



CHAPTER 18

**PROTECTION FROM
HARASSMENT**



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§ [11-1]. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. [Court]. "Court" means Penobscot Tribal Court.
2. [Harassment]. "Harassment" means any repeated act of intimidation, harassment, physical force or threat of physical force directed against any person, family or their property or advocate with the intention of causing fear or intimidation or to deter free exercise or enjoyment of any rights or privileges secured by the Indian Civil Rights Act of 1968, as amended."

This definition does not include any act protected by the constitutional guarantee of free speech.

3. [Law enforcement agency]. "Law enforcement agency" means the Penobscot Nation Police Department.
4. [Criminal violation]. As provided in this chapter, a criminal violation shall be subject to a fine and/or sentence not to exceed the limits authorized by 30 M.R.S.A. §6209 (1) (A), as amended."

§[11-2]. Filing of petition

Proceedings under this chapter shall be filed, heard and determined in the Tribal Court of the Penobscot Nation.

§[11-3]. Commencement of proceedings

1. [Filing]. Any person who has been a victim of harassment within the jurisdiction of the Penobscot Nation may seek relief by filing a sworn petition in the Court alleging that abuse.
2. [Assistance]. The court shall provide separate forms with a summons and clerical assistance to assist either party to proceed under this chapter in completing and filing a petition or other necessary documents. This assistance shall not include legal advice or assistance in drafting legal documents.
3. [Fees]. No fee may be charged for forms or filing of a petition. A plaintiff may apply for the right to proceed in

forma pauperis.

§ [11-4]. Hearings

1. [Full hearing]. Within 21 days of the filing of a petition, a hearing shall be held at which the plaintiff shall prove the allegation of harassment by a preponderance of the evidence.

2. [Temporary orders]. The court may enter any temporary orders, authorized under subsection 4, without written or oral notice to the defendant or the defendant's attorney if:

(A). It appears clearly from an affidavit accompanying the petition that:

(1) Before the defendant or the defendant's attorney can be heard, the plaintiff may be in immediate and present danger of physical abuse from the defendant or may suffer extreme emotional distress as a result of the defendant's conduct;

(2) Either the plaintiff has or has not contacted any law enforcement official(s) concerning the alleged harassment; and

(3) The plaintiff has provided sufficient information to substantiate the alleged harassment;

(B). When reasonable, the plaintiff or the court has made reasonable efforts to give written or oral notice to the defendant or defendant's attorney that the plaintiff is seeking a temporary order; and

(C). The court provides written reasons for entering a temporary order.

3. [Emergency relief]. Emergency relief shall be available as follows:

(A). When the courthouse is closed and no other provision can be made for protection of a victim of harassment, a petition may be filed before the Chief Judge of the Court or before an Appellate Court Judge whenever the Chief Judge is not immediately available. Upon a meeting of the requirements of subsection 2, the Court may enter any temporary orders, authorized under subsection 4, as it deems necessary to protect the plaintiff from harassment.

(B). If a petition is filed under this subsection, the petition and any order issued pursuant to it shall be immediately

certified to the clerk of the Court. This certification to the Court shall have the effect of commencing proceedings and invoking the other provisions of this chapter.

(C). An order shall remain in effect pending a hearing pursuant to subsection 1.

4. [Interim relief]. The court, in an ex parte proceeding, may enjoin the defendant from engaging in any of the following:

(A). Imposing any restraint upon the person or liberty of the plaintiff;

(B). Threatening, assaulting, molesting, harassing or Otherwise disturbing the peace of the plaintiff;

(C). Entering the plaintiff's residence; or

(D). Taking, converting or damaging property in which the plaintiff may have a legal interest.

5. [Service of order]. If the court issues a temporary order or orders emergency or interim relief, it shall order the law enforcement agency to serve the defendant personally with the order, the petition and the summons. To protect the plaintiff, the Court may order the omission or deletion of the plaintiff's address from any papers served on the defendant.

6. [Dissolution or modification]. Notwithstanding any other provision to the contrary, on 2 days notice to the plaintiff or on such shorter notice as the court may order, a person who is subject to any order may appear and move the dissolution or modification of the order and in that event the court shall proceed to hear and determine the motion expeditiously. At that hearing, the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged to abolish or limit any means, otherwise available by law, for obtaining dissolution, modification or discharge of an order.

7. [Extension]. If a hearing under subsection 1 is continued, the court may make or extend such temporary orders as it deems necessary.

