

**TITLE 5A**  
**LUMMI NATION CODE OF LAWS**  
**DOMESTIC VIOLENCE CODE**

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**TITLE 5A  
LUMMI NATION CODE OF LAWS  
DOMESTIC VIOLENCE CODE**

**Chapter 5A.01 General Provisions**

**5A.01.010 Purpose**

The purpose of the Domestic Violence Code is to ensure the safety and protection of victims, to protect children from experiencing violence in their homes, to ensure the right of the public to a safe and secure community, to protect the community from the effects of violent acts, and to ensure that whenever an offense of Domestic Violence occurs, the offender incurs an obligation to the community. This Code recognizes that Domestic Violence comes in many forms, including physical, psychological/emotional, and sexual abuse, of a child, spouse, sibling, parent, or elder. This Code shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

**5A.01.020 Jurisdiction**

The Court shall exercise civil and criminal jurisdiction to carry out the purposes of this title, including retention of personal and subject matter jurisdiction for violations of its Orders of Protection that are alleged to have occurred outside of the boundaries of the Lummi Reservation.

**5A.01.040 Definitions**

For the purposes of this Code, unless otherwise provided in this Code,

(a) "Victim Advocate" means an employee of or volunteer for a program for victims of domestic violence who:

- (1) has a primary function of providing legal assistance to or rendering advocacy-based counseling or assistance to victims of domestic violence, supervising the employees or volunteers of the program, or administering the program;
- (2) has undergone 30 hours of initial domestic violence training; and
- (3) works under the direction of a supervisor of the program, supervises

employees or volunteers, or administers the program.

(b) "crime involving domestic violence" means one or more of the following crimes when committed by a family or household member against another family or household member:

(1) offenses included under 18 U.S.C. § 1153, the Major Crimes Act, as now or hereafter amended;

(2) offenses included under the Lummi Code of Offenses, Title 5, as now or hereafter amended: homicide, stalking, assault, assault and battery, abduction, subjection to maltreatment, arson, robbery, malicious mischief, trespass, burglary, and disobedience to a lawful order of Court when the order was entered for the purpose of protecting a victim of alleged domestic violence;

(3) offenses included under Lummi Code of Laws, Title 5.9C, Sexual Offenses, as now or hereafter amended; and

(4) other criminal offenses included in the Lummi Code of Laws, except a criminal violation charged under 8.06.030, when the perpetrator commits the offense in an attempt to assert power and control over the victim.

(c) "Domestic Violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

(1) conduct that constitutes a crime of domestic violence as defined in this section;

(2) physically harming, attempting to physically harm, or placing a family or household member in reasonable fear of physical harm to him or herself or another family or household member. Reasonable fear may be produced by behavior which

induces fear in the victim, including harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;

(3) emotional or mental abuse of the family or household member, including isolating, physical or mental intimidation, controlling activities, or using demeaning language;

(4) economic abuse in the form of intimidating or manipulating a family or household member by withholding basic needs;

(5) causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

(d) "Domestic Violence Shelter" means a confidential location which provides emergency housing on a 24-hour basis for victims of sexual assault or domestic violence.

(e) "Elder" means a person who is over the age of 55.

(f) "Family or household members" include:

(1) persons who are or have been married, including persons who are or have been in a marital-like relationship;

(2) persons who have a child in common;

(3) persons who live together or have lived together within the previous year;

(4) persons who are dating or have dated within the previous year;

(5) persons who are related by blood, marriage, or adoption and the victim is an elder or vulnerable adult;

(6) persons who are siblings by blood, marriage, or adoption;

(7) persons who have a parent-child or grandparent-child relationship, whether by blood, marriage, or adoption; and

(8) minor children, by blood, marriage, or adoption, of a parent who is in a

relationship that is described in (1) – (4) of this subsection.

(g) "Protection Order" or "Order of Protection" means an order or a provision in an order entered by a Court, that restrains or mandates action by a person for the purpose of protecting a family or household member of that person from a potential act of domestic violence as defined in this chapter, including:

(1) an order issued under Chapter 5A.03;

(2) any injunction or other order, including temporary and final orders issued by a Court, however obtained, if the order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection;

(3) a provision in an order entered in a civil domestic relations case or child protection case that provides protection for a family or household member; or

(4) a order for the protection of a victim, in a criminal case arising from an alleged act of domestic violence, including a pretrial condition or a condition of probation.

(h) "Vulnerable adult" means a person who is over the age of 18 and unable to take steps under this Code to protect himself or herself from domestic violence because of mental or physical disability, illness or deficiency.

#### **5A.01.050 Immunity from Liability**

The following persons have immunity from liability in a civil action brought by a party for any action or omission in good faith under this Code arising from alleged domestic violence or a crime involving domestic violence:

(1) law enforcement officers;

(2) Victim Advocates;

(3) health, child protection, or social services staff; and

(4) persons who are members of a team established by the Lummi Indian Business Council for the purpose of protecting persons from domestic violence, abuse, or

neglect, including the Child Protection team and the Elder Protection Team.

#### **5A.01.060 Tracking and Confidentially**

(a) The Court shall establish a method for identifying civil and criminal cases that arise from an allegation of domestic violence or a crime of domestic violence.

(b) Court proceedings arising from a petition for a domestic violence order are closed to the general public. The Court may designate appropriate persons who may attend the proceeding.

(c) Court records arising from a petition for a domestic violence order are confidential. Documents and other information contained in the file may be released to the Petitioner, law enforcement officers, judicial officers, tribal prosecutor, Victim Advocates, child protection workers, and elder protection workers. The records may be released, except for the address and location of the protected person, to the Respondent. The records may also be released to other persons upon order of the Court for good cause shown.

