

## **CHAPTER 29 - DOMESTIC VIOLENCE**

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### **Section 29-1 Title, Purpose and Definitions**

**29-1.01 Purpose.** It is the legislative intent and purpose of the Spokane Tribal Council in enacting this Chapter:

- (a) To promote the health, welfare and peace of the people of the Spokane Reservation by providing an orderly, efficient and peaceful method of handling domestic violence situations;
- (b) To provide maximum protection to victims of abuse;
- (c) To show that all members of the Tribe and the entire community residing on the Spokane Indian Reservation are to be cherished and treated with respect, and,
- (d) To show that the voluntary use of any mind altering chemical/drug, including alcohol, will not be an excuse for violent behavior.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

**29-1.02 Jurisdiction.** The Spokane Tribe of Indians enacts this Chapter to apply to all people within the exterior boundaries of the Spokane Reservation, and all Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Reservation, as well as those lands that fulfill the definition of "Indian Country" as defined in 18 U.S.C. Section 1151.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

**29-1.03 Definitions.** For the purposes of this Code, the following words and phrases shall, unless otherwise indicated, have the following meaning:

- (a) "Abuse" means the infliction of physical harm, bodily injury or sexual assault, or the apprehension of physical harm, bodily injury or sexual assault, and includes but is not limited to:
  - (1) Assault;
  - (2) Assault and Battery;
  - (3) Abduction;
  - (4) Attempted Rape or Rape;
  - (5) Malicious Destruction of Property;
  - (6) Criminal Trespass to Land, if owned by the alleged victim;
  - (7) Criminal Trespass to Building, if owned or leased by the alleged victim;
  - (8) Malicious Mischief;
  - (9) Kidnapping;
  - (10) Violation of a No Contact Order or Restraining Order issued under this Chapter;
  - (11) Stalking.
- (b) "Court" means Spokane Tribal Court.

- (c) "Intimate Partner" means a spouse, former spouse(s), a person related by blood or marriage, a person related by an existing or prior marriage, a person who resides or formerly resided with the person, or a person with whom the person has a child in common regardless of whether they have been married or have lived together at any time.
- (d) "Domestic Violence" means an act of abuse inflicted by a perpetrator upon
- (1) an intimate partner
  - (2) the child of the intimate partner
  - (3) the child of the perpetrator
  - (4) a parent of the perpetrator.
- (e) "Mandatory Arrest" means that the police officer shall arrest within 24 hours, if there is probable cause to believe the person to be arrested has committed an offense as defined by this Chapter, even though the arrest may be against the express wishes of the victim. The victim need not sign a complaint for an arrest to occur.
- (f) "Order of Protection" means a court order granted for the protection of victims of domestic violence.
- (g) "No Contact Order" means a court order issued by the Court at the time the bail hearing or arraignment, directing the defendant to have no contact with the victim.
- (h) "Perpetrator" means the person who has allegedly committed an act of domestic violence.
- (i) "Police Officer" means a member of the Spokane Tribal Police, the Bureau of Indian Affairs Police, or a conservation/park ranger, security officer or other person who holds a special commission with the Spokane Tribe.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

### **Section 29-2 Crime of Domestic Violence**

**29-2.01 Penalty/Punishment.** Any person who shall knowingly commit an act of domestic violence and has been convicted of the underlying offense shall be sentenced to, in addition to the sentence for the underlying conviction:

