pending the habeas proceeding.

(a) A court shall grant a stay if the court:

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

(ii) 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.

(4) The Lower Elwha Tribal Court hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:

(a) Resides within the jurisdiction of the Elwha Klallam Tribe; or

(b) Is employed within the jurisdiction area of Elwha Klallam Tribe; or

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

(i) A member of the Elwha Klallam Tribe; or

(ii) A member of another Indian Tribe who resides within the jurisdiction of the Elwha Klallam Indian Reservation.

16.01.07 Special jurisdiction – Criminal conduct applicable.

The Elwha Klallam Tribe exercises the special domestic violence criminal jurisdiction of a defendant for criminal conduct that falls into one or more of the following categories:

(1) Domestic Violence and Dating Violence. An act of domestic violence or dating violence that occurs within the jurisdiction of the Elwha Klallam Tribe.

(2) Violations of Protection Orders. An act that:

(a) Occurs within the jurisdiction of the Elwha Klallam Tribe, and:

(b) Violates the portion of a protection order that:

(i) 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;

(ii) Was issued against the defendant;

(iii) Is enforceable by the Elwha Klallam Tribe; and

(iv) Is consistent with 18 U.S.C. 2265(b).

16.01.08 Statute of limitations.

For purposes of this Chapter, the statute of limitations shall be consistent and follow Chapter 6 of the Elwha Klallam Tribe's JCCP, or any successor code.

16.01.09 Nonwaiver of sovereign immunity.

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

16.01.10 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 Elwha Klallam Tribe's Business Committee hereby declares that it would have passed the remaining parts of this Chapter even if it had known that such part or parts or application of any part thereof would be declared invalid.

16.01.11 Savings.

This Chapter takes effect on the date approved by the Lower Elwha Community Council, by and through adoption by the Tribe's Business Committee as the elected representative body of the Community 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 Chapter and such 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.

16.01.12 Authority to Amend.

The Elwha Klallam Tribe's Business Committee is authorized to amend this Chapter as the need may arise in the Business Committee's determination and in the manner provided by the Business Committee Rules of Procedure. Amendments and additions shall become part of this Chapter for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization of the Family Protection Code, or any successor code.

16.01.13 Definitions.

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

- (1) "Abuse" means the intentional infliction of physical harm, bodily injury or sexual assault or the infliction of the fear of imminent physical harm, and includes but is not limited to Assault as defined in Title 9 of the Elwha Klallam Criminal Code.
- (2) "Advocate" means a person who is employed/volunteering to provide services to victims of domestic violence and/or sexual assault and who is bound by confidentiality policies.
- (3) "Anger management" means a program based on psychological therapeutic techniques and exercises by which someone with excessive or uncontrollable anger can control or reduce the triggers, degrees, and effects of an angered emotional state.
- (4) "Alarm" means to cause apprehension or fear resulting from the reasonable perception of danger.
- (5) "Coercion" means to restrain, compel or dominate by force or threat.
- (6) "Contact" includes but is not limited to:
 - (a) Repeatedly coming into and/or remaining in the visual or physical presence of the other person;
 - (b) Following the other person;
 - (c) Waiting outside the home, property, place of work or school of the other person;
 - (d) Sending or making written communications in any form, including but not limited to text messaging, IM, and social media, to the other person;
 - (e) Speaking with the other person by any means, including leaving a voicemail message;
 - (f) Communicating with the other person through a third person;
 - (g) Committing a crime against the other person;
 - (h) Communicating with a third person who has some relationship to the other person with the intent of impacting the third person's relationship with that other person;
 - (i) Communicating with business entities with the intent of affecting some right or interest of the other person;
 - (j) Damaging the other person'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 other person.

(7) "Court" means the Lower Elwha Klallam Tribal Court.

(8) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

(9) "Dating relationship" means a social relationship of a romantic or intimate nature. In determining whether parties have a "dating relationship," the trier of fact shall consider, among any other relevant facts, the following:

- (a) The length of time the relationship has existed;
- (b) The nature of the relationship; and
- (c) The frequency of the interaction between the parties.

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

(11) "Domestic violence" means a crime committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic violence laws of the Elwha Klallam Tribe.

Domestic violence can take many forms such as, but not limited to, use of intimidation, contact as defined within this Chapter, manipulation, isolation, coercion, fear and/or violence, as well as other tactics of power and control to establish and maintain a relationship of dominance over an intimate partner, but does not include acts of self-defense. The following are non-exhaustive, illustrative examples of what form the domestic violence action may take:

- (a) Attempting to commit or committing any criminal offense as defined by Elwha Klallam Tribe's Criminal Code against an intimate partner;
- (b) Physically harming, attempting to physically harm, or placing an intimate partner in reasonable fear of physical harm to himself or herself or another. Reasonable fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;
- (c) Emotional or mental abuse of the intimate partner, including physical or mental intimidation, controlling activities, or using demeaning language;
- (d) Economic control or abuse of an intimate partner;
- (e) Causing an intimate partner to engage involuntarily in sexual activity; or
- (f) Preventing the intimate partner from accessing services.

(12) "Electronic communications" means any form of expression or exchange of information by speech, photographs or written form using electronic means. Electronic communication includes, but is not limited to, communication via telephone, facsimile, electronic mail, social media or any other electronic form.

(13) "Electronic surveillance" means monitoring the behavior, activities, or whereabouts by electronic means.

(14) Emotional Distress. For the purpose of this Chapter, "emotional distress" means a reaction such as anguish, grief, fright, humiliation, or fury.

(15) "Elder" means a person 55 or more years old.

(16) "Essential personal effects" means those items necessary for a person's health, welfare and livelihood, including but not limited to clothing, cribs, bedding, family heirlooms, medications, money, personal documents, personal hygiene items, tools of the trade, vehicles, jewelry, regalia or any cultural or ceremonial items, and pets.

(17) "Ex parte" in this Chapter means that only the requesting party is heard by the Court, and that notice and an opportunity to contest the facts at a particular hearing are not available to the party adversely affected by the Court's action.

(18) "Family or household member" means:

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

(b) Minor children, by blood, marriage, or adoption, including tribal customary 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.

(19) "Family violence" means the same or similar acts committed in domestic violence, but directed towards a family or household member instead of an intimate partner.

(20) "Foreign protection order" means 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, or the District of Columbia, or any United States military tribunal, or a Tribal Court, in a civil or criminal action.

(21) "Indian Country" means the definition given in 18 U.S.C. 1151.

(22) "Immediate family" means a spouse, parent, child, sibling, live-in partner, or any other person who regularly resides in the household or who in the past regularly resided in the household.

(23) "Intimate partner" means:

(a) Spouses;

(b) Former spouses;

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

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

(e) Persons who are in a dating relationship or have been in a dating relationship in the past.

(24) "Mandatory arrest" means that a Police Officer shall arrest if there is probable cause to believe the person to be arrested has committed an offense as defined by this Chapter even though the arrest may be against the expressed wishes of the victim.

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

(26) "No contact order" means a Court order issued pursuant to a criminal case that prohibits a criminal defendant from having contact with the victim.

(27) "Protection order" means a temporary or permanent Court order, injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual assault or stalking; and

Includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another 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.

(28) "Perpetrator" means the person who has committed an act of domestic violence or family violence. The perpetrator may also be referred to as a "defendant" in a criminal case or "respondent" in a civil case.

(29) "Police Officer" means any person employed or commissioned as a police or law enforcement officer by the Elwha Klallam Tribe, Clallam County, other State of Washington or any agency of the Federal government or any law enforcement agency having jurisdiction within the Elwha Klallam Indian Reservation, including non-Tribally deputized officers who may make arrests on the Reservation.

(30) "Probable cause" for arrest means that the 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 Chapter, based on all the facts known to the officer, including the officer's personal observations, statements made by parties involved in the incident, statements made by witnesses, if any, and any other reliable information.

(31) "Repeated" means two or more times.

(32) "Safe house" means a safe home/safe house that provides temporary refuge and other services to victims of domestic violence and their children.

