JAMESTOWN S'KLALLAM TRIBE
TITLE 21
LAW AND ORDER CODE

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CHAPTER 21.1
LAW ENFORCEMENT IN JAMESTOWN INDIAN COUNTRY

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1.1 JURISDICTION OVER FELONIES, MISDEMEANORS AND INFRACTIONS

The Tribe has jurisdiction over all persons who violate applicable law while they are in Jamestown Indian Country. This jurisdiction covers felonies, misdemeanors and infractions.

Title 18 United States Code, Section 13, the Assimilative Crimes Act (ACA) in summary states whoever within or upon any part of Jamestown Indian Country reserved by the United States not within the jurisdiction of Washington State, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which Jamestown Indian Country is situated, by the laws of the State in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

Title 18 United States Code, Section 1152, the Indian Country Crimes Act (ICCA) in summary states all crimes committed by non-Indians against Indians in Indian Country are subject to exclusive federal jurisdiction regardless of the seriousness of the offense.

Title 18 United States Code, Section 1153, the Major Crimes Act (MCA) in summary states crimes committed in Indian Country, with the exception of crimes committed in the states granted jurisdiction, are subject to federal jurisdiction when the offense is committed by, or against, a Native American. The crimes subject to federal jurisdiction under 18 U.S.C. § 1153, include: murder, manslaughter, kidnapping, maiming, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, an assault against an individual who has not attained the age of 16 years, arson, burglary, and robbery.

Additionally, pursuant to 18 U.S.C. § 1153, all non-major crimes (those not listed in 18 U.S.C. § 1153) committed by Indians against other Indians within Indian Country, are subject to the jurisdiction of tribal courts. Further, all crimes committed by non-Indians against other non-Indians, in Indian Country, are subject to prosecution under state law.

Federal criminal laws of general application, such as federal mail fraud, assault on a federal officer, etc., also apply to Tribal citizens, other Indians who are members of recognized tribes, and non-Indians while they are in Jamestown Indian Country.

The United States and Tribe will generally have concurrent jurisdiction over criminal matters covered by the MCA and the ICCA.

Title 18 United States Code, Section 1162, , Title 28 United States Code, Section 1360, and Title 25 United States Code, Section(s) 1321-1326, laws collectively known as Public Law 280 which provides for state criminal jurisdiction over some Indian Country areas in Washington State, does not apply to Jamestown Indian Country.

The State of Washington has no criminal jurisdiction over Tribal citizens and other Indians who are members of recognized tribes while they are in Jamestown Indian Country, absent a grant of authority from the Tribe or the United States to the State to exercise criminal jurisdiction under Tribal law.

Existing Federal law limits the Tribe's ability to process non-Indian criminal violators in Tribal Court, therein the Tribe currently refers non-Indian criminal violators whose prosecutions have been declined by the United States Attorney, to the State of Washington for criminal justice processing of offenses committed against non-Indians and Indians alike while they are in Jamestown Indian Country.

1.2 GRANT OF AUTHORITY

The Tribe currently has entered into an Interlocal Agreement ("IA") with the Clallam County Sheriff's Office whereby the Sheriff's Department employees are authorized to perform as Tribal Police, and therein exercise the Tribe's law enforcement powers over Indians as well as non-Indians in Jamestown Indian Country.

1.3 CONSENT TO APPLICABILITY OF WASHINGTON STATE LAW – GAMING RELATED

The Tribe has entered into a Class III Gaming Compact with the State of Washington wherein it has consented to the specific applicability of certain provisions of the RCW related to gaming in Jamestown Indian Country, as required under Title 18 United States Code, Section 1166.
[See Title 7 - Gaming, of the Tribal Code, for details]

1.4 NON-WAIVER OF SOVEREIGN IMMUNITY

Nothing in this title shall be deemed to constitute a waiver by the Jamestown S'Klallam Tribe of its sovereignty, rights, powers, privileges, or sovereign immunity.

1.5 TRIBAL CUSTOM/OTHER LAW
Where helpful to the fair and equitable disposition of criminal matters, the Tribal Court may inquire into the tribal customs and usages of the Jamestown S'Klallam Tribe.

As to any matters which are not covered by the codes, ordinances and resolutions of the Tribe, or by the traditional customs and usages of the Tribe, the Tribal Court may be guided by statutes and case law developed by other tribes, the federal government, or by the states.

1.6 EVIDENCE / TRIAL PROCEDURE
All applicable procedures in Title 15 of the Tribal Code will be followed in any criminal action, as well as Title 20, Section 20.06.04 - Evidence and Section 20.06.05 – Applicable Law and the Tribal Rules of Evidence set out in Appendix A to Title 19. If there be any further unresolved evidentiary or procedure issues, the Court and Prosecutor shall utilize the Federal Rules of Criminal Procedure and the Federal Rules of Evidence to resolve the issue(s) as necessary.

CHAPTER 21.2
DEFINITIONS

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2.1 TITLE, EFFECTIVE DATE, APPLICATION, SEVERABILITY, CAPTIONS.
(1) This title shall be known and may be cited as the Jamestown S'Klallam Tribe Law and Order Code and shall become effective on December 16, 2013.

(2) The provisions of this title shall apply to any offense committed on or after December 16, 2013, which is defined in this title or the general statutes, unless otherwise expressly provided or unless the context otherwise requires, and shall also apply to any defense to prosecution for such an offense.

(3) The provisions of this title do not apply to or govern the construction of and punishment for any offense committed prior to December 16, 2013, or to the construction and application of any defense to a prosecution for such an offense. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this title had not been enacted.

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

(5) Chapter, section, and subsection captions are for organizational purposes only and shall not be construed as part of this title.

2.2 GENERAL DEFINITIONS

Since law enforcement in Jamestown Indian Country includes Tribal, Federal and Washington State laws, depending upon the offense, victim, and the offender, the definitions in sections 2.2.1 through 2.2.9 of this chapter are meant to clarify some of the distinctions that come into play for commonly used terms which appear in each body of law.

2.2.1 General Terms

(1). "Jamestown Indian Country" has the basic meaning set out in Title 18 United States Code, Section 1151. In general, it includes all reservation lands, lands held in trust by the Secretary of the Interior on behalf of the Tribe. Jamestown Indian Country also includes all lands, waters, property, airspace, other natural resources and any interest therein, either now, or in the future, owned by the Tribe, or individual tribal citizens held in trust status;

(2). "Tribal Police" or "CCSO" means the Clallam County Sheriff's Office;

(3). "FBI" means the Federal Bureau of Investigation;

(4). "IA" means the Interlocal Agreement between the Tribe and the CCSO for the provision of law enforcement services, not otherwise provided for, in Jamestown Indian Country;

(5). "RCW" means the Revised Code of Washington State;

(6). "Indian" or "Indians" means citizens of the Tribe and members of other recognized tribes; and

(7). "Tribe" means the Jamestown S'Klallam Tribe.

2.2.2 Purposes - Principles Of Construction.

(1) The general purposes of the provisions governing the definition of offenses are:

(a) To forbid and prevent conduct that inflicts or threatens substantial harm to citizens of the Tribe or threatens the health, welfare, or has some direct effect on the political integrity and economic security of the Tribe, individual or public interests;

(b) To safeguard conduct that is without culpability from condemnation as criminal;

(c) To give fair warning of the nature of the conduct declared to constitute an offense;

(d) To differentiate on reasonable grounds between serious and minor offenses, and to prescribe proportionate penalties for each.

(2) The provisions of this title shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this title.

2.2.3 Tribal Criminal Jurisdiction.
The following persons are liable to punishment:

(1) A person who commits any crime, in whole or in part within property controlled and/or owned by the Tribe.

(2) A person who commits out of Tribal jurisdiction any act which, if committed within it, would be theft and is afterward found within the Tribe's jurisdiction with any of the stolen property.

(3) A person who being out of the Tribe's jurisdiction, counsels, causes, procures, aids, or abets another to commit a crime in this Tribe's jurisdiction.

(4) A person who, being out of the Tribes jurisdiction, abducts or kidnaps by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends, or conveys such person into the Tribe's jurisdiction.

(5) A person who commits an act outside of the Tribe's jurisdiction which affects persons or property within the Tribe's jurisdiction, which, if committed within the Tribe's jurisdiction, would be a crime.

(6) A person who, being out of the Tribe's jurisdiction, makes a statement, declaration, verification, or certificate which, if made within the Tribe's jurisdiction, would be perjury.

(7) A person who commits an act onboard a conveyance within the Tribes jurisdiction, including the airspace over the Tribe's jurisdiction, that subsequently lands, docks, or stops within the Tribes jurisdiction which, if committed within the Tribe's jurisdiction, would be a crime.

2.2.4 People Capable Of Committing Crimes — Capability Of Children.
Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong.

Whenever in legal proceedings it becomes necessary to determine the age of a child, he or she may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his or her examination by one or more physicians, whose opinion shall be competent evidence upon the question of his or her age.

