


NEZ PERCE TRIBE REVISED CODE
As Amended through Resolution NP 24-226 (April 9, 2024)

TITLE 5 • CHILDREN, FAMILY AND ELDERS

Ch. 5.75 Protection Orders

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CHAPTER 5.75 CIVIL PROTECTION ORDERS

PART I. DEFINITIONS [7-1-3]

As used in the Title 5, the following terms shall have the meanings given below:

- A. Abuse means the intentional infliction of physical harm, bodily injury or sexual assault or the infliction of the fear of imminent physical harm, and— includes but is not limited to—assault and battery as defined in the Nez Perce Tribe’s Criminal Code.

- B. Advocate means a person who is employed to provide services to victims of domestic violence and/or sexual assault or who volunteers to do so after receiving training in the area, and is bound by confidentiality policies.

- C. Contact includes but is not limited to:
 - 1. repeatedly coming into and/or remaining in the visual or physical presence of the other person;
 - 2. following the other person;
 - 3. waiting outside the home, property, place of work or school of the other person;
 - 4. sending or making written communications in any form, including text messaging, instant messaging, and social media, to the other person;
 - 5. speaking with the other person by any means, including leaving a voicemail message;
 - 6. communicating with the other person through a third person;
 - 7. committing a crime against the other person;
 - 8. communicating with a third person who has some relationship to the other person with the intent of impacting the third person’s relationship with that other person;
 - 9. communicating with business entities with the intent of affecting some right or interest of the other person;
 - 10. damaging the other person’s home, property, place of work or school; or
 - 11. delivering directly or through a third person any object to the home, property, place of work or school of the other person.

- D. Dating relationship means a social relationship of a romantic nature. In determining whether parties have a “dating relationship,” the trier of fact shall consider:
 - 1. the length of time the relationship has existed;


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2. the nature of the relationship; and
3. the frequency of the interaction between the parties.

E. Domestic violence means violence committed by an intimate partner of the victim, a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, under the laws of the Nez Perce Tribe.

Domestic violence can take many forms such as but not limited to use of intimidation, contact as defined within this Code, manipulation, isolation, coercion, fear and/or violence, as well as other tactics of power and control to establish and maintain a relationship of dominance over an intimate partner, but does not include acts of self-defense.

The following are examples of what form actions of domestic violence may take, but are not an exhaustive list, merely illustrative:

1. attempting to commit or committing any criminal offense as defined by Nez Perce Tribe Revised Code (NPTrC) Title 4, Chapter 4.20 Offenses Against The Person [formerly 4-1-37 through 4-1-46], and Chapter 4.23 Sex-Related Crimes [formerly 4-1-48 through 4-1-53] against an intimate partner;
2. physically harming, attempting to physically harm, or placing an intimate partner in reasonable fear of physical harm to himself or herself:
 - a. reasonable fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;
3. emotional or mental abuse of the intimate partner, including physical or mental intimidation, controlling activities, or using demeaning language;
4. economic abuse of an intimate partner;
5. causing an intimate partner to engage involuntarily in sexual activity;
or
6. preventing the victim from accessing services.

F. Electronic communications means any form of expression or exchange of information by speech, photographs or written form using electronic means. Electronic communication includes, but is not limited to, communication via telephone, facsimile, electronic mail, social media and other electronic forms.


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- G. Electronic surveillance means monitoring behavior, activities, or whereabouts by electronic means.
- H. Ex parte means that only the requesting party (petitioner) is heard by the court, and that notice and an opportunity to contest the facts are not available to the party adversely affected (respondent) by the court's action. An ex parte protection order is temporary pending a full hearing.
- I. Family or household member means persons who are not Intimate Partners (defined further below); and:
1. who are related by blood, marriage, or adoption;
 2. who are minor children, by blood, marriage, or adoption;
 3. who are minor children who are part of the household; or
 4. who reside or have resided together in the past who are not or have not been intimate partners.
- J. Family violence means the same or similar acts committed in domestic violence, but directed towards a family or household member instead of an intimate partner. The dynamics of power and control may not be present.
- K. Foreign protection order means an injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, or a tribal court, in a civil or criminal action.
- L. Harassment as defined in NPTrC Chapter 4.90.013.
- M. Indian country means the definition given in 18 U.S.C. 1151.
- N. Intimate partner means:
1. spouses;
 2. former spouses;
 3. persons who are or have been in a dating relationship;
 4. persons who are or have been in a marital-like relationship; or
 5. persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship.
- O. Mandatory arrest means that a police officer shall arrest if there is probable cause to believe the person to be arrested has committed an offense as


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defined by this code even though the arrest may be against the expressed wishes of the victim.