(33) "School" means a public or private institution of learning or a child care facility.

(34) "Tribal or State certified domestic violence perpetrator treatment program" means 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 State standards of Chapter 388-60 WAC or any successor code.

16.01.14 Reporting domestic and family violence.

The following persons are obligated to report suspected domestic violence or family violence if they believe it is occurring, or is about to occur and they believe the victim is in imminent risk of harm: any physician, physician's assistant, psychologist, psychiatrist, mental health counselor, nurse, nurse's aide, nurse practitioner, midwife, dentist, dental assistant, hygienist, optometrist, or any medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker, or other child care staff including foster parents, residential care or institutional personnel; peace officer/police officer or other law enforcement official; and judge, attorney if not prevented by the attorney client privilege, probation staff, Clerk of the Court, or other judicial system official. The suspected domestic violence or family violence shall be reported immediately by telephone or otherwise to the Elwha Klallam Tribe's Police Department. The reporter may initially be logged in as anonymous.

Any person subject to mandatory reporting who fails, neglects, or refuses to report acts of domestic violence and/or family violence known to him/her, after notice and hearing, will be assessed a civil penalty in an amount not to exceed \$500.00.

16.01.15 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:

- (1) Law enforcement officers;
- (2) Victim advocates; or
- (3) Mandatory reporters.

Article II. Power and Duties of Law Enforcement

16.02.01 Law enforcement duties to victims.

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

- (1) 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;
- (2) Transporting or obtaining transportation for the victim and any child(ren) to a domestic violence safe house or other place of safety within the Elwha Klallam Tribe's service area at the victim's request;

- (3) Assisting the victim in removing essential personal effects, at the victim's request;
- (4) Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility;
- (5) Giving the victim immediate and adequate written notice of the rights of victims and of the remedies available as well as the name, address, and telephone number of local services available to victims, family or household members or witnesses of domestic violence or family violence;
- (6) When a law enforcement officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the Elwha Klallam Tribe's service area, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the tribal, city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in tribal, superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any tribal, municipal, district, or superior court.

- (7) Confiscating any weapon as provided within this Chapter; and/or
- (8) Providing assistance in obtaining a temporary protection order or emergency no contact order.

16.02.02 Duty to preserve evidence.

- (1) The purpose of this section is to provide uniformity in the investigation 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.
- (2) All law enforcement officers who respond to an allegation of a crime involving domestic violence or family violence shall take reasonable steps to collect relevant evidence. Reasonable steps include:
 - (a) Photographing injuries to any victim (including follow-up photographs to be taken post-incident to show injury aging), any damage to property and the location and surroundings of the alleged incident;
 - (b) Describing both the physical and emotional condition of the victim and perpetrator in detail;
 - (c) Noting the identity of any witnesses to the incident, determining what they observed and reporting of same;
 - (d) Identifying all persons present at the location at the time of the incident, including children, whether or not they witnessed the incident and reporting of same;
 - (e) Recording any oral comments;
 - (f) Gathering a history of the relationship and its duration;
 - (g) Describing the scene of the alleged crime on first contact and other physical evidence; and
 - (h) Gathering statements and interviewing responding medical personnel or following up with medical personnel if the victim is transported to a facility for medical treatment.
- (3) A law enforcement officer who responds to an allegation of domestic violence or family violence shall attempt to lawfully obtain an oral and written statement concerning the incident from the perpetrator and victim.
- (4) A law enforcement officer who responds to an allegation of a crime involving domestic violence or family violence shall ensure that the victim is made aware of the importance of preserving evidence of the incident. In addition, the law enforcement officer shall preserve a chronology of events in written form.

(5) If a child is present in the household, the officer shall note their presence. In order to preserve evidence and not taint testimony or induce additional trauma, an interview of a child shall be conducted by someone trained and qualified to interview children, which may include law enforcement. If the child makes spontaneous statements, the officer shall note these within his or her report. If a child is present in the household, the officer shall make any reports, as required by the Elwha Klallam Tribe's Family Protection Code to the Tribe's Indian Child Welfare Program, or another appropriate Tribal or other governmental agency responsible for investigating allegations of abuse or neglect.

16.02.03 Mandatory arrest.

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

(2) A law enforcement officer shall, without a warrant, arrest a person and charge him or her for the appropriate crime if the officer has probable cause to believe that the person has committed a crime of domestic violence or family violence within four hours of the time when the victim first has the ability to report the incident. The officer must make an arrest upon probable cause regardless of the express wishes of the victim, but those wishes should be noted in the report.

Nothing in this subsection prohibits an officer from arresting and booking a person upon probable cause to believe that a person has committed a crime involving domestic violence or family violence when more than four hours have passed.

(3) If a law enforcement officer receives a complaint alleging a crime involving domestic violence or family violence from 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:

- (a) Prior complaints of domestic violence or family violence;
- (b) The relative severity of the injuries inflicted on each person;
- (c) The likelihood of future injury to each person; and
- (d) Whether one of the persons acted in self-defense.

(4) 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.

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

(6) Whenever a law enforcement officer investigates an allegation of domestic violence or family violence, whether or not an arrest is made, the officer shall make a detailed written report of the alleged abuse and submit that report to the Elwha Klallam Prosecutor's office within 48 hours.

(7) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests of intervention by law enforcement by any party.

16.02.04 Emergency criminal no contact order.

A Police Officer shall have the authority after business hours or when the Judge is otherwise not available, to issue an emergency criminal no contact order prohibiting contact with the victim, including third party contact, on a form approved by the Court, if the officer has probable cause to believe that a crime involving domestic violence or family violence has occurred. The following shall occur regarding the issuance of an emergency criminal no contact order by an officer:

- (1) The officer shall sign the order on the Judge's behalf and serve it on the defendant.
- (2) The officer shall also provide the victim with a copy of the order at the scene if possible.

(3) The order shall be effective until the first Court appearance or as vacated or amended by Court order.

(4) 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 judicial day. The officer shall provide a copy of the order to the victim and assist the victim in securing any essential personal effects.

16.02.05 Violations of conditions of release.

If a Police 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 shall, without a warrant, arrest the alleged violator.

16.02.06 Duty to expedite service of protection orders.

The Elwha Klallam Tribal Police shall serve orders of protection on an expedited basis and shall attempt to complete service within 48 hours and provide a declaration of service to the Court by the next judicial day.

16.02.07 Authority to seize and hold weapons.

(1) Incident to arrest for a crime involving domestic violence or family violence, Elwha Klallam 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.

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

(3) The Elwha Klallam Tribal Police are authorized to confiscate weapons from a person who is prohibited from possessing or using them.

16.02.08 Mandatory arrest for violations of civil protection orders or criminal no contact orders.

When a law enforcement officer has probable cause to believe that a person has violated one of the following Court orders, the officer shall, without a warrant, arrest the alleged violator. This section applies to all violations of any protection order or no contact order whether civil or criminal. Arrest shall be mandatory where the violation is of one of the following, regardless of whether the issuing authority is the Elwha Klallam Tribal Court or another court:

- (1) A criminal no contact order;
- (2) A civil domestic violence protection order;
- (3) A sexual assault or harassment protection order;
- (4) A civil protection order issued in the context of a family law action;
- (5) A vulnerable adult protection order;
- (6) A youth in need of care protection order; or
- (7) A foreign protection order.

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

16.02.09 Law enforcement records on domestic violence or family violence to be identifiable.

(1) The Elwha Klallam Tribal 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.

(2) The Elwha Klallam Tribal 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.

16.02.10 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 Chapter 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 Chapter.

16.02.11 Officials who batter.

(1) No special treatment by policy makers or law enforcement officials shall be given to any person because of their official capacity as a law enforcement officer, public official, or because of their connections to or influence over policy makers, public officials, law enforcement officers or the community. All procedures and duties set out in this Chapter and internal policy of Elwha Klallam Tribal Police Department in its current form, or as subsequently modified, shall be strictly adhered to, regardless of any administrative, interagency, or departmental investigation and/or sanctions.

