

Title 9  
Domestic Violence and  
Anti-Harassment Ordinance

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Section 1.1 Statement of Purpose. It is the purpose of this Ordinance to stop all family violence on the Hoh Indian Reservation and to promote the healing of families where possible. Domestic violence is a serious crime against society and this Ordinance seeks to guarantee to the victim of domestic violence the maximum protection under the law.

It is the intent of the Hoh Tribal Business Committee that the official response to cases of domestic violence shall be that the Tribe will not tolerate or excuse violent behavior under any circumstances. The elders, adults, and children of our Tribe, and of the entire community residing on the Hoh Indian reservation, are to be cherished and treated with respect.

Section 1.2 Jurisdiction. Jurisdiction over domestic violence matters shall be in accordance with Title 1, Section 1.2. In addition, the Hoh Tribal court shall retain jurisdiction over members of federally-recognized Indian tribes or violation of Orders of protection entered pursuant to this Ordinance which are alleged to have occurred outside of the boundaries of the Hoh Indian Reservation, where such orders are entitled to recognition outside reservation boundaries as a matter of full faith and credit.

Section 1.3 Nonwaiver of Sovereign Immunity. Nothing in this Ordinance shall be deemed to constitute a waiver by the Hoh Tribe of its sovereign immunity for any reason whatsoever.

Section 1.4 Severability. If any part or parts, or the application of any part of this Ordinance is held invalid, such holding shall not affect the validity of the remaining parts of this Ordinance. The Hoh Tribal Business Committee hereby declares that it would have passed the remaining parts of this Ordinance even if it had known that such part or parts of application of any part thereof would be declared invalid.

Section 1.5 Definitions. As used in this Ordinance the following terms shall have the meaning given below:

A. "Abuse" means the 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 and battery as defined in the Hoh Tribal code.

B. "Alarm" means to cause apprehension or fear resulting from the perception of danger.

C. "Coerce" means to restrain, compel or dominate by force or threat.

D. "Contact" includes but is not limited to:

1. Repeatedly coming into and/or remaining in a visual or physical presence of the other person;
2. Following the other person;
3. Waiting outside the home, property, place of work or school or the other person or of a member of that person's family or household;
4. Sending or making written communications in any form to the other person;
5. Speaking with the other person by any means;
6. Communicating with the other person through a third person;
7. Committing a crime against the other person;
8. Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;
9. Communicating with business entities with the intent of affecting some right or interest of the other person;
10. Damaging the other person's home, property, place of work or school; or

11. Delivering directly or through a third person any object to the home, property, place of work or school of the other person.
- E. "Court" means the Hoh Tribal Court.
- F. "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats, or threats implied by conduct or a combination thereof directed at or toward a person.
- G. "Crime of Domestic Violence" means one or more of the following when committed by a family or household member against another family or household member:
1. Offenses listed under 18 U.S.C.SS1153, the Major Crimes Act as now or hereinafter amended: murder, manslaughter, kidnapping, maiming, felony sexual abuse under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and felony theft under section 661 of Title 18.
  2. Offenses listed under the Hoh Tribes code, Title 5, as now or hereafter amended: assault, aggravated assault, intimidation, neglect, endangerment, elder abuse, unlawful restraint, kidnapping, aggravated kidnapping, criminal mischief, trespass, and disobedience to lawful orders of court, when the order was entered or the purpose of protecting a victim of alleged domestic violence.
  3. Offenses listed under the Hoh Tribal Code, Title 5, Section 5.17, Sexual Offenses, as now or hereafter amended.
- H. "Domestic Violence" means an act of abuse, as defined in Section 1.5 (A), by a perpetrator or a family member or household member of the perpetrator.
- I. "Elder" means a person 55 or more years old.
- J. "Ex parte" when used in connection with proceedings of protection orders of the Court under this Ordinance, means that only the requesting party is heard by the court, and that notice and an opportunity to contest the facts are not available to the party adversely affected.
- K. "Family member or household member" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together, or who have resided together in the past, persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons 16 years of age or older who whom a respondent 16 years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.
- L. "Foreign Protection Order" means an injunction or other order related to domestic 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.
- M. "Immediate family" means a spouse, parent, child, sibling, live-in partner, or any other person who regularly resides in the household or who within the past six months regularly resided in the household.
- N. "Injunction" an injunction is a request for a special proceeding in which an order is issued by a judge, which restrains or enjoins a party from doing an act, or which requires a party to do a

particular act. Such orders can be temporary or permanent and are usually issued for a specific time period.

O. "Mandatory Arrest" means that the victim need not sign a complaint for an arrest to occur. 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 Ordinance even though the arrest may be against the expressed wishes of the victim.

P. "Minor" or "Juvenile" shall mean any person under the age of eighteen years of age.

Q "Order of Protection" means a court order granted for the protection of victims of domestic violence.

R. "Perpetrator" means the person who has committed an act of abuse on his or her family member or household member. The perpetrator may also be referred to as a "respondent" in a case.

S. "Police Officer" means any person employed or commissioned as a police, or peace or law enforcement officer by the Hoh Tribes, Jefferson County, the State of Washington, or any agency of the federal government or any agency having jurisdiction within the Hoh Indian Reservation, including non-tribally deputized officers who may make arrests on the reservation.