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

#### **5A.01.070 Effective Date for an Order of Protection**

An order of protection issued under this Code is effective upon receipt by the alleged perpetrator of the written order, or upon receipt by the alleged perpetrator of actual notice of the protection order, whichever is earlier.

#### **5A.01.080 Notice of Sanctions for Violation**

A protection order issued under this Code

shall contain the following language, in either boldfaced type or capital letters, which substantially informs the person against whom the order is entered that

“Violation of this order is a criminal offense and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate it. You have the sole responsibility to fully comply with all of the order's provisions. Only the Court may change the order.”

#### **5A.01.090 Remedies Outside of the Domestic Violence Code**

The Tribe recognizes that violence occurs outside of the family and household relationships that are included in this Code. Nothing in this Code precludes a person from seeking relief in the Court under other civil remedies, including an injunction or protective order against another person, when such relief is warranted by that person's conduct.

#### **5A.01.100 Penalties**

Any person who knowingly publishes, disseminates, or otherwise discloses the location of any domestic violence shelter, without the authorization of the director of the Lummi Victims of Crime program, is guilty of a crime and, upon conviction, shall be sentenced to imprisonment for not more than 180 days; and a fine not to exceed \$2,500.

#### **5A.01.110 Severability**

If any provision of this Code or its application to any person or circumstance is held invalid, the remainder of this Code, or the application of the provision to other persons or circumstances is not affected, and to this end the provisions of this Code are declared to be severable.

### **Chapter 5A.02 Law Enforcement Response and Duties**

#### **5A.02.010 Duties of Law Enforcement Officer to Victims**

A law enforcement officer who responds to an allegation of domestic violence or a crime involving domestic violence shall use all reasonable means to protect the victim and any family or household member, and prevent

further violence, including:

(1) transporting or obtaining transportation for the victim and any child to a domestic violence shelter or other place of safety, at the victim's request;

(2) assisting the victim in removing essential personal effects, regardless of ownership, at the victim's request;

(3) assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility;

(4) calling the Lummi Victims of Crime contact number so that an advocate can provide immediate support to the victim; and

(5) giving the victim immediate and adequate oral notice of the rights of victims and of the remedies and services available to victims of domestic violence. For an adult victim, additional written notice shall be given as set out in Section 5A.02.015.

**5A.02.015 Written Notice to Victims**

(a) Written notice, as required by 5A.02.010 and 5A.06.010, shall in substance advise that: "If you believe that law enforcement protection is needed to protect you from domestic violence, you have the right to request that a Lummi Police officer assist in providing for your safety. The officer can assist you to:

(1) Ask for an Emergency Order of Protection;

(2) Gather up essential personal effects, regardless of ownership;

(3) Locate a safe place and take you there. The officer may take you to a domestic violence shelter, the residence of a friend or family member, any other place of safety, or a meeting place where someone else can transport you to a safe place.

(4) Receive medical treatment;

(5) Receive a copy of the officer's report,

from the Lummi Nation Police Department at no cost;

(6) Contact the Lummi Victims of Crime office or other advocate services for immediate assistance;

You have the right to file a petition in Lummi Tribal Court requesting an Order of Protection from domestic or family violence. No fees are required to file for an Order of Protection. The forms you need to obtain an Order of Protection are available from the Tribal Court clerk's office, Lummi Victims Of Crime, and the Lummi Tribal Health Center. An Order of Protection may include specific orders of the Court to your abuser, or for your welfare, including any of the following:

(1) Order to not commit or threaten to commit further acts of domestic violence;

(2) Order to not contact you, harass, annoy, telephone or otherwise communicate with you, either directly or indirectly;

(3) Order removing your abuser from your residence, regardless of who owns the residence;

(4) Order to stay away from your residence, school, place of employment, or any other specific place you or another family or household member frequently go;

(5) Order prohibiting the possession or use of any firearm or other weapon specified by the Court, and requiring that such weapon be turned in to law enforcement;

(6) Temporary order granting you possession and use of the automobile and other essential personal items and property, regardless of ownership;

(7) Temporary order granting you custody of your child or children;

(8) Temporary order denying your abuser visitation with your child or children;

(9) Order making specific requirements for visitation, including supervised visitation; and

(10) Order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses or to maintain existing medical insurance coverage, expenses for shelter, Court costs and attorney's fees.

The following resources are available to members of the community who are victims of domestic violence:

(1) For treatment of injuries:  
Lummi Tribal Health Center [hours] [phone number]

(2) Places of safety and shelters:  
Help Line (24-hour): [phone number]

You may request that the Prosecutor review to determine whether to file a criminal complaint, even if no criminal citation is issued by a law enforcement officer. If a criminal complaint is filed, you are entitled to all rights granted to victims of crime including the right to:

(1) To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present;

(2) Provide the Court with a statement either in person or in writing, on the impact that the incident or crime has had on your health, welfare and the emotional impact of the incident or crime, a statement of your opinion regarding the frequency of domestic violence or crimes involving domestic violence which involve the abuser, and your concerns of further harm;

(3) Advise the Court on appropriate counseling and any other conditions of probation and parole that you believe should be required of the abuser in order to ensure your safety and welfare and that of other family and household members; and

(4) Request restitution for losses directly caused by any criminal conduct by the abuser; you may also be eligible to apply for victim's compensation.

You have the right to request the Court to

order the abuser to pay you for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or financial support, and other expenses for injuries sustained and damage to your property. This request can be made, without need for an attorney, by filing a civil complaint in the Court.

