

DOMESTIC VIOLENCE ORDINANCE
KLAMATH TRIBAL CODE
Title 4, Chapter 31

I. GENERAL PROVISIONS

31.101 Policy.

The Klamath Tribes of Oregon are a sovereign with the authority to adopt laws and regulations to promote the health, well-being and safety of its members, members' families and other people who reside on Tribal lands or otherwise are within the jurisdiction of the Klamath Tribes.

31.102 Purpose.

The purposes of this Chapter are to:

- (a) Recognize and affirm that the strength of the Klamath Tribes is based on healthy families and individuals, who form the foundation of Klamath Tribal society and to whom the Klamath Tribes owe a solemn and sacred duty of protection and providing for their general welfare, as dictated by our Klamath Tribal traditions, values, and Mission Statement.
- (b) Recognize that domestic violence is a serious crime against individuals, families and the Klamath Tribes, and to provide a victim of domestic violence the maximum protection from further violence and abuse that the law, and those who enforce the law, can provide. Furthermore, it is the purpose of this Chapter that the safety of victims of domestic violence must be ensured by the immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.
- (c) Convey the intent of the Klamath Tribes that the official response to domestic violence shall stress the enforcement of the laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribes' policy that violent behavior against intimate partners is criminal behavior and will not be excused or tolerated. This, in turn, will promote healing of Klamath families and the community, as well as promote cultural teachings and traditional Tribal values so as to nurture non-violence and respect within families.
- (d) This Chapter shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

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31.103 Definitions. The below terms shall be defined as follows for the purpose of this Chapter. Unless the context otherwise requires, the following terms shall apply equally to the singular and plural, as well as to the active form of any particular term:

- (a) "Child or children" means the biological or adoptive child or children of Klamath Tribal members, and children who are enrolled members of the Klamath Tribes or who are eligible for membership in the Tribe.
- (b) "Contact" includes, but is not limited to, the following types of actions:
- (1) Repeatedly entering into and/or remaining in the victims' visual or physical presence;
 - (2) Physically following the victim;
 - (3) Waiting outside the home, property, workplace, location or school of the victim;
 - (4) Monitoring the victim by actual or electronic surveillance;
 - (5) Communicating in any form with the victim, including via social media or by text;
 - (6) Communicating with the victim through a third person;
 - (7) Communicating with a third person who has some connection to the victim with the intent of impacting the third person's relationship with the victim;
 - (8) Communicating with business entities with the intent of affecting some right or interest of the victim;
 - (9) Committing a crime against the victim, including property crimes;
 - (10) Committing a crime against the victim's workplace or school, including property crimes;
 - (11) Delivering directly or through a third person any object or communication intended for the victim to the home, property, location, workplace or school of the victim.
- (c) "Dispute" means a conflict or controversy, especially one that has given rise to a particular lawsuit.

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- (d) "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 laws of the Tribes. Domestic violence can take many forms such as, but not limited to, the use of intimidation, contact (as herein defined), manipulation, isolation, coercion, behavior that induces reasonable fear in the victim, emotional abuse, economic abuse, sexual abuse, physical violence or threats thereof, as well as other tactics of power and control to establish and maintain a relationship of dominance over an intimate partner, but it does not include acts of self-defense.
- (e) "Foreign" for the purposes of a "foreign court" under this Chapter means any court of competent jurisdiction that is not part of the Klamath Tribes tribal court system, including but not limited to, the courts of other tribal nations and state courts.
- (f) "Intimate partner" means a current or former spouse or partner, including a dating partner; and persons who have a child in common, regardless of spousal or partner status.
- (g) "Klamath Reservation or Reservation" means all lands, the title to which is held in trust by the United States for the Klamath Tribes as part of the Klamath Tribes' Reservation.
- (h) "Klamath Tribal Service Area or Service Area" means Klamath County, Oregon which is that geographical territory where the Klamath Tribes and their members residing therein are deemed to be residing in or near a reservation and eligible for all federal services and benefits available to federally recognized Indian tribes and their members who reside on or near a reservation as provided by Section 2 (c) of the Klamath Tribe Restoration Act, Pub. L. No. 99-398, 100 Stat. 849 (August 27, 1986) codified at 25 U.S.C. § 566. The Service Area is considered to be within the jurisdiction of the Klamath Tribes.
- (i) "Tribal Court or Court" means the Tribal Court of the Klamath Tribes of Oregon.
- (j) "Tribal Lands" includes all lands owned or under the authority of the Klamath Tribes, whether in fee, trust or reservation status or otherwise.
- (k) "Tribal member or member" means an individual who is an enrolled member of or eligible for enrollment in the Klamath Tribes of Oregon.
- (l) "Tribes" means the Klamath Tribes of Oregon, a federally-recognized Indian tribe.

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(m) "Spouse" means a person who is married to another individual under law and/or in accordance with tribal custom, as provided hereunder, regardless of the gender or sexual identification of either person engaged in the relationship.