- P. No Contact Order means a court order issued pursuant to a *criminal* case that prohibits a criminal defendant from having contact with the victim.
- Q. Protection Order means a temporary or permanent court order, or other order issued by Tribal Court which require one person to stop harming another. The Tribal Court has the authority to order both domestic and non-domestic protection orders. Domestic orders are general related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual assault or stalking; non-domestic orders are generally orders issued to respondents who have no familial or household relationship to the petitioner; and
- includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection. Protection orders are generally issued against respondents who have threatened or engaged in domestic abuse, stalking, sexually abusive behavior, harassment, or have committed an act or acts that reasonably place the petitioner in reasonable apprehension of same.
- R. Perpetrator means the person who is alleged to have committed an act of domestic violence or family violence. The perpetrator may also be referred to as a “defendant” in a criminal case or “respondent” in a civil case.
- S. Program of Intervention for Perpetrators means a specialized program that:
1. accepts perpetrators of domestic violence into treatment or educational classes to satisfy court orders;
 2. offers assessment and treatment to perpetrators of domestic violence;
or
 3. offers classes or instruction to perpetrators of domestic violence.
- T. Sexual Misconduct mean any unlawful sexual act or contact as defined in NPTrC Chapter 4.23.
- U. Stalking means to follow another person or member of that person’s immediate family, or surveilling or cause another person to surveil a person for no legitimate purpose, to make a false report to a law enforcement, credit, or social service agency on more than one occasion, or to interfere with the delivery of any public or regulated utility to a person.


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PART II. GENERAL PROVISIONS

Section 5.75.001 Statement of Purpose [formally 5.70.044]

- A. It is the purpose of this chapter on Civil Protection Orders to stop family and community violence on the Nez Perce Reservation and to promote healing of families and community where possible.
- B. It is the policy of the Tribe that ex parte temporary protection orders 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.
- C. The Nez Perce Tribe further recognizes that there is a distinction between intimate partner domestic violence and family member violence. Domestic violence involves an intimate partner relationship and dynamics of power and control are overwhelmingly present in the action. Family violence is committed against all other family or household members. Both are reprehensible actions that require specialized recognition and enhanced provisions than what might be otherwise available to victims of crimes, or remedies available in civil actions.
- D. The Nez Perce Tribe finds that victims of sexual misconduct deserve the protections afforded within this chapter, regardless of any preexisting relationship with the perpetrator. Incidents of sexual misconduct are heinous and go to the heart of the health, safety, and general welfare of the Nez Perce Tribal Community; therefore, a protection order provided under this chapter is to protect those that have been a victim of sexual misconduct.
- E. The Nez Perce Tribe finds that victims of harassment or stalking, deserve the protections afforded within this chapter, regardless of any preexisting relationship with the perpetrator. Prevention of harassment and stalking is important to the health, safety, and general welfare of the Tribal community. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil harassment protection orders preventing all further unwanted contact between the victim and the perpetrator.

Section 5.75.002 Civil Action

There shall exist a civil action known as a petition for an order of protection. Protection Orders may be sought by a person affected by another who intentionally engages in the following conduct:

- A. domestic Violence;
- B. sexual Assault;
- C. harassment; or
- D. stalking.


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Section 5.75.003 Nonwaiver of Sovereign Immunity

Nothing in this Chapter shall be deemed to constitute a waiver by the Tribe of its sovereignty, rights, powers or privileges, including its immunity from lawsuits brought without its consent.

Section 5.75.004 Reserved

PART III. JURISDICTION AND VENUE

Section 5.75.005 Venue – Civil Protection Orders

A petition may be filed for a civil protection order in any of the following circumstances:

- A. the petitioner resides or is domiciled in the Nez Perce Tribe’s jurisdiction;
- B. the respondent resides or is domiciled in the Nez Perce Tribe’s jurisdiction;
- C. the alleged act occurred within the Nez Perce Tribe’s jurisdiction; or
- D. a communication that allegedly constitutes violence, threats of violence, harassment or stalking was either transmitted from or received in the Nez Perce Tribe’s jurisdiction.

Section 5.75.006 Jurisdiction

Jurisdiction shall be in accordance with Title 1. In addition, the Nez Perce Tribal Court shall retain jurisdiction over members of Federally recognized Indian tribes and any violations of orders of protection entered pursuant to this chapter which are alleged to have occurred outside of the boundaries of the Nez Perce Reservation where such orders are entitled to recognition outside Reservation boundaries as a matter of full faith and credit.