2.2.5 Proof Beyond A Reasonable Doubt.
(1) Every person charged with the commission of a crime is presumed innocent unless proved guilty. No person may be convicted of a crime unless each element of such crime is proved by competent evidence beyond a reasonable doubt.

(2) When a crime has been proven against a person, and there exists a reasonable doubt as to which of two or more degrees he or she is guilty, he or she shall be convicted only of the lowest degree.

2.2.6. Definitions.
In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;

(2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building," in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Tribe" includes any branch, subdivision, or agency of the Tribe of this Tribe and any other Tribal unit;

(9) "Tribal function" includes any activity which a Tribal public servant is legally authorized or permitted to undertake on behalf of the Tribe;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every Tribal judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a Tribal, city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed Tribal, city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(17) "Person," "he or she," and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Projectile stun gun" means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;

(22) "Property" means anything of value, whether tangible or intangible, real or personal;

(23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a Tribal Council Member, legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a Tribal function;

(24) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(25) "Statute" means the Constitution or an act of the government or initiative or referendum of this Tribe;

(26) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;

(27) "Suffocation" means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe;

(28) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his or her health, safety, business, financial condition, or personal relationships;

(29) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(30) Words in the present tense shall include the future tense; and in the masculine shall include

the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

2.2.7 General Requirements Of Culpability.
(1) Kinds of Culpability Defined.

(a) INTENT. A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.

(b) KNOWLEDGE. A person knows or acts knowingly or with knowledge when:

(i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

(c) RECKLESSNESS. A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

(d) CRIMINAL NEGLIGENCE. A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

(2) Substitutes for Criminal Negligence, Recklessness, and Knowledge. When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(3) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly, or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

(4) Requirement of Willfulness Satisfied by Acting Knowingly. A requirement that an offense committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears.

2.2.8 Liability For Conduct Of Another — Complicity.
(1) A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.

(2) A person is legally accountable for the conduct of another person when:

(a) Acting with the kind of culpability that is sufficient for the commission of the crime, he or she causes an innocent or irresponsible person to engage in such conduct; or

(b) He or she is made accountable for the conduct of such other person by this title or by the law defining the crime; or

(c) He or she is an accomplice of such other person in the commission of the crime.

(3) A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he or she:

(i) Solicits, commands, encourages, or requests such other person to commit it; or
(ii) Aids or agrees to aid such other person in planning or committing it; or

(b) His or her conduct is expressly declared by law to establish his or her complicity.

(4) A person who is legally incapable of committing a particular crime himself or herself may be guilty thereof if it is committed by the conduct of another person for which he or she is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his or her incapacity.

(5) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:

(a) He or she is a victim of that crime; or

(b) He or she terminates his or her complicity prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.

(6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his or her complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted.

2.2.9 Corporate And Personal Liability.
(1) As used in this section:

(a) "Agent" means any director, officer, or employee of a corporation, or any other person who is authorized to act on behalf of the corporation;

(b) "Corporation" includes a joint stock association;

(c) "High managerial agent" means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

(2) A corporation is guilty of an offense when:

(a) The conduct constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law; or

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of his or her employment and on behalf of the corporation; or

(c) The conduct constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of his or her employment and in behalf of the corporation and (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation.

(3) A person is criminally liable for conduct constituting an offense which he or she performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his or her own name or behalf.

(4) Whenever a duty to act is imposed by law upon a corporation, any agent of the corporation who knows he or she has or shares primary responsibility for the discharge of the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were by law imposed directly upon such agent.

(5) Every corporation, whether foreign or domestic, which shall violate any provision of section 3.2A.28.040, shall forfeit every right and franchise to do business with the Jamestown S'Klallam Tribe. The prosecuting attorney or general counsel for the Tribe shall begin and conduct all actions and proceedings necessary to enforce the provisions of this subsection.

2.3 LIMITATION OF ACTIONS

(1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

(i) Murder;

(ii) Homicide by abuse;

(iii) Arson if a death results;

(iv) Vehicular homicide;

(v) Vehicular assault if a death results;

(vi) Hit-and-run injury-accident if a death results.

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results; or

(iii)(A) Violations of sections 3.2A.44.040 or 3.2A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to the victim's twenty-eighth birthday.

(B) If a violation of sections 3.2A.44.040 or 3.2A.44.050 is not reported within one year, the rape may not be prosecuted: (I) More than three years after its commission if the violation was committed against a victim fourteen years of age or older; or (II) more than three years after the victim's eighteenth birthday or more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

(c) Violations of the following provisions of this Title may be prosecuted up to the victim's twenty-eighth birthday: 3.2A.44.070, 3.2A.44.073, 3.2A.44.076, 3.2A.44.079, 3.2A.44.080, 3.2A.44.083, 3.2A.44.086, 3.2A.44.089, 3.2A.44.100 (1)(b), 3.2A.64.020.

(d) The following offenses shall not be prosecuted more than six years after their commission or their discovery, whichever occurs later:

(i) Violations of sections 3.2A.82.060 or 3.2A.82.080;

(ii) Any felony violation of chapter 3.2A.83;

(iii) Any felony violation of chapter 3.2.35;

(iv) Theft in the first or second degree under chapter 3.2A.56 when accomplished by color or aid of deception; or

(v) Trafficking in stolen property in the first or second degree under chapter 3.2A.82 in which the stolen property is a motor vehicle or major component part of a motor vehicle.

(e) Bigamy shall not be prosecuted more than three years after the time specified in section 3.2A.64.010.

(f) A violation of section 3.2A56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(g) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under section 3.2A.44.115, if the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(h) No gross misdemeanor may be prosecuted more than two years after its commission.

(i) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) In any prosecution for a sex offense as defined in section 3.2A.94.030, the periods of limitation prescribed in subsection (1) of this section run from the date of commission or one year from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing, whichever is later.

(4) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

2.4 DEFENSES

2.4.1 Definitions.

Unless a different meaning is plainly required:

(1) "Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

(2) "Deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

2.4.2 Use Of Force - When Lawful.
The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;

(2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;

(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;

(4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;

(5) Whenever used by a carrier of passengers or the carrier's authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to expel the offender with reasonable regard to the offender's personal safety;

(6) Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority for the restraint or custody of the person.

2.4.3 Homicide - When Excusable.
Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, without criminal negligence, or without any unlawful intent.

2.4.4 Justifiable Homicide Or Use Of Deadly Force By Public Officer, Peace Officer, Person Aiding.
(1) Homicide or the use of deadly force is justifiable in the following cases:

(a) When a public officer is acting in obedience to the judgment of a competent court; or

(b) When necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.

(c) When necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:

(i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;

(ii) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; or

(iii) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or

(iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or

(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given.

(3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

(4) This section shall not be construed as:

(a) Affecting the permissible use of force by a person acting under the authority of sections 3.2A.16.020 or 3.2A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.

2.4.5 Homicide - By Other Person - When Justifiable.
Homicide is also justifiable when committed either:

(1) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his or her presence or company, when there is reasonable ground

to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or

(2) In the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode, in which he or she is.

2.4.6 Duress.
(1) In any prosecution for a crime, it is a defense that:

(a) The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or she or another would be liable to immediate death or immediate grievous bodily injury; and

(b) That such apprehension was reasonable upon the part of the actor; and

(c) That the actor would not have participated in the crime except for the duress involved.

(2) The defense of duress is not available if the crime charged is murder, manslaughter, or homicide by abuse.

(3) The defense of duress is not available if the actor intentionally or recklessly places himself or herself in a situation in which it is probable that he or she will be subject to duress.

(4) The defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse.

2.4.7 Entrapment.
(1) In any prosecution for a crime, it is a defense that:

(a) The criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and

(b) The actor was lured or induced to commit a crime which the actor had not otherwise intended to commit.

(2) The defense of entrapment is not established by a showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime.

2.4.8 Action For Being Detained On Mercantile Establishment Premises For Investigation - "Reasonable Grounds" As Defense.
In any criminal action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer, by the owner of the mercantile

establishment, or by the owner's authorized employee or agent, and that such peace officer, owner, employee, or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft or shoplifting on such premises of such merchandise.

As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.

2.4.9 Intoxication.
No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his or her condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his or her intoxication may be taken into consideration in determining such mental state.

2.4.10 Use Of Force On Children - Policy - Actions Presumed Unreasonable.
It is the policy of this state to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. However, the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. Any use of force on a child by any other person is unlawful unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child.

The following actions are presumed unreasonable when used to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive.

2.4.11 Pow Wow, Outdoor Music Festival, Campground - Detention.
(1) In a criminal action brought against the detainer by reason of a person having been detained on or in the immediate vicinity of the premises of an outdoor music festival, Pow Wow or related campground for the purpose of pursuing an investigation or questioning by a law enforcement officer as to the lawfulness of the consumption or possession of alcohol or illegal drugs, it is a defense that the detained person was detained in a reasonable manner and for not more than a reasonable time to permit the investigation or questioning by a law enforcement officer, and that a peace officer, owner, operator, employee, or agent of the outdoor music festival had reasonable grounds to believe that the person so detained was unlawfully consuming or attempting to unlawfully consume or possess, alcohol or illegal drugs on the premises.