31.103 Court Appointed Attorneys.

When so provided by the Tribes, in any proceeding arising under this Chapter, the Tribal Court may appoint an attorney to provide legal representation and counsel to one or both of the parties, or to any minor child in a child custody, parenting plan, or visitation proceeding, where the Tribal Court determines that a court appointed attorney is necessary to avoid undue financial hardship or would be in the best interests of that party, parties, or minor child.

II. JURISDICTION

31.201 Jurisdiction.

(a) The Tribal Court shall have personal and subject matter jurisdiction over matters involving domestic violence concerning members of the Klamath Tribes, members of other tribes, non-Indian perpetrators of domestic violence against Tribal members, members of other tribes, or other persons within the territorial jurisdiction of the Klamath Tribes.

(b) The Tribal Court shall retain jurisdiction over any violations of orders of protection entered pursuant to this Chapter which are alleged to have occurred outside of the boundaries of the Klamath Reservation where such orders are entitled to recognition outside Reservation boundaries as a matter of full faith and credit, or which are granted recognition as a matter of comity.

(c) The Tribal Court has, but is not limited to, personal jurisdiction over the following persons, for purposes of enforcing the provisions of this Chapter, and any associated matters:

- (1) Enrolled members of the Klamath Tribes;
- (2) Persons who consent to the jurisdiction of the Tribal Court by one of the following actions:
 - (i) Filing an action;

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- (ii) Knowingly and voluntarily giving written consent to jurisdiction of the Tribal Court;
 - (iii) Entering a notice of appearance in an action without concurrently filing an express written reservation of issues concerning personal jurisdiction, or filing a motion to dismiss for lack of jurisdiction within thirty (30) days of entering the notice of appearance;
 - (iv) Appearing in an action without concurrently filing an express written reservation of issues concerning personal jurisdiction, or filing, within thirty (30) days of such appearance, a motion to dismiss for lack of jurisdiction; or
- (3) Persons who are the parent or guardian of an enrolled Klamath tribal member or the parent or guardian of a child eligible for enrollment with the Klamath Tribes;
- (4) Persons who have legally enforceable rights in any jurisdiction to visitation or custody of a child that is in any way a subject of the proceeding and the child is an enrolled member of the Klamath Tribes or eligible for enrollment with the Klamath Tribes; and
- (5) Persons who are the current or former intimate partner or spouse of a Klamath tribal member, regardless of whether such persons are also Klamath tribal members, members of other federally recognized tribes, non-tribal members, non-Indians, or any other identification.

31.202 Continuing Jurisdiction.

- (a) In every action under this Chapter where there is jurisdiction, the Tribal Court shall retain continuing jurisdiction over the parties.
- (b) Consent cannot be withdrawn once given, whether such consent was given expressly or impliedly, except by permission of the Tribal Court.
- (c) Personal jurisdiction cannot be defeated by relocation after jurisdiction is established.

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(d) Personal jurisdiction cannot be defeated by voluntary relinquishment of enrollment and membership with the Klamath Tribes.

31.203 Appeals of Finding of Jurisdiction.

Appeals of Tribal Court determinations of jurisdiction may be appealed to the Klamath Tribes Supreme Court in accordance with the laws of the Klamath Tribes.

III. CIVIL PROTECTION ORDERS

31.301 Civil Protection Order.

A person may seek a protection order whether or not the person has contacted law enforcement or Tribal officials to report a crime, but such persons should be referred to law enforcement in the event that crime has been committed. It is the policy of the Tribes that temporary protection orders may be issued without prior notice to the respondent to ensure the immediate protection of the victim and prevent further violence. 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 relief is available in another action.

31.302 Persons Authorized to File.

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

- (a) Any person claiming to be the victim of domestic violence;
- (b) Any family member or household member of a minor child or vulnerable adult alleged to be the victim of domestic violence on behalf of the minor child or vulnerable adult; or
- (c) Any person acting in an official capacity in the protection of domestic violence survivors including, but not limited to, victim advocates, elder abuse case managers or advocates, therapists, Child Protective Services, or other advocates acting in a professional capacity.

31.303 Petition for Protection Order or Modification.

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

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- (b) A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.
- (c) No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been charged with the offense of domestic violence, the Tribal Court shall advise the alleged victim of the right to file a petition under this section without cost.
- (d) The petitioner, or the victim on whose behalf a petition has been filed, is not required to move from the family home or file for annulment, dissolution 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.
- (e) The Tribal Court shall make available standard, simplified petition forms and instructional brochures with instructions for completion. The Klamath Tribes and the Tribal Court shall make such forms available upon request to victims of domestic violence.

31.304 Procedure for Issuance of a Protection Order.

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

- (a) Immediately grant an ex parte protection order without bond if, based on the specific facts stated in the affidavit, the Tribal 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 harm.
- (b) Cause an ex parte protection order, together with notice of hearing, to be made immediately available to the petitioner for service by an authorized person.
- (c) The Tribal 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 seventy-two (72) hours and at that time the order shall be granted or denied.
- (d) Hold a hearing within fourteen (14) days after the granting of the ex parte protection order to determine whether the order should be vacated, extended, or modified in any respect.