(2) Upon receiving notification that a law enforcement officer is a possible perpetrator:

(a) The dispatcher shall immediately notify the Chief of Police and the Tribal Prosecutor. In the event that the Chief of Police is the possible perpetrator, the dispatcher shall immediately notify the next highest ranking police officer. The notified law enforcement officer shall engage an individual law enforcement official from another jurisdiction to investigate the incident. The Tribal Prosecutor shall not be involved in the investigation.

(b) Any officer alleged to have committed an offense shall immediately surrender all weapons to the investigating officer. No weapons shall be returned to the officer under investigation without the written consent of the Chief of Police and the Tribal Prosecutor.

(c) Investigation and prosecution will proceed regardless of administrative, interagency, or departmental investigation and sanctions.

Article III. Court Requirements

16.03.01 Confidentiality.

- (1) The Court shall establish a method for identifying civil and criminal cases that arise from an allegation of domestic violence or family violence or a crime of domestic violence or family violence. These files may be treated as other confidential files subject to limited release.
- (2) Civil Court proceedings arising from a petition for a domestic violence or family violence order are closed to the general public. The Court may designate appropriate persons who may attend the proceeding.
- (3) Court records arising from a civil petition for a domestic violence or family violence order are confidential. Documents and other information contained in the file may be released to the petitioner, law enforcement officers, judicial officers, Tribal Prosecutor or the Tribe's Office of General Counsel, victim advocates, child protection workers, and elder protection workers. The records may be released, except for the address and location of the protected person, to the respondent. The records may also be released to other persons, including Defense Attorneys, upon order of the Court for good cause shown.
- (4) 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 good cause shown.

16.03.02 Pre-trial and release conditions.

- (1) 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 specifically consider the following factors when setting bail:

- (a) The person has been charged with a crime of violence and (i) the person has been recently convicted of another crime of violence, or (ii) the person has committed this offense while on probation or other release for another crime of violence;
 - (b) 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;
 - (c) 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 potential; or
 - (d) The person represents a danger to the community. This requires a pattern of behavior evidenced by past and present conduct and no conditions for release are available which would reasonably assure the safety of the community.
- (2) No Contact 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 violence or family violence, the Court may issue a no contact order prohibiting the defendant from having any contact with the victim. The Court has the right to review and amend emergency no contact orders issued by law enforcement sua sponte or upon the request of the Prosecutor or Defense attorney.
 - (a) The protected party, as well as the perpetrator, in a no contact order shall be provided with a copy of the order.

(b) In issuing a no contact order, the Court shall consider whether the firearms prohibition provisions of this Chapter apply.

(c) A no contact order shall not be vacated without notice to the Prosecutor and a hearing.

(3) Other Considerations.

(a) 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.

(b) Bail. Bail set in a domestic violence or family violence case requires cash only. A bond is not available unless approved by the Court and after input from the Prosecutor.

(c) The use of GPS monitoring may be ordered pre- or post-trial at the recommendation of the Prosecutor or Probation Officer and at the defendant's expense.

(d) Other Conditions. 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 Elwha Klallam Tribal Police Department.

16.03.03 Special Court rules for domestic violence or family violence crimes.

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

(1) If the alleged perpetrator pleads or is found guilty, the Court, in its discretion, may order the Elwha Klallam Tribe's Probation office to prepare a pre-sentence report prior to sentencing.

(2) 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 at the discretion of the Court.

(3) Upon a guilty plea, conviction, or other disposition, the Court may issue a no contact order prohibiting the defendant from having any contact with the victim irrespective of whether the victim consents.

(4) Upon a guilty plea, conviction, or other disposition, the perpetrator shall be ordered to participate in a state certified domestic violence perpetrator treatment program. The state certified domestic violence perpetrator treatment program should consist of the following:

(a) The perpetrator shall attend and cooperate in an intake session for a state certified domestic violence perpetrator treatment program.

(b) The intake shall be completed by the domestic violence perpetrator treatment program no later than 20 calendar days after entry of the order requiring treatment, unless the Court extends that time period for good cause shown.

(c) A copy of the recommended treatment plan shall be provided to the Court, Tribal Prosecutor and Defense Counsel.

(d) In the discretion of the Court, the perpetrator's participation in treatment sessions based on the domestic violence program's treatment plan may be in lieu of confinement and/or fine, or the execution of any such penalty may be suspended pending completion of the treatment ordered by the Court. However, once this service is ordered it must be completed prior to any dismissal unless probation is revoked.

(e) The domestic violence program or other services provider shall submit written progress reports to the Court which will share the reports with the attorneys of record.

16.03.04 Judgments and convictions.

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

- (1) Consider the entry of orders for the protection of the victim, including those set out within this Chapter;
- (2) Order restitution as warranted; and
- (3) Order appropriate domestic violence perpetrator's treatment.

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

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

- (4) In the Court's 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 Elwha Klallam Tribal Police Department.

16.03.05 Additional conditions for crimes involving domestic violence or family violence.

- (1) Upon conviction of a crime of domestic violence or family violence, the perpetrator shall be required to complete domestic violence perpetrator's treatment.

(2) Within the Court's discretion, the defendant may be excluded from the Elwha Klallam Indian Reservation consistent with Tribe's Exclusion and Expulsion Ordinance, when applicable.

(3) Within the Court's discretion, the Court may order publication of the perpetrator's name and photograph in the Elwha Klallam Tribe's newspaper described as a domestic violence or family violence perpetrator.

(4) Within the Court's discretion, it may order any combination of such confinement, exclusion, publication, and fine.

(5) The forfeiture of any cash bond posted for a person convicted under this Chapter shall be withheld by the Elwha Klallam Tribe and applied to the following until the costs and/or restitution are paid in full, to be satisfied in the following order:

- (a) Any restitution ordered by the Court for victim and/or victim's property;
- (b) Costs incurred by the Elwha Klallam Tribe for imprisonment; or
- (c) Costs incurred by the Elwha Klallam Tribe for exclusion of the convicted person.

(6) If the defendant is not a Tribal member, the Court shall reduce the restitution and costs to a judgment and shall send said judgment to collections. Attorney fees and costs of collections shall be added onto the judgment.

16.03.06 Factors to consider in sentencing.

(1) In sentencing for a crime of domestic violence, family violence, or stalking as defined in this Chapter, the Court shall consider, among other factors, whether:

- (a) The firearms prohibition provisions of this Chapter apply;
- (b) The defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;
- (c) 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 whether
- (d) The offense occurred within sight or sound of any minor children.

(2) The Court shall consider both aggravating and mitigating factors in sentencing the defendant after conviction.

(a) Aggravating factors include but are not limited to:

- (i) Nature and Degree of injury to the victim;
- (ii) Other impacts to victim's life as a result of the incident;
- (iii) The use of a weapon;
- (iv) Prior history of personal crimes against current or former victim(s);
- (v) Prior convictions of crimes against persons;
- (vi) Use of alcohol and drugs at the time of the incident;
- (vii) Whether children were in the residence at the time of the incident;
- (viii) Whether children witnessed, saw or heard the incident;
- (ix) Fleeing from law enforcement;
- (x) Violation of release orders; and
- (xi) Prior violation of restraining orders.

(b) Mitigating factors shall include but are not limited to:

- (i) Appropriate progress in Court-approved counseling and or treatment;
- (ii) Adherence to release conditions;
- (iii) Documentation of abstinence from alcohol and drugs;
- (iv) Lack of criminal history, and
- (v) Voluntary relinquishment of weapons.

(3) In sentencing for the crime of domestic violence or family violence as defined in this Chapter, the Prosecutor shall provide for the Court's review:

(a) The defendant's criminal history, if any, that occurred under the law of the Elwha Klallam Tribe, any state, Federal, territory, possession, other Tribe or United States military tribunal.

(b) For the purposes of subsection (3)(a) of this section, criminal history includes all previous convictions and orders of deferred prosecution and stipulated orders of continuance (SOC), as otherwise available to the Court or Prosecutor, before the date of sentencing.

