

**SKOKOMISH CRIMINAL CODE
FAMILY-RELATED OFFENSES**

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9.06.010 **Incest (REPEALED and MOVED to S.T.C. 9.02A By Res. No. 98-012, March 19, 1998)**

9.06.020 **Endangering the Welfare of a Minor**

Any person who knowingly endangers the welfare of a minor by violating a duty of care, protection or support, or by intentionally leaving the minor without care or by otherwise neglecting to care for the minor in any manner which threatens serious harm to the physical or emotional well-being of the minor, shall be guilty of a class B offense.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.030 **Bigamy**

Any person who intentionally marries or falsely claims to marry another person when either person has a living spouse, is guilty of a class B offense.

In any prosecution under this section, it is a defense that at the time of the subsequent marriage or purported marriage:

S.T.C. 1.02

- (a) The defendant reasonably believed that the prior spouse was dead; or
- (b) A court had entered a judgment purporting to terminate or annul any prior disqualifying marriage and the actor did not know that such judgment was invalid; or
- (c) The defendant reasonably believed that he or she was legally eligible to marry.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.040 Interference with Custody

Any person without lawful authority, who knowingly takes or entices a minor or incompetent person from the legal custody of a person, agency, or institution or who fails to return a minor or incompetent person to another's legal custody as required by the terms of a valid court order shall be guilty of a class C offense.

The Court shall take into consideration the duration of the interference and the level of trauma resulting to the minor or incompetent person in sentencing a person for this offense.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.050 Failure to Support Dependent Persons

Any person who, without reasonable excuse, refuses or neglects to furnish food, shelter, or care to those dependent upon him or her under the laws of customs and usage of the Skokomish Indian Tribe, or if he or she fails to make proper use of funds or property of a dependent person for the benefit of the dependent, shall be guilty of a class C offense.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.060 Desertion and Non-Support of Minor

Any person who leaves a minor who is less than twelve (12) years of age alone for an amount of time that would ordinarily raise concern based on the standards of the Skokomish Tribal Community and fails to provide for the minors support or care while he or she is away, or willfully neglects or refuses to provide for the support or maintenance of his or her minor, or of a minor in his or her custody, when financially able to do so, shall be guilty of a class C offense.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.070 Failure to Send Minor to School (REPEALED by Resolution No. 16-26)

9.06.080 Curfew (REPEALED by Resolution No. 16-26)

DOMESTIC VIOLENCE ORDINANCE

9.06.101 **General Provisions**

- (a) Declaration of Policy. The Skokomish Indian Tribe recognizes that domestic violence is a serious crime. The official response to cases of domestic violence shall stress the enforcement of laws to protect the victims and shall communicate the policy of the Skokomish Indian Tribe that violent behavior will not be tolerated. It is also a policy of the Skokomish Indian Tribe to assure the victims of domestic violence the maximum protection from abuse which the law and those that enforce the law can provide.
- (b) Definitions. Where a term is not defined in this section, it shall be given its ordinary meaning, unless otherwise defined in the Ordinance. Terms used in this section shall have the following meaning, except where the context clearly indicates otherwise:
- (1) "Court" means the Skokomish Tribal Court or another court of competent jurisdiction;
 - (2) "Domestic Violence" means any act resulting in physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury when committed by one family or household member against another, including, but not limited to, any of the following crimes when committed by one family or household member against another:
 - (A) Rape (S.T.C. 9.02A.006, 9.02A.007, and 9.02A.008);
 - (B) Kidnapping (S.T.C. 9.02.030);
 - (C) Assault (S.T.C. 9.02.040);
 - (D) Battery (S.T.C. 9.02.050);
 - (E) Reckless Endangerment (S.T.C. 9.02.060);
 - (F) Unlawful Imprisonment (S.T.C. 9.02.070);
 - (G) Indecent Liberties (S.T.C. 9.02A.016);
 - (H) Intimidation (S.T.C. 9.02.100);
 - (I) Burglary (S.T.C. 9.03.020);
 - (J) Trespass (S.T.C. 9.03.080);
 - (K) Vandalism and Unauthorized Use (S.T.C. 9.03.120);
 - (L) Violation of the provisions of a restraining order restraining the person or excluding the person from a residence;

(M) Violation of the provisions of a protection order restraining the person or excluding the person from a residence;

(3) "Family" or "Household Members" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together or who have resided together in the past, and persons who have a child in common, regardless of whether they have been married or have lived together at any time.