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

(f) If an ex parte protection order is not granted, serve notice upon both parties to appear in Tribal Court and hold a hearing on the petition for protection order within seventy-two (72) hours after the filing of the petition; if notice of hearing cannot be personally served, notice shall be provided consistent with Tribal law.

31.305 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 Tribal Court, include provisions that:

(a) Restrain the respondent from committing acts of domestic violence.

(b) Exclude or limit the respondent from the residence, workplace, school, and grounds of dwelling of the victim or other specific location where the victim can be found on a regular basis, whether or not the respondent and the victim share that residence.

(c) Restrain the respondent from any contact with the victim and any relations or household members of the victim as is necessary for safety and welfare purposes.

(d) Award temporary custody or establish temporary visitation rights with regard to any minor child of the victim and respondent on a basis that gives primary consideration to the safety of the claims victim of domestic violence and the minor child, consistent with the provisions of this Chapter. In every proceeding where there is at issue the modification of a custody order or visitation of a minor child, the finding that domestic violence has occurred since the last custody determination constitutes a finding of a change in circumstances.

(e) Order temporary guardianship with regard to a vulnerable adult victim of domestic violence if necessary for the safety of that individual until the matter can be addressed.

(f) Award temporary use and possession of shared property of the respondent.

(g) Restrain one or both parties during the pendency of the action from transferring, encumbering, concealing or disposing of property, except as authorized by the Tribal Court, and requiring that an accounting shall be made to the Tribal Court for all such transfers, encumbrances, dispositions and expenditures.

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- (h) Order the respondent to timely pay any existing debts of the petitioner, including housing costs, necessary to maintain the claimed victim's place of residence.
- (i) Describe any prior orders of the Tribal Court relating to domestic matters which are superseded or altered by the protection order.
- (j) Notify the parties that the willful violation of any provision of the protection order constitutes contempt of the court punishable by a fine and constitutes a violation of this Chapter for which penalties may be assessed.
- (k) Allow for a landlord, including a tribal housing authority, to change the locks of victim's residence upon request within twenty-four (24) business hours of issuance of the order.
- (l) Order appropriate Tribal officials to assist the victim in removing essential personal effects from a shared home.
- (m) Order that the respondent not come within five hundred (500) feet of a safe house or shelter, regardless of whether the victim is there.
- (n) Order, at the Tribal Court's discretion, any other lawful relief.

31.306 Duration of Permanent Protection Order and Modification.

- (a) The provisions of the protection order shall remain in effect for the period of time stated in the order, not to exceed one (1) year unless the Tribal Court finds that the respondent is likely to resume acts of domestic violence against the petitioner, any minor children or relations of the petitioner, and a period longer than one (1) year is required to protect such individuals. The Tribal Court may also extend a protection order at the request of any party.
- (b) The Tribal Court may, at its discretion, upon request of either party modify an order. If such request is made by the petitioner, the Tribal Court may require the petitioner to participate in a domestic violence support group, taking special consideration into whether any minor child lives with the petitioner and the effects of domestic violence thereupon. If such request is made by the respondent, the Tribal Court shall require that the respondent furnish all pertinent documentation and information as may be required by the Tribal Court for reconsideration.

31.307 Service of Temporary Protection Order.

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Temporary protection orders are to be served personally upon the respondent by an authorized person within forty-eight (48) hours, where 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 service has not been achieved by the first hearing, service may be made by a one (1) week published notice if the authorized person files an affidavit with the Tribal Court that personal service was attempted but was unsuccessful.

31.308 Notice to Local Law Enforcement Agencies.

Each protection order granted pursuant to this Chapter shall be forwarded by fax or email by the Tribal Court within twenty-four (24) hours to the appropriate local Police Department and any other appropriate law enforcement agency for entry into state-wide data systems. Proof of service to the local police department and any other appropriate law enforcement agency shall be filed with the Tribal Court for its records.

31.309 Penalties for Violation of a Protection Order.

Violation of a protection order is a civil infraction and may include the imposition of sanctions including but not limited to monetary fines. Consent is not a defense to a charge of violation of a protection order. Any respondent who is found guilty of violating the terms of a protection order may also, subject to the Tribal Court's discretion, be held in civil contempt of the court, and the Tribal Court may impose such sanctions as it deems appropriate under the circumstances. Any penalties assessed under this section or under any of the other sections of this Chapter shall be cumulatively assessed.

31.310 Firearms Disqualification.

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, as defined under this Chapter, who is subject to a protection order based upon a finding that the person represents a credible threat to the safety and welfare 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 offense. Violation of this section is a civil infraction and may include the imposition of sanctions, including but not limited to monetary fines, through the Tribal Court's inherent contempt powers, as deemed appropriate by the Tribal Court under the circumstances.