You also have the choice to refuse an interview by the defendant, the defendant's attorney, or other person acting on behalf of the defendant unless the Court orders that an interview may take place under conditions that the Court sets for your protection and comfort."

(b) Written notice provided for general distribution to the public shall not include the addresses of domestic violence shelters.

#### **5A.02.020 Duty to Preserve Evidence**

(a) The Tribe recognizes that victims of crimes involving domestic violence are often reluctant to press charges or testify at subsequent hearings for many reasons, including economic factors and emotional and psychological factors related to patterns of victimization.

(b) A law enforcement officer who responds to an allegation of a crime involving domestic violence shall take reasonable steps to collect sufficient evidence to enable the prosecutor to secure a conviction of the perpetrator without the testimony of any victim. Reasonable steps include, when appropriate, noting the physical and emotion condition of the victim; noting the identity of any witnesses to the incident and determining what they observed; and taking photographs of injuries to any victim, of any damage to property, and of the location and surroundings of the alleged incident.

(c) A law enforcement officer who responds to an allegation of domestic violence or a crime involving domestic violence shall encourage any victim to make an oral and written statement concerning the incident and shall take one from any perpetrator, if possible.

(d) A law enforcement officer who responds to an allegation of a crime involving domestic

violence shall ensure that the victim is made aware of the importance of preserving evidence of the incident.

**5A.02.030 Mandatory Arrest; Determination of Predominate Physical Aggressor**

(a) It is the policy of the Tribe that perpetrators of a crime of domestic violence must be taken into custody when an officer determines that there is probable cause to conclude that a crime involving domestic violence has occurred. This policy is to provide victims with immediate protection from the current violence, afford them an opportunity to consider legal options, to provide victims with time to safely relocate or obtain an order of protection, and to ensure an adequate and prompt law enforcement response to domestic violence. The person shall be held in custody without bail pending further action by the Court.

(b) A law enforcement officer shall, without a warrant, arrest a person and book him or her for the appropriate crime if the officer has probable cause to believe that the person has committed a crime involving domestic violence within the previous four hours. The officer's duty under this subsection is not lessened even though it may be against the expressed wishes of the victim. Nothing in this subsection prohibits an officer from arresting and booking a person upon probable cause to believe that a person has committed a crime involving domestic violence when more than four hours have passed.

(c) If a law enforcement officer receives a complaint alleging a crime involving domestic violence from two or more opposing persons, the officer shall evaluate each person's account separately to determine who was more likely to have been the predominate physical aggressor. In determining whether a person was the predominate physical aggressor, the officer must consider the following as well as any other relevant factors:

- (1) prior complaints of domestic violence;
- (2) the relative severity of the injuries inflicted on each person;

(3) the likelihood of future injury to each person; and

(4) whether one of the persons acted in self-defense.

(d) If a law enforcement officer determines that one person was the predominate physical aggressor, the officer need not arrest the other person, even if the officer has probable cause to believe that the other person has committed a crime involving domestic violence against the predominate physical aggressor.

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

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

(g) The law enforcement officer shall contact the prosecutor within five days of the incident if there is probable cause to believe that a domestic violence crime has been committed and no arrest has taken place.

**5A.02.040 Duty to Request Telephonic Emergency Order of Protection**

(a) A law enforcement officer shall contact the judge by telephone to make a request for an Emergency Order of Protection, and state the grounds for making the request, when:

(1) the officer has probable cause to believe that domestic violence or a crime involving domestic violence has occurred;

(2) the victim or a person authorized to act on behalf of the victim requests immediate protection; and

(3) a judge is not available in person to hear a request for an emergency order of protection.

(b) Upon telephonic authorization from the Court for an emergency order of protection, the law enforcement officer shall:

- (1) write and sign the order as directed by the Court;
- (2) immediately provide the Petitioner with a copy of the order, and assist the Petitioner in securing any items of property he or she is entitled to under the terms of the order;
- (3) take all reasonable means to serve a copy on the Respondent; and
- (4) provide the order to the Court by the end of the next judicial day.

**5A.02.050 Duty to Expedite Service for Orders of Protection**

The Lummi Police Department shall ensure that law enforcement officers give priority to serving orders of protection.

**5A.02.060 Duty to Seize and Hold Weapons**

(a) A law enforcement officer who responds to an allegation of domestic violence or a crime involving domestic violence shall confiscate any weapon that was used or threatened to be used in the alleged incident.

(b) The officer may also seize a weapon that is in the plain view of the officer or was discovered pursuant to a consensual search or a search incident to arrest as necessary for the protection of the officer or other persons.

(c) Law enforcement officers shall confiscate weapons from a person who is prohibited from possessing them.

(d) Law enforcement officers are authorized to accept and hold weapons for safekeeping for a person who is prohibited from possessing or using them.

**5A.02.070 Mandatory Arrest for Certain Violations of an Order of Protection**

A law enforcement officer shall, without a warrant, arrest and, upon verification of the order, book the alleged violator when the

officer has probable cause to believe that a Respondent has violated one of the following orders of the Court:

- (a) order to not commit or threaten to commit further acts of domestic violence;
- (b) order to not contact a protected person, harass, annoy, telephone or otherwise communicate with the person, either directly or indirectly;
- (c) order removing the Respondent from a person's residence;
- (d) order to stay away from a protected person's residence, school, place of employment, or any other specific place the person or the person's family or household member frequently go;
- (e) order prohibiting the possession or use of any firearm or other weapon specified by the Court.

The person shall be held in custody without bail pending further action by the Court.

**5A.02.080 Mandatory Arrest for Certain Violations of Pretrial Conditions**

If a law enforcement officer has probable cause to believe that a person has violated a pretrial condition for the protection of another person, imposed by the Court on a person who is alleged to have committed a crime involving domestic violence, the officer shall, without a warrant, arrest the alleged violator. The person shall be held in custody without bail pending further action by the Court.