(2) For the purposes of this section:

(a) "Illegal drug" means a controlled substance under Title 21 United States Code for which the person detained does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a regulated substance under Title 21 United States Code for which the person does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(b) "Outdoor music festival" or "music festival" or "festival" or “Pow Wow” means an assembly of persons gathered primarily for outdoor, live or recorded musical entertainment, or spiritual event where the predicted attendance is two thousand persons or more and where the duration of the program is five hours or longer: PROVIDED, That this definition shall not be applied to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies which do not exceed by more than two hundred fifty people the maximum seating capacity of the structure where the assembly is held: PROVIDED, FURTHER, That this definition shall not apply to Tribal sponsored fairs held on regularly established grounds nor to assemblies required to be licensed under other laws or regulations of the Tribe.

(c) "Reasonable grounds" include, but are not limited to:

(i) Exhibiting the effects of having consumed liquor, which means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(A) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(B) Is shown by other evidence to have recently consumed liquor; or

(ii) Exhibiting the effects of having consumed an illegal drug, which means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug, and either:

(A) Is in possession of an illegal drug; or

(B) Is shown by other evidence to have recently consumed an illegal drug.

(d) "Reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to allow a law enforcement officer to determine the lawfulness of the consumption or possession of alcohol or illegal drugs. "Reasonable time" may not exceed one hour.

2.5 DEFINITIONS RELATED TO FELONIES

Under Tribal Law, there is one class of felony punishable by up to three years imprisonment and/or $15,000 in fines.

2.6 DEFINITIONS RELATED TO MISDEMEANORS
Under Tribal law, there are two classes of misdemeanors:

(1) Gross Misdemeanor - Any offense which is not considered a misdemeanor or felony that is punishable by more than 90 days and less than 1 year in jail and fines up to $5,000, and

(2) Misdemeanor - Any offense which is punishable by not more than 90 days in jail and fines up to $2,500.

2.7 DEFINITIONS RELATED TO INFRACTIONS
Under Tribal Law, an infraction is a non-criminal violation of law defined by statute. It usually means a civil prosecution brought in Tribal Court pursuant to a statute that authorizes certain offenses to be punished as civil infractions, as opposed to crimes such as misdemeanors or felonies.

CHAPTER 21.3
CRIMES – INFRACTIONS – PUNISHMENTS

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3.1 OFFENSES UNDER FEDERAL LAW
The following provisions of federal law apply regarding certain offenses committed by Indians in Jamestown Indian Country. The CCSO/Tribal Police has the authority to take into custody Indians, or non-Indians suspected of committing a covered offense, under one or more of the following authorities, until custody of such person can be transferred to an appropriate Federal Law Enforcement Officer is necessary.

3.1.1 The Indian Country Crimes Act 18 U.S.C. § 1152; Laws Governing
Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

3.1.2 The Major Crimes Act 18 U.S.C. §1153; Offenses Committed Within Indian Country
(1) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony, incest,

a felony assault, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and any other felony under this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(2) Any offense referred to in subsection (1) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the tribe shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

3.1.3 The Provisions of 18 U.S.C. §1166. Gambling In Indian Country
The following provisions of 18 U.S.C. §1166 are hereby incorporated into this Title:

"(a) Subject to subsection (c), for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State.

(b) Whoever in Indian country is guilty of any act or omission involving gambling, whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(c) For the purpose of this section, the term ''gambling'' does not include (1) class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act, or (2) class III gaming conducted under a Tribal- State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act that is in effect.

(d) The United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country, unless an Indian tribe pursuant to a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the Indian Gaming Regulatory Act, or under any other provision of Federal law, has consented to the transfer to the State of criminal jurisdiction with respect to gambling on the lands of the Indian tribe."

3.1.4 Federal criminal laws of general application, such as mail fraud, assault on a federal officer, etc.

3.2 OFFENSES UNDER TRIBAL LAW

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3.2.1 GENERAL PROVISIONS

3.2.1.055 Citizen Immunity If Aiding Officer.

Private citizens aiding a police officer, or other officers of the law in the performance of their duties as police officers or officers of the law, shall have the same civil and criminal immunity as such officer, as a result of any act or commission for aiding or attempting to aid a police officer or other officer of the law, when such officer is in imminent danger of loss of life or grave bodily injury or when such officer requests such assistance and when such action was taken under emergency conditions and in good faith.

3.2.27 INTERFERENCE WITH COURT.

3.2.27.015 Interference, Obstruction Of Any Court, Building, Or Residence.

Whoever, interfering with, obstructing, or impeding the administration of justice, pickets or parades in or near a building housing a court of the Jamestown S'Klallam Tribe or any political subdivision thereof, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be guilty of a gross misdemeanor.

Nothing in this section shall interfere with or prevent the exercise by any court of the Jamestown S'Klallam Tribe or any political subdivision thereof of its power to punish for contempt.

3.2.31 ESCAPED PRISIONER RECAPTURED.

3.2.31.090 Escaped Prisoner Recaptured.

Every person in custody, under sentence of imprisonment for any crime, who shall escape from custody, may be recaptured and imprisoned for a term equal to the unexpired portion of the original term.

3.2.35 IDENTITY CRIMES.

3.2.35.001 Findings — Intent.

The Tribe finds that means of identification and financial information are personal and sensitive information such that if unlawfully obtained, possessed, used, or transferred by others may result in significant harm to a person's privacy, financial security, and other interests.

The Tribe finds that unscrupulous persons find ever more clever ways, including identity theft, to improperly obtain, possess, use, and transfer another person's means of identification or financial information.

The Tribe intends to penalize for each unlawful act of improperly obtaining, possessing, using, or transferring means of identification or financial information of an individual person. The unit of prosecution for identity theft by use of a means of identification or financial information is each individual unlawful use of any one person's means of identification or financial information.

Unlawfully obtaining, possessing, or transferring each means of identification or financial information of any individual person, with the requisite intent, is a separate unit of prosecution for each victim and for each act of obtaining, possessing, or transferring of the individual person's means of identification or financial information.

3.2.35.005 Definitions.
The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Financial information" means any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit:

(a) Account numbers and balances;

(b) Transactional information concerning an account; and

(c) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicard numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

(2) "Financial information repository" means a person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.

(3) "Means of identification" means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including: A current or former name of the person, telephone number, an electronic address, or identifier of the individual or a member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver's license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

(4) "Person" means a person defined as "he or she," and "actor" includes any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association.

(5) "Victim" means a person whose means of identification or financial information has been used or transferred with the intent to commit, or to aid or abet, any unlawful activity.

3.2.35.010 Improperly Obtaining Financial Information.
(1) No person may obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, financial information from a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association:

(a) By knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial information repository with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the financial information;

(b) By knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association with the intent to deceive the customer into releasing financial information or authorizing the release of such information;

(c) By knowingly providing any document to an officer, employee, or agent of a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association, knowing that the document is forged, counterfeit, lost, or stolen; was fraudulently obtained; or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent to release the financial information.

(2) No person may request another person to obtain financial information from a financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association and knows or should have known that the person will obtain or attempt to obtain the information from the financial institution repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association in any manner described in subsection (1) of this section.

(3) No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, or any action of an agent of the financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association when working in conjunction with a law enforcement agency.

(4) This section does not apply to:

(a) Efforts by the financial information repository to test security procedures or systems of the financial institution repository for maintaining the confidentiality of customer information;

(b) Investigation of alleged employee misconduct or negligence; or

(c) Efforts to recover financial or personal information of the financial institution obtained or

received by another person in any manner described in subsection (1) or (2) of this section.

(5) Violation of this section is a felony.

(6) A person who violates this section is liable for five hundred dollars or actual damages, whichever is greater, and reasonable attorneys' fees.

3.2.35.020 Identity Theft.
(1) No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.

(2) Violation of this section when the accused or an accomplice violates subsection (1) of this section and obtains credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value shall constitute identity theft in the first degree. Identity theft in the first degree is a felony.

(3) A person is guilty of identity theft in the second degree when he or she violates subsection (1) of this section under circumstances not amounting to identity theft in the first degree. Identity theft in the second degree is a gross misdemeanor.

(4) Each crime prosecuted under this section shall be punished separately unless it is the same criminal conduct as any other crime.

(5) Whenever any series of transactions involving a single person's means of identification or financial information which constitute identity theft would, when considered separately, constitute identity theft in the second degree because of value, and the series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining the degree of identity theft involved.

(6) Every person who, in the commission of identity theft, shall commit any other crime may be punished therefor as well as for the identity theft, and may be prosecuted for each crime separately.