16.03.07 Sentencing.

(1) MISDEMEANORS

Any offense not defined as a felony under the Elwha Klallam Tribe's Domestic Violence Code shall be subject to a term of imprisonment of not more than 1 year or a fine of \$5,000, or both.

(2) FELONIES

(a) Any offense expressly defined as a felony under the Elwha Klallam Tribe's Domestic Violence Code shall be subject to a term of imprisonment of not more than 3 years or a fine of \$15,000, or both. A total term of imprisonment for any criminal proceeding shall not exceed 9 years.

(b) A defendant shall not be subject to felony prosecution unless the defendant:

(i) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

(ii) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

16.03.08 Defendant's Rights

(1) Every defendant is entitled to those rights enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302.

(2) Every defendant has the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution.

(3) The Elwha Klallam Tribe shall provide any indigent defendant, at trial and on appeal, the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States, including Tribes, provided that such jurisdiction applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.

(4) In any criminal proceeding, the presiding judge shall:

(a) have sufficient legal training to preside over criminal proceedings; and

(b) be licensed to practice law by any jurisdiction in the United States, including the Elwha Klallam Tribe.

(5) In any criminal proceeding, the court shall maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(6) In any criminal proceeding, a defendant has right to an impartial jury drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians.

(7) Every defendant has the privilege of the writ of habeas corpus in a court of the United States to test the legality of their detention by order of the Elwha Klallam Tribal Court.

(a) Every defendant who has been detained in jail by Elwha Klallam Tribe shall be notified of this right and any additional rights and privileges they are entitled to under 25 U.S.C. 1304(e).

16.03.09 Witness testimony.

(1) Upon the request of a 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:

- (a) The witness is material to the party's case;
- (b) The witness has failed or refused to appear before the Court; and
- (c) Other means of securing the witness's presence at trial have proved futile.

(2) Prior Statement. A prior statement 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:

- (a) The witness voluntarily made the statement;
- (b) When the statement was made, there were minimal guaranties of truthfulness, such as a sworn declaration, certified statement, 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,

which should be followed by a signature and date;

- (c) The statement was taken pursuant to standard procedure; and
- (d) The witness whose statement is being offered is subject to cross-examination when giving the subsequent statement.

Article IV. Criminal Actions and Remedies

16.04.01 Domestic violence or family violence sentencing designation.

This section provides for the designation of a crime as domestic violence (DV) or family violence (FV), which gives notice that the Elwha Klallam Tribe may seek additional conditions at sentencing. Any crime as defined by Elwha Klallam Tribe's Criminal Code or within this Chapter is considered domestic violence if committed against a current or former intimate partner, or family violence if against a family or household member, and is subject to the provisions of this Chapter.

16.04.02 Interfering with the 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 or the Elwha Klallam 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 as defined in this Chapter.

16.04.03 Interfering with the prosecution of domestic violence or family violence.

Any person who prevents or attempts to prevent a witness from testifying in a Court proceeding, or otherwise impedes the prosecution of a case involving domestic violence or family violence, has committed the crime of interfering with the prosecution of domestic violence or family violence.

Interfering with the prosecution of domestic violence or family violence is a Misdemeanor as defined in this Chapter.

16.04.04 Powers and duties of Prosecutor.

The Prosecutor shall indicate in the charging document that the defendant is being accused of a crime of domestic violence or family violence.

16.04.05 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, with particular attention to the following:

(1) Hearing Dates, Continuances, Sentencing. The Prosecutor shall make reasonable efforts to assure that the victim is informed of all hearing dates and continuances and of the right to address the Court at any hearing, in person or in writing, regarding the various impacts of the criminal offense on the victim, the risk of further acts of domestic violence or family violence, and the conditions of sentence necessary to ensure the safety of the victim and the victim's family and household members.

(2) Prosecutorial Decisions. The Prosecutor shall make reasonable efforts to 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 Court days of the decision and should include available resources for the victim.

(3) Restitution. The Prosecutor shall make reasonable efforts to 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 shall seek restitution for the victim.

16.04.06 Violation of no contact order – Penalties.

(1) A Police Officer shall arrest without a warrant and take into custody any person who the Police Officer has probable cause to believe has willfully violated a no contact order issued under Section 16.03.02(2).

(2) All provisions of an order issued under Section 16.03.02(2) shall remain in full force and effect until the order terminates or is modified by the Court.

(3) Willful violation of a no contact order subjects the defendant to criminal penalties under this Chapter. Any defendant who is found guilty of violating the terms of a no contact order may also, subject to the Court's discretion, be held in contempt of court, and the Court may impose such sanctions as it deems appropriate.

(a) Violation of a no contact order is a Misdemeanor as defined in this Chapter.

(b) A second or subsequent violation of a no contact order is a Felony as defined in this Chapter.

(c) Consent is not a defense to a violation of a domestic violence no contact order.

16.04.07 Violation of domestic violence protection order – Penalties.

(1) A Police Officer shall arrest without a warrant and take into custody any person who the Police Officer has probable cause to believe has willfully violated an order issued under Section 16.05.01.

(2) All provisions of an order issued under Section 16.05.01 shall remain in full force and effect until the order terminates or is modified by the Court.

(3) Willful violation of any domestic violence protection order subjects the respondent to criminal penalties under this Chapter. Any respondent who is found guilty of violating the terms of a domestic violence protection order may also, subject to the Court's discretion, be held in contempt of court, and the Court may impose such sanctions as it deems appropriate.

(a) Violation of a domestic violence protection order is a Misdemeanor as defined in this Chapter.

(b) A second or subsequent violation of a domestic violence protection order is a Felony as defined in this Chapter.

(c) Consent is not a defense to a charge of violation of a domestic violence protection order.

16.04.08 Crime of stalking.

(1) A person commits the crime of stalking if, without lawful authority:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The fear must be one that a reasonable person would experience under the same circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2) It is not a defense to the crime of stalking:

(a) Under subsection (1)(c)(i) of this section, that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; or

(b) Under subsection (1)(c)(ii) of this section, that the stalker did not intend to frighten, intimidate, or harass the person.

(3) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitute prima facie evidence that the stalker intends to intimidate or harass the person.

(4) A person who stalks another person is guilty of a Misdemeanor as defined in this Chapter except that the person is guilty of a Felony as defined in this Chapter if any of the following applies:

(a) The stalker has previously been convicted in the Elwha Klallam Tribal Court, in Washington State or any other state of any crime of harassment, as defined in the Elwha Klallam Tribe's Criminal Code or RCW 9A.46.060 or similar statute of another jurisdiction;

(b) The stalking violates any protective order protecting the person being stalked;

(c) The stalker has previously been convicted of an offense under this section or of a gross misdemeanor or felony stalking offense under Federal or Washington State law;

(d) The stalker was armed with a dangerous weapon while stalking the person;

(e) The stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate or children's advocate, legislator, or community corrections officer, probation officer or staff and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or

(f) The stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(5) As used in this section:

(a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears 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 follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(b) "Harasses" for the purpose of this section means 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 legitimate or 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 by a person over age 18 of a minor child, that would cause a reasonable parent to fear for the well-being of that child.

(c) "Protective order" means any temporary or permanent Court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person, including but not limited to a domestic violence protection order issued pursuant to Section 16.05.04, no contact order issued pursuant to Section 16.03.02(2), sexual assault protection order pursuant to Section 16.07.16, harassment protection order pursuant to Section 16.07.07 or any successor codes to these sections.

(d) "Repeatedly" means two or more times.

(e) Stalking includes the definition of Cyberstalking:

(1) A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:

(i) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;

(ii) Anonymously or repeatedly whether or not conversation occurs; or

(iii) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

(2) Any offense committed under this section may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.

(3) For purposes of this section, "electronic communication" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic

communication" includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.

16.04.09 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 may be present at any interview with the victim and at any judicial proceeding related to criminal acts committed against the victim.

16.04.10 Victim rights.

Notwithstanding other provisions of the Elwha Klallam Tribal Law and Order Code, a victim of a crime under this Chapter shall have the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) 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.
- (3) The right not to be excluded from any such public Court proceeding, unless the Court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in Court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the Prosecutor in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The victim has the right to provide a victim impact statement.