§[11.5]. Relief

1. [Protection order; consent agreement]. The court, after a hearing and upon finding that the defendant has committed the harassment alleged, may grant any protection order or approve any consent agreement to bring about a cessation of harassment, which may include:

(A). Directing the defendant to refrain from threatening, assaulting, molesting, attacking or otherwise abusing the plaintiff;

(B). Directing the defendant to refrain from going on the premises of the plaintiff's residence;

(C). Directing the defendant to refraining from interference with the plaintiff's property

(D). Ordering payment of monetary compensation to the plaintiff for losses suffered as a direct result of the harassment. Compensatory losses shall be limited to loss of earnings or support; reasonable expenses incurred for personal injuries or property damage; and reasonable moving expenses. upon the motion to either party, for sufficient cause, the court may set a later hearing on the issue of the amount of damages, if any, to be awarded. If it appears from the Petition that an order under this paragraph may be granted, the plaintiff or defendant may remove the issue of monetary compensation to a separate action before the Court. Removal shall be requested by motion prior to a hearing under section 11-4.

(E). Ordering the defendant to pay court costs or reasonable attorneys fees; and

(F). Entering any other orders deemed necessary or appropriate in the discretion of the court.

2. [Duration]. Any protective order or approved consent agreement shall be for a fixed period not to exceed one year. At the expiration of that time, the court may extend an order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff from harassment. Upon motion by either party, for sufficient cause, the Court may modify the order or agreement from time to time as circumstances require.

3. [Consequences of violation]. Any protective order or approved consent agreement shall indicate, in a clear and conspicuous manner, the potential consequences of violation of the order or agreement.

4. [Title to property]. No order or agreement may affect title to any real property.

5. [Bond prohibited]. The Court shall not require the execution of a bond by the plaintiff prior to issuance of any order of protection.

6. [Law enforcement agency to serve defendant]. The Court shall order the law enforcement agency to serve the defendant personally with any protective order or consent decree.

§[11-6]. Confidentiality of plaintiff's address

To protect the plaintiff, the Court may order the omission or deletion of the plaintiff's address from any papers available to the public.

§ [11-7]. Notification

The clerk shall issue, without fee, a copy of an order, agreement, amendment or revocation to the plaintiff, the defendant and, as the Court directs, to the law enforcement agency most likely to enforce it.

§ [11-8] Procedure

(1). [Civil rules apply]. Unless otherwise indicated in this chapter, all proceedings shall be in accordance with the Maine Rules of Civil Procedure. Appeals may be taken as provided by the Maine Rules of Civil Procedure and may be only for error of law or abuse of discretion.

(2). [Proceedings] independent. A proceeding under this chapter shall be in addition to any other available civil or criminal remedies.

(3). [Self-defense]. The right to relief, under this chapter, shall not be affected by the plaintiff's use of reasonable force in response to abuse by the defendant.

(4). [Intoxication]. Voluntary intoxication shall not be a defense to an action under this chapter.

§[11.9]. Violation, emergency

(1). [Crime committed]. Violation of a temporary, emergency, interim or final protective order or a court approved consent agreement, when the defendant has prior actual notice of the order or agreement is a criminal violation, except when the only provision that is violated concerns relief authorized under section 11-5, subsection 1, paragraphs D to F. Violation of these paragraphs shall be treated as contempt and punished in accordance with law.

(2). [Warrantless arrest]. Notwithstanding any provision to the contrary, an arrest for criminal violation of an order or consent agreement may be made without warrant upon probable cause whether or not the violation is committed in the

presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of a protective order by telephone or radio communication with the law enforcement agency.

§[11-10]. Law enforcement agency responsibilities

(1).[Reports]. The law enforcement agency shall report all incidents of harassment in conformity with standard reporting procedures.

(2).[Agency procedures]. The law enforcement agency shall establish procedures to verify the effective dates and terms of any recorded protection order.

(3).[Officer training]. The law enforcement agency shall provide officers employed by them with an education and training program designed to inform the officers of the problems of harassment, procedures to deal with these problems and the provisions of this chapter. The amount and degree, beyond the distribution of information, shall be determined by the Director of the law enforcement agency.

(4).[Officer responsibilities]. Whenever a law enforcement officer has reason to believe that a person has been the victim of harassment, the officer shall immediately use all reasonable means to prevent further abuse, including:

(A) . Remaining on the scene as long as the officer reasonably believes there is a danger to the the physical safety of that person without the presence of a law enforcement officer;

(B) . Assisting that person in obtaining medical treatment necessitated by an assault;

(C) . Giving that person written notice of the individual's rights, which shall include information summarizing the procedures and relief available to victims of harassment; or

(D) . Arresting the harassing party with or without a warrant pursuant to §11-9, sub-§2.

Historical Notes

At the General Meeting of August 13, 1985, Chapter 13-A, Subchapter II, Protection from Harassment was enacted.

As part of the re-codification of tribal laws and ordinances, prior Chapter 13-A, Subchapter II was reprinted as Chapter 18 (December 1993).