T. "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 Ordinance, 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.

8. "Protection Orders" include the following temporary or permanent orders: No-contact Order (criminal), Protection Order (civil), Restraining Order (civil), or Anti-harassment Order (civil).

9. "Repeated" means two or more times.

10. "School" means a public or private institution of learning or a child care facility.

11. "Treatment" there is a controversy surrounding the use of the word "treatment". Some advocates believe that the term signifies a mode of working with abusers, which does not hold them accountable for their actions nor try to alter their belief system. As used in this ordinance, the word treatment means a program for abusers in which they are held accountable for their abusive actions, and in which their belief systems are sought to be changed.

#### Section 1.6 Criminal Remedy - Crime of Domestic Violence

A. A person commits one or more of the crimes involving domestic violence, as defined by Section 1.5 of this Ordinance when:

1. Attempting to cause or causing physical harm to another family or household member;
2. Attempting to commit or committing a crime involving domestic violence against a family or household member;
3. Placing the family or household member in reasonable fear or physical harm to him or herself or another family or household member. This 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;
4. Causing a family or household member to engage in involuntary or sexual activity by force, threat of force or duress.
5. This section does not include acts of self-defense.

B. Penalties for the crime of Domestic Violence: Any person who shall knowingly commit an act of domestic violence as defined by Section 1.5 of this Ordinance shall be deemed guilty of the offense of domestic violence and upon conviction shall be sentenced to:

1. For the first offense: confinement of up to, but not exceed three (3) months and/or expulsion from the Hoh Indian Reservation of up to, but not exceed six (6) months and/or publication of the perpetrator's name and photograph in the Hoh Tribal newspaper (if one exists) described as a Domestic Violence Perpetrator and/or a fine of up to, but not exceed two hundred dollars (\$200) or to any combination of such confinement, expulsion, publication, and fine;

2. For the second offense: confinement of up to, but not exceed five (5) months and/or expulsion from the Hoh Indian Reservation of up to, but not exceed twelve (12) months and/or publication of the perpetrator's name and photograph in the Hoh Tribal newspaper (if one exists) described as a Domestic Violence Perpetrator and/or a fine of up to, but not exceed four hundred dollars (\$400) or to any combination of such confinement, expulsion, publication, and fine;

3. For the next offenses: confinement of up to, but not exceed six (6) months and/or expulsion from the Hoh Indian reservation of up to, but not exceed twenty-four (24) months and/or publication of the perpetrator's name and photograph in the Hoh Tribal newspaper (if one exists) described as a Domestic Violence Perpetrator and/or a fine up to, but not to exceed five hundred dollars (\$500) or to any combination of such confinement, expulsion, publication, and fine;

C. The Hoh Tribe's per capita payment of any person convicted under this section shall be withheld by the Hoh Tribe and applied to fines and/or costs incurred by the Hoh Tribe for confinement or expulsion of the convicted person until the fines and/or costs are paid in full.

D. In addition to or in lieu of the imposition of such confinement and/or fine, the Court shall order the convicted person to participate in the Hoh Tribe's Family Services' certified domestic violence treatment program, or if the Hoh Tribe's Family Services Program is unavailable at the time of sentencing, a certified domestic violence treatment program at the convicted person's expense as provided in Section 1.10 of this Ordinance.

E. In addition to or in lieu of the imposition of such confinement and/or fine, for juveniles the Court shall order the convicted juvenile to participate in Hoh Tribe's Juvenile Offender Treatment Program, or if the Hoh Tribe's Juvenile Offender Program is unavailable at the time of sentencing, the juvenile will be referred to a juvenile community treatment offender program at the convicted juvenile person's expense.

F. Prosecution for the offense of domestic violence shall not preclude prosecution for any other offense under the Hoh Tribal Code arising from the same circumstances.

### Section 1.7 Criminal Remedy - Crime of Stalking

A. A person commits the crime of stalking if:

1. The person knowingly alarms or coerces another person or a member of that person's family or household by engaging in repeated and unwanted contact with the other person;

2. A reasonable person in the victim's same or similar situation would be alarmed or coerced by the contact; and

3. The repeated and unwanted contact causes the victim reasonable apprehension of harm regarding the personal safety of the victim or a member of the victim's family or household.

B. Penalties for the Crime of Stalking:

1. Any person who shall knowingly commit an act of stalking as defined by this Section shall be deemed guilty of the offense of stalking and upon conviction shall be sentenced to:

a. For the first offense: confinement of up to, but not exceed three (3) months and/or expulsion from the Hoh Indian Reservation of up to, but not exceed nine (9) months and/or publication of the perpetrator's name and photograph in the Hoh Tribal newspaper (if one exists) described as a Stalker and/or a fine up to, but not exceed two hundred Dollars (\$200) or to any combination of such confinement, publication, and fine;

b. For the second offense: confinement of up to, but not exceed five (5) months and/or expulsion from the Hoh Indian Reservation of up to, but not exceed Fifteen (15) months and/or publication of the perpetrator's name and photograph in the Hoh Tribal newspaper (if one exists) described as a Stalker and/or a fine up to, but not exceed four hundred dollars (\$400) or to any combination of such confinement, publication, and fine;

c. For the third offense: confinement of up to, but not to exceed six (6) months and/or expulsion from the Hoh Indian Reservation of up to, but not exceed twenty-four (24) months and/or publication of the perpetrator's name and photograph in the Hoh Tribal newspaper (if one exists) described as a Stalker and/or a fine up to, but not to exceed five hundred Dollars (\$500) or to any combination of such confinement, publication, and fine;

2. The Hoh Tribe's per capita payment of any person convicted under this section shall be withheld by the Hoh Tribe and applied to fines and/or costs incurred by the Hoh Tribes for confinement or expulsion of the convicted person until the fines and/or costs are paid in full.