A victim impact statement is a written or oral statement given to the sentencing judge by the victim. Such statements may include the impact of the crime on the victim, and how the crime affected the victim psychologically, financially, and physically. The Prosecutor may assist the victim with providing this 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.

16.04.11 Habitual domestic violence or family violence offender.

Any person with two or more convictions for crimes of domestic violence or family violence shall be deemed a habitual domestic violence or family violence offender and any subsequent violation shall be a Felony as defined in this Chapter, except where inconsistent with Federal laws.

16.04.12 Assaulting Personnel.

Any written or verbal threat or any assault upon a person acting in an official or professional capacity in the protection of victims of domestic violence or family violence, sexual assault, stalking or dating violence shall be considered to be a Misdemeanor as defined in this Chapter.

16.04.13 Probation – Modifications of conditions.

Upon violation of a judgment and sentencing order, the Court may modify, reduce, or enlarge the conditions of probation at any time prior to the expiration or termination of the term of probation and the provisions applicable to the initial setting of the conditions of probation. However, the Court may not set aside or modify the requirement to complete domestic violence perpetrator's treatment without notice to the Prosecutor, Defense Counsel and a hearing.

16.04.14 Written statement of conditions.

The Court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required. This statement shall be signed and dated by defendant when received.

16.04.15 Violations by juveniles – Mandatory arrest.

(1) Whenever a Police Officer has grounds under Section 16.02.03, or 16.02.08 to arrest a person who is a juvenile, the officer shall arrest the juvenile as provided in this Chapter, and the provisions of this Chapter shall govern the arrest and all subsequent proceedings.

(2) A juvenile held in custody under this Chapter shall be held in any of the following places:

- (a) Juvenile detention facility.
- (b) Juvenile halfway home.
- (c) Any other suitable place approved by the Court.

(3) All civil and criminal proceedings against a juvenile under this Chapter shall be within the jurisdiction of the Tribal Court.

(4) The arrest and prosecution of a juvenile under this Chapter does not bar proceedings in an appropriate Juvenile Court.

(5) A petition for a protection order under described under Section 16.05.01 may be filed against a juvenile who is alleged to have committed an act of domestic violence or any other violence described in this Chapter, and the provisions of this Chapter shall govern all subsequent proceedings in the action.

Article V. Civil Remedies and Actions

16.05.01 Civil protection order.

A person may seek a protection order whether or not the person has contacted law enforcement officers to report a crime, but such persons should be referred to law enforcement officers in the event that crime has been committed. It is the policy of Elwha Klallam Tribe that 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 or 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.

16.05.02 Persons authorized to file.

(1) 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 of a minor or vulnerable adult alleged to be the victim of domestic violence, family violence, dating violence or stalking on behalf of the minor or vulnerable adult; 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 Indian Child Welfare staff, elder abuse case managers or advocates, Child Advocacy Center, therapists, case managers on behalf of a child, or other advocate acting in a professional capacity.

16.05.04 Petition for protection order or modification.

(1) A petition shall allege the existence of domestic violence, family violence, dating violence, or stalking, and shall be supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.

(2) A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.

(3) No filing fee shall be required for the filing of a petition under this section. 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 of the right to file a petition under this section without cost.

(4) The petitioner, or the victim on whose behalf a petition has been filed, is not required to file for annulment, separation, or divorce as a prerequisite to obtaining a protection order. However, the petition shall state whether any other action is pending between the petitioner or victim and the respondent.

(5) The Court shall make available standard, simplified petition forms and instructional brochures with instructions for completion. The Elwha Kallam Tribal Police Department and the Tribal Court shall make such forms available upon request to victims of domestic violence, family violence, dating violence, or stalking.

16.05.05 Procedure for issuance of a protection order.

Upon the filing of a petition for a protection order, the Court shall evaluate the petition for protection and, when deciding whether or not to grant an ex parte temporary protection order, err on protecting the petitioner and any other family members during this initial process, and:

(1) Immediately grant an ex parte protection order without bond if, based on the specific facts stated in the affidavit, the Court has probable cause 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.

(2) Cause an ex parte protection order, together with notice of hearing, to be made immediately available to the petitioner for service by a Police Officer, Court Officer, or other authorized person.

(3) 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 72 hours and within that time the order granted or denied.

(4) 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.

(a) 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.

(b) If a protection order is entered by default, a respondent may request a hearing on a default protection order at any time.

(5) Once granted, the protection order may not be dismissed without a Court hearing.

(6) If an ex parte order is not granted, notice shall be served upon both parties to appear in Tribal Court and the Court shall hold a hearing on the petition for protection order within 72 hours after the filing of the petition; if notice of hearing cannot be personally served, notice shall be provided consistent with the Tribe's Judicial Code and Court Procedures.

16.05.06 Contents of a 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:

(1) Restraining the respondent from committing acts of domestic violence, family violence, dating violence, or stalking.

(2) 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.

(3) Restraining the respondent from any contact with the victim and his or her family or household members as is necessary for their safety and welfare.

(4) 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.

(a) In every proceeding where there is at issue a dispute as to the custody of a minor child, a determination by the Court that domestic violence or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic violence or family violence.

(b) In every proceeding where there is at issue a dispute as to the custody of a minor child, a determination by the Court that domestic violence, family violence, sexual assault, or stalking has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, family violence, sexual assault, or stalking in the location of that parent's choice.

(c) In every proceeding where there is at issue the modification of an order for custody or visitation of a minor child, the finding that domestic violence, family violence, sexual assault, or stalking has occurred since the last custody determination constitutes a finding of a change in circumstances.

(d) If the Court finds that the safety of the claimed victim or the minor children will be jeopardized by unsupervised or unrestricted visitation, the Court shall set forth conditions which may include supervision or restrict visitation as to the time, place, duration, or deny visitation entirely, as needed, to guard the safety of the claimed victim and the minor children.

(e) In determining custody and/or visitation, the Court must consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.

(f) If a parent is absent or relocated because of an act of domestic violence or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

(h) In a visitation order, the Court may:

(i) Order an exchange of a minor child to occur in a protected setting;

(ii) Order that visitation be supervised by another person or agency at the perpetrator of domestic violence or family violence's expense;

(iii) Order the perpetrator of domestic violence or family violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators of violence or other designated counseling as a condition of the visitation;

(iv) Order the perpetrator of domestic violence or family violence to abstain from possession or consumption of alcohol, controlled substances or abuse of prescription drugs during the visitation and for 24 hours preceding the visitation and may order submission of a urinalysis sample for testing prior to the visit;

(v) Prohibit overnight visitation;

(vi) Impose any other condition that is deemed necessary to provide for the safety of the minor child, the victim of domestic violence or family violence, or other family or household member.

(h) Whether or not visitation is allowed, the Court may order the address of the minor child and the victim to be kept confidential.

(i) The Court may refer but may not order an adult who is a victim of domestic violence or family violence to attend counseling relating to the victim's status or behavior as a victim, as a condition of receiving custody of a minor child or as a condition of visitation.

(j) If the Court allows a family or household member to supervise visitation, the Court must establish, in writing, conditions to be followed during visitation.

(k) The Court shall notify the restrained party that the willful violation of any provision of the protection order is a criminal offense and punishable by imprisonment and/or a fine.

(5) Awarding temporary use and possession of property of the respondent.

(6) 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 pursuant to the elder protection chapter of the Tribe's Family Protection Code, or other similar provision in the Tribe's Law and Order Code.

(7) 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.

(8) Ordering the respondent to timely pay any existing debts of the petitioner, including mortgage or rental payments, necessary to maintain the claimed victim in his/her residence.

(9) Describing any prior orders of the Court relating to domestic matters which are superseded or altered by the protection order.

(10) Notifying the parties that the willful violation of any provision of the order constitutes contempt of court punishable by a fine or imprisonment or both and constitutes a violation of this code for which civil penalties may be assessed.