(7) A person who violates this section is liable for civil damages of one thousand dollars or actual damages, whichever is greater, including costs to repair the victim's credit record, and reasonable attorneys' fees as determined by the court.

(8) In a proceeding under this section, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(9) The provisions of this section do not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her

age.

(10) In a proceeding under this section in which a person's means of identification or financial information was used without that person's authorization, and when there has been a conviction, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from a violation of this section.

3.2.35.030 Soliciting Undesired Mail.
(1) It is unlawful for any person to knowingly use a means of identification or financial information of another person to solicit undesired mail with the intent to annoy, harass, intimidate, torment, or embarrass that person.

(2) Violation of this section is a misdemeanor.

(3) Additionally, a person who violates this section is liable for civil damages of five hundred dollars or actual damages, including costs to repair the person's credit record, whichever is greater, and reasonable attorneys' fees as determined by the court.

3.2.35.040 Information Available To Victim.
(1) A person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association possessing information relating to an actual or potential violation of this chapter, and who may have entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person who has used the victim's means of identification, must, upon written request of the victim, provide copies of all relevant application and transaction information related to the transaction being alleged as a potential or actual violation of this chapter. Nothing in this section requires the information provider to disclose information that it is otherwise prohibited from disclosing by law, except that a law that prohibits disclosing a person's information to third parties shall not be used to deny disclosure of such information to the victim under this section.

(2) Unless the information provider is otherwise willing to verify the victim's identification, the victim shall provide the following as proof of positive identification:

(a) The showing of a Tribal or other government issued photo identification card or, if providing proof by mail, a copy of a Tribal or government issued photo identification card;

(b) A copy of a filed police report evidencing the victim's claim; and

(c) A written statement from the Tribal Police showing that the Tribal Police has on file documentation of the victim's identity pursuant to any reasonable personal identification procedures.

(3) The provider may require compensation for the reasonable cost of providing the information requested.

(4) No person, financial information repository, financial service provider, merchant,

corporation, trust, partnership, or unincorporated association may be held liable for an action taken in good faith to provide information regarding potential or actual violations of this chapter to other financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any persons alleging to be a victim who comply with subsection (2) of this section which evidences the alleged victim's claim for the purpose of identification and prosecution of violators of this chapter, or to assist a victim in recovery of fines, restitution, rehabilitation of the victim's credit, or such other relief as may be appropriate.

(5) A person, financial information repository, financial service provider, merchant, corporation, trust, partnership, or unincorporated association may decline to provide information pursuant to this section when, in the exercise of good faith and reasonable judgment, it believes this section does not require disclosure of the information.

(6) Nothing in this section creates an obligation on the part of a person, financial information repository, financial services provider, merchant, corporation, trust, partnership, or unincorporated association to retain or maintain information or records that they are not otherwise required to retain or maintain in the ordinary course of its business.

(7) The Tribe finds that the practices covered by this section are matters vitally affecting the public interest. Violations of this section are not reasonable in relation to the development and preservation of business. It is an unfair or deceptive act in trade or commerce and an unfair method of competition. The burden of proof in an action alleging a violation of this section shall be by a preponderance of the evidence, and the applicable statute of limitation shall be as set at two (2) years, a judgment awarded pursuant to an action by a consumer shall be an award of actual damages.

However, where there has been willful failure to comply with any requirement imposed under this section, the consumer shall be awarded actual damages, a monetary penalty of one thousand dollars, and the costs of the action together with reasonable attorneys' fees as determined by the court.

3.2.35.050 Incident Reports.
(1) A person who has learned or reasonably suspects that his or her financial information or means of identification has been unlawfully obtained, used by, or disclosed to another, as described in this chapter, may file an incident report with a law enforcement agency, by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, place of business, or place where the crime occurred. The law enforcement agency shall create a police incident report of the matter and provide the complainant with a copy of that report, and may refer the incident report to another law enforcement agency.

(2) Nothing in this section shall be construed to require a law enforcement agency to investigate reports claiming identity theft. An incident report filed under this section is not required to be counted as an open case for purposes of compiling open case statistics.

3.2.38 FALSE REPRESENTATIONS.

3.2.38.010 False Representation Concerning Credit.

Every person who, with intent thereby to obtain credit or financial rating, shall willfully make any false statement in writing of his or her assets or liabilities to any person with whom he or she may be either actually or prospectively engaged in any business transaction or to any commercial agency or other person engaged in the business of collecting or disseminating information concerning financial or commercial ratings, shall be guilty of a misdemeanor.

3.2.38.015 False Statement By Deposit Account Applicant.

(1) It is a gross misdemeanor for a deposit account applicant to knowingly make any false statement to a financial institution regarding:

(a) The applicant's identity;

(b) Past convictions for crimes involving fraud or deception; or

(c) Outstanding judgments on checks or drafts issued by the applicant.

(2) Each violation of subsection (1) of this section after the third violation is a felony.

3.2.38.020 False Representation Concerning Title.

Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.

3.2.38.060 Digital Signature Violations.

(1) A person shall not knowingly misrepresent the person's identity or authorization to obtain a public key certificate used to reference a private key for creating a digital signature.

(2) A person shall not knowingly forge a digital signature.

(3) A person shall not knowingly present a public key certificate for which the person is not the owner of the corresponding private key in order to obtain unauthorized access to information or engage in an unauthorized transaction.

(4) A person who violates this section is guilty of a felony.

3.2.40 FIRE, CRIMES RELATING TO.

3.2.40.040 Operating Engine Or Boiler Without Spark Arrester.

Every person who shall operate or permit to be operated in dangerous proximity to any brush, grass or other inflammable material, any spark-emitting engine or boiler which is not equipped with a modern spark-arrester, in good condition, shall be guilty of a misdemeanor.

3.2.40.100 Tampering With Fire Alarm Or Firefighting Equipment — False Alarm — Penalties.
Any person who willfully and without cause tampers with, molests, injures or breaks any Tribal, public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any firefighting equipment, or who willfully and without having reasonable grounds for believing a fire exists, sends, gives, transmits, or sounds any false alarm of fire, by shouting in a public place or by means of any public or private fire alarm system or signal, or by telephone, is guilty of a misdemeanor.

This provision shall not prohibit the testing of fire alarm systems by persons authorized to do so, or by a fire department.

3.2.40.105 Tampering With Fire Alarm Or Firefighting Equipment — Intent To Commit Arson — Penalty.
Any person who willfully and without cause tampers with, molests, injures, or breaks any Tribal, public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any firefighting equipment with the intent to commit arson, is guilty of a felony.

3.2.40.110 Incendiary Devices — Definitions.
For the purposes of sections 3.2.40.110 through 3.2.40.130 , as now or hereafter amended, unless the context indicates otherwise:

(1) "Disposes of" means to give, give away, loan, offer, offer for sale, sell, or transfer.

(2) "Incendiary device" means any material, substance, device, or combination thereof which is capable of supplying the initial ignition and/or fuel for a fire and is designed to be used as an instrument of willful destruction. However, no device commercially manufactured primarily for the purpose of illumination shall be deemed to be an incendiary device for purposes of this section.

3.2.40.120 Incendiary Devices — Penalty.
Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a felony, and upon conviction, shall be punished by imprisonment in a prison facility for a term of not more than three years.

3.2.40.130 Incendiary Devices — Exceptions.
Section 3.2.40.120, as now or hereafter amended, shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the armed forces of the United States or by firefighters, or peace officers, nor shall these sections prohibit the use or possession of any material, substance, or device described therein when used solely for scientific research or educational purposes or for any lawful purpose, and shall not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this section.

3.2.41 FIREARMS AND DANGEROUS WEAPONS.

3.2.41.010 Terms Defined.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Barrel length" means the distance from the bolt face of a closed action down the length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

(3) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a felony or an attempt to commit a felony, criminal solicitation of or criminal conspiracy to commit a felony, manslaughter, indecent liberties if committed by forcible compulsion, kidnapping, arson, assault, assault of a child, extortion, burglary, and robbery;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(4) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(5) "Family or household member" means "family" or "household member" defined as spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(6) "Felony" means any felony offense under the laws of this Tribe or any federal or out-of-tribe offense comparable to a felony offense under the laws of this Tribe.

(7) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.

(8) "Law enforcement officer" includes a general authority Tribal, Federal or Washington State peace officer. "Law enforcement officer" also includes a limited authority Washington peace officers as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

(9) "Lawful permanent resident" has the same meaning afforded a person "lawfully admitted for permanent residence" in Title 8 U.S.C., Section 1101(a)(20).

(10) "Loaded" means:

(a) There is a cartridge in the chamber of the firearm;

(b) Cartridges are in a clip that is locked in place in the firearm;

(c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;

(d) There is a cartridge in the tube or magazine that is inserted in the action; or

(e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

(11) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

(12) "Nonimmigrant alien" means a person defined as such in Title 8 U.S.C., Section 1101(a)(15).