3. In addition to or in lieu of the imposition of such confinement and/or fine, the Court shall order the convicted person to participate in the Hoh Tribe's Family Services certified domestic violence treatment program, or if the Hoh Tribe's Family Services Program is unavailable at the time of sentencing a certified domestic violence treatment at the convicted person's expense as provided in Section 1.10 of this Ordinance.

4. In addition to or in lieu of the imposition of such confinement and/or fine, for juveniles the court shall order the convicted juvenile to participate in the Hoh Tribe's Juvenile Offender Treatment Program, or if Hoh Tribe's juvenile offender Program is unavailable at the time of sentencing, the juvenile will be referred to a juvenile community treatment offender program at the convicted juvenile person's expense.

5. All provisions, mandates, and definitions as stated in this Ordinance including Sections 1.1 through 1.22 shall be equally applied and enforced with regards to the crimes of domestic violence.

#### Section 1.8 Mandatory Arrest - Domestic Violence Crimes

A. A police officer shall arrest an alleged perpetrator of any age for a domestic violence crime as defined in Section 1.5, 1.6 and 1.7 of this Ordinance, if an arrest warrant has been issued, or without a warrant if the offense occurs in the presence of the officer or if the officer has probable cause to believe that the person to be arrested has committed a domestic violence offense. If the conditions for arrest established by this Section are present, the officer shall arrest the alleged

perpetrator of the domestic violence offense whether or not the alleged victim signs a complaint and whether or not the arrest is against the expressed wishes of the alleged victim.

B. Determination of Primary Physical Aggressor: If a police officer receives a complaint alleging an incident of domestic violence from or involving two or more opposing persons, the officer shall evaluate each complaint separately to determine who was more likely to have been the primary physical aggressor. In determining whether a person was the primary physical aggressor, the officer shall consider:

1. Prior complaints of domestic violence;
2. The relative severity of injuries inflicted on each person;
3. The likelihood of future injury to each person; and
4. Whether one of the persons acted in self-defense.

If the officer determines that one person was the primary 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 domestic violence or a crime involving domestic violence against the primary physical aggressor.

A police 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.

C. Whenever a police officer investigates an allegation of domestic 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 Hoh Tribe's Domestic Violence Program (if one exists) and the Hoh Tribe's Perpetrator Program (if one exists) or Family Services within 48 hours for purposes of program coordination. The report shall state why the officer either did not make an arrest, or arrested two or more parties.

D. In all domestic violence arrests, after notifying the alleged perpetrator of his/her rights, if the alleged perpetrator consents, a police officer or criminal investigator shall interview the alleged perpetrator within 24 hours after the arrest.

E. Immediately following a domestic violence arrest, the police officer shall advise all known victims of the availability of Domestic Violence Services' Programs (as applicable) and shall give the victims cards describing their legal rights and other services available. Upon request of the victim, the police officer shall provide or arrange for transportation of the victim to a medical facility or a place of shelter.

F. Upon a domestic violence arrest, the arresting police officer shall file with the prosecutor a criminal complaint and an affidavit or a written report of the alleged abuse within 48 hours of the arrest or the first day after a weekend or holiday.

G. Whether or not the alleged perpetrator has been arrested, the Prosecutor shall assist the alleged victim or other appropriate persons in the preparation and filing of a criminal complaint under this Section and/or a petition under Section 1.11 of this Ordinance.

H. Any alleged perpetrator arrested under this Section shall be held in custody for a period not less than forty-eight (48) hours, or such longer period as is necessary to conduct a commitment hearing or as determined by the court, as a mandatory "cooling off" period. Prior to the commitment hearing, the alleged perpetrator shall not be released on bail or on his/her own recognizance.

I. The Hoh Police Department and the ICW legal staff shall develop and maintain a protocol for implementation of their obligations under this Ordinance.

### Section 1.9 Violations by Juveniles - Mandatory Arrest

A. Whenever a police officer has grounds under section 1.8 or Section 1.18 of this Ordinance to arrest a person who is a juvenile, the officer shall arrest the juvenile as provided in this Ordinance, and the provisions of this ordinance shall govern the arrest and all subsequent proceedings.

B. A juvenile held in custody under this Ordinance shall be held in any of the following places:

1. Juvenile Detention Facility.
2. Juvenile Halfway Home
3. Any other suitable place approved by the Court and/or ICW.

C. All civil and criminal proceedings against a juvenile under this Ordinance shall be within the jurisdiction of the Tribal Court rather than the Juvenile Court.