Section 5.75.007 Reserved

Section 5.75.008 Reserved

Section 5.75.009 Reserved

PART IV. FILING

Section 5.75.010 Filing—Types of Petitions [formally 5.70.046]

There shall exist a civil action known as a petition for an order of protection. Protection Orders may be sought as follows:

- A. a petition alleging domestic violence must contain sufficient facts to find the existence of domestic violence committed against the petitioner by an intimate partner or family or household member. A petition for a domestic


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- violence protection order must specify whether the petitioner and respondent are intimate partners or family or household members;
- B. a petition alleging sexual misconduct must contain sufficient facts to find the existence of sexual misconduct was committed against the petitioner by the respondent. A single incident of sexual misconduct is sufficient grounds for a petition for a sexual assault protection order;
 - C. a petition alleging harassment must contain sufficient facts to find the existence of harassment committed against the petitioner or petitioners by the respondent; and
 - D. A petition alleging stalking must contain sufficient facts to find the existence of stalking committed against the petitioner or petitioners by the respondent.

Section 5.75.011 Persons authorized to file [7-3-1, 5.70.045]

- A. A petition to obtain a civil protection order may be filed by:
 - 1. any person who alleges that he or she has been the victim of:
 - a. domestic violence, including intimate partner violence, dating violence or family violence;
 - b. sexual misconduct; or
 - c. Harassment or Stalking. Any family or household member of a person eligible for protection under this chapter who is under the age of 18 years old or is a vulnerable adult.
 - 2. a family or household member on behalf of a person eligible for protection under this chapter who is prevented from doing so by hospitalization, by physical or mental disability, or by fear; or
 - 3. any person acting in an official capacity in the protection from violence including but not limited to Úuyit Kímti (New Beginnings) Program, Nimiipuu Behavioral Health, or a case manager on behalf of a child, or other advocate acting in a professional capacity.

Section 5.75.012 Filing—Provisions governing all petitions [7-3-2, 5.70.046]

The following apply to all petitions for protection orders under this chapter. A petition for an order of protection shall include the following information:

- A. The petition must be accompanied by a confidential document to be used by the court and law enforcement to fully identify the parties and serve the respondent and shall include:
 - 1. the names, ages, and Tribal status of all persons known to the petitioner to be in need of protection;
 - 2. the name, age, Tribal status, and address of the alleged abuser, and his or her relationship to each victim;


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- B. A petition must be accompanied by a declaration signed under the penalty of perjury stating the specific facts and circumstances for which relief is sought including whether the petitioner believes that he or she is in danger of further violence.
- C. The petitioner and the respondent must disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties, to the extent that such information is known by the petitioner and respondent. To the extent possible, the court shall take judicial notice of any existing restraining, protection, or no-contact orders between the parties before entering a protection order. The court shall not include provisions in a protection order that would allow the respondent to engage in conduct that is prohibited by another restraining, protection, or no-contact order between the parties that was entered in a different proceeding. The obligation to disclose the existence of any other litigation includes, but is not limited to, the existence of any other litigation concerning the custody or residential placement of a child of the parties.
- D. A person’s right to petition for relief under this chapter is not affected by the person leaving his or her residence or household.
- E. No filing fee may be charged to petitioners seeking relief under this chapter.

Section 5.75.013 Reserved

Section 5.75.014 Reserved

Section 5.75.015 Service—Methods of service.

- A. To minimize delays and the need for more hearings, which can hinder access to justice and undermine judicial economy, to lessen costs, to guarantee actual notice to the respondent, and to simplify and modernize processes for petitioners, respondents, law enforcement, and the court, the following methods of service are authorized for protection order proceedings, including petitions, temporary protection orders, reissuances of temporary protection orders, full protection orders, motions to renew protection orders, and motions to modify or terminate protection orders.
 - 1. Personal service, consistent with court rules for civil proceedings, is an authorized method of service for any protection order proceeding. Personal service is required in: Cases where the protection orders include orders to surrender and prohibit weapons; cases that involve transferring the custody of a child or children from the respondent to the petitioner; cases involving vacating the respondent from the parties’ shared residence; cases involving a respondent who is incarcerated.


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- a. Personal Service in cases as specified above in this subsection must be made by law enforcement including, at a minimum, two timely attempts at personal service.
 - b. After two unsuccessful attempts at personal service, the court may permit service by other means, including electronic means in accordance with this section.
2. Service may be accomplished by law enforcement through electronic means, including service by email, text message, social media applications, or other technologies, except in cases where personal service is required under paragraph A(1) of this subsection.
- a. The respondent's email address, number for text messaging, and username or other identification on social media applications and other technologies, if known or available, must be provided by the petitioner to law enforcement in the confidential information form, and attested to by the petitioner as being the legitimate, current, or last known contact information for the respondent.
 - b. Electronic service must be effected by law enforcement by transmitting copies of the petition and any supporting materials filed with the petition, notice of hearing, and any orders, or relevant materials for motions, to the respondent at the respondent's electronic address or the respondent's electronic account associated with email, text messaging, social media direct messaging applications, or other direct messaging technologies.
 - c. Sworn proof of electronic service must be filed with the court by the person who effected service. Proof of electronic service must be supported by read-receipt mechanisms, a response, a sworn statement from the person who effected service verifying transmission and any follow-up communications such as email or telephone contact used to further verify, an appearance by the respondent at a hearing, or any other facts upon which the court finds, by a preponderance of the evidence, that the Respondent received the electronic notice.
- B. The court may authorize multiple methods of service permitted by this section and may consider use of any address determined by the court to be appropriate in order to authorize service that is reasonably probable to provide actual notice. The court shall favor speedy and cost-effective methods of service to promote prompt and accessible resolution of the merits of the petition.