(13) "Pistol" means any firearm with a barrel less than sixteen inches in length, or is designed to be held and fired by the use of a single hand.

(14) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(15) "Sell" refers to the actual approval of the delivery of a firearm in consideration of payment or promise of payment of a certain price in money.

(16) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any crime of violence;

(b) Any felony violation of Title 21 U.S.C, the Federal Uniform Controlled Substances act, , that is classified as a felony;

(c) Child molestation;

(d) Incest when committed against a child under age fourteen;

(e) Indecent liberties;

(f) Leading organized crime;

(g) Promoting prostitution in the first degree;

(h) Rape in the third degree;

(i) Drive-by shooting;

(j) Sexual exploitation;

(k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug, or by the operation of any vehicle in a reckless manner;

(m) Any other felony offense with a finding of sexual motivation, as "sexual motivation" is determined;

(n) Any other felony with a deadly weapon verdict; or

(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any Tribal, federal or out-of-state conviction for an offense that under the laws of this Tribe would be a felony classified as a serious offense.

(17) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(18) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(19) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

3.2.41.040 Unlawful Possession Of Firearms — Ownership, Possession By Certain Persons — Restoration Of Right To Possess — Penalties.

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm is a felony.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence;

(ii) After having previously been involuntarily committed for mental health treatment under Tribal, State or Federal statutes, unless his or her right to possess a firearm has been restored as provided in Tribal, state or federal law;

(iii) If the person is under eighteen years of age, except as provided in section 3.2.41.042; and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in section 3.2.41.010;

(b) Unlawful possession of a firearm in the second degree is a gross misdemeanor.

(3) Notwithstanding any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of

any future proceedings including but not limited to sentencing or disposition, post-trial or post-fact finding motions, and appeals.

Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Jamestown S'Klallam Tribe.

A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances who received a probationary sentence, and who received a dismissal of the charge, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity.

Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm; or

(ii) If the conviction or finding of not guilty by reason of insanity was for a non-felony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm, and the individual has completed all conditions of the sentence.

(b) An individual may petition the Tribal Court to have his or her right to possess a firearm restored under (a) of this subsection (4) only at the Tribal Court of record that ordered the petitioner's prohibition on possession of a firearm.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the Tribal Court shall revoke the person's privilege to drive.

(6) Nothing in chapter shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

3.2.41.042 Children — Permissible Firearm Possession.
Section 3.2.41.040 (2)(a)(iii) shall not apply to any person under the age of eighteen years who is:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;

(3) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;

(4) Hunting or trapping under a valid license issued to the person under the Title 9 Hunting Code of the Tribal Code;

(5) In an area where the discharge of a firearm is permitted, is not trespassing, and the person either: (a) Is at least fourteen years of age, has been issued a hunter safety certificate, and is using a lawful firearm other than a pistol; or (b) is under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;

(6) Traveling with any unloaded firearm in the person's possession to or from any activity described in subsection (1), (2), (3), (4), or (5) of this section;

(7) On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;

(8) At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights such as when used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;

(9) Is a member of the armed forces of the United States, national guard, or organized reserves, when on duty.

3.2.41.045 Possession By Offenders.
As a sentence condition and requirement, offenders under the supervision of the Tribal Court or Tribal Probation shall not own, use, or possess firearms or ammunition. In addition to any penalty imposed pursuant to section 3.2.41.040 when applicable, offenders found to be in actual or constructive possession of firearms or ammunition shall be subject to an appropriate violation process and sanctions. Firearms or ammunition owned, used, or possessed by offenders may be confiscated by probation officers and turned over to the Tribal Police for disposal.

3.2.41.050 Carrying Firearms.
(1)(a) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol.

(b) Every licensee shall have his or her concealed pistol license in his or her immediate possession at all times that he or she is required by this section to have a concealed pistol license and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. Any violation of this subsection (1)(b) shall be a civil infraction and shall be punished accordingly pursuant the infraction rules.

(2)(a) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and: (i) The pistol is on the licensee's person, (ii) the licensee is within the vehicle at all times that the pistol is there, or (iii) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(3)(a) A person at least eighteen years of age who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(4) Nothing in this section permits the possession of firearms illegal to possess under state or federal law.

3.2.41.060 Exceptions To Restrictions On Carrying Firearms.

The provisions of section 3.2.41.050 shall not apply to:

(1) Tribal Police, marshals, sheriffs, prison or jail wardens or their deputies, correctional personnel and probation / community corrections officers as long as they are employed as such who have completed Tribe-sponsored law enforcement firearms training and have been subject to a check through the national instant criminal background check system or an equivalent background check within the past five years, or other law enforcement officers of this Tribe or another state. Correctional personnel and community corrections officers seeking the waiver provided for by this section are required to pay for any background check that is needed in order to exercise the waiver;

(2) Members of the armed forces of the United States or of the national guard or organized reserves, when on duty;

(3) Active duty or retired police officers or employees of the Tribe duly authorized to carry a concealed pistol;

(4) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of the person, if possessing, using, or carrying a pistol in the usual or ordinary course of the business;

(5) Regularly enrolled members of any organization duly authorized to purchase or receive pistols from the Tribe or from this state;

(6) Regularly enrolled members of clubs organized for the purpose of target shooting, when those members are at or are going to or from their places of target practice;

(7) Regularly enrolled members of clubs organized for the purpose of modern and antique firearm collecting, when those members are at or are going to or from their collector's gun shows and exhibits;

(8) Any person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area;

(9) Any person while carrying a pistol unloaded and in a closed opaque case or secure wrapper; or

(10) Law enforcement officers retired for service or physical disabilities, except for those law enforcement officers retired because of mental or stress-related disabilities. This subsection applies only to a retired officer who has: (a) Obtained documentation from a law enforcement agency from which he or she retired that is signed by the agency's chief law enforcement officer and that states that the retired officer was retired for service or physical disability; and (b) not

been convicted or found not guilty by reason of insanity of a crime making him or her ineligible for a concealed pistol license.

3.2.41.073 Concealed Pistol License — Reciprocity.
(1)(a) A person licensed to carry a pistol in a tribe or state the laws of which recognize and give effect in that state to a concealed pistol license issued under the laws of the Tribe or the State of Washington is authorized to carry a concealed pistol in this state if:

(i) The licensing tribe or state does not issue concealed pistol licenses to persons under twenty-one years of age; and

(ii) The licensing tribe or state requires mandatory fingerprint-based background checks of criminal and mental health history for all persons who apply for a concealed pistol license.

(b) This section applies to a license holder from another tribe or state only while the license holder is not a resident of this tribe or state. A license holder from another tribe or state must carry the handgun in compliance with the laws of this Tribe or Washington State.

3.2.41.080 Delivery to ineligible persons.
No person may deliver a firearm to any person whom he or she has reasonable cause to believe is ineligible under section 3.2. 41.040 to possess a firearm. Any person violating this section is guilty of a felony.

3.2.41.098 Forfeiture of firearms — Disposition — Confiscation.
(1) The Tribal Court may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by section 3.2.41.060 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid concealed pistol license from a recognized jurisdiction within the preceding two years, and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay any Tribally incurred administrative fee;

(b) In the possession of a person prohibited from possessing the firearm under sections 3.2.41.040 or 3.2.41.045;

(c) In the possession or under the control of a person at the time the person committed or was arrested for committing a felony or committing a non-felony crime in which a firearm was used or displayed;

(d) In the possession of a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor;

(e) In the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a non-felony crime in which a firearm was used or displayed, except that violations of the Tribe's Hunting and Fishing Code shall not result in forfeiture under

this section;

(g) In the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to any recognized jurisdiction;

(h) Used or displayed by a person in the violation of a proper written order of the Tribal Court; or

(i) Used in the commission of a felony or of a non-felony crime in which a firearm was used or displayed.

(2) Upon order of forfeiture, the Tribal Court in its discretion may order destruction of any forfeited firearm. The Tribal Court may temporarily retain forfeited firearms needed for evidence.

(a) Except as provided for in this section, firearms that are: (i) Judicially forfeited and no longer needed for evidence; or (ii) forfeited due to a failure to make a claim; may be disposed of in any manner determined by the Tribal Council.

(b) Antique firearms and firearms recognized as curios, relics, and firearms of particular historical significance by the United States treasury department *bureau of alcohol, tobacco, and firearms are exempt from destruction and shall be disposed of by auction or trade to licensed dealers.

(3) The Tribal Court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in section (1). After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of the Tribal Court as provided in section (1); or (c) to the owner if the proceedings are dismissed or as directed in subsection (3).

3.2.41.140 Alteration of identifying marks — Exceptions.
No person may change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any firearm. Possession of any firearm upon which any such mark shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same. This section shall not apply to replacement barrels in old firearms, which barrels are produced by current manufacturers and therefor do not have the markings on the barrels of the original manufacturers who are no longer in business. This section also shall not apply if the changes do not make the firearm illegal for the person to possess under state or federal law.