D. The arrest and prosecution of a juvenile under this Ordinance does not bar proceedings in an appropriate Juvenile Court.

E. A civil petition for an order of protection under Section 1.11 of this Ordinance may be filed against a juvenile who is alleged to have committed an act of domestic violence, and the provisions of this Ordinance shall govern all subsequent proceedings in the action.

Section 1.10 Special Court Rules for Domestic Violence Crimes. In addition to the rules of Court generally applicable to criminal proceedings, the Court is authorized to take the following actions in proceeding involving alleged domestic violence crimes.

A. At the commitment hearing, if the alleged perpetrator is to be released from custody, the court in its discretion and as a condition of release, may issue an order for protection temporarily excluding the alleged perpetrator from the home of the alleged victim and restraining the alleged perpetrator from any contact with the alleged victim.

B. If the alleged perpetrator pleads guilty, a pre-sentence report may be ordered at the discretion of the Court prior to sentencing.

C. If it appears to the Court that alcohol or drugs played a part in the abuse, a chemical dependency evaluation with a treatment plan may be ordered, at the discretion of the Court prior to sentencing.

D. Upon a guilty plea or conviction, the perpetrator shall be ordered to participate in the Hoh Tribe's Family Services Certified Domestic Treatment program, or if the Hoh Tribe's Family Services Program is unavailable at the time of sentencing, a certified domestic violence treatment at the perpetrator's expense consisting of at least the following:

1. The perpetrator shall attend and cooperate in an intake session for a domestic violence treatment program.
2. The intake shall be completed by the domestic, violence program not later than 10 calendar days after entry of the order requiring treatment, unless the Court extends that time period.
3. A copy of the intake and recommended treatment plan shall be provided to the court.
4. 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.
5. The domestic violence program or other service providers shall submit progress reports to the Court at least every six (6) calendar weeks.



E. Willful failure or refusal to comply with a court order requiring a perpetrator to attend and cooperate with an intake and undergo treatment as described in a treatment plan shall constitute contempt of court punishable as provided in the Hoh Tribal Code. If the court has suspended execution of any penalty imposed under Sections 1.6 or 1.7 of this Ordinance on the condition that the perpetrator undergo court-ordered intake and treatment, the Court may also order execution of any such suspended sentence.

F. Any written statement made by the alleged victim under oath and signed by the victim that describes the alleged acts of domestic violence shall not be considered inadmissible hearsay evidence, but shall be admissible in any proceeding related to a prosecution under Sections 1.6 or 1.7 of this Ordinance.

G. Any assault upon a person acting in an official capacity in the protection of victims of domestic violence, e.g., women's advocacy, adult case manager, therapist, and other associates staff, shall be considered the most serious nature and punishable by six (6) months in jail and fined Five Hundred Dollars (\$500). The Hoh Tribe's per capita payment of any person convicted under this section shall be withheld by the Hoh Tribe and applied to fines and/or costs incurred by the Hoh Tribe for confinement of the convicted person until the fines and/or costs are paid in full.

#### Section 1.11 Civil Remedy - Order of Protection Petition

##### A. Petition for an Order of Protection - Availability.

1. A petition to obtain an order of protection under this Section may be filed by:
  - a. Any person claiming to be the victim of domestic violence,
  - b. Any family member or household member of a minor or disabled person claimed to be the victim of domestic violence, on behalf of the alleged victim, or
  - c. The Tribal Prosecutor
  - d. Any person acting in an official capacity in the protection of a domestic violence survivor including but not limited to e.g., Domestic Violence Advocate, Adult Case Manager, Therapist, and other associated staff.
2. A petition shall allege the existence of domestic violence, and shall be verified or supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.
3. A petition may be filed regardless of any other pending civil or criminal proceeding related to the allegations in the petition.
4. No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been arrested for any domestic violence offense, the Court or the arresting officer shall advise the alleged victim of the right to file a petition under this section without cost.
5. 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 an order of protection; but the petition shall state whether any other action is pending between the petitioner or victim and the respondent.
6. Standard, simplified petition forms with instructions for completion shall be available to persons not represented by counsel. The Hoh Tribe's Police Department and the Tribal Court shall keep such forms and make them available upon request to victims of domestic violence.

##### B. Procedure for Issuing an Order of Protection.

Upon the filing of a petition for order of protection, the Court shall:

1. Immediately grant an ex-parte order of protection without bond if, based on the specific facts stated in the affidavit or the verified petition, 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 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 order of protection, together with notice of hearing, to be served immediately on the respondent. Service must be made by posted notice if personal service cannot be completed within twenty-four (24) hours.
3. Hold a hearing within thirty (30) days after the granting of the ex-parte order of protection to determine whether the order should be vacated, extended for an additional thirty (30) days, or modified in any respect.
4. If an ex-parte order is not granted, the court shall serve notice upon both parties and hold a hearing on the petition for order of protection within seventy-two (72) hours after the filing of the petition; if notice of hearing cannot be personally served within twenty four (24) hours, the parties shall be served by posted notice, and the court shall hold a hearing on the petition within thirty (30) days after the filing of the petition.