**5A.02.090 Law Enforcement Records**

(a) The Lummi Police Department shall include coding or other identification on the records it maintains that will indicate which incidents and arrests involved allegations of domestic violence.

(b) The Lummi Police Department is not required to provide records of police contacts alleging incidents of domestic violence to the alleged perpetrator; any records would have to be obtained through the prosecutor's office as part of a criminal prosecution or by Court order. In ordering disclosure, the Court may

order that the victim identification and location be redacted, and may make other orders as necessary to protect the victim's confidentiality.

(c) The Lummi Police Department shall provide all relevant criminal histories and records upon request to:

(1) Victim Advocates who are assessing the propensity for violence of a person who is alleged to have engaged in an act of domestic violence;

(2) Child protection workers inquiring into the safety of a child from a person who is alleged to have engaged in an act of domestic violence;

(3) Elder protection workers inquiring into the safety of an elder or vulnerable adult from a person who is alleged to have engaged in an act of domestic violence; and

(4) Persons providing assessments of propensity for violence as part of Court-ordered evaluation or treatment of persons convicted of a crime involving domestic violence.

(c) Pending the prosecution of a case, the prosecutor may provide a copy of a police report to the victim if, in the discretion of the prosecutor, providing the report will not impair the prosecution. The prosecutor will redact the names of other victims if necessary to protect their confidentiality and will redact the names of juvenile defendants. If the victim is a minor, the prosecutor may release the report to the victim's parent or custodian.

#### **5A.02.100 Victim Compensation**

Victim Advocates shall assist a victim of domestic violence to apply for victim compensation for which the victim is eligible.

### **Chapter 5A.03 Civil Order of Protection**

#### **5A.03.010 Purpose**

A person may seek an order of protection whether or not the person has contacted law enforcement officers to report a crime, but those persons should be referred to law enforcement officers in the event that an

unreported crime has been committed. It is the policy of the Tribe that temporary orders of protection may be issued without prior notice to the Respondent to ensure the immediate protection of the victim and any family or household member, and to prevent further violence. Orders may be modified or extended, with or without notice to the Respondent or a hearing consistent with this purpose. Relief under this Code may not be denied or delayed on the grounds that the relief is available in another action.

#### **5A.03.020 Persons Authorized to File a Petition for an Order of Protection**

(a) Any person, 14 years of age or older, who alleges that he or she is or has been a victim of domestic violence may file a petition for an order of protection.

(b) A person over the age of 18 may petition for relief on behalf of any family or household members under the age of 15.

(c) Family or household members may jointly file a single petition.

(d) A petition on behalf of a person under the age of 14 must be filed by a parent, custodian, or other adult family or household member; if the parent or custodian is the alleged abuser or unreasonable fails to file a petition on behalf of the minor for a protection order, and no adult family or household member files a petition on behalf of the minor, a Victim Advocate may file on behalf of the minor.

(e) A family member, household member, or Victim Advocate may file a petition on behalf of an elder or vulnerable adult if that person is unable to file a petition.

#### **5A.03.030 Contents of a Petition for an Order of Protection or Modification**

A petition for an order of protection from domestic violence, or to modify an existing order of protection, shall include:

(a) the name of the Petitioner and of each person sought to be protected, and ages of any minor sought to be protected;

(b) if the Petitioner is filing on behalf of other persons, the Petitioner's address and a

statement of the person's authority under 5A.03.020 to file the petition;

(c) an allegation that domestic violence has taken place against the person(s) sought to be protected;

(d) the name and, if known, the address, date of birth, and age of the alleged abuser, and his or her relationship to each victim;

(e) a signed statement, or separate affidavit filed with the petition, stating in the Petitioner's own words the specific facts and circumstances of the alleged domestic violence, including whether the Petitioner believes him or herself, or the person sought to be protected, to be in immediate danger of further domestic violence, and if applicable, what modifications to the existing order the Petitioner is requesting, and why the changes are necessary;

(f) a statement listing, if known, each civil or criminal action or proceeding involving both parties, whether past or present; the Court of record for the action or proceeding; and any additional identifying information which may enable the Court to locate those Court records;

(g) a request for the relief sought; and

(h) a separate sheet from the petition on which the Petitioner provides an address for protected persons; the address shall not be provided to the Respondent.

**5A.03.040 Emergency Order of Protection**

(a) The Court shall ensure that a judge, or other authorized person designated by the Court, is available 24 hours a day, seven days per week to hear petitions or requests for an emergency order of protection. These proceedings shall be conducted ex parte.

(b) The Court may issue a written or telephonic emergency order of protection when the Court finds reasonable cause to believe that the Petitioner, or another person sought to be protected, is in immediate danger of domestic violence by a family or household member:

(1) based on statements, made in person or telephonically, by a law enforcement officer or the Petitioner alleging a recent incident of domestic violence by the family or household member; or

(2) upon review of a petition for an order of protection from domestic violence or other reliable documentation alleging a recent incident of domestic violence by a family or household member.

(c) Upon finding that a request for an emergency order of protection meets the requirements of this Code, the Court shall grant the following relief in an emergency order of protection:

(1) order the Respondent to not commit or threaten to commit further acts of domestic violence;

(2) order the Respondent to not contact, harass, annoy, telephone or otherwise communicate with the persons protected under the order, either directly or indirectly;

(3) order that the Respondent is prohibited from possessing or using any firearm or other weapon specified by the Court, and that the Respondent is required to turn such items in to law enforcement for safekeeping.