(11) If the victim or alleged victim is awarded temporary use of the house and is listed on the rental agreement, the landlord, including Tribal housing, shall at the request of the petitioner change the locks within 24 business hours of issuance of the order.

(12) Ordering law enforcement to assist the victim in removing essential personal effects from a shared home.

(13) Ordering, in the Court's discretion, 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 Elwha Klallam Tribe's Police Department.

16.05.07 Duration of permanent protection order and modification.

(1) The provisions of the order shall remain in effect for the period of time stated in the order, not to exceed one year unless extended by the Court at the request of any party.

(2) The Court in its discretion may upon request of either party modify a protection order.

(3) By the Petitioner. Before the Court may modify or reconsider 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 or counseling, with a session focused on the effects of domestic violence on children.

(4) 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.

16.05.08 Service of temporary protection order.

Temporary protection orders are to be served personally upon the respondent by a Police Officer, officer of the Court, or other authorized person within 48 hours if possible. If the respondent cannot be located, the order shall be mailed by certified mail with return receipt requested and regular mail to the respondent's last known address. If by the first Court hearing service is not achieved, then notice shall be issued by publication in accordance with Tribe's Judicial Code and Court Procedures. 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.

16.05.09 Copy to the Police Department and other jurisdictions.

Each protection order granted pursuant to Section 16.05.01 and each order issued under Section 16.05.08 shall be forwarded by fax or email by the Clerk of Courts within 24 hours to the Elwha Klallam Tribal Police Department and Clallam County Superior Court, or any other necessary jurisdiction for entry into the State-wide data system. The Police Department shall make available to each officer information as to the existence and status of each such order.

16.05.10 Penalties for violation of a protection order.

Violation of a protection order is a crime.

(1) Violation of a protection order is a Misdemeanor as defined in this Chapter.

(2) The second or subsequent violation of a protection order is a Felony as defined in this Chapter.

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

16.05.11 Firearms disqualification.

Purpose. It shall be the purpose of this section to 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 Elwha Klallam Tribe, 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; any person who is found mentally incompetent to stand trial; or any person committed for mental health reasons after a domestic violence, family violence, sexual assault, stalking, or dating violence offense, from possessing a firearm.

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

(a) Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact or assaulting an intimate partner or family member as defined in this Chapter 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:

(i) 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;

(ii) Include a finding that such person represents a credible threat to the physical safety of such household or family member; and

(iii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family member.

(b) 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 Elwha 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.

(2) Violation of this section is a Felony as defined in this Chapter and may result in exclusion from the Elwha Klallam Indian Reservation as defined within the Tribe's Exclusion and Expulsion Ordinance, as applicable. Any violations of related domestic violence or family violence sentences in this Chapter or any violations of other sections of this Chapter shall be served consecutively.

Article VI. Special Rules of Court and Other Issues

16.06.01 Secure waiting area.

Whenever practical, the Court shall provide a secure waiting area or bailiff supervision prior to and during Court proceedings for a victim, and his or her family, of domestic violence, family violence, sexual assault, dating violence, or stalking, which will not require them to be in close proximity to the defendant or their families or friends.

16.06.02 Fees not permitted.

A public agency may not charge a fee for filing or preparation of certified, authenticated, or exemplified copies to a person entitled to protection who seeks relief under this Chapter or to a foreign prosecutor or a foreign law enforcement agency seeking to enforce a protection order. A person entitled to protection and foreign prosecutors or law enforcement agencies must be provided the necessary number of certified, authenticated, or exemplified copies at no cost.

16.06.03 Child custody disputes.

(1) Any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with Tribe's Judicial Code and Court Procedures or its successor, the Uniform Child-Custody Jurisdiction and Enforcement Act, and be in accordance with the Parental Kidnapping Prevention Act, 28 U.S.C. 1738A.

(2) A police officer shall not remove a child from his or her current placement unless:

(a) A writ of habeas corpus to produce the child has been issued by the Elwha Klallam Tribal Court, a superior court of this State, or another tribal court; or

(b) There is probable cause to believe that the child is abused or neglected and the child would be injured.

16.06.04 Domestic Violence Leave Act.

Purpose. Victims of domestic violence are often forced to flee from a perpetrator in order to avoid future danger and violence. In so fleeing, victims who are employed frequently miss days of employment and employers sometimes respond by terminating or disciplining such employees. It is the purpose of this Chapter to preclude all Elwha Klallam Indian Reservation employers from terminating any employee who can document within 14 days an instance of domestic abuse which contributed to his/her absence from employment. Employers have the option of granting such employees leave with or without pay because of domestic violence related absences.

An employee may, upon reasonable notice to their Elwha Klallam Indian Reservation employer, take leave from work, intermittent leave, or leave on a reduced work schedule, with or without pay, to:

(1) Seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence or family violence, sexual assault, stalking or dating violence;

(2) Seek treatment by a health care provider for physical or mental injuries caused by domestic violence or family violence, sexual assault, stalking, or dating violence, or to attend to health care treatment for a victim who is the employee's family member;

(3) Obtain or assist a family member in obtaining services from a domestic violence safe house, rape crisis center, or other social services program for relief from domestic violence, family violence, sexual assault, stalking, or dating violence;

(4) Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, family violence, sexual assault, stalking or dating violence, in which the employee or the employee's family member was a victim of domestic violence or family violence, sexual assault, stalking or dating violence; or

(5) Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence or family violence, sexual assault, stalking, or dating violence.

16.06.05 Discharges for absence of employment due to domestic violence prohibited.

It shall be a violation of this Chapter for any employer located within the exterior boundaries of the Elwha Klallam Indian Reservation to terminate or otherwise discipline any employee who has missed work or is

tardy to work when such employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other method satisfactory to the employer, that he/she has been the victim of domestic violence, family violence, sexual assault, stalking or dating violence, and that such violence contributed to his/her absence(s) from work or tardiness to work. In lieu of disciplinary action, the employer shall grant the employee leave with or without pay, dependent upon the policies of the employer, for such absences.

16.06.06 Penalty for violation.

Any employer who willfully violates this article shall be subject to a maximum civil penalty of up to \$1,000 payable to Elwha Klallam Tribe in addition to any other remedies the wrongfully discharged employee may have against the employer. Nothing in this article shall preclude a private party from commencing a wrongful termination action against an employer for violation of this article.

Article VII. Other Orders

16.07.01 Full faith and credit clause.

Purpose. The purpose of this section 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.

A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, Indian Tribe, or United States military tribunal.

A person under restraint must be given reasonable notice and the opportunity to be heard before the protection order of the foreign state, territory, possession, Indian Tribe or United States military tribunal was issued. In the case of an ex parte order, notice and opportunity to be heard must have been provided within a reasonable time after the order was issued, consistent with due process.

16.07.02 Filing a foreign protection order.

(1) A person entitled to protection who has a valid foreign protection order may file that order by presenting a certified, authenticated, or exemplified copy of the foreign protection order to a Clerk of the Elwha Klallam Tribal Court. Any out-of-state department, agency, or court responsible for maintaining protection order records may by facsimile or electronic transmission send a reproduction of the foreign protection order to the Clerk of the Elwha Klallam Tribal Court as long as it contains a facsimile or digital signature by any person authorized to make such transmission.

(2) There shall be a presumption in favor of validity where a protection order appears authentic on its face.

(3) Filing of a foreign protection order with a court and entry of the foreign protection order into any computer-based criminal intelligence information system available in this State used by law enforcement agencies to list outstanding warrants are not prerequisites for enforcement of the foreign protection order.

(4) The Elwha Klallam Tribal Court shall accept the filing of a foreign protection order without a fee or cost.

(5) The Clerk of the Elwha Klallam Tribal Court shall provide information to a person entitled to protection of the availability of domestic violence, family violence, sexual abuse, stalking and dating violence or other services to victims in the community.