C. Contents of an Order of Protection. An ex-parte order of protection or an order of protection entered after notice and hearing shall, when deemed appropriate by the court, include provisions:

1. Restraining the respondent from committing any acts of domestic violence.
2. Excluding the respondent from the residence of the victim, whether or not the respondent and the victim share that residence.
3. Restraining the respondent from any contact with the victim.
4. Awarding temporary custody or establishing temporary visitation rights with regard to minor children of the respondent on a basis which 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 the modification of an order for custody or visitation of a minor child, the finding that domestic or family violence has occurred since the last custody determination constitutes a finding of a change in circumstances.
  - b. 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 or restrict visitation as to the time, place, duration, or supervision, or deny visitation entirely, as needed, to guard the safety of the claimed victim and the minor children.
  - c. 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.
  - d. If a parent is absent or relocated because of an act of domestic 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.
  - e. Any temporary custody order shall provide for child support and temporary support for the person having custody of the children, in amounts deemed proper by the Court
  - f. In a visitation order, the Court may:
    1. Order an exchange of minor child to occur in a protected setting;

2. Order that visitation be supervised by another person or agency;
  3. Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substance during the visitation and for 12 hours preceding the visitation;
  4. Order the perpetrator of domestic or family violence to pay a fee to defray the cost of supervised visitation;
  5. Prohibit overnight visitation;
  6. Require a bond from the perpetrator of domestic or family violence for the return and safety of the minor child; and
  7. Impose any other condition that is deemed necessary to provide for the safety of the minor child, the victim of domestic or family violence, or other family or household member.
- g. Whether or not visitation is allowed, the court may order the address of the minor child and the victim to be kept confidential.
  - h. The Court may refer but must not order an adult who is a victim of domestic 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.
  - i. If the Court allows a family or household member to supervise visitation, the Court must establish conditions to be followed during visitation.
5. Ordering temporary guardianship with regard to an elder or disabled victim of domestic violence if necessary for the safety of the elder or disabled person
  6. Awarding temporary use and possession of property of the respondent.
  7. Restraining one or both parties 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 respondent, including mortgage or rental payments, necessary to maintain the claimed victim in his/her residence.
  9. Describing any prior orders of the Court of domestic-related matters which are superseded or altered by the order of protection.
  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 Ordinance for which civil penalties may be assessed.
  11. 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, including orders or directives to the Hoh Tribal Police Department.

#### D. Duration and Modification of Order of Protection

1. The provisions of the order shall remain in effect for the period of time stated in the order, not to exceed 12 months unless extended by the court at the request of any party or at the request of the Domestic Violence Offender Treatment Program.
2. The Court in its discretion may upon request of either party or the Domestic Violence Offender Treatment Program modify an order of protection.

Section 1.12 Service of Order of Protection. Orders of protection are to be served personally upon the respondent by a police officer. If the respondent cannot be located, the order will be mailed by certified mail to the respondent's last known address and upon application with the Court, notice will be posted.

Section 1.13 Assistance of the Police Department in Service or Execution of Order of Protection. When an order of protection is issued, upon request of the petitioner, the Court shall order the police to accompany and assist any claimed victim of domestic violence in taking possession of the claimed victim's residence or otherwise to assist in execution of the order.

Section 1.14 Firearms Disqualification. It shall be the purpose of this Section to prohibit any person who has been convicted of a felony or gross misdemeanor offense of domestic violence, as defined under this Ordinance or a foreign protection order, or tribal, state or federal law, any persons who is subject to an order of protection based upon a finding that the person represents a credible threat of the physical safety of the victim, or any person who is found mentally incompetent to stand trial or those committed for mental health reasons after a domestic violence offense, from possessing a firearm.

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

1. Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking or threatening a family or household member as defined in this Ordinance or engaging in any other conduct that would place a family or household member in reasonable fear of bodily injury to the household of family member, except that this paragraph shall apply only to those orders that:

- a. were issued after hearing of which such person received actual notice and had the opportunity to participate; and
- b. includes a finding that such person represents a credible threat of physical safety to such house hold or family member; or
- c. by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family member.

2. Has been convicted in state, federal or tribal court of any crime involving domestic violence, as defined in Section 1.5 of this Ordinance or any foreign protection order, 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 a household or family member as defined in Section 1.5

B. Violation of this Section shall result in a maximum sentence of confinement of six (6) months. Any violations of related domestic violence sentences in this section or any violations of other Sections of this Ordinance shall be served consecutively.

Section 1.15 Right to Apply for Relief. A person's right to apply for relief under Section 1.11 of this ordinance or to file a criminal complaint under Sections 1.6 or 1.7 of this Ordinance shall not be affected by his/her leaving the residence or household to avoid abuse.

Section 1.16 Domestic Violence Leave Act. Victims of domestic violence are oftentimes forced to flee from a perpetrator in order to avoid future danger of violence. In so fleeing victims who are employed frequently miss days of employment and employers respond by terminating or disciplining such employees. It is the purpose of this Ordinance to preclude all reservation

employers from terminating any employee who can document within 14 days of an instance of domestic abuse which contributed to his/her absence from employment. Employers have the option of granting such employees leave with pay or leave without pay because of domestic violence related absences. Absences not to exceed twelve (12) weeks.