- (a) for a first offense, a \$350 fine;
- (b) for a second conviction within 2 years, not less than 30 days in jail, and/or not less than \$500, or both such confinement and fine; or
- (c) for a third or subsequent conviction within 2 years, not less than 60 days, and/or a fine of \$1,000, or both such confinement and fine.
  - (1) This section shall apply to any offense committed after the enactment of this section, but any conviction for a crime of domestic violence committed before enactment of this section may be considered in determining whether the sentence should be enhanced.
- (d) Juveniles: Any juvenile committing domestic violence shall be subject to prosecution and all other conditions outlined under this chapter.
  - (1) Any such prosecution shall be in accordance with Section 6-1.08 (Chapter 6 Youth Code) and any imposition of jail time shall be served in a Juvenile Detention Center.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-2.02 Willful Violation of No Contact or Restraining Order. Willful violation of a court order issued in a domestic violence case is a crime and upon conviction, the defendant shall be sentenced to a period of confinement not to exceed 1 year or ordered to pay a fine not to exceed \$5,000, or both jail sentence and fine, and costs.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-2.03 Willful Violation of the Prohibition on Possessing a Firearm. Willful violation of a Court order issued in a domestic violence case prohibiting the defendant from possessing a firearm is a crime and upon conviction, the defendant shall be sentenced to a period of confinement not less than 30 days and not to exceed 1 year and/or order to pay a fine of not less than \$1,000, and not more than \$5,000, or both jail sentence and fine, plus costs.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-2.04 Additional Requirements. In addition to the imposition of such confinement and/or fine the Court shall order the person convicted of the offense of domestic violence to complete a domestic violence evaluation and comply with treatment recommendations, as provided in Section 29-4.09 of this Chapter, and if alcohol and/or drugs is indicated, also complete a chemical dependency evaluation and comply with treatment recommendations as provided in Section 29-4.08.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

### **Section 29-3 Duties of Police Officers**

29-3.01 Primary Duty. It shall be the primary duty of the police officer, when responding to a domestic violence situation, to enforce the laws allegedly violated and to protect the complaining party(ies).

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 29-3.02 Response to Domestic Violence Situations

(a) A police officer shall arrest an alleged perpetrator of domestic violence, if an arrest warrant has been issued, or without a warrant, if the offense occurs in the presence of the officer or if the officer has probable cause to believe that the person to be arrested has committed domestic violence without regard to any other requirements imposed by Chapters 8, 9 or 10, of the Spokane Tribal Law and Order Code, including a person who may have violated the terms of a No Contact or Restraining Order, prohibiting the person from contact and/or acts or threats of acts of violence and/or excluding that person from a residence.

(1) If the conditions for arrest established by this Section are present, the officer shall arrest the alleged perpetrator of domestic violence regardless of whether the alleged victim signs a complaint and whether the arrest is against the expressed wishes of the alleged victim.

(b) Whenever a police officer investigates an alleged act of domestic violence, regardless of whether an arrest is made, the officer shall make a written incident report of the alleged abuse and submit that report to the Spokane Tribe's Domestic Violence Program, or Department of Health and Human Services if there is no such program, within 48 hours for purposes of program coordination.

(c) In all domestic violence arrests, the officer shall notify the victim advocate on call of the situation and allow the advocate to accompany him/her to the call once the scene has been determined to be secure by the officer.

(1) If the advocate cannot be reached the advocate shall be notified by the next working day.

(2) If, after investigating a complaint of domestic violence, the officer does not make an arrest, the officer shall notify the victim advocate and advise of the incident.

- (d) Within 24 hours following an arrest involving domestic violence, the police officer shall advise the known victims of:
- (1) the availability of Domestic Violence Treatment Programs;
  - (2) their legal rights and available services;
  - (3) information about how to obtain a "No Contact Order" or a Temporary Restraining Order, and,
  - (4) the availability of filing a criminal complaint if an arrest is not immediately made.
- (e) Upon an arrest of an alleged perpetrator under this section, the arresting police officer shall cause the filing with the court a criminal complaint and an affidavit or written report of the alleged abuse.
- (1) Whether or not the alleged perpetrator has been arrested, the police shall refer the alleged victim to the victim advocate within 24 hours.
  - (2) The Spokane Tribal Police Department and the Bureau of Indian Affairs Police, or other commissioned officer, shall develop and maintain a protocol for implementation of their obligations under this Chapter.
- (f) While held in custody, the alleged perpetrator shall not be allowed to have contact with the alleged victim from jail.
- (g) If a law enforcement officer receives complaints of domestic violence from 2 or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor.
- (1) If the officer determines that 1 person was the predominate aggressor, the officer need not arrest the other person alleged to have committed domestic violence.
  - (2) In determining whether a person is the predominate aggressor, the officer shall consider:
  - (3) The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
  - (4) The relative severity of the injuries inflicted on each person, i.e., who in this relationship poses the most danger to the other;
  - (5) The likelihood of future injury to each person, i.e., who is at the most risk of future harm;
  - (6) Whether 1 of the persons acted in self-defense and/or in defense of others, and,
  - (7) The degree to which 1 of the persons has acted with deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain of fear of harm to the person or third party.
- (h) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by any party.
- (i) A law enforcement officer shall not consider the use of abuse of alcohol or other controlled substances by either party in making a determination as to whether of domestic violence has been committed.
- (j) The employment, economic, educational, social, physical and/or mental health and political status of the alleged perpetrator and/or victim shall not be considered in making an arrest.
- (k) The law enforcement officer is not required to make an arrest based on who hit who first, but shall consider the dynamics of domestic violence.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-3.03 Ethics; Familial Relationships of Law Enforcement, Prosecution, and Judges to Defendant.