(d) The Court may grant the following relief in an emergency order of protection:

(1) order allowing the protected person and the person's dependents to remain in the protected person's residence, regardless of ownership of the residence, and removing the Respondent;

(2) order the Respondent to stay away from the protected person's residence, school, place of employment, or any other specific place the protected persons frequently go;

(3) order granting the protected person possession and use of an automobile and other essential personal items and property, regardless of ownership, and direct law enforcement to accompany the protected

person to the residence of the parties to ensure that the protected person is able to safely retrieve such items, or to supervise the Respondent or protected person in removing personal property;

(4) order granting the Petitioner temporary custody of a child or children, including an order directing law enforcement to assist in the transfer or surrender of custody to the Petitioner;

(5) restraining the Respondent from removing a child or children from Whatcom County, Washington; and

(6) order such other relief as the Court deems necessary to protect and provide for the safety of the protected person and any designated family or household member.

(e) An emergency order of protection granting any relief under (d) of this Section expires three working days after issuance unless a hearing is scheduled by the Court with notice to the Respondent. An emergency order of protection granting only relief under (c) of this Section expires ten days after issuance unless a hearing is scheduled by the Court with notice to the Respondent.

(f) Following entry of an ex parte emergency order of protection, the Court shall:

(1) set a date for a hearing in accordance with (d) of this Section;

(2) cause the order to be delivered to the police department for service upon the Respondent and for enforcement; and

(3) transmit a copy of the order to any additional appropriate agencies designated by the protected person.

(g) For the purposes of this Section, “ex parte” means that notice and an opportunity to contest the facts are not available to the person adversely affected.

### **5A.03.050 Order of Protection**

(a) Whether or not the Court has issued an ex parte order of protection under 5A.03.040, it may issue an order of protection, or modify an

order of protection, under this section after a hearing. If notice has been sent to the Respondent, the order may be issued whether or not he appears at the hearing.

(b) If, after hearing, the Court determines that domestic violence has occurred, the Court may grant the following relief in an order of protection or modification of an order of protection:

(1) order the Respondent to not commit or threaten to commit further acts of domestic violence;

(2) order the Respondent to move from the protected person’s residence;

(3) order the Respondent to not contact, harass, annoy, telephone or otherwise communicate with the person protected under the order, either directly or indirectly;

(4) order the Respondent to stay away from the protected person’s residence, school, place of employment, or any other specific place the protected persons frequently go;

(5) order that the Respondent is prohibited from possessing or using any firearm or other weapon specified by the Court, and that the Respondent is required to turn such items in to law enforcement for safekeeping;

(6) grant the protected person possession and use of an automobile and other essential personal items and property, and direct law enforcement to accompany the protected person to the residence of the parties to ensure that the protected person is able to safely retrieve such items, or to supervise the Respondent or protected person in removing personal property;

(7) grant a change of custody for any child for whom the Respondent is a parent or custodian;

(8) restrain the Respondent from removing a child or children from Whatcom County, Washington;

(9) specify arrangements for the Respondent to visit any minor child, and require supervision of that visitation by a third party, or deny visitation if necessary to protect the safety of the protected person or child;

(10) order the Respondent to make the following payments to the protected person, the Court, or to another party:

(A) rent or mortgage on the protected person's current residence, regardless of ownership;

(B) support of the protected person and minor child if, under the circumstances, the Respondent is found to have a duty to support the protected person or minor child;

(C) reimbursement for any expenses associated with the domestic violence, including medical expenses, counseling, shelter, and repair or replacement of damaged property; and

(D) costs and fees incurred by the Petitioner in bringing the action, including attorney's fees; and

(11) order such other relief as the Court deems necessary to protect and provide for the safety of the protected person and any designated family or household member.

(c) If the Court issues or modifies an order of protection under this section, the Court shall:

(1) cause the order to be delivered to the Lummi Police Department for expedited service to any of the parties who were not present in the Courtroom. If the police department cannot personally serve the Respondent, the Court shall complete service by certified mail, return receipt requested, and by regular mail to any address the Petitioner believes may reasonably ensure notice to the Respondent, or by publication;

(2) make reasonable efforts to ensure that the order of protection, or modified order of protection, is understood by the Petitioner

and the Respondent, if present; and

(3) transmit a copy of the order of protection, or modified order of protection, to any additional, appropriate law enforcement agencies or other agencies designated by the Petitioner.

(d) An order of protection issued under to this section is effective for up to five years, or until further order of the Court. The order may be rescinded by the Court prior to expiration, upon the Petitioner's request. The order may be renewed upon the Petitioner's request and after notice to the parties and a hearing, whether or not the Respondent appears.

#### **5A.03.060 Request by Respondent for Reconsideration or Modification of Order**

(a) When a Respondent did not receive actual notice of a hearing prior to entry of an Order of Protection under LCL 5A.03.050, the Respondent may request reconsideration of the order of protection.

(b) The Respondent may also request and obtain an modification of an order. In order to obtain modification, the Respondent must prove by a preponderance of the evidence that:

(1) the order contains one of the following provisions:

(A) removes the Respondent from a residence that he or she owns;

(B) requires the Respondent to stay away from the protected person's residence, school, place of employment, or any other specific place the protected person or any designated family or household member frequently go;

(C) grants the protected person possession and use of an automobile and other essential personal items and property, regardless of ownership;

(D) grants the protected person temporary custody of a child or children;

(E) limits or denies the Respondent

visitation with a minor child; or

(F) requires the Respondent to make any payments to the protected person, the Court, or to another party.

(2) a substantial change of circumstances has occurred since the time that the provision in the order was entered;

(3) the provision in the order may be modified without endangering the safety of any person protected under the order; and

(4) the provision in the order works an unreasonable hardship upon the Respondent.