A. Discharges for Absence of employment Due to Domestic Violence Prohibited. It shall be a violation of this ordinance for any employer located within the exterior boundaries of the Hoh 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 (e.g. medical documents), that he/she has been the victim of domestic 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.

B. Penalty for Violation of Employer. Any employer who willfully violates this section shall be subject to a civil penalty of \$500.00 payable to the Tribe in addition to any other remedies the wrongfully discharged employee may have against the employer. Nothing in this section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this section.

C. Penalty for Violation of Employee. Any employee who willfully violates this section by making a false report shall be subject to a penalty of termination.

Section 1.17 Copy to the Police Department. Each order of protection granted pursuant to Section 1.11 of this Ordinance and each order issued under Section 1.11 of this Ordinance shall be forwarded by the Clerk of the Court immediately to the Hoh Tribe's Police Department. The Police Department shall make available to each officer, information as to the existence and status of each such orders.

Section 1.18 Violation of Court Orders - Mandatory Arrest

A. Willful violation of an order issued under Section 1.11 of this Ordinance shall constitute contempt of court punishable as provided in the Hoh Tribal Code.

B. 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 1.11 of this Ordinance.

C. All provisions of an order issued under Section 1.11 of this Ordinance shall remain in full force and effect until the order terminates or is modified by the Court. Violation of the order, including any prohibition against entering a residence, is not excused by the consent or permission of the alleged victim or any other person.

D. Any person who knowingly violates an order issued under Section 1.11 of this Ordinance may, after notice and hearing, be assessed a civil penalty in an amount not to exceed \$500, in addition to any jail time imposed.

Section 1.19 Reporting Domestic Violence

A. Any physician, nurse, school teacher, psychologist, social worker, probation officer, community health representative, or any other person knowing or suspecting that domestic violence is occurring and believes the victim is at imminent risk shall report the matter orally and

immediately by telephone or otherwise to the Hoh Tribal Police Department or Public Safety Officer.

B. Any person, including individuals corporations, governmental entities and their agents, who in good faith makes or participates in the making of the report pursuant to this section shall have immunity from any liability, civil or criminal, which might otherwise arise from making that report, and shall have the same immunity with respect to participation in any court proceeding resulting from such a report.

C. Any person who shall make a report of domestic violence knowing that the facts reported are false or misleading, and the report causes the arrest of the person identified in the report, shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to confinement not to exceed six months and/or to a fine not to exceed \$500 or both such confinement and fine.

D. Any person who shall make a report of domestic violence knowing that the facts reported are false or misleading may, after notice and hearing, be assessed a civil penalty in an amount not to exceed \$500.

E. Any person subject to mandatory reporting who fails, neglects, or refuses to report acts of domestic violence against a vulnerable victim known to him/her may, after notice and hearing, be assessed a civil penalty in an amount not to exceed \$500.

#### Section 1.20 Prevention and Intervention

A. The Hoh Tribe's Domestic Violence Program (should one exist) serving domestic violence survivors shall create a committee to create a public health plan for reducing domestic violence which will:

1. Assess the impact of domestic violence on the public's health; and
2. Write a public health plan for reducing the incidence of domestic violence within the tribal community

B. The public health plan:

1. Must include but is not limited to public education, including use of the various communication media to set forth the public health perspective on domestic violence.
2. Must be developed in consultation with public and private agencies that provide program for victims of domestic violence, advocates for victims, and persons who have demonstrated expertise and experience in providing health care to victims of domestic violence and their children.
3. Must be completed within 365 days of the enactment of the Domestic Violence Code.

C. The Committee shall:

1. Transmit a copy of the public health plan to the Hoh Tribal Business Committee; and
2. Annually review and update the plan.

Section 1.21 Full Faith and Credit Clause. The purpose of this Section is to insure compliance with the Full Faith and Credit provision of the Violence Against Women Act of 1994 (V.A.W.A) as set forth in Title 18 of the United States Code, section 2265 (18 U.S.C. SS2265), and to insure that victims of domestic violence are able to move across state and tribal boundaries without losing 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.

#### Section 1.22 Filing a Foreign Protection Order

A. 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 Hoh 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 Court as long as it contains a facsimile or digital signature by any person authorized to make such transmission.

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

C. 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.

D. The Court shall accept the filing of a foreign protection order without a fee or cost.

E. The Clerk of the Court shall provide information to a person entitled to protection of the availability of domestic violence, sexual abuse, and other service to victims in the community.

F. The Clerk of the Court shall assist the person entitled to protection in completing an information form that must include, but need not be limited to, the following:

1. The name of the person entitled to protection and any other protected parties;
2. The name and address of the person who is subject to the restraint provisions of the foreign protection order;
3. The date and foreign protection order was entered;
4. The date the foreign protection order expires;
5. The relief granted under \_\_\_\_\_ (specify the relief awarded and citations thereto, and designate which of the violations are arrest able offenses);
6. The judicial district and contact information of the court administration for the court in which the foreign protection order was entered;
7. The social security number, date of birth, and description of the person subject to the restraint provisions of the foreign protection order;
8. Whether the person who is subject to the restraint provisions of the foreign protection order is believed to be armed and dangerous;
9. 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;
10. 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.
11. An inability to answer any of the above questions does not preclude the filing or enforcement of a foreign protection order.