- (a) All public servants shall be expected to perform their duties and proceed in accordance with this chapter no matter what the employment, education, social and political status of the alleged perpetrator and/or victim.
- (b) Public servants shall be held to the highest professional standards in responding to the crime of domestic violence.
- (c) In instances where law enforcement officers respond to a call involving a relative by blood or marriage, the officer shall note the relationship on the case report.
- (d) In instances where law enforcement officers have responded to a call involving a relative by blood or marriage, the supervisor reviewing the report shall review the report for accuracy and ensure that appropriate action has been taken.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-3.04 Transportation. Upon request of the victim, the police officer or emergency medical response team shall provide or arrange for transportation of the victim to a medical facility or a place of shelter.

Legislative History-Amended 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

**Section 29-4 Special Court Rules**

29-4.01 Special Court Rules. In addition to the rules of court generally applicable to criminal proceedings, the Court has the duty to take the following actions in a proceeding involving alleged domestic violence offenses.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.02 Court Appearance by Defendant.

- (a) At the first court appearance of the defendant charged with an offense involving domestic violence the Court may impose a No Contact Order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance of an arraignment.
- (b) The No Contact Order as provided in Section 29-4.05, if issued, shall be provided to law enforcement upon issuance.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.03 Defendant Guilty.

- (a) If a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such order shall be provided to the victim.
- (b) Willful violation of a court order issued under this section is a crime and shall be punished in conformity with section 29-2.02.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.04 Proof of Dissolution not Required. The Court shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.05 Location of Victim. The Court shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence; *provided that* the court shall order a criminal defense attorney not to disclose to his client the victim's location.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.06 Issuance of No Contact Order.

(a) If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the Court authorizing release may issue, by telephone, a No Contact Order prohibiting the person charged or arrested from having contact with the victim.

(b) The No Contact Order shall also be issued in writing as soon as possible.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.07 Surrender of Deadly Weapon and Prohibition of Possession. If the court has probable cause to believe that the person charged or arrested is likely to use or display or threaten to use a deadly weapon in any further acts of violence, the court may also require that person to surrender any deadly weapon in that person's immediate possession or control, or subject to that person's immediate possession or control and prohibit the person from possessing a deadly weapon.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.08 Presentence Report. If the alleged perpetrator pleads guilty, a pre-sentence report may be ordered at the discretion of the Court prior to sentencing.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.09 Alcohol and Drug Evaluation. If it appears to the Court that alcohol or drugs played a part in the abuse, the Court may order a chemical dependency evaluation prior to sentencing.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.10 Guilty Plea or Conviction. Upon a guilty plea of conviction, the defendant shall be ordered to participate in an appropriate domestic violence program consisting of at least the following:

(a) The defendant shall attend and cooperate in an intake session for evaluation.

(b) The evaluation shall be completed by a Court approved evaluator for domestic violence, or the Spokane Tribal Domestic Violence Program, not later than 14 calendar days after entry of the order requiring evaluation, unless the Court extends that time period.

(c) The defendant shall sign the necessary waiver of confidentiality for the treatment provider to provide a copy of the evaluation and recommended treatment plan which shall be provided to the Court and the parties.