(6) The Clerk of the Elwha Klallam Tribal Court shall provide the person entitled to protection an information form that must include, but need not be limited to, the following:

- (a) The name of the person entitled to protection and any other protected parties;
- (b) The name and address of the person who is subject to the restraint provisions of the foreign protection order;
- (c) The date the foreign protection order was entered;
- (d) The date the foreign protection order expires;
- (e) The relief granted under _____ (specify the relief awarded and citations thereto, and designate which of the violations are offenses subject to arrest);
- (f) The judicial district and contact information of the court administration for the court in which the foreign protection order was entered;
- (g) The Social Security number, date of birth, and description of the person subject to the restraint provisions of the foreign protection order;
- (h) Whether the person who is subject to the restraint provisions of the foreign protection order is believed to be armed and dangerous;
- (i) Whether the person who is subject to the restraint provisions of the foreign protection order was served with the order, and if so, the method used to serve the order;
- (j) The type and location of any other legal proceedings between the person who is subject to the restraint provisions and the person entitled to protection;
- (k) An inability to answer any of the above questions does not preclude the filing or enforcement of a foreign protection order.

(7) The Clerk of the Court shall provide the person entitled to protection with a copy bearing proof of filing with the Court.

(8) Any assistance provided by the Clerk under this section does not constitute the practice of law. The Clerk is not liable for any incomplete or incorrect information that he or she is provided.

16.07.03 Transmittal of filed foreign protection orders to law enforcement agency.

(1) The Clerk of the Court shall forward a copy of a foreign protection order that is filed under this Chapter on or before the next judicial day to the Elwha Klallam Tribal Police Department and Clallam County Sheriff along with the completed information form. The Clerk may forward the foreign protection order to the Clallam County Sheriff by facsimile or electronic transmission. Upon receipt of the filed foreign protection order, the Elwha Klallam Tribal Police Department shall immediately enter the foreign protection order into any computer-based criminal intelligence information system available, listing outstanding warrants. The foreign protection order must remain in the computer for the period stated in the order. The Elwha Klallam Tribal Police Department shall only expunge from the computer-based criminal intelligence information system foreign protection orders that are expired, vacated, or superseded. Entry into the computer-based intelligence information system constitutes notice to all law enforcement agencies of the existence of the foreign protection order. The foreign protection order is fully enforceable in any county in the State.

(2) The information entered into other computer-based criminal intelligence information systems must include, if available, notice to law enforcement whether the foreign protection order was served and the method of service.

16.07.04 Violation of foreign orders.

(1) Whenever a foreign protection order is granted to a person entitled to protection and the person under restraint knows of the foreign protection order, a violation of a provision prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person from a residence, workplace, school, or daycare, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which a foreign protection order specifically indicates that a violation will be a crime, shall subject the person to the same penalties as if the order were issued by the Elwha Klallam Tribal Court in Section 16.05.01.

(2) Upon conviction, and in addition to any other penalties provided by law, the Court may require the person under restraint to submit to electronic monitoring (Global Positioning System (GPS) or similar). The Court shall specify who will provide the electronic monitoring services, and the terms under which the monitoring will be performed. The order also may include a requirement that the person under restraint pay the costs of the monitoring. The Court shall consider the ability of the convicted person to pay for electronic monitoring.

(3) A peace officer shall arrest without a warrant and take into custody a person when the peace officer has probable cause to believe that a foreign protection order has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order for which the foreign protection order specifically indicates that a violation will be a crime. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

16.07.05 Police/peace officer immunity.

No Police Officer, peace officer, or officer's legal advisor shall be held criminally or civilly liable for making an arrest under this Chapter if the Police Officer, peace officer, or the officer's legal advisor acted in good faith and without malice.

16.07.06 Harassment.

Purpose. The Elwha Klallam Tribe finds that the prevention of harassment is important to the health, safety and general welfare of the Tribal community. This Chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil harassment protection orders preventing all further unwanted contact between the victim and the perpetrator.

16.07.07 Harassment protection order.

For the purpose of this section, "harassment protection order" means a Court order restricting a person from harassing, threatening, contacting, or approaching another specified person for a period of time.

16.07.08 Temporary harassment protection order.

For the purpose of this section, "temporary harassment protection order" means a Court order restricting a person from harassing, threatening, contacting, or approaching another specified person not longer than 14 days.

16.07.09 Petition for a harassment protection order.

There shall exist an action known as petition for harassment protection order for cases of harassment. The requirements for obtaining such an order are as follows:

(1) A petition to obtain a harassment protection order under this section may be filed by any person claiming to be the victim of harassment or made by a parent, guardian, if the child is a ward of the Court, on behalf of the child.

(a) A petition for relief may be made regardless of whether or not there is a pending lawsuit, criminal complaint, petition, or other action between the parties, except that a parent may not petition for a harassment protection order on behalf of his or her child against the child's other parent. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no contact orders between the parties.

16.07.10 Contents of a petition for harassment protection order.

(1) A petition for relief shall allege the existence of harassment and shall be accompanied by a statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.

(2) The Court shall make simplified petition forms and instructional brochures available. Any information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(3) Civil filing fees shall apply for filing of a petition under this section, unless the Court makes a finding upon due inquiry that the petitioner lacks the financial resources to pay filing fees.

(4) No bond is required to obtain relief in any proceeding under this section.

(5) The parent, guardian of a child under age 18, if the child is a ward of the Court may petition for a harassment protection order to restrain a person age 18 years or over from contact with that child upon a showing that contact with the person to be restrained is detrimental to the welfare of the child.

16.07.11 Harassment protection order ex parte.

(1) Upon filing a petition for a harassment protection order under this section, the petitioner may obtain an ex parte temporary harassment protection order with or without serving notice upon the respondent by filing a statement made under penalty of perjury which, to the satisfaction of the Court, shows evidence of harassment of the petitioner by the respondent, and that continued harassment may result if the temporary harassment protection order is not granted.

(2) An ex parte temporary harassment protection order shall be effective for a fixed period not to exceed 14 days. A full hearing, as provided in this Chapter, shall be set for not later than 14 days from the issuance of the temporary order. The respondent shall be personally served with a copy of the ex parte temporary harassment protection order along with a copy of the petition and notice of the date set for the hearing. If service is not possible, the Court may authorize service according to Tribe's Judicial Code and Court Procedures or its successor code.

16.07.12 Permanent harassment protection order.

(1) At the hearing within 14 calendar days after the granting of the ex parte harassment protection order, a permanent order shall be issued prohibiting such harassment if the Court finds by a preponderance of the evidence that harassment exists or has occurred. Otherwise, the temporary harassment protection order shall expire on its own terms. If the respondent does not appear, the petitioner must demonstrate that he or she effected proper service, and a default judgment will be entered.

(2) An order issued under this section shall be effective for not more than one year unless the Court finds that any future contact with petitioner would result in the harm from which the petitioner originally sought protection. If the Court so finds, the Court may enter an order to a fixed time exceeding one year or may enter a permanent harassment protection order.

(3) In the event that a respondent fails to appear for a hearing and the petitioner cannot demonstrate service upon him or her, the Court may grant a second ex parte temporary harassment protection order to the same petitioner enjoining the same respondent and order alternate service according to the Tribe's Judicial Code and Court Procedures or its successor code. If an officer investigates an alleged violation of an order issued pursuant to this Chapter and service has not been effected prior to contact, the officer shall provide service as described herein and within the next day file proof of service with the Court.

(4) At any time within three months prior to the expiration of the order, the petitioner may apply for a renewal of the order by filing a motion for renewal with the Court. The motion for renewal shall state the reasons why he or she seeks to renew the order. Upon receipt of the motion for renewal, the Court shall order a hearing which shall be held within 14 days from the date of motion. The Court shall grant the motion for renewal unless the respondent proves by preponderance of evidence that he/she will not resume harassment of the petitioner when the order expires. The Court may renew the harassment protection order for another fixed period or may enter a permanent order.

(5) The Court, in granting a harassment protection order, shall have broad discretion to grant such relief as the Court deems proper including but not limited to:

(a) Restraining the respondent from making attempts to contact the petitioner and all persons listed in the petition.

(b) Restraining the respondent from making any attempts to monitor the petitioner by actual or electronic surveillance.