G. The Clerk of the Court shall provide the person entitled to protection with a copy bearing proof of filing with the court.

H. 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.

### Section 1.23 Transmittal of Filed Foreign Protection Orders to Law Enforcement Agency

A. The Clerk of the Court shall forward a copy of a foreign protection order that is filed under this Ordinance on or before the next judicial day to the Hoh Tribal Police and County Sheriff along with the completed information form. The Clerk may forward the foreign protection order to the County Sheriff by facsimile or electronic transmission. Upon receipt of the filed foreign protection order, the Chief of Police 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 Tribal Police 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 in 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.

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

### Section 1.24 Violation of Foreign Orders

A. 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 under restraint from a residence, workplace, school, or day care, or violation of any provision for which the foreign protection order specifically indicates, that violation will be a crime. 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. The Court shall specify who will provide the electronic monitoring service, and the terms under which the monitoring will be performed. The foreign protection order may also require that the person under restraint pay the costs for the electronic monitoring. The Court shall consider the ability of the convicted person to pay for electronic monitoring.

B. A police officer shall arrest and take into custody without a warrant a person under restraint when the police officer has probable cause to believe that a foreign protection order has been issued which the person under restraint has knowledge and has violated a provision of the foreign protection order. The protection order may prohibit the person under restraint from contacting or communicating with another person, may exclude the person under restraint from a residence, workplace, school, or daycare, or may include any other provision for which the foreign protection order specifically indicates is a violation of a crime. Presence of the foreign protection order in the law enforcement computer based criminal intelligence information system is not the only means of establishing knowledge of the order.

Section 1.25 Police/Peace Officer Immunity. No police officer, peace officer, or a officer's legal advisor shall be held criminally or civilly liable for making an arrest under this Ordinance and foreign protection orders if the police officer, peace officer, or the officer's legal advisor acted in good faith and without malice.



Section 1.26 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 ordinance 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.

#### Section 1.27 Child Custody Disputes

A. Any disputes regarding provisions of 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 RCW 26.27 and in accordance with the Parental Kidnapping Prevention Act, 28 U.S.C. 1738A.

B. A police officer shall not remove a child from his or her current placement unless:

1. A Writ of Habeas Corpus to produce the child has been issued by a Superior Court of this state; or
2. There is probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050.

Section 1.28 Amendments. This Ordinance may be recommended for amendment by a majority of Health Commission present at any regular or special meeting, provided at least ten (10) days written notice is given of the intention to consider amendment to the Ordinance. If passed, a recommendation for amendment shall be forwarded to the board of Directors for approval and adoption as set forth below.

#### Section 1.29 Harassment.

A. A person commits the violation of harassment if:

1. Without lawful authority, the person knowingly commits "Harassment" as defined below through a "Course of Conduct" as defined in 1.29.C, below.

B. Purpose. It is the purpose of this section to create and maintain a peaceful and safe environment for all persons on the Hoh Indian Reservation by making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the person harassed. Harassment is a serious crime against society and this section seeks to guarantee to the victim of harassment the maximum protection under the law.

C. Definitions.

1. "Harassment": For the purpose of this section "harassment" means a knowing and willful course of conduct directed at a specific person, which seriously alarms, annoys harasses, or is detrimental to that person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress or would cause a reasonable person to fear for the well being of his or her family, and shall actually cause for the petitioner substantial emotional distress or fear for the well being of his or family.

2. “Course of Conduct”: For the purpose of this section, “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. “Course of conduct” includes, but is not limited to, the use of electronic media as a means of conducting harassment.

3. “Electronic Communication”: For the purpose of this section, “electronic communication” means any form of expression or exchange of information by speech or writing using electronic means. Electronic communication includes but is not limited to, communication via telephone, facsimile and electronic mail.

4. “Specific Person”: For the purpose of this section, “specific person” means any person who is subjected to harassment as defined above.

5. “Electronic Surveillance”: For the purpose of this section, “electronic surveillance” means close observation of or listening to a person or place by electronic means for the purpose of harassment by any electronic means.

6. “Emotional Distress”: For the purpose of this section, “emotional distress” means a highly unpleasant reaction such as anguish, grief, fright, humiliation, or fury.

7. “Harassment Restraining Order”: For the purpose of this section, “Harassment restraining order” means a court order restricting a person from harassing, threatening, contacting, or approaching another specified person for a period of time.

8. “Temporary Harassment Restraining Order”: For the purpose of this section, “temporary restraining order” means a court order restricting a person from harassing, threatening, contacting, or approaching another specified person not longer than thirty (30) days.

Section 1.29.D Petition for an Harassment Restraining Order-Availability. There shall exist an action known as Harassment restraining order (“restraining order”) for cases of harassment. The condition for obtaining such an order are as follows:

1. A petition to obtain a restraining order under this section may be filed by any person claiming to be the victim of harassment.

2. A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit under oath stating the facts and circumstances from which relief is sought.