(c) Upon receiving the Respondent's request alleging that all the circumstances set out in (b) of this section exist, the Court shall set a hearing as soon as practicable, but in no event later than 14 days after the next day on which Court is in session following the filing of the Petitioner's request. Notice shall be sent to the Petitioner that the Respondent is seeking a modification of the order of protection.

## **Chapter 5A.04 Court Proceedings for Crimes of Domestic Violence**

### **5A.04.010 Pretrial and Bail Conditions**

(a) When considering pretrial release of a person who is in custody for, or being charged with, a crime involving domestic violence, the Court shall review all available facts and make a determination, on the record if possible, whether or not to release the person, the amount of bail to require, and what pretrial and bail conditions to impose, based on whether the person:

(1) is a threat to the alleged victim or other family or household member;

(2) is a threat to the safety of the community; or

(3) is not reasonably likely to appear in Court for a subsequent proceeding.

(b) The Court shall consider imposing pretrial conditions in order to protect the alleged victim, to protect the community, and to

ensure the appearance of the person at a subsequent Court proceeding. Pretrial and bail conditions may include:

(1) an order to not commit or threaten to commit acts of domestic violence against the alleged victim or other family or household member;

(2) an order to not contact, harass, annoy, telephone or otherwise communicate with the alleged victim, either directly or indirectly;

(3) an order to vacate or stay away from the residence of the victim, even if it is a shared residence, or principally owned by the alleged perpetrator, and to stay away from any specific place the alleged victim or another family or household member frequently go;

(4) an order prohibiting the possession or use of any firearm or other weapon specified by the Court, and to turn such weapon in to law enforcement for safekeeping;

(5) an order prohibiting the person from possession or consumption of alcohol or controlled substances; and

(6) any other order the Court believes is reasonably necessary to protect and ensure the safety of the alleged victim and family or household members, to protect and ensure the safety of the community, or to ensure the appearance of the person at a subsequent Court proceeding.

(c) If pretrial conditions are imposed, the Court shall:

(1) issue a written order that shall contain the conditions imposed by the Court; and

(2) immediately distribute a copy of the order to the Lummi police department, and any entity having custody of the person.

(d) The Court shall direct the Lummi Police Department, or any other entity having custody of the person, to provide a copy of the pretrial conditions to the person upon his

or her release. Failure to provide the person with a copy of the conditions of release does not prevent enforcement of the conditions if the person has actual notice of the conditions.

(e) If pretrial conditions are imposed without a hearing, the Court shall hold a prompt hearing to review the conditions, upon the request of the person restrained by the conditions.

(f) When a person who is in custody for a crime involving domestic violence is released from custody, the Court shall direct the Lummi Police Department, or any other entity having custody of the person to:

- (1) Use all reasonable means to immediately notify the victim of the alleged crime that the person is being released; and
- (2) furnish the victim of the alleged crime a copy, at no cost, of any pretrial conditions imposed for the safety of the victim.

#### **5A.04.015 Witness Testimony**

(a) Upon the request of a prosecutor or the defense, the Court may issue a material witness warrant compelling a witness to appear before the Court. In making the request, the party must certify that:

- (1) the witness is material to the party's case;
- (2) the witness has failed or refused to appear before the Court; and
- (3) other means of securing the witness' presence at trial have proved futile.

(b) With the legislative purpose in mind to find the truth while allowing a domestic violence victim protection from trauma to the extent that is constitutionally permitted, the Lummi Tribal Court may implement state or federal rules of procedure regarding the admissibility of evidence, including, but not limited to, hearsay, video-taped depositions, or testimony by closed-circuit television. The Lummi Indian Business Council declares that protection of domestic violence victim-witnesses is a substantial and compelling interest of the Lummi Nation. When abuse is

prosecuted, a domestic violence victim-witness may suffer serious emotional and mental trauma from exposure to the abuser or from testifying in open Court. The creation of procedural devices designed to enhance the truth-seeking process and to shield domestic violence victim-witnesses from the trauma of exposure to the abuser and the Courtroom is a compelling tribal interest.

#### **5A.04.020 Powers and Duties of Prosecutor**

(a) A person prosecuting a crime involving domestic violence shall:

- (1) encourage the victim to advise the prosecutor as to the victim's wishes regarding the outcome of the case;
- (2) upon request, inform the victim of all Court hearings where the defendant has the right to be present;
- (3) forward to the Court any requests or statements made by the victim regarding victim impact, recommendations for treatment and other conditions of sentencing, and restitution;
- (4) notify the victim or, if the victim cannot be contacted notify Lummi Victims of Crime, when:

(A) an alleged perpetrator will not, for any reason, be prosecuted for an alleged crime involving domestic violence; and

(B) when the disposition of the case involves an agreement reached during plea bargaining.

(b) If the prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the prosecutor must state the specific reasons for the dismissal in the written motion. If the motion for dismissal is based on the unavailability of the alleged victim or any witness, the prosecutor's office shall indicate any known reason why such person(s) are unavailable, and why the case cannot be prosecuted in that person's absence.

(c) In filing a criminal complaint, the

prosecutor may decline to charge the alleged crime as one involving domestic violence upon a determination that the alleged crime does not come within the purpose of this title, to prevent domestic violence, because the incident does not involve an attempt by one family or household member to exercise power and control over the other family or household member.

#### **5A.04.040 Prohibitions on Dismissal of Criminal Case**

The Court shall not dismiss a criminal case alleging a crime involving domestic violence for the sole reason that a civil compromise or settlement is offered or reached or that the victim does not want the matter to be pursued.

