

TITLE 4 – DOMESTIC RELATIONS

CHAPTER 4-11 DOMESTIC VIOLENCE PREVENTION ACT

4-11-1 Findings

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) recognize that domestic abuse is a serious crime against society, the Tribes, and the family. The strength of the Tribes is founded on healthy families, and families damaged by domestic abuse must be healed by the immediate intervention of law enforcement, education, counseling, and other appropriate services. Violent behavior will not be excused or tolerated within the territory of the Tribes.

4-11-2 Jurisdiction

The Tribes' Tribal Court shall have jurisdiction over any action filed under this Chapter, in which both parties are tribal members or in which one party is a tribal member and the other party either (1) resides on tribal lands or (2) consents to jurisdiction.

4-11-3 Definitions

(a) "Abuse" - the occurrence of one or more of the following acts between family or household members:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.

(2) Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury.

(3) Causing another to engage in involuntary sexual relations by force or threat of force.

(b) "Child" - an unmarried person who is under eighteen (18) years of age.

(c) "Family or Household Members" - any of the following:

(1) Spouses.

(2) Former spouses.

(3) Adult persons related by blood, marriage or adoption.

(4) Persons who are cohabiting or who have cohabited with each other.

- (5) Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition under this chapter.
- (6) Unmarried parents of a child.
- (d) “Interfere” - to interpose in a manner that would reasonably be expected to hinder or impede a person in the petitioner’s situation.
- (e) “Intimidate” - to act in a manner that would reasonably be expected to threaten a person in the petitioner’s situation, thereby compelling or deterring conduct on the part of the person.
- (f) “Menace” - to act in a manner that would reasonably be expected to threaten a person in the petitioner’s situation.
- (g) “Molest” - to act, with hostile intent or injurious effect, in a manner that would reasonably be expected to annoy, disturb or persecute a person in the petitioner’s position.

4-11-4 Petition to Tribal Court for Relief; Burden of Proof

- (a) Any person who has been the victim of abuse within the preceding one hundred eighty (180) days may petition the Tribal Court for relief under this chapter, if the person is in danger of further abuse from the abuser. The person may seek relief by filing a petition with the Tribal Court alleging that the person is in danger of abuse from the respondent, that the person has been the victim of abuse committed by the respondent within the one hundred eighty (180) days preceding the filing of the petition and particularly describing the nature of the abuse and the dates thereof. The abuse must have occurred not more than one hundred eighty (180) days before the filing of the petition. Allegations in the petition shall be made under oath or affirmation.
- (b) The Tribal Court shall have jurisdiction over all proceedings under this chapter.
- (c) The petitioner has the burden of proving a claim under this chapter by a preponderance of the evidence.
- (d) A person’s right to relief under this chapter shall not be affected by the fact that the person left the residence or household to avoid abuse.
- (e) A petition filed under this chapter shall disclose the existence of any custody, Family Abuse Prevention Act or family law actions, pending between the parties, and the existence of any other custody order affecting the children of the parties, whether those proceedings occurred in Tribal Court or State Court.

(f) When the petitioner requests protection for any child, the petition shall disclose:

- (1) The child's present residence and the length of time the child has resided at the residence;
- (2) The county and state where the child resided for the five (5) years immediately prior to the filing of the petition;
- (3) The name and address of the party or other responsible person with whom the child is presently residing;
- (4) The name and current address of any party or other responsible person with whom the child resided for the five (5) years immediately prior to the filing of the petition;
- (5) Whether the party participated as a party, witness or in any other capacity, in any other litigation concerning the custody of the child in this court or any other court;
- (6) Whether the party has information of any custody proceeding concerning the child pending in a tribal court or a court of the State of Oregon or any other state; and
- (7) Whether the party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody, parenting time or visitation rights with respect to the child.

(g) For purposes of computing the one hundred eighty- (180) day period in this chapter, any time during which the respondent is incarcerated or has a principal residence more than one hundred (100) miles from the principal residence of the petitioner shall not be counted as part of the one hundred eighty- (180) day period.

4-11-5 Hearing; Additional Relief; Certificate of Compliance; Effect on Title to Real Property; No Undertaking Required

(a) If the respondent requests a hearing pursuant to 4-11-6, the Court shall hold the hearing within twenty-one (21) days following the request, and may cancel or change any order previously issued.