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- C. To promote judicial economy and reduce delays, for respondents who are able to be served electronically, the respondent, or the parent or guardian of the respondent for respondents under the age of 18 or the guardian, shall be required to provide his or her electronic address or electronic account associated with an email, text messaging, social media application, or other technology by filing the confidential party information form. This must occur at the earliest point at which the respondent, parent, guardian, or conservator is in contact with the court so that electronic service can be effected for all subsequent motions, orders, and hearings.
- D. If an order entered by the court recites that the respondent appeared before the court, either in person or remotely, the necessity for further service is waived and proof of service of that order is not necessary, including in cases where the respondent leaves the hearing before a final ruling is issued or signed. The court's order, entered after a hearing, need not be served on a respondent who fails to appear before the court for the hearing, if material terms of the order have not changed from those contained in the order, and it is shown to the court's satisfaction that the respondent has previously been served with the order.
- E. When the respondent for a protection order is under the age of 18 or is an individual subject to a guardianship:
 - 1. service of a petition for a protection order, modification, or renewal, shall be completed, as defined in this chapter, upon both the respondent and the respondent's parent or legal guardian.
 - 2. a minor respondent shall not be served at the minor respondent's school unless no other address for service is known.

Section 5.75.016 Service—Timing.

- A. Unless waived by the nonmoving party, service must be completed on the nonmoving party not less than five judicial days before the hearing date. If service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining service or permit service by other means authorized in this chapter. The court shall not require more than two attempts at obtaining personal service before permitting service by other means authorized in this chapter unless the moving party requests additional time to attempt service.
- B. Service is completed on the day the respondent is personally served, on the date of transmission for electronic service, on the 10th calendar day after mailing for service by mail, or on the date of the third publication when publication has been made for three consecutive weeks for service by publication.


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- C. If the nonmoving party was served before the hearing, but less than five business days before the hearing, it is not necessary to re-serve materials that the nonmoving party already received, but any new notice of hearing and reissued order must be served on the nonmoving party. This additional service may be made by mail as an alternative to other authorized methods of service under this chapter. If done by mail, this additional service is considered completed on the third calendar day after mailing.
- D. Where electronic service was not complete because there was no verification of notice, and service by mail or publication has been authorized, copies must also be sent by electronic means to any known electronic addresses.

Section 5.75.017 Service—Development of best practices

The Nez Perce Tribal Court and Tribal Police shall adopt rules, protocols, and pattern forms to standardize and implement best practices for service, including mechanisms and verification options for electronic service and electronic returns of service, as well as best practices for efficient transmission of court documents to law enforcement for entry into criminal justice databases and returns of service or property.

Section 5.75.018 Reserved

Section 5.75.019 Reserved

PART V. HEARINGS

Section 5.75.020 Hearings—Procedure [7-3-4, 7-3-5, 5.70.047 NPTrC]

In hearings under this chapter, the following apply:

- A. Hearings under this chapter are special proceedings that are generally closed to the public. The procedures established under this chapter for protection order hearings supersede civil court rules that are inconsistent with this chapter. Courts should evaluate the needs and procedures best suited to individual hearings based on consideration of the totality of the circumstances, including disparities that may be apparent in the parties' resources and representation by counsel.
- B. The Court shall prioritize hearings on petitions for ex parte temporary protection orders over less emergent proceedings.
- C. When considering any request to stay, continue, or delay a hearing under this chapter because of the pendency of a parallel criminal investigation or prosecution of the respondent, courts shall apply a rebuttable presumption against such delay and give due recognition to the purpose of this chapter to provide victims quick and effective relief.


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- D. Hearings may be conducted upon the information provided in the sworn petition, live testimony of the parties should they choose to testify, and any additional sworn declarations. Live testimony of witnesses other than the parties may be requested by a party but shall not be permitted unless the court finds that live testimony of witnesses other than the parties is necessary and material. If either party requests a continuance to allow for proper notice of witnesses or to afford a party time to seek counsel, the court may continue the hearing. In considering the request, the court should consider the rebuttable presumption against delay and the purpose of this chapter to provide victims quick and effective relief.
- E. If the court continues a hearing for any reason, the court shall reissue any temporary orders, including orders to surrender and prohibit weapons, issued with or without notice.
- F. The rules of evidence need not be applied, other than with respect to privileges and evidence rule 20.
- G. The Court shall, whenever possible, have petitioners and respondents in protection order proceedings gather in separate locations and enter and depart the courtroom at staggered times. Where the option is available, for safety purposes, the court should arrange for petitioners to leave the court premises first.