#### **5A.04.045 Judgments of Conviction**

(a) When entering a judgment of conviction for a crime involving domestic violence, the Court shall:

- (1) consider the entry of orders for the protection of the victim, including those set out in LCL 5A.04.010(b)(1)-(6);
- (2) order the defendant to obtain a domestic violence evaluation and to comply with all treatment recommendations, including additional recommendations that may be made during treatment;
- (3) order restitution as warranted; and
- (4) order the defendant to pay \$50 into a victim impact fund to be maintained by the Lummi Victims of Crime office.

(b) For the purposes of this section, a domestic violence evaluation shall include a complete diagnostic evaluation; an evaluation of current and past criminal history; an evaluation of all violence history whether or not it resulted in a conviction; an assessment of future dangerousness; an assessment of family and cultural issues; an assessment of substance abuse; an assessment of learning disabilities and other special needs that would affect the method of treatment; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual. The evaluation may not be based solely on the defendant's self-report.

The defendant must sign privacy releases for the evaluator to obtain any confidential information that is necessary to the evaluation.

(c) Satisfactory completion of domestic violence treatment required under this section must be based on meeting treatment goals, not merely the completion of a certain period of time or certain number of sessions. The treatment must focus on ending the violence and holding the defendant accountable for his or her violence. The treatment must include education about the individual, family, and cultural dynamics of domestic violence. If the defendant or the victim has a minor child, treatment must include education about the effects of domestic violence on children. The defendant must sign privacy releases for the treatment provider to obtain any confidential information that is necessary to the treatment.

The defendant must also sign a release for the treatment provider to provide information to the probation office in order to monitor compliance with the Court order.

#### **5A.04.070 Information from National Crime Information Databases**

Under the power granted in 18 U.S.C. § 534(e)(1), the Court shall obtain information from national crime information databases of identification records, criminal history records, protection orders, and wanted person records for use in domestic violence or stalking cases.

### **Chapter 5A.05 Special Rules of Court and Applicable Law**

#### **5A.05.010 Expedited Service of Process**

In any case where a perpetrator of alleged domestic violence or crime involving domestic violence cannot personally be served a notice required by this Code, and service of process must be effected by mail or publication, service shall be complete:

- (1) Upon delivery of the mail, for any form of mail requiring a return receipt signed by the addressee, unless returned by postal authorities because of the addressee's refusal to accept, in which case service is complete 14 days after mailing notice to the same address by first class mail.

(2) Fourteen days from the date of first publication, if the notice is published at least once a week for three consecutive weeks in a newspaper of general circulation in the vicinity of the Lummi Indian Reservation.

**5A.05.020 Mediation in Cases Involving Domestic Violence**

(a) In any proceeding concerning the custody of, or visitation with a child, the Court shall not order mediation or refer either party to mediation if an order of protection is in effect.

(b) In any proceeding concerning the custody of, or visitation with a child, if there is an allegation of domestic violence, and an order of protection is not in effect, the Court may offer mediation only if:

- (1) mediation is requested by the victim of the alleged domestic violence;
- (2) mediation is provided by a certified mediator, who is trained in domestic violence in a specialized manner intended to protect the safety of victims; and
- (3) the victim is permitted to have a supporting person of his or her choice, such as an attorney or Victim Advocate, in attendance at the mediation.

**5A.05.030 Spousal Privileges Not Applicable**

The following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of domestic violence or an alleged crime involving domestic violence perpetrated by the other spouse:

- (a) the privilege of confidential communication between spouses; and
- (b) the privilege to not testify against a spouse.

**5A.05.040 Victim Advocate - Victim Privilege**

(a) An evidentiary privilege extends to all oral and written communications between the

Victim Advocate and the victim; all communications made in the course of the advocacy relationship, including those made to or in the presence of third parties also participating in the advocacy or other victim services; and written records and reports maintained by the advocate concerning the victim, when:

- (1) the victim claims the Victim Advocate-victim privilege; or
- (2) the person who was the advocate at the time of the confidential communication claims the Victim Advocate-victim privilege.

(b) A Victim Advocate may not claim the privilege if the privilege has been waived by the victim, the victim has been found to be incompetent, or if the victim is deceased.

(c) The Victim Advocate-victim privilege does not relieve a person from any mandatory duty to report child abuse or neglect imposed by federal or tribal law. A person may not claim the privilege when providing evidence in proceedings concerning child abuse.

**5A.05.050 Child Custody and Visitation Determinations**

(a) In every proceeding where custody or visitation of a child is in dispute, a determination by the Court that domestic violence has occurred,

- (1) raises a rebuttable presumption that it is detrimental and not in the best interest of the child to be placed in sole custody, joint legal custody or joint physical custody with the perpetrator of domestic violence.
- (2) raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, in the location of that parent's choice.

(b) In addition to other factors that a Court must consider in a proceeding where custody or visitation of a child is in dispute, and the Court has made a finding of domestic violence, the Court shall also consider:

(1) that the safety and well-being of the child and of the parent who is the victim of domestic violence is the primary concern; and

(2) the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury or assault to any other person.

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

#### **5A.05.070 Conditions of Visitation**

(a) A Court may award visitation by a parent who committed domestic violence only if the Court finds that adequate provision for the safety of the child and the parent who is a victim of domestic violence can be made.