(b) In addition to the relief available under 4-11-6, the Court, in a hearing held pursuant to subsection (a) of this section, may assess against either party a reasonable attorney fee and such costs as may be incurred in the proceeding.

(c) Where temporary custody of a minor child is contested, the hearing shall be held within five (5) days of the respondent's request. If the respondent is represented by an attorney, time for the hearing may be extended for up to five (5) days at the request of the petitioner so that the petitioner may seek representation.

(d) If the Court continues the order, with or without changes, at a hearing about which the respondent received actual notice and the opportunity to participate, the Court shall include in the order a certificate in substantially the following form in a separate section immediately above the signature of the judge:

CERTIFICATE OF COMPLIANCE
WITH THE VIOLENCE
AGAINST WOMEN ACT

This protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. 2265 (1994). This Court has jurisdiction over the parties and the subject matter. The respondent was afforded notice and timely opportunity to be heard as provided by the law of this jurisdiction. This order is valid and entitled to enforcement in this and all other jurisdictions.

(e) The Court shall have the further power to approve any consent agreement to bring about a cessation of abuse of the parties. An order or consent agreement made under this section may be amended at any time and shall continue in effect for a period of one (1) year from the date of the order issued or until amended or revoked by the Court.

(f) No order under this chapter shall in any manner affect title to any real property.

(g) No undertaking shall be required in any proceeding under this chapter.

(h) Any proceeding under this chapter shall be in addition to any other available civil or criminal remedies.

4-11-6 Restraining Order; Forms; Service of Order; Request for Hearing

(a) When a person files a petition under this chapter, the Tribal Court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the petitioner has been the victim of abuse committed by the respondent within one hundred eighty (180) days preceding the filing of the petition, that there is an imminent danger of further abuse to the petitioner and that the respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child, the Court shall, if requested by the petitioner, order, for a period of one (1) year or until the order is withdrawn or amended

(1) That temporary custody of the children of the parties be awarded to the petitioner or, at the request of the petitioner, to the respondent, subject to reasonable parenting time rights of the non-custodial parent, which the Court shall order, unless such parenting time is not in the best interest of the child;

(2) That the respondent be required to move from the petitioner's residence, if in the sole name of the petitioner or if it is jointly owned or rented by the petitioner and the respondent, or if the parties are married to each other;

(3) That the respondent be restrained from entering, or attempting to enter, a reasonable area surrounding the petitioner's current or subsequent residence if the respondent is required to move from petitioner's residence;

(4) That a peace officer accompany the party who is leaving or has left the parties' residence to remove essential personal effects of the party or the party's children, or both, including but not limited to clothing, toiletries, diapers, medications, Social Security cards, birth certificates, identification and tools of the trade;

(5) That the respondent be restrained from intimidating, molesting, interfering with or menacing the petitioner, or attempting to intimidate, molest, interfere with or menace the petitioner;

(6) That the respondent be restrained from intimidating, molesting, interfering with or menacing any children in the custody of the petitioner, or attempting to intimidate, molest, interfere with or menace any children in the custody of the petitioner;

(7) That the respondent be restrained from entering, or attempting to enter, on any premises and a reasonable area surrounding the premises when it appears to the Court that such restraint is necessary to prevent the respondent from intimidating, molesting, interfering with or menacing the petitioner or children whose custody is awarded to the petitioner;

(8) Other relief that the Court considers necessary to provide for the safety and welfare of the petitioner and the children in the custody of the petitioner including, but not limited to, emergency monetary assistance from the respondent; or

(9) That the respondent has no contact with the petitioner in person, by telephone or by mail except as described in parenting time ordered under this section.

(b) If respondent is restrained from entering, or attempting to enter, an area surrounding petitioner's residence or any other premises, the order restraining respondent shall specifically describe the area.

(c) Imminent danger under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with additional bodily harm.

(d) If the Court awards parenting time to a parent who committed abuse, the Court shall make adequate provision for the safety of the child and of the petitioner. The order of the Court may include, but is not limited to, the following:

(1) That exchange of a child between parents shall occur at a protected location.

(2) That parenting time be supervised by another person or agency.

(3) That the perpetrator of the abuse be required to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators or any other counseling program designated by the Court as a condition of the parenting time.