Section 5.75.021 Hearings—Remote hearings

- A. Hearings on protection orders, including hearings concerning temporary protection orders, full protection orders, compliance, reissuance, renewal, modification, or termination, may be conducted in person or remotely in order to enhance access and safety for all parties.
- B. In the court’s discretion, parties, witnesses, and others authorized by this chapter to participate in protection order proceedings may attend a hearing on a petition for a protection order, or any hearings conducted pursuant to this chapter, in person or remotely, including by telephone, video, or other electronic means where possible. No later than two business days before the hearing, the parties may request to appear at the hearing, with witnesses, remotely by telephone, video, or other electronic means.
- C. The court shall require assurances of the identity of persons who appear by telephone, video, or other electronic means.

Section 5.75.022 Grant of order, denial of order, and improper grounds [5.70.047]

- A. The court shall issue a full protection order if it finds by a preponderance of the evidence that the petitioner has proved the required criteria specified in paragraphs 1 through 4 of this subsection for obtaining a protection order under this chapter.


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1. For a domestic violence protection order, that the petitioner has been subjected to domestic violence by the respondent.
 2. For a sexual assault protection order, that the petitioner has been subjected to nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.
 3. For a harassment protection order, that the petitioner has been subjected to harassment by the respondent.
 4. For a stalking protection order, that the petitioner has been subjected to stalking by the respondent.
- B. The court shall issue a permanent protection order if it finds by clear and convincing evidence the respondent has committed acts that constitute grounds for the issuance of the civil protection order and that the acts are likely to continue if the person is not restrained.
- C. If the court declines to issue a protection order, the court shall state in writing the particular reasons for the court's denial.

Section 5.75.023 Reserved

Section 5.75.024 Reserved

PART VI. ORDERS, DURATION, RELIEF, AND REMEDIES

Section 5.75.025 Ex parte temporary protection orders [5.70.048]

- A. Where it appears from the petition and any additional evidence that the respondent has engaged in conduct against the petitioner that serves as a basis for a protection order under this chapter, and the petitioner alleges that serious immediate harm or irreparable injury could result if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary protection order, pending a full hearing. The court has broad discretion to grant such relief as the court deems proper.
- B. Any order issued under this section must contain the date, time of issuance, and expiration date.
- C. The court may issue an ex parte temporary protection order on the petition with or without a hearing. If an ex parte temporary protection order is denied, the court shall still set a full hearing unless the court determines the petition does not contain prima facie allegations to support the issuance of any type of protection order. If the court declines to issue an ex parte temporary protection order as requested or declines to set a hearing, the court shall state the reasons in writing. The court's denial of a motion for an ex parte temporary protection order shall be retained in the court file.


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- D. If a full hearing is set on a petition that is filed before close of business on a business day, the hearing must be set not later than 14 calendar days from the date of the filing of the petition. If a full hearing is set on a petition that is submitted after close of business on a business day or is submitted on a nonbusiness day, the hearing must be set not later than 14 calendar days from the first business day after the petition is filed, which may be extended for good cause.
- E. If the court does not set a full hearing, the petitioner may file an amended petition within 14 calendar days of the court's denial. If the court determines the amended petition does not contain prima facie allegations to support the issuance of any type of protection order or if the petitioner fails to file an amended petition within the required time, the court may enter an order dismissing the petition.
- F. A petitioner may not obtain an ex parte temporary harassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil harassment protection order, unless good cause for such failure can be shown.

Section 5.75.026 Relief for temporary and full protection orders

In issuing any type of protection order, other than an ex parte temporary harassment protection order as limited by subsection F in the preceding section, the court shall have broad discretion to grant such relief as the court deems proper, including an order that provides relief as follows:

- A. Restrain the respondent from committing any of the following acts against the petitioner and other persons protected by the order: Domestic violence; nonconsensual sexual conduct or nonconsensual sexual penetration; sexual abuse; and unlawful harassment.
- B. Restrain the respondent from making any attempts to have contact, including nonphysical contact, with the petitioner or the petitioner's family or household members who are minors or other members of the petitioner's household, either directly, indirectly, or through third parties regardless of whether those third parties know of the order.
- C. Exclude the respondent from the residence that the parties share.
- D. Exclude the respondent from the residence, workplace, or school of the petitioner; or from the day care or school of a minor child.
- E. Restrain the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location including, but not limited to, a residence, school, day care, workplace, the protected party's person, and the protected party's vehicle. The specified distance shall


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presumptively be 1,000 feet, unless the court for good cause finds that a different specified distance is appropriate.