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IV. HARASSMENT PROTECTION ORDERS

31.401 Harassment Protection Orders.

There are four types of harassment protection orders available under this Chapter, which vary depending upon the length of time in which they are in effect:

- (a) A "harassment protection order" means a Tribal Court order restricting a person from contacting (as defined herein), harassing, threatening or approaching a specified person for a period of time longer than fourteen (14) days, including for a fixed time exceeding one (1) year.
- (b) A "temporary harassment protection order" means a Tribal Court order restricting a person from contacting (as defined herein), harassing, threatening or approaching a specified person for a period of time shorter than fourteen (14) days, subject to the review procedures set forth in subsection 31.404.
- (c) A "ex parte harassment protection order" means a Tribal Court order restricting a person from contacting (as defined herein), harassing, threatening or approaching a specified person for a period of time not longer than fourteen (14) days and subject to the additional procedural requirements set forth in subsection 31.404.
- (d) A "permanent harassment protection order" means a Tribal Court order restricting a person from contacting (as defined herein), harassing, threatening or approaching a specified person for an indefinite period of time.

31.402 Petition for a Harassment Protection Order.

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

- (a) 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 on behalf of a child by a parent, guardian or a member of the Social Services Department.
- (b) A petition may be granted 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 a child against the child's other parent. The

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existence of any legal action between the parties shall be disclosed as part of the petitioning process.

31.403 Contents of a Petition for a Harassment Protection Order.

(a) The Tribal Court shall make standard petition forms and instructional materials available. A petition for harassment protection order 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. The Tribal Court is not responsible for incorrect information contained in a petition.

(b) No bond shall be required to obtain relief in any harassment protection order proceeding.

(c) The parent or guardian of a child under age eighteen (18), or the Tribes' Social Services Department, may petition for a harassment protection order to restrain a person from contact with that child upon showing that such contact is harmful to the welfare of the child.

31.404 Ex Parte Harassment Protection Orders.

(a) A petitioner may obtain an ex parte harassment protection order without prior notice to the respondent by filing an affidavit which, to the satisfaction of the Tribal Court, shows evidence of harassment of the petitioner by the respondent, and that continued harassment may result in the absence of the ex parte harassment protection order.

(b) A full hearing, as provided in this Chapter, shall be set for not later than fourteen (14) days from the issuance of the ex parte order, which shall itself be effective for a period not to exceed fourteen (14) days. Ex parte harassment orders are to be served upon the respondent by an authorized person within forty-eight (48) hours, where possible. If the respondent cannot be located for personal service, the order shall be mailed by certified mail with return receipt requested and regular mail to the respondent's last known address. If service has not been achieved by the first hearing service may be made by one (1) week published notice if the authorized person files an affidavit with the Tribal Court that personal service was attempted but was unsuccessful.

(c) Within fourteen (14) days after the granting of an ex parte or temporary harassment protection order, the Tribal Court shall hold a hearing to determine whether harassment exists or has occurred. Upon such affirmative finding, the Tribal Court shall issue a fixed-term or permanent harassment protection order. In the absence of such affirmative finding, the ex parte or temporary harassment order shall expire on its own terms. If the respondent does not appear

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at the hearing and proper service had been effected, then a default judgment shall be entered. If the respondent does not appear and evidence of proper service cannot be demonstrated, the Tribal Court may grant an extension of the ex parte or temporary harassment protection order pending delivery of proof of service pursuant to the Klamath Tribal Code, Rules of Civil Procedure, Title 2, Chapter 12.

31.405 Motion to Renew a Harassment Protection Order.

(a) At any time prior to the expiration of a harassment protection order, the petitioner may file a motion for renewal of the order with the Tribal Court. The Tribal Court shall hold a hearing on the motion for renewal within fourteen (14) days of receipt of the motion. Such motion shall be granted unless the respondent can demonstrate, by preponderance of evidence, that resumption of the harassment shall not occur when the order expires. The Tribal Court may renew the order for a fixed period of time or may enter a permanent order.

31.406 Notice to Local Law Enforcement Agencies.

A copy of any harassment protection order granted under this Chapter shall be forwarded by email or fax by the Tribal Court within twenty-four (24) hours to the appropriate local Police Department and any other appropriate law enforcement agency for entry into State-wide data systems. Proof of service to the appropriate local police department and any other appropriate law enforcement agency shall be filed with the Tribal Court for its records.

31.407. Penalties.

Violation of a harassment protection order is a civil infraction and may include the imposition of sanctions including but not limited to monetary fines. Consent is not a defense to a charge of violation of a protection order. Any respondent who is found guilty of violating the terms of a harassment protection order may also, subject to the Tribal Court's discretion, be held in civil contempt of the court, and the Tribal Court may impose such sanctions as it deems appropriate under the circumstances. Any penalties assessed under this section or under any of the other sections of this Chapter shall be cumulatively assessed.