(4) That the perpetrator of the abuse not possess or consume alcohol or controlled substances during the parenting time and for twenty-four (24) hours preceding the parenting time.

(5) That the perpetrator of the abuse pay all or a portion of the cost of supervised parenting time, and any program designated by the Court as a condition of parenting time.

(6) That no overnight parenting time occur.

(e) An instruction brochure shall be available from the Clerk of the Tribal Court explaining the rights set forth in this chapter. The petition, order and related forms shall be available from the Clerk of the Tribal Court at no charge to the parties.

(f) If the Court orders relief:

(1) The Clerk of the Court shall provide, without charge, the number of certified true copies of the petition and order necessary to provide the petitioner with one (1) copy and to effect service and shall have a true copy of the petition and order delivered to the tribal police for service upon the respondent, unless the Court finds that further service is unnecessary because the respondent appeared in person before the Court. In addition and upon request by the petitioner, the Clerk shall provide the petitioner, without charge, two (2) additional true copies of the petition and order.

(2) The tribal police shall serve the respondent personally unless the petitioner elects to have the respondent served personally by a private party

or by a peace officer who is called to the scene of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of the order within a reasonable amount of time. Proof of service shall be filed with the Clerk of the Tribal Court. When the order does not contain the respondent's date of birth and service is effected by the tribal police or other peace officer, the officer shall verify the respondent's date of birth with the respondent and shall record that date on the order or proof of service entered into the Law Enforcement Data System under 4-11-8.

(3) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the relief provided under this chapter.

(g) If the tribal police, after accepting the order and petition, cannot complete service within ten (10) days, the tribal police shall notify the petitioner, at the address provided by the petitioner, that the documents have not been served. If the petitioner does not respond within ten (10) days, the tribal police shall hold the order and petition for future service and file a return to the Clerk of the Court showing that service was not completed.

(h) (1) Within thirty (30) days after a restraining order is served under this section, the respondent therein may request a court hearing upon any relief granted. The hearing request form shall be available from the Clerk of the Court and shall be in substantially the form provided in subsection (e) of this section.

(2) If the respondent requests a hearing under paragraph (1) of this subsection, the clerk of the court shall notify the petitioner of the date and time of such hearing, and shall supply the petitioner with a copy of the respondent's request for a hearing. The petitioner shall give to the Clerk of the Court information sufficient to allow such notification.

(3) The hearing shall not be limited to the issues raised in the respondent's request for hearing form. If the respondent seeks to raise an issue at the hearing not previously raised in the request for hearing form, or if the petitioner seeks relief at the hearing not granted in the original order, the other party shall be entitled to a reasonable continuance for the purpose of preparing a response to the issue.

(4) If the respondent fails to request a hearing within thirty (30) days after a restraining order is served, the restraining order is confirmed by operation of law. The provisions of this section are sufficient to meet the due process requirements of 18 U.S.C. 922(g) in that the respondent received actual notice of the right to request a hearing and the opportunity to participate at the hearing but the respondent failed to exercise those rights.

4-11-7 Removal of Personal Effects; Party Accompanied by Peace Officer

- (a) A peace officer who accompanies a party removing essential personal effects pursuant to an order issued under this chapter shall remain for up to twenty (20) minutes and may temporarily interrupt the removal of property at any time.
- (b) The party removing essential personal effects from the residence pursuant to an order issued under this chapter is entitled to be accompanied by a peace officer on one (1) occasion only.
- (c) A peace officer who accompanies a party removing essential personal effects pursuant to an order issued under this chapter shall have immunity from any liability, civil or criminal, for any actions of the party committed during the removal of essential personal effects.

4-11-8 Enforcement of Restraining Orders; Tribal Police Proceedings; Contempt Hearings; Security