3.2.41.171Alien possession of firearms — Requirements — Penalty.
It is a felony for any person who is not a citizen of the United States to carry or possess any firearm.

3.2.41.190 Unlawful Firearms — Exceptions.
(1) It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any machine gun, short-barreled shotgun, or short-barreled rifle; or any part designed and intended solely and exclusively for use in a machine gun, short-barreled shotgun, or short-barreled rifle, or in converting a weapon into a machine gun, short-barreled shotgun, or short-barreled rifle; or to assemble or repair any machine gun, short-barreled shotgun, or short-barreled rifle.

(2) This section shall not apply to:

(a) Any peace officer in the discharge of official duty or traveling to or from official duty, or to any officer or member of the armed forces of the United States or the State of Washington in the discharge of official duty or traveling to or from official duty; or

(b) A person, including an employee of such person if the employee has undergone fingerprinting and a background check, who or which is exempt from or licensed under federal law, and engaged in the production, manufacture, repair, or testing of machine guns, short-barreled shotguns, or short-barreled rifles:

(i) To be used or purchased by the armed forces of the United States;

(ii) To be used or purchased by tribal, federal, state, county, or municipal law enforcement agencies; or

(iii) For exportation in compliance with all applicable federal laws and regulations.

(3) It shall be an affirmative defense to a prosecution brought under this section that the machine gun, short-barreled shotgun, or short-barreled rifle was acquired prior to July 1, 1994, and is possessed in compliance with federal law.

(4) Any person violating this section is guilty of a felony.

3.2.41.225 Use of machine gun in felony — Penalty.
It is unlawful for a person, in the commission or furtherance of a felony other than a violation of 3.2.41.190, to discharge a machine gun or to menace or threaten with a machine gun, another person. A violation of this section shall be punished as a felony.

3.2.41.230 Aiming or discharging firearms, dangerous weapons.
(1) For conduct not amounting to an assault violation, any person who:

(a) Aims any firearm, whether loaded or not, at or towards any human being;

(b) Willfully discharges any firearm, air gun, or other weapon, or throws any deadly missile in a public place, or in any place where any person might be endangered thereby. A public place shall not include any location at which firearms are authorized to be lawfully discharged; or

(c) Except as may be provided in the Tribe's Hunting and Fishing Codes, sets a so-called trap, spring pistol, rifle, or other dangerous weapon, although no injury results, is guilty of a gross misdemeanor.

(2) If an injury results from a violation of subsection (1) of this section, the person violating subsection (1) of this section shall be subject to the applicable provisions of homicide and assault, etc.

3.2.41.250 Dangerous Weapons — Penalty.
(1) Every person who:

(a) Manufactures, sells, or disposes of or possesses any instrument or weapon of the kind usually known as slung shot, sand club, or metal knuckles, or spring blade knife;

(b) Furtively carries with intent to conceal any dagger, dirk, pistol, or other dangerous weapon; or

(c) Uses any contrivance or device for suppressing the noise of any firearm unless the suppressor is legally registered and possessed in accordance with federal law,
is guilty of a gross misdemeanor.

(2) "Spring blade knife" means any knife, including a prototype, model, or other sample, with a blade that is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward, or centrifugal thrust or movement. A knife that contains a spring, detent, or other mechanism designed to create a bias toward closure of the blade and that requires physical exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure to assist in opening the knife is not a spring blade knife.

3.2.41.270 Weapons apparently capable of producing bodily harm — Unlawful carrying or handling — Penalty — Exceptions.
(1) It shall be unlawful for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(2) Any person violating the provisions of subsection (1) above shall be guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1) of this section, the person shall lose his or her concealed pistol license, if any. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

(3) Subsection (1) of this section shall not apply to or affect the following:

(a) Any act committed by a person while in his or her place of abode or fixed place of business;

(b) Any person who by virtue of his or her office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty;

(c) Any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;

(d) Any person making or assisting in making a lawful arrest for the commission of a felony; or

(e) Any person engaged in military activities sponsored by the federal or state governments.

3.2.41.290 Tribe Preemption.
The Jamestown S'Klallam Tribe hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the Tribe. No part of this preemption is intended to displace or preempt any laws of the United States.

3.2.41.800 Surrender of weapons or licenses — Prohibition on future possession or licensing.
(1) The Tribal Court when entering an order authorized under this Law and Order or any other Code of the Tribe shall, upon a showing by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm under the provisions of section 3.2.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender any concealed pistol license issued from any recognized jurisdiction while within the Tribe's jurisdiction;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(2) The Tribal Court when entering an order authorized under this Law and Order or any other Code of the Tribe may, upon a showing by a preponderance of the evidence but not by clear and convincing evidence, that a party has: used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a pistol under the provisions of section 3.2.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender a concealed pistol license issued from any recognized jurisdiction while within the Tribe's jurisdiction;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(3) The court may order temporary surrender of a firearm or other dangerous weapon without notice to the other party if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.

(4) In addition to the provisions of subsections (1), (2), and (3) of this section, the Tribal Court may enter an order requiring a party to comply with the provisions in subsection (1) of this section if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

(5) The requirements of subsections (1), (2), and (4) of this section may be for a period of time less than the duration of the order.

(6) The Tribal Court may require the party to surrender any firearm or other dangerous weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the Tribal Police or Sheriff, or to the restrained or enjoined party's counsel or to any person designated by the Tribal Court.

3.2.45 FRAUDS AND SWINDLES.

3.2.45.060 Encumbered, Leased, Or Rented Personal Property — Construction.

Every person being in possession thereof, who shall sell, remove, conceal, convert to his or her own use, or destroy or connive at or consent to the sale, removal, conversion, concealment, or destruction of any personal property or any part thereof, upon which a security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease exists, with intent to hinder, delay, or defraud the secured party of such security agreement, or the holder of such mortgage, lien, or conditional sales contract or the lessor under such lease or rentor under such rental agreement, or any assignee of such security agreement, mortgage, lien, conditional sales contract, rental agreement or lease shall be guilty of a gross misdemeanor.

In any prosecution under this section any allegation containing a description of the security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain.

The provisions of this section shall be cumulative and nonexclusive and shall not affect any other criminal provision.

3.2.45.070 Mock Auctions.

Every person who shall obtain any money or property from another or shall obtain the signature of another to any writing the false making of which would be forgery, by color or aid of any false or fraudulent sale of property or pretended sale of property by auction, or by any of the practices known as mock auction, shall be punished by imprisonment in a state correctional facility for not more than five years or in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

Every person who shall buy or sell or pretend to buy or sell any goods, wares or merchandise, exposed to sale by auction, if an actual sale, purchase and change of ownership therein does not thereupon take place, shall be guilty of a misdemeanor.

3.2.45.080 Fraudulent Removal Of Property.
Every person who, with intent to defraud a prior or subsequent purchaser thereof, or prevent any of his or her property being made liable for the payment of any of his or her debts, or levied upon by an execution or warrant of attachment, shall remove any of his or her property, or secrete, assign, convey, or otherwise dispose of the same, or with intent to defraud a creditor shall remove, secrete, assign, convey, or otherwise dispose of any of his or her books or accounts, vouchers or writings in any way relating to his or her business affairs, or destroy, obliterate, alter, or erase any of such books of account, accounts, vouchers, or writing or any entry, memorandum, or minute therein contained, shall be guilty of a gross misdemeanor.

3.2.45.090 Knowingly Receiving Fraudulent Conveyance.
Every person who shall receive any property or conveyance thereof from another, knowing that the same is transferred or delivered to him or her in violation of, or with the intent to violate 3.2.45.080, shall be guilty of a misdemeanor.

3.2.45.100 Fraud In Assignment For Benefit Of Creditors.
Every person who, having made, or being about to make, a general assignment of his or her property to pay his or her debts, shall by color or aid of any false or fraudulent representation, pretense, token, or writing induce any creditor to participate in the benefits of such assignments, or to give any release or discharge of his or her claim or any part thereof, or shall connive at the payment in whole or in part of any false, fraudulent or fictitious claim, shall be guilty of a gross misdemeanor.

3.2.45.122 Measurement Of Commodities — Public Policy.
Because of the widespread importance to the marketing of goods, raw materials, and agricultural products such as, but not limited to, grains, timber, logs, wood chips, scrap metal, oil, gas, petroleum products, coal, fish and other commodities, that qualitative and quantitative measurements of such goods, materials and products be accurately and honestly made, it is declared to be the public policy of this state that certain conduct with respect to said measurement be declared unlawful.