- F. Order the respondent to obtain a mental health or chemical dependency evaluation. If the court determines that a mental health evaluation is necessary, the court shall clearly document the reason for this determination and provide a specific question or questions to be answered by the mental health professional. Before ordering an evaluation, the court shall consider the ability of the respondent to pay for an evaluation. Minors are presumed to be unable to pay, however, the court may consider the parent and/or guardian's ability to pay for the minor's evaluation.
- G. Restrain the respondent from harassing, following, monitoring, keeping under physical or electronic surveillance, stalking, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of the petitioner or the petitioner's family or household members who are minors or other members of the petitioner's household.
- H. Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included. Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent, and may prohibit the respondent from interfering with the petitioner's efforts to obtain the pet. The court may also prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found.
- I. Order other relief as it deems necessary for the protection of the petitioner and other family or household members who are minors or vulnerable adults for whom the petitioner has sought protection, including orders or directives to a law enforcement officer, as allowed under this chapter.
- J. The court in granting a temporary harassment protection order or a civil harassment protection order shall not prohibit the respondent from exercising constitutionally protected free speech. Nothing in this section prohibits the petitioner from utilizing other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected.
- K. The court shall not issue a full protection order to any party except upon notice to the respondent and the opportunity for a hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with this chapter.
- L. The order shall specify the date the order expires, if any. For permanent orders, the court shall set the date to expire 99 years from the issuance date. The order shall also state whether the court issued the protection order


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following personal service, service by electronic means, service by mail, or service by publication, and whether the court has approved service by mail or publication of an order issued under this section.

Section 5.75.027 Duration of full protection orders

When issuing an order after notice to the respondent and a hearing, the court may either grant relief for a fixed period of time or enter a permanent order of protection. Other than for harassment protection orders, the court shall not grant relief for less than one year unless the petitioner has specifically requested relief for a shorter period of time.

Section 5.75.028 Errors in protection orders.

After a protection order is issued, the court may correct clerical or technical errors in the order at any time. The court may correct errors either on the court's own initiative or upon notice to the court of an error. If the court corrects an error in an order, the court shall provide notice of the correction and a corrected copy of the order to the parties. The court shall direct the clerk to forward the corrected order on or before the next business day to the law enforcement agency specified in the order.

Section 5.75.029 Dismissal or suspension of criminal prosecution in exchange for protection order

The practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a protection order undermines the purposes of this chapter. Nothing in this chapter shall be construed as encouraging that practice.

PART VII. REISSUANCE AND RENEWAL

Section 5.75.030 Reissuance of temporary protection orders

- A. A temporary protection order issued under this chapter may be reissued for the following reasons:
 - 1. agreement of the parties;
 - 2. to provide additional time to effect service of the temporary protection order on the respondent; or
 - 3. if the court, in writing, finds good cause to reissue the order.
- B. Any temporary orders to surrender and prohibit weapons must also be automatically reissued with the temporary protection order.
- C. To ensure that a petitioner is not delayed in receiving a hearing on a petition for a protection order, there is a rebuttable presumption that a temporary protection order should not be reissued more than once or for more than 30


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days at the request of the respondent, absent agreement of the parties, good cause, or the need to provide additional time to effect service.

- D. When considering any request to stay, continue, or delay a hearing under this chapter because of the pendency of a parallel criminal investigation or prosecution of the respondent, courts shall apply a rebuttable presumption against such delay and give due recognition to the purpose of this chapter to provide victims quick and effective relief.

Section 5.75.031 Renewal of protection orders

The following provisions apply to the renewal of all full protection orders issued under this chapter:

- A. If the court grants a protection order for a fixed time period, the petitioner may file a motion to renew the order at any time within the 90 days before the order expires. The motion for renewal must state the reasons the petitioner seeks to renew the protection order. Upon receipt of a motion for renewal, the court shall order a hearing, which must be not later than 14 calendar days from the date of the order. Service must be made on the respondent not less than five business days before the hearing.
- B. If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion and statement of the reason for the requested renewal.
- C. The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.
- D. The court shall grant the motion for renewal unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances and the following:
1. for a domestic violence protection order, that the respondent proves that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's family or household members who are minors or vulnerable adults when the order expires;
 2. for a sexual assault protection order, that the respondent proves that the respondent will not engage in, or attempt to engage in, physical or nonphysical contact with the petitioner when the order expires; or
 3. for a harassment or stalking protection order, that the respondent proves that the respondent will not resume harassment or stalking of the petitioner when the order expires.
- E. In determining whether there has been a substantial change in circumstances, the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:


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1. whether the respondent has committed or threatened sexual assault; domestic violence; stalking; abandonment, abuse, financial exploitation, or neglect of a vulnerable adult; or other harmful acts against the petitioner or any other person since the protection order was entered;
 2. whether the respondent has violated the terms of the protection order and the time that has passed since the entry of the order;
 3. whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;
 4. whether the respondent has been convicted of criminal activity since the protection order was entered;
 5. whether the respondent has either: Acknowledged responsibility for acts of sexual assault, domestic violence, or stalking, or acts of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult, or behavior that resulted in the entry of the protection order; or successfully completed state-certified perpetrator treatment or counseling since the protection order was entered;
 6. whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order; or
 7. other factors relating to a substantial change in circumstances.
- F. The court may renew the protection order for another fixed time period of no less than one year or may enter a permanent order as provided in this section.