(4) "Victim" means a family member or household member who has been subjected to domestic violence.

(c) Crimes Involving Domestic Violence. When an act resulting in physical harm or bodily injury, or the infliction of fear of physical harm or bodily injury, or a crime, enumerated within the definition of "domestic violence" in subsection (b), is committed against a family member or household member, the citation or complaint shall indicate that the act or crime involved domestic violence.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.102 Law Enforcement Officers - Training; Powers; Duties

(a) Training. All training relating to the handling of domestic violence complaints by Skokomish Tribal Law Enforcement Officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. The Skokomish Department of Public Safety and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(b) Duties. The primary duty of Skokomish Tribal law enforcement officers when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the victim. The Skokomish Tribal law enforcement officers shall have the authority to arrest or issue a criminal summons pursuant to this Ordinance.

(c) Response. When a law enforcement officer responds to a domestic violence call, the officer shall notify the victim of the victim's right to initiate a criminal proceeding against the offender in all cases where the officer has not exercised arrest powers, or decided to initiate criminal proceedings by summons or otherwise. The parties in such cases shall be advised of the importance of preserving evidence.

(d) Offense Report. A law enforcement officer, having responded to a call where domestic violence occurred, shall complete an offense report, including statements from those involved, and the officer's disposition of the case. A copy of the report shall be forwarded to the Court.

(e) Notice of Legal Rights and Remedies. When a law enforcement officer responds to a domestic violence call, the officer shall advise victims of all responsible means to prevent further abuse, including advising each person

of the availability of a shelter, or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

“IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the Skokomish Tribal Prosecutor to file a criminal complaint. You also have the right to file a petition in Skokomish Tribal Court requesting an order for protection from domestic abuse which could include any of the following:

- (1) An order restraining your abuser from further acts of abuse;
- (2) An order directing your abuser to leave your household;
- (3) An order preventing your abuser from entering your residence, school business, or place of employment;
- (4) An order awarding you or the other parent custody of, or visitation with, your minor child or children;
- (5) An order restraining your abuser from molesting or interfering with minor children in your custody;
- (6) An order preventing the abuser from transferring any property or assets except in the usual course of business; and
- (7) An order directing the party not granted custody of any minor children to pay temporary support to the custodial party, if there is a legal obligation to do so.

The forms needed to obtain a protection order are available from the Court.”

- (f) Assistance to Victim(s). The law enforcement officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.
- (g) Report to Prosecutor. The Skokomish Department of Public Safety shall forward a domestic violence offense report to the Skokomish Tribal Prosecutor within ten business days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.
- (h) Records. The Department of Public Safety, as soon as practical, shall record and maintain records of all incidents of domestic violence. Records kept pursuant to this section shall be specifically coded for identification as domestic violence.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.103 Complaint and Petition for an Order for Protection; Notice and Hearing; Relief

- (a) Complaint and Petition for an Order for Protection. Any person may seek relief under this Ordinance by filing a Complaint and/or a Petition for an Order for Protection with the Court.

- (1) A person may petition for relief on behalf of himself/herself, and/or on

behalf of minor family or household members in the following manner:

- (A) A Complaint and/or a Petition shall allege the existence of domestic violence and shall be accompanied by signed declaration made under penalty of perjury by the complaining witness:
 - (i) Identifying the perpetrator of domestic violence;
 - (ii) Identifying the victim of domestic violence; and
 - (iii) Stating the specific facts and circumstances from which relief is sought pursuant to S.T.C. 9.06.

- (B) The petitioner may request, and the Court may issue without notice and a hearing, a Temporary Protection Order:
 - (i) Such Order shall be for no more than 30 days from the date of its issuance.
 - (ii) The Department of Public Safety or anyone authorized by the Court shall serve the Temporary Protection Order upon the respondent personally or by leaving it at the respondent's residence or place of employment with a person at least 14 years old who lives or works there.
 - (iii) The clerk's office shall forward a copy of the Order to the Department of Public Safety no later than the next business day following the issuance of the Order.