V. SEXUAL ASSAULT PROTECTION ORDERS

31.501 Policy.

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The Klamath Tribes finds that there are times when a victim of a sexual assault or unwanted sexual contact is neither an intimate partner nor spouse. Nevertheless, the Tribes recognize that 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 community; therefore, a protection order provided under this Chapter is to protect those that have been sexually assaulted without qualification as to their relationship, or lack thereof, with the assailant.

31.502 Persons Authorized to File.

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

- (a) A person who does not qualify for a domestic violence protection order who is the victim of nonconsensual sexual conduct or nonconsensual sexual penetration; or
- (b) By a parent, guardian, or other person on behalf of a minor child or any adult who, because of age, disability, health or inaccessibility, cannot directly file the petition, who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration and who does not qualify for a domestic violence protection order:

31.503 Petition for a Sexual Assault Protection Order.

(a) A petition for a sexual assault protection order shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration and shall be accompanied by an affidavit stating the specific statements or actions made at the same time of the sexual assault or thereafter which give rise to a reasonable fear of future acts for which protection is sought.

(b) A petition may be granted regardless of whether or not there is a pending lawsuit, criminal complaint, petition or other action between the parties. The existence of any legal action between the parties shall be disclosed as part of the petitioning process.

(c) The Tribal Court shall make standard petition forms and instructional materials available free of charge. The Tribal Court is not responsible for incorrect information contained in a petition.

(d) No bond shall be required to obtain relief in any sexual assault protection order proceeding.

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(e) If the petition states that disclosure of the petitioner's address would place the petitioner or any member of the petitioner's family or household at risk, that address may be omitted from all documents filed with the Tribal Court in connection with the sexual assault protection order. 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.

31.504 Ex Parte Emergency Sexual Assault Protection Order.

(a) An ex parte emergency sexual assault protection order shall be issued if the Tribal Court finds that:

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

(2) There is good cause to grant the order, regardless of the lack of prior service of process or of notice upon the respondent, because the harm which that order 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 protection.

(b) If the Tribal Court declines to issue an ex parte emergency sexual assault protection order, the Tribal Court shall state the particular reasons for its denial and set a hearing on the petition, which shall be held not later than fourteen (14) days from the Tribal Court's action.

(c) An ex parte emergency sexual assault protection order shall be effective for a fixed period not to exceed fourteen (14) days. A full hearing, as provided in this Chapter, shall be set for not later than fourteen (14) days from the issuance of the emergency order. The respondent shall be personally served with a copy of the ex parte emergency sexual assault protection order along with a copy of the petition and notice of the date set for the hearing by an authorized person. If service has not been achieved by the first hearing, service may be made by one (1) week published notice if the authorized person, files an affidavit with the Tribal Court that personal service was attempted but was unsuccessful.

31.505 Final Sexual Assault Protection Order.

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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 (2) years. However, the order may be renewed prior to its expiration, without limit, as necessary for the victim's safety.

31.506 Expiration of a Sexual Assault Protection Order.

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

31.507 Motion to Modify a Sexual Assault Protection Order.

Upon motion with notice to all parties and after a hearing, the Tribal 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 business day, forward a true copy of the modified order or the termination order to the appropriate local police department and any other appropriate law enforcement agency for entry into state-wide data systems.

31.508 Motion to Renew a Sexual Assault Protection Order.

Any ex parte emergency or final sexual assault protection order may be renewed at any time within the three (3) months before the order expires, without limit, as necessary for the victim's safety. If the petitioner's 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 Tribal Court.

31.509 Notice to Petitioner's County of Residence and Local Law Enforcement Agencies.

A copy of any sexual assault protection order granted under this Chapter shall be forwarded by email or fax by the Tribal Court within twenty-four (24) hours to the Clerk of the Court of the county in which the petitioner resides and to appropriate local police department and any other appropriate law enforcement agency for entry into state-wide data systems. Such notice shall include the date and time of issuance of the order and its expiration date. Proof of service to the appropriate local Police Department and any other appropriate law enforcement agency shall be filed with the Tribal Court for its records.

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31.510 Penalties.

Violation of a sexual assault protection order is a civil infraction and may include the imposition of sanctions including but not limited to monetary fines. Consent is not a defense to a charge of violation of a protection order. Any respondent who is found guilty of violating the terms of a sexual assault protection order may also, subject to the Tribal Court's discretion, be held in civil contempt of the court, and the Tribal Court may impose such sanctions as it deems appropriate under the circumstances. Any penalties assessed under this section or under any of the other sections of this Chapter shall be cumulatively assessed.

VI. FOREIGN PROTECTION ORDERS

31.601 Policy.

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.

31.602 Foreign Protection Orders.

(a) A foreign protection order is valid and shall be enforced on the Klamath Reservation and Tribal lands if the issuing court had jurisdiction over the parties and matter under the law of the State, foreign country, territory, possession, Indian tribe, or United States military tribunal.