3. Standard, simplified petition forms with instructions for completion shall be available to persons seeking restraining orders at the office of the court clerk.

4. A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties, except that a parent may not petition for a restraining order on behalf of a child against the child’s other parent. Petitioner shall be required to disclose any pending suits at the time the petition is entered.

5. 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.

6. The parent or guardian of a child under eighteen may petition for a restraining order to enjoin a person age eighteen years or over who is not that child’s parent from contact with that child upon showing that contact with the person to be enjoined is detrimental to the welfare of the child.

7. The parent or guardian of a child under the age of eighteen may petition for a restraining order to enjoin a person under the age of eighteen years from contact with that child, but only where the person to be enjoined has been adjudicated of an offense against the child protected by the other, or is under investigation or has been investigated for such an offense. The

parent, guardian, or custodian of the respondent child shall be notified of such action and served with process. In issuing a restraining order under this section, the court shall consider, among the other facts of the case, the severity of the alleged offense, any continuing physical danger or emotional distress to the alleged victim, and the expense, difficulty, and educational disruption that would be caused by enforcement of the order. The court shall send notice of the restriction to the school(s) attend by the person restrained and the person protected by the order. If the court deems that either the person restrained or the person protected by the order must transfer schools for the order to be enforceable, the parents(s) or legal guardian(s) of the person affected are responsible for transportation and other costs associated with the change of school.

#### Section 1.29.E Harassment Restraining Orders-Ex Parte Temporary Hearing– Longer Term and Renewal.

1. Upon filing a petition for a Harassment order under this section, the petitioner may obtain an ex parte temporary Harassment restraining order with or without serving notice upon the respondent by filing an affidavit which, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent and that harm will result to the petitioner if the temporary anti-restraining order is not granted. This temporarily restraining order shall be valid for thirty (30) calendar days.

2. Upon the issuance of a temporary anti-restraining order, the petitioner shall cause a copy of the order together with notice of hearing to be personally served on the respondent a minimum of five (5) days prior to the hearing. Service may be made by certified mail if personal service cannot be completed within specified period, and the return receipt indicating actual notice must be given to court.

3. At the hearing within thirty (30) calendar days after the granting of the ex parte order of protection, a harassment restraining 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 restraining order shall be vacated. If the respondent does not appear, the petitioner must demonstrate that he received notice before or that despite petitioner's own due diligence service could not be made, a default judgment will be entered.

4. An order issued under this section shall be effective for not more than one year unless the court finds that the respondent is likely to resume harassment of the petitioner when the order expires. If so, the court may enter an order to a fixed time exceeding one year or may enter a permanent harassment restraining order.

5. In the event that the respondent fails to appear for a hearing and the petitioner cannot demonstrate service upon him, the court may grant a second ex parte temporary Harassment restraining order by the same petitioner enjoining the same respondent. After two consecutive ex parte temporary harassment orders have been issued and notice still cannot be effected, the court may issue an harassment restraining order. When a peace officer investigates a report of an alleged violation of a restraining order issued without notice pursuant to this section, the officer shall issue notice of the order upon the respondent during the investigation.

6. At anytime within three month before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal with the court. The petition for renewal shall state the reasons why the petitioner seeks to renew the order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be held within thirty (30) days from the date of petition. The court shall grant the petition for renewal unless the respondent proves by preponderance of evidence that he will not resume harassment of the petitioner when

the order expires. The court may renew the protection order for another fixed period or may enter a permanent order as provided in Subsection (3.5.16.4.d) of this section.

7. The court, in granting a harassment restraining order, shall have broad discretion to grant such relief, as the court deems proper including:

- a. Restraining the respondent from making attempts to contact the petitioner.
- 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.

#### Section 1.29.F Notice to Local Law Enforcement Agencies –Enforceability.

1. A copy of an harassment restraining order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the Hoh Police Department or appropriate law enforcement agency. Upon receipt of the order, the Police Department shall enter the order into any 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 code and notice has not been effected prior to contact, the office shall arrest the respondent, but rather provide notice as described herein. Law enforcement should update the criminal information system to reflect that notice has been effected.

#### Section 1.29.G Contempt and Violation of Order-Penalties.

1. Willful violation of a harassment restraining order subjects the respondent to criminal penalties under this ordinance.

2. Any respondent who is found guilty of violating the terms of a harassment restraining 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.

3. The first violation of a harassment restraining order is a misdemeanor, and the offender may be sentenced to imprisonment for a period not to exceed thirty (30) days or a fine not to exceed \$200, or both.

4. Subsequent violation of a harassment restraining order is a gross misdemeanor, and an offender may be sentenced to imprisonment for a period not to exceed three (3) months, or fine not to exceed \$400, or both.

#### Section 1.29.H Full Faith and Credit.

1. Harassment restraining orders issued by the Hoh Tribal Court will be enforced throughout the state of Washington pursuant to RCW 13.34.240 and CR 82.5 ( c ).

2. To ensure that harassment restraining orders issued by the Hoh Tribal Court are enforced outside of the boundaries of the reservation, ant-harassment restraining orders issued in the Washington State Superior courts will be enforced within the boundaries of the Reservation.

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