- (a) (1) Whenever a restraining order is issued and the person to be restrained has actual notice thereof, the Clerk of the Court or any other person serving the petition and order shall deliver forthwith to the Tribal Police a true copy of the affidavit of proof of service on which it is stated that personal service of the petition and order was served on the respondent, a copy of the petition and a true copy of the order. If an order entered by the Court recites that the respondent appeared in person before the Court, the necessity for further service of the order is waived and an accompanying proof of service is not necessary. Upon receipt of a true copy of proof of service, when required, and a true copy of the order, the Tribal Police shall forthwith enter the order into the Law Enforcement Data System maintained by the Oregon Department of State Police and into the databases of the National Crime Information Center of the United States Department of Justice. The Tribal Police shall also provide the petitioner with a true copy of the proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of such order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order. Such order shall be fully enforceable in any county or tribal land in the State of Oregon. The petitioner may elect to deliver documents personally to a county sheriff in addition to the Tribal Police or to have them delivered by a private person for entry into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.
- (2) When a restraining order has been entered into the Law Enforcement Data System and the databases of the National Crime Information Center of

the United States Department of Justice under paragraph (a) of this subsection, the tribal police shall cooperate with a request from a law enforcement agency from any other jurisdiction to verify the existence of the restraining order or to transmit a copy of the order to the requesting jurisdiction.

(b) (1) A restraining order shall remain in effect until the order expires or is terminated by court order.

(2) When a restraining order has been entered under this chapter, the restraining order shall not be terminated upon a motion for dismissal by the petitioner unless the motion is notarized.

(3) In any situation where a restraining order described in subsection (a) of this section is terminated before the expiration date, the Clerk of the Court shall deliver forthwith a true copy of the termination order to the Tribal Police with whom the original order was filed. Upon receipt of such termination order the Tribal Police shall promptly remove the original order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

(c) Pending a contempt hearing for alleged violation of a restraining order issued pursuant to this chapter, a person arrested and taken into custody on a violation of the order may be released upon posting security in the amount stated on the order. Whenever such restraining order is issued, the issuing court shall set a security amount for the violation of such order.

4-11-9 Petitioner's Change of Residence

If the Court does not award parenting time under this chapter to the parent who committed abuse, the petitioner may move to a residence more than sixty (60) miles from the other parent without giving notice to the other parent of the change of residence.

4-11-10 Renewal of Order Entered Under this Chapter

The Court may renew an order entered under this chapter upon a finding that a person in the petitioner's situation would reasonably fear further acts of abuse by the respondent if the order is not renewed. A finding that there has been a further act of abuse is not required. A court may renew an order on the basis of a sworn, ex parte petition alleging facts supporting the required finding. If the renewal order is granted, the provisions of 4-11-5 and 4-11-6 apply except that the Court may hear no issue other than the basis for renewal. The Court shall hold a hearing required under this section within twenty-one (21) days after the respondent's request.

4-11-11 Standing to Petition for Relief of Person Under 18 Years of Age

A person who is under eighteen (18) years of age may petition the Tribal Court for relief under this chapter if:

(a) The person is:

- (1) The spouse of the respondent;
- (2) The former spouse of the respondent; or
- (3) A person who has been in a sexually intimate relationship with the respondent; and

(b) The respondent is eighteen (18) years of age or older.

4-11-12 Contempt Proceedings

Any contempt proceedings for violation of a restraining order issued under this chapter must be conducted by the Tribal Court that issued the order.

4-11-13 Effect of Subsequent Custody Order

(a) In any case in which an order of temporary custody of minor children has been issued under this chapter, or an order restraining or limiting contact by the respondent with minor children and a subsequent order regarding custody, visitation or parenting time with the minor children is issued by any court of competent jurisdiction, the subsequent order shall prevail regarding terms and conditions of custody, visitation, parenting time and access to minors. Any terms of the Domestic Violence Restraining Order not in conflict with the subsequent order, shall remain in full force and effect.

4-11-14 Sovereign Immunity Intact

Nothing in this Code is to be construed to create a cause of action for violation of its provisions or to be construed as a waiver of the sovereign immunity of the Tribes.

4-11-15 Severability

If a court of competent jurisdiction holds any provision of this Code invalid, the invalid portion will be severed and the remaining provisions shall continue in full force and effect.

APPENDIX A
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

DOMESTIC VIOLENCE

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Domestic Violence" Ordinance, with the addition of section 4-11-2 Jurisdiction, Resolution No. 06-029, Ordinance No. 064, in a regular Tribal Council meeting on February 12, 2006. Vote was 7 (for), 0 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the Domestic Violence Ordinance, Resolution No. 05-036, Ordinance No. 064, in a regular Tribal Council meeting on May 15, 2005. Vote was 5 (for), 0 (against) and 0 (abstaining).