(b) A person under restraint must be given reasonable notice and the opportunity to be heard before the protection order of the State, foreign country, 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.

31.603 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 the Tribal Court. Any non-Tribal entity or court responsible for maintaining protection order records may fax or electronically transmit a reproduction of the foreign protection order to

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the Tribal Court as long as it contains the digital signature of any person authorized to make such transmission.

- (b) There shall be a presumption in favor of validity where a foreign protection order appears authentic on its face.
- (c) Filing of a foreign protection order with the Tribal Court is not a prerequisite for enforcement of the foreign protection order on the Klamath Reservation or Tribal lands.
- (d) The Tribal Court shall accept the filing of a foreign protection order without a fee or cost.
- (e) The Tribal Court shall provide information to a person entitled to protection of the availability of domestic violence, sexual abuse or other victims' services in the community.
- (f) The Tribal Court shall assist the person entitled to protection in completing an informational form that shall accompany the filing of a foreign protection order. Any assistance provided by the Tribal Court does not constitute the practice of law. The Tribal Court is not responsible for any incorrect information provided. The informational form must include, but need not be limited to, the following:
 - (1) The name of the person entitled to protection and any other protected parties identified in the foreign protection order;
 - (2) The name, address, date of birth, Social Security (if applicable), and description of the person who is subject to the restraint provisions of the foreign protection order, including identifying whether such person is believed to be armed and dangerous;
 - (3) The date the foreign protection order was entered and when it expires;
 - (4) The relief granted under the foreign protection order, including specification of which violations are offenses warranting arrest;
 - (5) The judicial district and contact information for the court in which the foreign protection order was entered;
 - (6) 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;
 - (7) 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;

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- (8) An inability to answer any of the above questions does not preclude the filing or enforcement of a foreign protection order.
- (g) The Tribal Court shall provide the person entitled to protection with a copy of proof of filing.

31.604 Child Custody Disputes.

- (a) Any disputes regarding provisions in foreign protection orders dealing with child custody, residential placement or visitation shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with Article V of this Chapter, Klamath Tribal Code Title 2, Chapter 15 and be in accordance with the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A.
- (b) No law enforcement officer or authorized employee of the Social Services Department may remove a minor child from his or her current residential placement unless:
- (1) A writ of habeas corpus to produce the child has been issued by the Tribal Court, a state court, or the court of another federally recognized Indian tribe; or
 - (2) There is probable cause to believe that the child is abused or neglected and the child would be injured or may not be taken into custody if it were necessary to delay and first obtain a Tribal Court order pursuant to Klamath Tribal Code, Title 2, § 15.20.

31.605 Notice to County Sheriff and Local Law Enforcement Agencies.

A copy of any foreign protection order and completed informational form filed under this Chapter shall be forwarded by email or fax by the Tribal Court within twenty-four (24) hours to the local County Sheriff and appropriate local Police Department and any other appropriate law enforcement agency for entry into state-wide and national data systems. Such notice shall include the date and time of issuance of the order and its expiration date. Entry into state-wide and national data systems shall constitute notice to all law enforcement agencies of the existence of the foreign protection order. Proof of service to the appropriate local police department and any other appropriate law enforcement agency shall be filed with the Tribal Court for its records.

31.606 Violation of Foreign Protection Orders.

- (a) Whenever a foreign protection order is granted to a person entitled to protection and

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the person under restraint knows of the foreign protection order, a violation of any provision for which a foreign protection order specifically indicates that a violation will be a crime, and shall subject the person to the same penalties as if the order were issued by the Tribal Court.

(b) Upon conviction, and in addition to any other penalties provided by law, the Tribal Court may require the person under restraint to submit to electronic monitoring (Global Positioning System (GPS) or similar). The Tribal 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 monitoring costs.

(c) A law enforcement officer shall arrest without a warrant and take into custody a person when the law enforcement officer has probable cause to believe that a foreign protection order has been issued of which the person under restraint has knowledge and has violated. Knowledge may be established by the presence of the foreign protection order in a tribal, State, or national data system, among other means.

VII. FULL FAITH AND CREDIT

31.701 Orders issued by the Tribal Court under this Chapter will, as a matter of federal law, be accorded full faith and credit outside of the Reservation and off of Tribal lands pursuant to 18 U.S.C. § 2265, 25 U.S.C. § 1911, 25 U.S.C. § 1738B. Judicial orders issued under this Chapter will also, as a matter of state law, be accorded full faith and credit by the State of Oregon pursuant to 18 U.S.C. § 2265(a), O.R.S. § 24.115(4), O.R.S. Ch. 14, § 63, and O.R.S. § 105., and by the State of California pursuant to Cal. Fam. Code §§ 3404, 4901, and 6401 and Cal. Civ. Pro. §§ 1714 and 1723.

31.702 To ensure that orders issued by the Tribal Court under this Chapter are enforced outside of the boundaries of the Reservation, any civil, harassment or sexual assault harassment protection orders issued in the courts of the States of Oregon and California will be enforced within the boundaries of the Klamath Tribes Indian Reservation and on Tribal lands.