3.2.45.124 Measurement Of Commodities — Measuring Inaccurately — Altering Measuring Devices — Penalty.
Every person, corporation, or association whether profit or nonprofit, who shall ask or receive, or conspire to ask or receive, directly or indirectly, any compensation, gratuity, or reward or any

promise thereof, on any agreement or understanding that he or she shall (1) intentionally make an inaccurate visual or mechanical measurement or an intentionally inaccurate recording of any visual or mechanical measurement of goods, raw materials, and agricultural products (whether severed or unsevered from the land) which he or she has or will have the duty to measure, or shall (2) intentionally change, alter or affect, for the purpose of making an inaccurate measurement, any equipment or other device which is designed to measure, either qualitatively or quantitatively, such goods, raw materials, and agricultural products, or shall intentionally alter the recordation of such measurements, is guilty of a felony.

3.2.47A INHALING TOXIC FUMES.

3.2.47A.010 Definition.

As used in this chapter, the phrase "substance containing a solvent having the property of releasing toxic vapors or fumes" shall mean and include any substance or any other solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors.

3.2.47A.020 Unlawful Inhalation — Exception.

It is unlawful for any person to intentionally smell or inhale the fumes of any type of substance as defined in section 3.2.47A.010 or to induce any other person to do so, for the purpose of causing a condition of, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses of the nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes. This section does not apply to the inhalation of any anesthesia for medical or dental purposes.

3.2.47A.030 Possession Of Certain Substances Prohibited, When.

No person may, for the purpose of violating section 3.2.47A.020, use, or possess for the purpose of so using, any substance containing a solvent having the property of releasing toxic vapors or fumes.

3.2.47A.040 Sale Of Certain Substances Prohibited, When.

No person may sell, offer to sell, deliver, or give to any other person any container of a substance containing a solvent having the property of releasing toxic vapors or fumes, if he or she has knowledge that the product sold, offered for sale, delivered, or given will be used for the purpose set forth in section 3.2.47A.020.

3.47A.050 Penalty.

Any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or by both.

3.2.51 JURIES, CRIMES RELATING TO.

3.2.51.010 Misconduct Of Officer Drawing Jury.

Every person charged by law with the preparation of any jury list or list of names from which any jury is to be drawn, and every person authorized by law to assist at the drawing of a grand or petit jury to attend a court or term of court or to try any cause or issue, who shall --

(1) Place in any such list any name at the request or solicitation, direct or indirect, of any person; or

(2) Designedly put upon the list of jurors, as having been drawn, any name which was not lawfully drawn for that purpose; or

(3) Designedly omit to place upon such list any name which was lawfully drawn; or

(4) Designedly sign or certify a list of such jurors as having been drawn which were not lawfully drawn; or

(5) Designedly and wrongfully withdraw from the box or other receptacle for the ballots containing the names of such jurors any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omit to place therein any name lawfully drawn or designated, or place therein a paper or ballot containing the name of a person not lawfully drawn and designated as a juror; or

(6) In drawing or impanelling such jury, do any act which is unfair, partial or improper in any respect.

A violation of this section is a gross misdemeanor.

3.2.51.020 Soliciting Jury Duty.
Every person who shall, directly or indirectly, solicit or request any person charged with the duty of preparing any jury list to put his or her name, or the name of any other person, on any such list, shall be guilty of a gross misdemeanor.

3.2.51.030 Misconduct Of Officer In Charge Of Jury.
Every person to whose charge a jury shall be committed by a court or magistrate, who shall knowingly, without leave of such court or magistrate, permit them or any one of them to receive any communication from any person, to make any communication to any person, to obtain or receive any book, paper or refreshment, or to leave the jury room, shall be guilty of a gross misdemeanor.

3.2.54 STOLEN PROPERTY RESTORATION.
3.2.54.130 Restoration Of Stolen Property — Duty Of Officers.
The officer arresting any person charged as principal or accessory in any robbery or larceny shall use reasonable diligence to secure the property alleged to have been stolen, and after seizure shall be answerable therefor while it remains in his or her hands, and shall annex a schedule thereof to his or her return of the warrant.

Whenever the prosecuting attorney shall require such property for use as evidence upon the examination or trial, such officer, upon his or her demand, shall deliver it to him or her and take his or her receipt therefor, after which such prosecuting attorney shall be answerable for the same.

3.2.61 MALICIOUS MISCHIEF -- INJURY TO PROPERTY.

3.2.61.160 Threats To Bomb Or Injure Property — Penalty.

(1) It shall be unlawful for any person to threaten to bomb or otherwise injure any public or private school building, any place of worship or public assembly, any Tribal property, or any other building, common carrier, or structure, or any place used for human occupancy; or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated.

(2) It shall not be a defense to any prosecution under this section that the threatened bombing or injury was a hoax.

(3) A violation of this section is a felony.

3.2.61.230 Telephone Harassment.

(1) Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

(a) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

(b) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household;

Any violation under subsection (1) of this section is a gross misdemeanor, except as provided in subsection (2) of this section.

(2) The person is guilty of a felony if either of the following applies:

(a) That person has previously been convicted of any crime of harassment, as defined in section 3A.2.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state; or

(b) That person harasses another person under subsection (1)(c) of this section by threatening to kill the person threatened or any other person.

3.2.61.240 Telephone Harassment — Permitting Telephone To Be Used.

Any person who knowingly permits any telephone under his or her control to be used for any purpose prohibited by section 3.61.230 shall be guilty of a misdemeanor.

3.2.61.250 Telephone Harassment — Offense, Where Deemed Committed.

Any offense committed by use of a telephone as set forth in section 3.2.61.230 may be deemed to have been committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received.

3.61.260 Cyberstalking.
(1) A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:

(a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;

(b) Anonymously or repeatedly whether or not conversation occurs; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

(2) Cyberstalking is a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Cyberstalking is a felony if either of the following applies:

(a) The perpetrator has previously been convicted of the crime of harassment, as defined in 3A.2.46.020, with the same victim or a member of the victim's family or household or any person specifically named in a no-contact order or no-harassment order in this or any other state; or

(b) The perpetrator engages in the behavior prohibited under subsection (1)(c) of this section by threatening to kill the person threatened or any other person.

(4) Any offense committed under this section may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.

(5) For purposes of this section, "electronic communication" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic communication" includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.

3.2.62 MALICIOUS PROSECUTION -- ABUSE OF PROCESS.
3.2.62.010 Malicious Prosecution.
Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he or she is innocent:

(1) If such crime be a felony, is guilty of a felony; and

(2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor.

3.2.62.020 Instituting Suit In Name Of Another.
Every person who shall institute or prosecute any action or other proceeding in the name of another, without his or her consent and contrary to law, shall be guilty of a gross misdemeanor.

3.2.68 OBSCENITY AND PORNOGRAPHY.
3.2.68.015 Obscene Literature, Shows, Etc. — Exemptions.
Nothing shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

3.2.68.030 Indecent Articles, Etc.
Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for causing unlawful abortion; or shall write, print, distribute or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor.

3.2.68.050 "Erotic Material" — Definitions.
For the purposes of sections 3.2.68.050 through 3.2.68.1203:

(1) "Minor" means any person under the age of eighteen years;

(2) "Erotic material" means printed material, photographs, pictures, motion pictures, sound recordings, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sado-masochistic abuse; and is utterly without redeeming social value;

(3) "Person" means any individual, corporation, or other organization;

(4) "Dealers", "distributors", and "exhibitors" mean persons engaged in the distribution, sale, or exhibition of printed material, photographs, pictures, motion pictures, or sound recordings.

3.2.68.060 "Erotic Material" — Determination By Court — Labeling — Penalties.
(1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of section 3.2.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such

adjudication:

(a) If the subject material is written or printed, or is a sound recording, the court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication or sound recording sold or otherwise distributed in the Tribe's jurisdiction. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of the motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

(4) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

(5) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating sections 3.2.68.050 through 3.2.68.120, such violation to carry the following penalties:

(a) For the first offense a misdemeanor;

(b) For the second offense a gross misdemeanor;

(c) For all subsequent offenses a felony.

3.2.68.070 Prosecution For Violation Of 3.2.68.060 — Defense.
In any prosecution for violation of section 3.2.68.060, it shall be a defense that:

(1) If the violation pertains to a motion picture or sound recording, the minor was accompanied by a parent, parent's spouse, or guardian; or

(2) Such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or an apparently official document purporting to establish such minor was over the age of eighteen years; or

(3) Such minor was accompanied by a person who represented himself or herself to be a parent, or the spouse of a parent, or a guardian of such minor, and the defendant in good faith relied upon such representation.

3.2.68.080 Unlawful Acts.
(1) It shall be unlawful for any minor to misrepresent his or her true age or his or her true status as the child, stepchild, or ward of a person accompanying him or her, for the purpose of purchasing or obtaining access to any material described in section 3.2.68.050.

(2) It shall be unlawful for any person accompanying such minor to misrepresent his or her true status as parent, spouse of a parent, or guardian of any minor for the purpose of enabling such minor to purchase or obtain access to material described in section 3.2.68.050.

3.2.68.130 "Sexually Explicit Material" — Defined — Unlawful Display.
(1) A person is guilty of unlawful display of sexually explicit material if he or she knowingly exhibits such material on a viewing screen so that the sexually explicit material is easily visible from a public thoroughfare, park or playground or from one or more family dwelling units.