Section 5.75.032 Reserved

Section 5.75.033 Reserved

Section 5.75.034 Reserved

PART VIII. VIOLATIONS AND ENFORCEMENT

Section 5.75.035 Notice to Nez Perce Tribal Police – Enforceability

- A. A copy of a protection order granted under this chapter shall be forwarded by the Clerk of the Court on or before the next business day Nez Perce Tribal Police. Upon receipt of the order, law enforcement agency shall enter the order into the computer-based criminal intelligence information system currently in use by the Department to list outstanding warrants. The law enforcement agency shall expunge expired orders from the computer system.
- B. Entry into the information system constitutes notice of the existence of the order.


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- C. If an officer investigates an alleged violation of an order issued pursuant to this chapter and service has not been effected prior to contact, the officer shall provide service as described herein and within the next day file proof of service with the Court. Law enforcement shall update the criminal information system to reflect that service has been effected.

Section 5.75.036 Reserved

Section 5.75.037 Firearms disqualification [5.70.049]

- A. Purpose. It shall be the purpose of this section to prohibit any person who has been convicted of a felony or misdemeanor crime of domestic violence (intimate partner violence), family violence, sexual assault, stalking, or dating violence, as defined under the laws of the Nez Perce Tribe; who is subject to a protection order based upon a finding that the person represents a credible threat to the physical safety of the victim; who is subject to a criminal no contact order entered in Nez Perce Tribal Court or any court of competent jurisdiction; who has been found mentally incompetent to stand trial; or who has been committed for mental health reasons after a domestic violence, family violence, sexual assault, stalking, or dating violence offense, from possessing a firearm or ammunition.
- B. It shall be unlawful for any person to possess a firearm or ammunition, as defined in Title 4, NPTrC, who:
1. is subject to any Court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact or assaulting an intimate partner or family member as defined in this chapter or engaging in any other conduct that would place an intimate partner or family member in reasonable fear of physical harm to the intimate partner or family member, except that this subsection shall apply only to those orders that:
 - a. were issued at a hearing at which such person was present and had the opportunity to participate; or at a hearing of which such person had notice and the opportunity to be heard, whether or not the person was present;
 - b. include a finding that such person represents a credible threat to the physical safety of such household or family member; or
 - c. by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family member.
 2. Has been convicted under the law of any state, territory, possession, tribe, or United States military tribunal of any crime involving domestic violence or family violence, as defined by the laws of the Nez Perce Tribe, which involved the use or attempted use of physical force,


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or the threatened use of physical force, or the threatened use of a deadly weapon against an intimate partner or family member as defined within Chapters 5.70 and 5.75 of the NPTrC.

C. Violation of this section is a Class F offense.

Section 5.75.038 Contempt and violation of protection order – Penalties

- A. A knowing violation of any protection order subjects the respondent to criminal penalties under this chapter.
- B. Any respondent who is found guilty of violating the terms of the protection order may also, subject to the Court’s discretion, be held in civil contempt of court, and the Court may impose such sanctions as it deems appropriate.
- C. Violation of a protection order is a Class E offense.
- D. A second violation of a protection order is a Class E offense.
- E. Third or subsequent violation of a protection order is a Class F offense.

Section 5.75.039 Reserved

PART IX. MODIFICATION AND TERMINATION

Section 5.75.040 Modification or termination

- A. Upon a motion with notice to all parties and after a hearing, the court may modify the terms of an existing protection order or terminate an existing order.
- B. A respondent’s motion to modify or terminate an existing protection order must include a declaration setting forth facts supporting the requested order for modification or termination. The nonmoving parties to the proceeding may file opposing declarations. All motions to modify or terminate shall be based on the written materials and evidence submitted to the court. The court shall set a hearing only if the court finds that adequate cause is established. If the court finds that the respondent established adequate cause, the court shall set a date for hearing the respondent’s motion, which must be at least 14 calendar days from the date the court finds adequate cause.
- C. Upon the motion of a respondent, the court may not modify or terminate an existing protection order unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent will not resume, engage in, or attempt to engage in, the following acts against the petitioner or those persons protected by the protection order if the order is terminated or modified:
 - 1. acts of domestic violence, in cases involving domestic violence protection orders;