(b) In a visitation order, adequate provision for the safety of the child and the parent who is a victim of domestic violence may include but is not limited to an order that:

(1) exchange of a child is to occur in a protected setting;

(2) visitation is to be supervised by another person or agency;

(3) the perpetrator of domestic violence is to attend and complete, to the satisfaction of the Court, and as a condition of the visitation, a program of counseling for perpetrators of domestic violence, or some other designated counseling;

(4) the perpetrator of domestic violence is to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation;

(5) the perpetrator of domestic violence is to pay a fee to defray the costs of supervised visitation;

(6) overnight visitation is prohibited;

(7) the perpetrator of domestic violence is

to post bond for the return and safety of the child; and

(8) the perpetrator of domestic violence is to comply with any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic violence, or any other family or household member.

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

(d) The Court may refer, but shall not order, an adult who is a victim of domestic violence to attend counseling related to the victim's status or behavior as a victim, either individually or with the perpetrator of domestic violence as a condition of receiving custody of a child, or as a condition of visitation.

(e) If a Court allows a family or household member to supervise visitation, the Court shall furnish clear guidelines to those persons related to their responsibility and authority during supervision, so they are better able to protect the child should the perpetrator engage in violent or intimidating conduct toward the child or adult victim in the course of visitation.

#### **Chapter 5A.06 Health, Child Protection, and Social Services Response and Duties**

##### **5A.06.010 Notice by Lummi Tribal Health Center to Victim**

(a) The Lummi Tribal Health Center shall make available to its staff and patients a written notice, as set forth in Section 5A.02.015, of the rights of victims and of the remedies and services available to victims of domestic violence.

(b) Any health care practitioner, who becomes aware that a patient is a victim of domestic violence, shall directly provide the patient with the written notice set forth in Section 5A.02.015.

##### **5A.06.020 Lummi Tribal Health Center Notice to Parents**

(a) In order to avert the trauma of domestic

violence and child abuse in families, and a first step in the process of providing essential safeguards and services for families, is it is the policy of the Tribe to inform parents, particularly of new or young families, about domestic violence, and the community and health care systems which are available for support and assistance.

(b) The Lummi Tribal Health Center shall provide information concerning domestic violence to parents of both newborn infants and hospitalized minors. The information must include but is not limited to the effect of domestic violence on children, and available services for the prevention and treatment of domestic violence.

#### **5A.06.030 Child Protection Response and Duties**

(a) Any person or entity performing child protection services within the Lummi Nation shall screen each referral for abuse or neglect of a child to assess whether abuse or neglect of another family or household member is also occurring. The assessment shall include but is not limited to:

(1) Inquiry concerning incidents of violence in the criminal record of the parents, and the alleged abusive or neglectful person, and the alleged perpetrator of domestic violence, if such person is not a parent of the child; and

(2) inquiry concerning the existence of orders for protection issued to either parent.

(b) If it is determined in an investigation of abuse or neglect of a child that:

(1) the child or another family or household member has been or is a victim of domestic violence, or is threatened by acts of domestic violence, and it reasonably appears to the person conducting the investigation that the child or another family or household member is in danger of domestic violence and that removal of one of the parties is necessary to prevent the abuse or neglect of the child, the responsible person or entity, shall seek the removal of the alleged perpetrator; and

(2) a parent of the child is a victim of domestic violence, services must be offered to the victimized parent and the provision of such services may not be contingent upon a finding that either parent is at fault or has failed to protect the child.

### **Chapter 5A.07 Enforcement of Foreign Orders**

#### **5A.07.010 Policy**

It is the policy of the Tribe to ensure the safety of victims of domestic violence, and crimes involving domestic violence, who are located within the jurisdiction of the Lummi Nation, by giving effect to foreign orders for protection and to comply 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. § 2265), as now or hereafter amended.

#### **5A.07.020 Enforcement of Foreign Orders of Protection**

(a) For the purposes of this chapter, a “foreign order” is an order issued by another jurisdiction.

(b) A foreign order of protection that appears authentic on its face is presumed to be valid.

(c) Any order of protection, except as noted in (b) below, issued by a Court of any Indian tribe, a state of the United States, the District of Columbia, or a commonwealth, territory or possession of the United States, shall be accorded full faith and credit by the Court of the Lummi Nation, and shall be enforced as if it were an order of the Court, if:

(1) the issuing Court had jurisdiction over the parties and the matter at the time the order was issued; and

(2) the issuing Court gave reasonable notice and an opportunity to be heard to the person the order is issued against, sufficient to protect that person’s right to due process. in the case of ex parte orders, notice and opportunity to be heard were given within a reasonable time after the order is issued.

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(d) A foreign order of protection entered against both a plaintiff and a Respondent shall not be enforceable against the plaintiff unless:

(1) The defendant filed a cross or counter petition, complaint or other written pleading seeking such a protection order; and

(2) the issuing Court made specific findings of domestic violence or a crime involving domestic violence by both the plaintiff and defendant and determined that each party was entitled to such an order.

**5A.07.030 Filing Foreign Orders of Protection**

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(a) A plaintiff who obtains a valid order of protection from another Indian tribe or State of the United States, the District of Columbia, a commonwealth, territory or possession of the United States may file that order by presenting a certified copy of the foreign order of protection to a clerk of the Lummi Tribal Court.

(b) A person may file a foreign order of protection without fee or cost.

(c) Upon receipt of a foreign order of protection, the Court clerk shall:

(1) forward a copy of the foreign order of protection to an officer of the police department;

(2) provide the plaintiff with a document bearing proof of filing with the Court; and

(3) inform the plaintiff of the process for Court review of a foreign order of protection, and take steps to expedite review when the plaintiff perceives a risk of further harm.

**5A.07.040 Court May Recognize Additional Foreign Orders**

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Nothing in this Chapter shall prevent the Lummi Tribal Court from entering into agreements, or establishing procedures, by which orders of protection from jurisdictions not referred to in this Chapter may be filed with the Court and be entitled to full faith and