- (C) Pursuant to a Temporary Protection Order, the Court may provide relief as follows:
 - (i) Exclude the respondent from the dwelling which the parties share, or from the residence, business, or place of employment of the petitioner; and
 - (ii) Award temporary custody and establish temporary visitation with regard to minor children of the parties, and restrain any party from interfering with the custody of the minor children; and
 - (iii) Order other relief as it deems necessary for the protection of a family or household member, including orders or directives to law enforcement officers pursuant to S.T.C. 9.06.

- (D) A Petition may be made regardless of whether or not there is a pending suit, complaint, petition, criminal action, or other

action between the parties.

(E) A person's right to petition for relief under S.T.C. 9.06 is not affected by the person leaving the residence or household to avoid abuse.

(2) The clerk of the Skokomish Court shall make available simplified forms and instructions. Any assistance or information provided by clerks under this section does not constitute the practice of law. Clerks are not responsible for incorrect information contained in a Petition.

(b) Notice and Hearing. Upon receipt of a Complaint and/or a Petition for Order of Protection:

(1) The Court shall order a hearing, which shall be held not later than 30 days from the date of the filing of the Complaint and/or the Petition with the Court. The Court shall review the Complaint and/or the Petition to determine whether an Arrest Warrant or Summons should issue.

(2) If the Court issues a Summons, the Department of Public Safety or anyone authorized by the Court shall serve the Summons and the Order for Protection upon the respondent personally or by leaving it at the respondent's residence or place of employment with a person at least 14 years old who lives or works there. The clerk of the Court shall have a copy of any Summons issued under this Ordinance forwarded on or before the next business day to the Department of Public Safety.

(A) Service of a Summons and an Order issued under S.T.C. 9.06 shall take precedence over the service of other documents unless they are of a similar emergency nature.

(B) If an Order entered by the Court recites that the respondent appeared in person before the Court, the necessity for further service is waived, and proof of service of that Order is not necessary.

(C) In the event personal service cannot be completed within 5 days prior to the hearing, the Court may set a new hearing date.

(D) Service may be made by publication in a newspaper of general circulation within Mason County, Washington; provided the law enforcement officer files an affidavit with the Court that personal service was attempted, but was unsuccessful because the respondent is avoiding service by concealment, or otherwise, and notice was sent to the respondent's last known address.

- (c) Relief. The relief granted under an Order for Protection shall be for a fixed period not to exceed one (1) year. Pursuant to an Order for Protection, the Court may provide relief as follows:
- (1) Order a party from committing further acts of domestic violence; and
 - (2) Exclude the respondent from the dwelling which the parties share, or from the residence, business, or place of employment of the petitioner; and
 - (3) Award temporary custody and establish temporary visitation with regard to minor children of the parties, and restrain any party from interfering with the custody of the minor children; and
 - (4) Order the respondent to participate in treatment or counseling services; and
 - (5) Order the respondent from transferring any property or assets except in the usual course of business; and
 - (6) Order the party not granted custody of any minor children to pay temporary support to the custodial party; and
 - (7) Order other relief as it deems necessary for the protection of a family or household member, including orders or directives to law enforcement officers pursuant to S.T.C. 9.06.
- (d) Modification of Order. Upon application and with notice of all parties and after a hearing, the Court may modify the terms of any existing Order. In any situation where an Order is terminated or modified before its expiration date, the clerk of the Court shall forward a copy of the modified or terminated Order to the Department of Public Safety no later than the next business day.
- (e) Automatic Review and/or Renewal by the Court. The Court, prior to expiration of an Order For Protection, shall take reasonable steps to contact the petitioner and ascertain if the order should be extended.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.105 Criminal Procedure

- (a) Arrest
- (1) A law enforcement officer shall arrest a person pursuant to an Arrest Warrant issued by the Court pursuant to this Ordinance.
 - (2) A law enforcement officer shall arrest and take into custody a person without a warrant, regardless of whether or not a victim requests the person be arrested, when:

- (A) The officer has probable cause to believe that the person has committed an act resulting in physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury upon a family or household member within the preceding 12 hours; or
 - (B) Following the expiration of this 12-hour period, the officer has probable cause to believe that the person continues to pose an imminent threat of physical harm or bodily injury to the victim or victims; or
 - (C) The officer reasonably believes an Order has been issued under this Ordinance restraining the person and the officer has probable cause that the person has violated the terms of the Order restraining the person from acts or threats of violence, or excluding the person from the residence.
- (3) When the officer has probable cause to believe that family or household members have committed acts of domestic violence against each other, the officer may, but is not required to, arrest both persons. The officer shall arrest the person whom the officer reasonably believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider:
- (A) The intent of this Ordinance to protect victims of domestic violence;
 - (B) The comparative extent of injuries inflicted, or serious threats creating fear of physical injury; and
 - (C) The history of domestic violence between the persons involved.
- (4) A law enforcement officer shall enforce an Order issued by the Court restricting the person's ability to have contact with a victim, by arresting and taking the person into custody when the officer has probable cause to believe the person has violated the terms of that Order.
- (b) Initial Appearance; Arraignment; Conditions of Release
- (1) A defendant who is arrested for a crime involving domestic violence shall be brought before the Court for an initial appearance within 48 hours. At the initial appearance the Court shall determine whether to release the defendant and/or set the conditions of release according to established Rules of the Skokomish Tribal Court. The Court shall also determine the necessity of imposing a "No Contact Order" as a condition of release. The defendant may be arraigned at the initial

appearance.

- (2) A defendant who is criminally charged by complaint with an offense involving domestic violence and not arrested, or a defendant who is arrested for a crime involving domestic violence and not arraigned at the initial appearance, shall be served a summons to appear in court for an arraignment hearing in person no later than 30 days from the date of the complaint or initial appearance. The defendant's appearance is mandatory, and cannot be waived.
 - (3) At the time of the defendant's arraignment and/or initial appearance, if the Court has probable cause to believe the defendant is likely to use, display, or threaten to use a deadly weapon in any further acts of violence, as one of the conditions of pretrial release, the Court may require the defendant to surrender any such deadly weapon in the defendant's possession or control to the Skokomish Department of Public Safety.
- (c) Custody. Anyone arrested for a crime involving domestic violence shall be held without bail for 48 hours or until an initial appearance before the Skokomish Tribal Court, whichever occurs first.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.105 Court Proceedings

- (a) Restrictions Upon and Duties of the Court. Because of the serious nature of domestic violence, the Court, in domestic violence actions:
- (1) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;
 - (2) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;
 - (3) Shall not dismiss any criminal charge involving domestic violence solely because the victim does not wish the defendant to be prosecuted, unless:
 - (A) The victim appears in Court and satisfies the Court that dismissing the charge is the best interest of the parties, including any minor children, and
 - (B) The Tribe concurs with the victim's request;
 - (4) May issue a warrant directing the police to arrest a material witness in order to secure the witness's appearance at trial or hearing if the witness has failed to appear in response to a properly served subpoena;
 - (5) May realign the designation of the parties as "petitioner" and

“respondent,” where the Court finds that the original petitioner is the abuser and the original respondent is the victim.

(b) No Contact Orders. Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person arrested or charged for a crime involving domestic violence is released from custody before arraignment , the Court shall determine whether a “No Contact Order” shall be issued or extended.

(1) Whenever a No Contact Order is issued, modified, or terminated, the Court clerk shall notify and forward a copy of the order to the Department of Public Safety by no later than the next business day.

(2) The written order shall contain the Court’s directives and shall bear the legend: “VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE AND WILL SUBJECT A VIOLATOR TO ARREST.”

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.106 Penalties

(a) Assessment for Counseling. If a person is convicted of any crime and the crime involves domestic violence, in addition to any other lawful penalties or conditions, the Court shall:

(1) Order an assessment of the need for drug, alcohol, mental health, and anger management counseling or treatment, and

(2) Order the person to comply with the assessor’s recommendations, if the Court deems the recommendations to be appropriate.

(b) Violation of Required Counseling. Willful violation of Court ordered counseling or treatment, when ordered as a part of a defendant’s sentence, shall be punishable by imprisonment of no less than 7 days, and no more than 6 months, and the defendant may be fined in amount not to exceed \$500.00. The Court may also order any other condition, including counseling and/or treatment, as part of the sentence.

(c) Violation of Court Orders. Willful violation of any other Court order issued under this Ordinance shall be a criminal offense punishable by imprisonment of not less than 30 days and not more than 1 year, and the defendant may be fined in an amount not to exceed \$1,000.00. The Court may also order any other condition, including counseling or treatment, as part of the sentence.