(c) Requiring the respondent to stay a specified minimum distance from the petitioner's residence, workplace, and/or school.

16.07.13 Notice to local law enforcement agencies – Enforceability.

(1) A copy of a harassment protection order granted under this Chapter shall be forwarded by the Clerk of the Court on or before the next judicial day to the Elwha Klallam Tribal Police Department or appropriate law enforcement agency. Upon receipt of the order, the Police Department shall enter the order into the computer-based criminal intelligence information system currently in use by the Department to list outstanding warrants. The Police Department shall expunge expired orders from the computer system. Entry into the information system constitutes notice to the Police Department of the existence of the order.

(2) If an officer investigates an alleged violation of an order issued pursuant to this Chapter and service has not been effected prior to contact, the officer shall provide service as described herein and within the next day file proof of service with the Court. Law enforcement shall update the criminal information system to reflect that service has been effected.

16.07.14 Contempt and violation of harassment protection order – Penalties.

(1) Knowing violation of any harassment protection order subjects the respondent to criminal penalties under this Chapter.

(2) Any respondent who is found guilty of violating the terms of the harassment protection order may also, subject to the Court's discretion, be held in civil contempt of court, and the Court may impose such sanctions as it deems appropriate.

(3) Violation of a harassment protection order is a Misdemeanor as defined in this Chapter.

(4) Second or subsequent violation of a harassment protection order is a Felony as defined in this Chapter.

16.07.15 Full faith and credit.

(1) Harassment protection orders issued by the Elwha Klallam Tribal Court will be enforceable throughout the State of Washington pursuant to RCW 13.34.240, if pertaining to a child under 18, or Washington Civil Rule 82.5(c), provided it does not violate policy.

(2) To ensure that harassment protection orders issued by the Elwha Klallam Tribal Court are enforced outside of the boundaries of the Reservation, harassment protection orders issued in the courts of the State of Washington will be enforced within the boundaries of the Elwha Klallam Indian Reservation.

(3) Notice of reciprocal enforcement pursuant to this section shall be printed on all harassment protection orders issued by the Court.

16.07.16 Sexual assault protection order.

Purpose. The Elwha 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 Elwha Klallam Tribal Community; therefore, a protection order provided under this Chapter is to protect those that have been sexually assaulted.

16.07.17 Persons authorized to file.

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

(1) Who does not qualify for a domestic violence or family violence protection order and who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration; or

(2) On behalf of any of the following persons who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration and who does not qualify for a domestic violence or family violence protection order:

(a) A minor child; or

(b) A vulnerable adult or elder as defined in the Tribe's elder protection chapter, or similar provisions in the Tribe's Law and Order Code; or

(c) Any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition.

16.07.18 Petition for sexual assault protection order.

There shall exist an action known as a petition for a sexual assault protection order.

(1) A petition for relief shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made under oath stating the specific statements or actions made at the same time of the sexual assault or subsequently thereafter which give rise to a reasonable fear of future dangerous acts for which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, criminal complaint, petition, or other action between the parties.

(3) Forms and instructional brochures and the necessary number of certified copies shall be provided to the petitioner free of charge.

(4) A person is not required to post a bond to obtain relief in any proceeding under this section.

(5) 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.

16.07.19 Emergency sexual assault protection order ex parte.

(1) An ex parte temporary sexual assault protection order shall issue if the petitioner, to the satisfaction of the Court, shows evidence of:

(a) The petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent; and

(b) There is good cause to grant the remedy, regardless of the lack of prior service of process or of notice upon the respondent, because the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief.

(2) If the Court declines to issue an ex parte temporary sexual assault protection order, the Court shall state the particular reasons for the Court's denial and set a hearing on the petition. The Court's denial of a motion for an ex parte temporary protection order shall be filed with the Court.

(3) A willful violation of a Court order issued under this section is punishable under the laws of the Elwha Klallam Tribe and will subject the perpetrator to arrest.

(4) An ex parte temporary sexual assault protection order shall be effective for a fixed period not to exceed 14 days. A full hearing, as provided in this Chapter, shall be set for not later than 14 days from the issuance of the temporary order. The respondent shall be personally served with a copy of the ex parte temporary sexual assault protection order along with a copy of the petition and notice of the date set for the hearing. If service is not possible, the Court may authorize service according to Elwha Klallam Tribe's Judicial Code and Court Procedures or its successor code.

(a) Any ex parte temporary sexual assault protection order issued under this section shall contain the date and time of issuance and the expiration date and shall be transmitted to the clerk of the court of the county in which the petitioner resides and to the Elwha Klallam Tribal Police Department within one judicial day after issuance.

(5) Any ex parte temporary or final sexual assault protection order may be renewed one or more times, as necessary for victim safety. The petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal. Renewals may be granted only in open court.

16.07.20 Appointment of counsel.

The Court may appoint counsel to represent the petitioner and/or the respondent.

16.07.21 Permanent sexual assault protection order.

(1) Except as otherwise provided in this section, a final sexual assault protection order shall be effective for a fixed period of time, not to exceed two years. However, the order may be renewed prior to its expiration.

(2) Any sexual assault protection order which would expire on a Elwha Klallam Tribal holiday shall instead expire at the close of the next Court business day.

16.07.22 Request for reconsideration or modification.

Upon motion with notice to all parties and after a hearing, the Court may modify the terms of an existing sexual assault protection order. In any situation where an order is terminated or modified before its expiration date, the Clerk of the Court shall, on or before the next judicial day, forward a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or terminated order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the computer-based criminal intelligence information system, or if the order is terminated, remove the order from the computer-based criminal intelligence information system.

16.07.23 Sexual assault protection orders – Personal jurisdiction – Nonresident individuals.

(1) In a proceeding in which a sexual assault protection order is sought under this Chapter, the Elwha Klallam Tribal Court may exercise personal jurisdiction over a nonresident individual if:

- (a) The individual is personally served with a petition; or
- (b) The individual submits to the jurisdiction of the Elwha Klallam Tribe by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction; or
- (c) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a sexual assault protection order occurred within the Elwha Klallam Tribe's jurisdiction as defined by Elwha Klallam Tribe's Criminal Code or within this Chapter; or
- (d) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a sexual assault protection order occurred outside the Elwha Klallam Tribe but are part of an ongoing pattern of sexual assaults or stalking that has an adverse effect on the petitioner, a member of the petitioner's family or household and the petitioner resides within the exterior boundaries of the Elwha Klallam Indian Reservation; or
- (e) There is any other basis consistent with laws of the Elwha Klallam Tribe and/or the laws of the United States.

(2) For jurisdiction to be exercised under subsections (1)(a) through (e) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides within the exterior boundaries of the Elwha Klallam Tribe. For the purposes of subsections (1)(a) through (e) of this section, "communicated or made known" includes, but is not limited to, regular or electronic mail, telephonic, or a posting on an electronic communication site, medium or social website. Communication on any electronic medium that is generally available to any individual residing in the State shall be sufficient to exercise jurisdiction under subsection (1)(d) of this section if directed at a resident of the Elwha Klallam Indian Reservation.

16.07.24 Penalties for violation of a sexual assault protection order.

Violation of a sexual assault protection order is a crime.

- (1) Violation of a sexual assault protection order is a Misdemeanor as defined in this Chapter.
- (2) A second or subsequent violation of a sexual assault protection order is a Felony as defined in this Chapter.
- (3) Consent is not a defense to a charge of violation of a sexual assault protection order.

16.07.25 Full faith and credit.

(1) A sexual assault protection order issued by the Elwha Klallam Tribal Court will be enforceable throughout the State of Washington pursuant to RCW 13.34.240, if pertaining to a child under 18, or Washington Civil Rule 82.5(c).

(2) To ensure that sexual assault protection orders issued by the Elwha Klallam Tribal Court are enforced outside of the boundaries of the Reservation, 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 boundaries of the Reservation.

(3) Notice of reciprocal enforcement pursuant to this section shall be printed on all sexual assault protection orders issued by the Court.