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2. physical or nonphysical contact, in cases involving sexual assault protection orders; or
 3. acts of unlawful harassment or stalking, in cases involving harassment or stalking protection orders.
- D. The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.
- E. Regardless of whether there is a substantial change in circumstances, the court may decline to terminate a protection order if it finds that the acts of domestic violence, sexual assault, stalking, unlawful harassment, and other harmful acts that resulted in the issuance of the protection order were of such severity that the order should not be terminated.
- F. A respondent may file a motion to modify or terminate a full protection order no more than once in every 12-month period that the order is in effect, starting from the date of the order and continuing through any renewal period.
- G. If a Permanent Protection Order is issued, the restrained party must wait 2 years before petitioning the court to modify or dismiss the Order.
1. If a petition to modify or dismiss a permanent protection order is denied, respondent must wait an additional two (2) years before filing any further requests to modify or terminate the order.
 2. If the restrained party has been convicted of a subsequent crime against the protected party, the permanent order cannot be modified or dismissed.
- H. A court may require the respondent to pay the petitioner for costs incurred in responding to a motion to modify or terminate a protection order, including reasonable attorneys' fees.

Section 5.75.041 Reporting of modification or termination of protection order

In any situation where a protection order issued under this chapter is modified or terminated before its expiration date, the clerk of the court shall forward on the same day a true copy of the modified order or the termination order to the Nez Perce Tribal Police. Upon receipt of the order, the law enforcement agency shall promptly enter it in the computer-based criminal intelligence information system, or if the order is terminated, remove the order from the computer-based criminal intelligence information system.

Section 5.75.042 Reserved

Section 5.75.043 Reserved


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Section 5.75.044 Reserved

PART X. MISCELLANEOUS PROVISIONS

Section 5.75.045 Full Faith and Credit Clause [7-3-6, 5.70.052]

- A. Purpose. The purpose of this section is to ensure compliance with the full faith and credit provision of the Violence Against Women Act (VAWA) as set forth in 18 U.S.C. 2265, as it may be amended from time to time, and to ensure that victims of domestic violence are able to move across State and Tribal boundaries without losing the ability to enforce protection orders they have previously obtained to increase their safety.
- B. A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, Indian tribe, or United States military tribunal.
- C. A person under restraint must be given reasonable notice and the opportunity to be heard before the protection order of the foreign state, territory, possession, Indian tribe, or United States military tribunal was issued. In the case of an ex parte order, notice and opportunity to be heard must have been provided within a reasonable time after the order was issued, consistent with due process.

Section 5.75.046 Filing a Foreign Protection Order [5.70.053]

- A. A person entitled to protection who has a valid foreign protection order may file that order by presenting a certified, authenticated, or exemplified copy of the foreign protection order to a clerk of the Nez Perce Tribal Court.
 - 1. Any out-of-state department, agency, or court responsible for maintaining protection order records may by facsimile or electronic transmission send a reproduction of the foreign protection order to the clerk of the court as long as it contains a facsimile or digital signature by any person authorized to make such transmission.
- B. There shall be a presumption in favor of validity where a protection order appears authentic on its face.
- C. Filing of a foreign protection order with a court and entry of the foreign protection order into any computer-based criminal intelligence information system available in this State used by law enforcement agencies to list outstanding warrants are not prerequisites for enforcement of the foreign protection order.
- D. The court shall accept the filing of a foreign protection order without a fee or cost.


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- E. The clerk of the court shall provide information to a person entitled to protection of the availability of domestic violence, sexual abuse, and stalking or other services to victims in the community.
- F. The clerk of the court shall assist the person entitled to protection in completing an information form that includes, but need not be limited to, the following:
 - 1. the name of the person entitled to protection and any other protected parties;
 - 2. the name and address of the person who is subject to the restraint provisions of the foreign protection order;
 - 3. the date the foreign protection order was entered;
 - 4. the date the foreign protection order expires;
 - 5. relief granted (specify the relief awarded and citations thereto, and designate which of the violations are arrestable offenses);
 - 6. the judicial district and contact information of the court administration for the court in which the foreign protection order was entered;
 - 7. the Social Security number, date of birth, and description of the person subject to the restraint provisions of the foreign protection order;
 - 8. whether the person who is subject to the restraint provisions of the foreign protection order is believed to be armed and dangerous;
 - 9. whether the person who is subject to the restraint provisions of the foreign protection order was served with the order, and if so, the method used to serve the order;
 - 10. the type and location of any other legal proceedings between the person who is subject to the restraint provisions and the person entitled to protection; or
 - 11. an inability to answer any of the above questions does not preclude the filing or enforcement of a foreign protection order.
- G. The clerk of the court shall provide the person entitled to protection with a copy bearing proof of filing with the court.
- H. Any assistance provided by the clerk under this section does not constitute the practice of law. The clerk is not liable for any incomplete or incorrect information that he or she is provided.