(d) Court Fee. A court fee of \$50 shall be imposed by the Court when the respondent is found guilty of any violation of this Ordinance.

(e) Penalties Non-Exclusive. Any penalty imposed under this Ordinance is non-exclusive and in addition to any other sentence, fine or penalty imposed by the Court in its discretion pursuant to any other provision of Title 9 or other provision of the Skokomish Tribal Code.

9.06.107 Domestic Violence Diversion Program

- (a) Purpose and Eligibility. The Skokomish Tribe has determined that in certain cases, it is in the best interest of the tribal community and its members to allow the Skokomish Tribal Court to deviate from prescribed sentencing guidelines. The Skokomish Tribal Court may impose a one-time alternative sentencing option to be known as the “Domestic Violence Diversion Program,” provided:
- (1) As in all cases, the Court has fully considered the safety and protection of the victims, including any children;
 - (2) The defendant has not previously participated in a domestic violence diversion program;
 - (3) The victim agrees with the Court’s decision to grant diversion; and
 - (4) The Tribe agrees with the Court’s decision to grant diversion.
- (b) Requirements. When a defendant charged with domestic violence under this Ordinance pleads guilty, the Court may defer the defendant’s sentence for up to one year if the defendant meets all of the following requirements:
- (1) Agrees to an initial assessment by a mental health professional and/or a substance abuse counselor to determine whether alcohol and drug treatment, anger management, or other mental health counseling is required. To determine eligibility for diversion and to establish the level of treatment required, the Court shall consider the following factors:
 - (A) Whether the incident involved drugs or alcohol;
 - (B) Whether a weapon was used;
 - (C) Whether the case involved rape, sexual molestation, or inappropriate touching;
 - (D) Whether a child was sexually or physically abused;
 - (E) Whether a lawful Order issued by the Court has been violated;
 - (F) Whether the person has an extensive history of assault or other violent acts, or has been convicted of any crimes against persons; and
 - (G) Whether the person is willing to take responsibility for his/her behavior;

- (2) Agrees to undergo all treatment as prescribed by the professional assessments;
 - (3) Agrees to observe a “No Contact Order” if applicable;
 - (4) Agrees to pay all costs associated with the incident, including medical expenses or property damage suffered by the victim as a result of the incident;
 - (5) Agrees to report to the Court as ordered on a regular basis and sign releases for the Court to obtain reports of treatment and progress;
 - (6) Agrees to sign a “Standard Order of Agreement/Continuance” for the Court; and
 - (7) Agrees to pay a court fee of \$50.
- (c) Completion. Upon defendant’s completion of all the requirements, the defendant’s plea will be removed from the Court record and the record will be changed to reflect that the case was adjudicated, the defendant successfully completed the diversion program and charges were dismissed.
- (d) Non-Compliance. If the defendant does not comply with the requirements of the diversion agreement or commits any act of domestic violence during his/her diversion agreement, the defendant shall be sentenced as prescribed in this Ordinance.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.06.108 Miscellaneous Provisions

- (a) Immunity. A law enforcement officer may not be held criminally or civilly liable for making an arrest under this Ordinance if the officer acts in good faith and without malice.
- (b) Crime Victim’s Compensation Fund. A fund shall be established and shall be identified as the Crime Victim’s Compensation Fund. Twenty Percent (20%) of any fine imposed under S.T.C. 9.06 shall be placed in that fund to assist victims of domestic violence. The Law and Order Committee shall review and determine all requests for compensation.
- (c) Severability. If any provision of this Ordinance or its application is held invalid, the remainder of the Ordinance, or the application of the provision to other persons or circumstances, is not affected.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

Legislative History prior to July 5, 2017

+Adopted by Resolution No. 95-57 (June 7, 1995)

Amended by Resolution No. 96-66 (September 11, 1996)
+Amended by Resolution No. 98-12 (March 19, 1998)
+Amended by Resolution No. 04-112 (September 8, 2004)
Amended by Resolution No. 16-026 (February 3, 2016)
Reaffirmed by Resolution No. 17-100 (July 5, 2017)

+Ordinance and/or amendments not attached to the resolution in the Skokomish Tribal Archives