31.703 Notice of reciprocal enforcement pursuant to this section shall be printed on all protection orders issued by the Tribal Court under this Chapter.

VIII. CRIMINAL ACTIONS AND REMEDIES (RESERVED)

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IX. SPECIAL RULES OF THE COURT

31.901 Confidentiality.

- (a) The Tribal Court shall establish a method for identifying civil and criminal cases that arise under this Chapter. These files shall be treated as confidential files subject to limited release.
- (b) Civil proceedings arising from a petition under this Chapter are closed to the general public. The Tribal Court may designate appropriate persons who may attend the proceeding.
- (c) Tribal Court records arising from a civil petition for an order under this Chapter are confidential. Documents and other information contained in the file may be released to the petitioner, law enforcement personnel, judicial officers, designated legal representatives, victim advocates, child protection workers, and elder protection workers. The records may be released except for the address, location and contact information of the protected person to the respondent. Release of the records to any other persons shall only be considered for good cause shown, at the Tribal Court's discretion.
- (d) At all stages of a civil or criminal proceeding under this Chapter, the Tribal 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 the address or location of the victim without authorization of the Tribal Court and prior notification to the victim. The Tribal Court may, at its discretion, order release of the information to other persons upon good cause shown.
- (e) Upon Tribal Court approval, a petitioner in a civil matter or a victim in a criminal matter under this Chapter may use an alternate address for service of process and other purposes.

31.902 Pro Hac Vice Appearance by Pro Bono Attorneys.

- (a) Attorneys who are representing a party in a civil or criminal proceeding arising under this Chapter on a *pro bono* status, and who are not licensed to practice before the Tribal Court of the Klamath Tribes of Oregon may, for the limited purposes of this Chapter, appear *pro hac vice* on behalf of his or her client in the Tribal Court.

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(b) Any *pro bono* attorney seeking to appear under this section must provide the Tribal Court with a current certificate of good standing of the bar of any United States court in which the attorney is authorized to practice law before he or she will be permitted to appear and participate in a particular case. The attorney must also identify any cases in which he or she is appearing or has appeared *pro hac vice* before the Tribal Court within the past calendar year, as well as any cases in which he or she is currently appearing *pro hac vice* in any other jurisdiction.

(c) A *pro bono* attorney admitted *pro hac vice* to the Tribal Court under this Chapter may file papers, enter appearances, sign stipulations, and otherwise carry out and be responsible for all other legal duties and actions of an attorney otherwise licensed to practice before the Tribal Court. Notwithstanding an attorney's *pro hac vice* status, such an attorney is within the disciplinary jurisdiction of the Tribal Court.

(d) Admission *pro hac vice* is not a substitute for admission to the bar of the Tribal Court, but it is rather intended to facilitate occasional appearances only. As such, an attorney may be admitted *pro hac vice* for no more than three (3) cases in any calendar year. Further, an attorney may not be admitted *pro hac vice* if such attorney is concurrently admitted *pro hac vice* in three (3) active cases, regardless of the jurisdiction of such cases.

31.903 Spousal Privilege Does Not Apply in Domestic Violence Proceedings.

It is the intent of the Klamath Tribes to facilitate, to the maximum extent possible, judicial protections and justice for victims of domestic violence and sexual assault. To further this intent, it is the desire of the Klamath Tribes that the parties to a civil or criminal proceeding arising under this Chapter must be able to provide free and unimpaired testimony. Therefore, for the limited purpose of providing testimony, the spousal privilege set forth under the Federal Rules of Evidence, Rule 501, as adopted by incorporation by the Tribes at the Klamath Tribal Code Ch. 14.04, shall be inapplicable and no claim or defense of spousal privilege may be made in a civil or criminal proceeding arising under this Chapter to testimony offered by a victim of domestic violence or sexual assault against his or her spouse.

31.904 No Contact Order.

(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence, when any person is arrested for or charged with a crime of domestic violence in any jurisdiction, the Tribal Court may issue a no contact order prohibiting the defendant from having any contact with the victim. A certified copy shall be provided to both parties. Such an order shall be entered at the first opportunity, including on an emergency basis, with no

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additional hearing required and shall not be vacated without first providing notice to the protected party's legal representative and a hearing.

(b) Violation of a no contact order is a civil infraction and may include the imposition of sanctions including but not limited to monetary fines. Consent is not a defense to a charge of violation of a no contact order. Any respondent who is found guilty of violating the terms of a no contact order may also, subject to the Tribal Court's discretion, be held in civil contempt of the court, and the Tribal Court may impose such sanctions as it deems appropriate under the circumstances. Any penalties assessed under this section or under any of the other sections of this Chapter shall be cumulatively assessed.