(d) In the discretion of the Court the execution of any monetary or jail penalty may be suspended pending completion of the treatment ordered by the Court.

(e) The domestic violence program and/or other service provider shall submit progress reports to the Court at least once every 4 calendar weeks.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.11 Willful Failure or Refusal to Comply With a Court Order.

(a) Willful failure or refusal to comply with a court order requiring a perpetrator to attend and cooperate in evaluation and/or to undergo treatment as described in a treatment plan shall constitute contempt of court punishable as provided in Chapter 1, Section 1-8.03 and Chapter 4, Section 4-25.07 of the Spokane Tribal Law and Order Code, or a new charge of Disobedience of a Lawful Court Order of the Court, pursuant to Chapter 14 Section 14-7.01.

(b) If the Court has suspended execution of any penalty imposed under Section 3 of this Chapter on the condition that the perpetrator undergo court-ordered evaluation and/or treatment, the Court may also order execution of any such suspended sentence, in addition to the Tribe filing Contempt or Disobedience charges under the above referenced statutes.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 29-4.12 Admissibility of Child Statement.

(a) For purposes of prosecution including juvenile offense adjudications, a statement made by a child when under the age of 10 describing any act of sexual contact performed with or on the child by another, describing any attempted act of sexual contact with or on the child by another, or describing any act of physical abuse of the child by another that results in substantial bodily harm, not otherwise admissible by statute or court rule, is admissible in evidence if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(2) The child either:

(A) testifies at the proceedings; or

(B) is unavailable as a witness; *provided, that* when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

(b) A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to challenge the statement.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-4.13 Communication to Police. All orders prohibiting contact shall be immediately communicated to the Police, who shall keep such orders in their active records for immediate reference for at least 1 year from the date of issuance.

Legislative History-Enacted 4/07/00, Res.No.2000-179; Readopted 8/01/06, Resolu. 2006-524.

### **Section 29-5 Victim's Rights**

29-5.01 Final Order-Defendant Convicted. When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such order shall be provided to the victim.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

29-5.02 Decision Not to Prosecute. If a decision is made not to prosecute, the victim shall be advised, within 5 days of the decision, of the reasons for not prosecuting, and any recourse available to the victim.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

#### 29-5.03 Domestic Violence Leave.

(a) Purpose: Victims of Domestic Violence are often times forced to flee from a perpetrator in order to avoid future danger and violence.

(1) In so fleeing victims who are employed frequently miss days of employment.

(2) It is the purpose of this section to preclude employers located on the Spokane Indian Reservation from terminating any employee who can document an instance of domestic violence which contributed to the employee's absence from employment.

(3) Employers have the option of granting such employees leave with pay or leave without pay because of domestic violence related absences.

(b) Discharges for Absence of Employment Due to Domestic Violence Prohibited. It shall be a violation of this chapter for any employer located within the exterior boundaries of the Spokane Indian Reservation to terminate or otherwise discipline any employee who has missed work or is tardy to work when such employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other method satisfactory to the employer, that he/she has been the victim of domestic violence and that such violence contributed to his/her absence(s) from work or tardiness to work.

(1) In lieu of disciplinary action, the employer shall grant the employee leave with or without pay, dependent upon the policies of the employer, for such absences.

(c) Penalty for Violation: Any employer who willfully violates this section shall be subject to a civil penalty of \$500 payable to the Tribe in addition to any other remedies the wrongfully discharged employee may have against his/her employer.

(1) Nothing in this section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this section.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

### **Section 29-6 Liability of Police Officers**

29-6.01 Liability of Police Officers. A police officer shall not be held liable in any civil action for an arrest based upon probable cause, enforcement in good faith of a court order, or any other action or omission

29-6.02 taken in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

Legislative History-Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.

### **Section 29-7 Severability**

29-7.01 Severability. If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances is not affected, provided that the purposes of the Chapter can still be fulfilled.

Legislative History - Enacted 4/07/00, Resolu. 2000-179; Readopted 8/01/06, Resolu. 2006-524.