31.905 Service of Protection Orders to be Expedited.

Orders of protection under this Chapter shall be served on an expedited basis of within forty-eight (48) hours, where possible, and a declaration of service shall be provided to the Tribal Court by the next judicial day after service is completed.

31.906 Pre-Trial Conditions.

(a) A protection order issued in a domestic violence or sexual assault crime cannot be quashed without notice to the legal representative of the victim and a hearing.

(b) The use of GPS monitoring may be required at the recommendation of the prosecuting attorney and at the defendant's expense.

(c) Other conditions may also be ordered at the Tribal Court's discretion as it deems necessary for the protection of victims and petitioners under this Chapter.

31.907 Secure Waiting Area.

Whenever possible, the Tribal Court shall provide a secure waiting area or court supervised area before and during any civil or criminal proceedings for a victim, and his or her family, of domestic violence or sexual assault, which will not require them to be in close proximity to the defendant or the defendant's family or friends.

31.908 Fees Not Permitted.

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Neither the Tribal Court nor any office of the Klamath Tribes may charge an administrative fee for the filing, copying or preparation of certified, authenticated or exemplified copies of necessary documents to a person entitled to protection who seeks relief under this Chapter, or to a foreign law enforcement agency or foreign prosecutor seeking to enforce a protection order.

31.909 Mediation Not Allowed Unless Requested by Victim.

Mediation is not allowed if a protection order is in effect under this Chapter unless requested by the victim after consultation with legal counsel or an advocate. Such mediation shall be provided by a certified mediator who is trained in domestic violence in a specialized manner intended to protect the safety of victims. The victim is permitted to have a support person of his or her choice, in attendance at the mediation.

31.910 Additional Court Rules in a Domestic Violence Proceeding.

- (a) If it appears to the Tribal 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 Tribal Court's discretion.
- (b) Upon a guilty plea, conviction or other disposition, the defendant shall be ordered to participate in a certified domestic violence perpetrator treatment program. The intake assessment for the program must take place within ten (10) days of the Tribal Court's order of participation, unless good cause is shown for an extension of time. A copy of the recommended treatment plan and regular progress reports shall be provided to the Tribal Court for its records on the case. Participation in such treatment program may be in lieu of or supplemental to any other penalty that may be ordered by the Tribal Court.
- (c) Upon a guilty plea, conviction or other disposition, the Tribal Court may issue a no contact order prohibiting the defendant from having any contact with the victim irrespective of whether the victim consents, and any other lawful relief as it deems necessary for the protection of victims and petitioners under this Chapter, including monetary penalties, exclusion from the Reservation and Tribal lands, and/or publication of the perpetrator's name and image in the Klamath News.
- (d) In sentencing for a crime defined under this Chapter, the Tribal Court shall consider, without limitation, whether the offense occurred within sight or sound of the victim's or offender's minor child; was part of an ongoing pattern of abuse of the victim; was in response to a continuing pattern of coercion, control, or abuse of the defendant by the victim; and whether

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the firearms prohibition of this Chapter applies. The Tribal Court shall also consider the defendant's criminal history, which shall include, but is not limited to, all previous convictions, orders of deferred prosecution, and stipulated orders of continuance.

(e) When entering a judgment upon conviction for a crime involving domestic violence, the Tribal Court shall consider the entry of orders for the protection of the victim; order costs and/or restitution as warranted, including attorney fees and costs of collection; and order appropriate domestic violence perpetrator treatment program participation, as set forth under subsection (b) of this section.

(f) Any payment issued to tribal members by the Klamath Tribes shall be withheld from any person convicted under this Chapter and applied in the following order until any Tribal Court-ordered costs and/or restitution are paid in full:

- (1) Any restitution ordered for the victim, including his or her property;
- (2) Costs incurred by the Tribes for confinement; and then
- (3) Costs incurred by the Tribes for exclusion.

X. MISCELLANEOUS

31.1001 Sovereign Immunity.

Except as expressly and specifically waived by resolution of the Klamath Tribes or Klamath Tribal Law, the Klamath Tribes shall be immune from suit, and their officers and employees also shall be immune from suit for liability arising from the performance of their official duties. Nothing in this Chapter shall be deemed to waive such immunity.

31.1002 Severability.

If any provision of this Chapter or the application of any provision to any person or circumstances is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of this Chapter and its application to any other person or circumstances, and to this end, the provisions of this Chapter are severable.

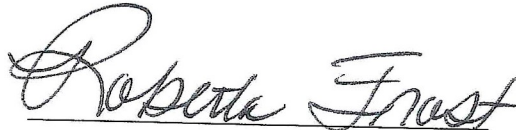
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TRIBAL COUNCIL CERTIFICATION

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that by Referendum vote of The Klamath Tribes General Council held on the 15th day of October, 2021, the Klamath Tribes General Council adopted this Ordinance to be effective as of October 15th, 2021 by a vote of 445 for, 57 opposed.



Donald C. Gentry
Chairman
The Klamath Tribes



Roberta Frost
Secretary
The Klamath Tribes