(2) "Sexually explicit material" as that term is used in this section means any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult human genitals: PROVIDED HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.

(3) Any person who violates subsection (1) of this section shall be guilty of a misdemeanor.

3.2.68A SEXUAL EXPLOITATION OF CHILDREN.
3.2.68A.001 Tribe Findings, Intent.
The Tribe finds that the prevention of sexual exploitation and abuse of children constitutes a Tribal objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The Tribe further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.

The Tribe further finds that children engaged in sexual conduct for financial compensation are frequently the victims of sexual abuse. Approximately eighty to ninety percent of children engaged in sexual activity for financial compensation have a history of sexual abuse victimization. It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

The Tribe further finds that due to the changing nature of technology, offenders are now able to access child pornography in different ways and in increasing quantities. By amending current statutes governing depictions of a minor engaged in sexually explicit conduct, it is the intent of

the Tribe to ensure that intentional viewing of and dealing in child pornography over the internet is subject to a criminal penalty without limiting the scope of existing prohibitions on the possession of or dealing in child pornography, including the possession of electronic depictions of a minor engaged in sexually explicit conduct.

It is also the intent of the Tribe to clarify the unit of prosecution for the statutes governing possession of and dealing in depictions of a minor engaged in sexually explicit conduct. It is the intent of the Tribe that the first degree offenses under sections 3.2.68A.050, 3.2.68A.060 and 3.2.68A.070 have a per depiction or image unit of prosecution, while the second degree offenses under sections 3.2.68A.050, 3.2.68A.060 and 3.2.68A.070 have a per incident unit of prosecution.

Furthermore, it is the intent of the Tribe to set a different unit of prosecution for the new offense of viewing of depictions of a minor engaged in sexually explicit conduct such that each separate session of intentionally viewing over the internet of visual depictions or images of a minor engaged in sexually explicit conduct constitutes a separate offense.

The Tribe finds that the importance of protecting children from repeat exploitation in child pornography is not being given sufficient weight under these decisions. The importance of protecting children from repeat exploitation in child pornography is based upon the following findings:

(1) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited;

(2) The state has a compelling interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain;

(3) Every instance of viewing images of child pornography represents a renewed violation of the privacy of the victims and a repetition of their abuse;

(4) Child pornography constitutes prima facie contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys;

(5) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violation and abuse of victims, so long as the Tribe makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense.

The Tribe is also aware that the Adam Walsh child protection and safety act, P.L. 109–248, 120 Stat. 587 (2006), codified at 18 U.S.C. Sec. 3509(m), prohibits the duplication and distribution of child pornography as part of the discovery process in federal prosecutions. This federal law has been in effect since 2006, and upheld repeatedly as constitutional. Courts interpreting the Walsh Act have found that such limitations can be employed while still providing the defendant due process. The Tribe joins congress, and the legislatures of other jurisdictions that have passed

similar provisions, in protecting these child victims so that our justice system does not cause repeat exploitation, while still providing due process to criminal defendants.

3.2.68A.005 Section Not Applicable To Lawful Conduct Between Spouses.
This chapter does not apply to lawful conduct between spouses.

3.2.68A.011 Definitions.
Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) An "internet session" means a period of time during which an internet user, using a specific internet protocol address, visits or is logged into an internet site for an uninterrupted period of time.

(2) To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means anything tangible or intangible produced by photographing.

(3) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

(4) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadomasochistic abuse;

(e) Defecation or urination for the purpose of sexual stimulation of the viewer;

(f) Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer. For the purposes of this subsection (4)(f), it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

(5) "Minor" means any person under eighteen years of age.

(6) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

3.2.68A.040 Sexual Exploitation Of A Minor - Elements Of Crime - Penalty.
(1) A person is guilty of sexual exploitation of a minor if the person:

(a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;

(b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or

(c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

(2) Sexual exploitation of a minor is a felony.

3.2.68A.050 Dealing In Depictions Of Minor Engaged In Sexually Explicit Conduct.
(1)(a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in section 3.2.68A.011 (4) (a) through (e); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in section 3.2.68A.011 (4) (a) through (e).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the first degree is a felony.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the second degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in section 3.2.68A.011 (4) (f) or (g); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in section 3.2.68A.011 (4) (f) or (g).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the second degree is a felony.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of dealing in one or more depictions or images of visual or printed matter constitutes a separate offense.

3.2.68A.060 Sending, Bringing Into State Depictions Of Minor Engaged In Sexually Explicit Conduct.
(1)(a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in section 3.2.68A.011 (4) (a) through (e).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree is a felony.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in section 3.2.68A.011 (4) (f) or (g).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree is a felony.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of sending or bringing into the state one or more depictions or images of visual or printed matter constitutes a separate offense.

3.2.68A.070 Possession Of Depictions Of Minor Engaged In Sexually Explicit Conduct.
(1)(a) A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in section 3.2.68A.011 (4) (a) through (e).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the first degree is a felony.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed

matter depicting a minor engaged in sexually explicit conduct as defined in section 3.2.68A.011 (4) (f) or (g).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the second degree is a felony.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense.

3.2.68A.075 Viewing Depictions Of A Minor Engaged In Sexually Explicit Conduct.
(1) A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in section 3.2.68A.011 (4) (a) through (e) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the first degree, a felony.

(2) A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in section 3.2.68A.011 (4) (f) or (g) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the second degree, a felony.

(3) For the purposes of determining whether a person intentionally viewed over the internet a visual or printed matter depicting a minor engaged in sexually explicit conduct in subsection (1) or (2) of this section, the trier of fact shall consider the title, text, and content of the visual or printed matter, as well as the internet history, search terms, thumbnail images, downloading activity, expert computer forensic testimony, number of visual or printed matter depicting minors engaged in sexually explicit conduct, defendant's access to and control over the electronic device and its contents upon which the visual or printed matter was found, or any other relevant evidence. The state must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.

(4) For the purposes of this section, each separate internet session of intentionally viewing over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct constitutes a separate offense.

3.2.68A.080 Reporting Of Depictions Of Minor Engaged In Sexually Explicit Conduct — Civil Immunity.
(1) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor.

(2) If, in the course of repairing, modifying, or maintaining a computer that has been submitted either privately or commercially for repair, modification, or maintenance, a person has reasonable cause to believe that the computer stores visual or printed matter that depicts a minor

engaged in sexually explicit conduct, the person performing the repair, modification, or maintenance may report such incident, or cause a report to be made, to the proper law enforcement agency.

(3) A person who makes a report in good faith under this section is immune from civil liability resulting from the report.

3.2.68A.090 Communication With Minor For Immoral Purposes — Penalties.
(1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.

(2) A person who communicates with a minor for immoral purposes is guilty of a felony. Additionally, if the person has previously been convicted under this section or of a felony sexual offense under chapters 3.2.68A, 3.2A.44, or 3.2A.64 of this Title or of any other felony sexual offense in the Tribe's Code or the law of any other jurisdiction or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes through the sending of an electronic communication, they are guilty of a felony.

3.2.68A.100 Commercial Sexual Abuse Of A Minor — Penalties.
(1) A person is guilty of commercial sexual abuse of a minor if:

(a) He or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;

(b) He or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee.

(2) Commercial sexual abuse of a minor is a felony.

(3) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined as:

(a) "Sexual intercourse" (i) has its ordinary meaning and occurs upon any penetration, however slight, and

(ii) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(iii Also means any act of sexual contact between persons involving the sex organs of one

person and the mouth or anus of another whether such persons are of the same or opposite sex.

(b) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

3.2.68A.101 Promoting Commercial Sexual Abuse Of A Minor — Penalty.
(1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(2) Promoting commercial sexual abuse of a minor is a felony.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A "sexually explicit act" is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which something of value is given or received.

(e) A "patron" is a person who pays or agrees to pay a fee to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

(4) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in section 3.2.68A.100 (3).

3.2.68A.102 Promoting Travel For Commercial Sexual Abuse Of A Minor — Penalty.
(1) A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.

(2) Promoting travel for commercial sexual abuse of a minor is a felony.

(3) For purposes of this section, "travel services" includes transportation by air, sea, or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

3.2.68A.103 Permitting Commercial Sexual Abuse Of A Minor — Penalty.
(1) A person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

(2) Permitting commercial sexual abuse of a minor is a gross misdemeanor.

3.2.68A.104 Advertising Commercial Sexual Abuse Of A Minor — Penalty.
(1) A person commits the offense of advertising commercial sexual abuse of a minor if he or she knowingly publishes, disseminates, or displays, or causes directly or indirectly, to be published, disseminated, or displayed, any advertisement for a commercial sex act, which is to take place within Tribal properties or in the State of Washington and that includes the depiction of a minor.

(a) "Advertisement for a commercial sex act" means any advertisement or offer in electronic or print media, which includes either an explicit or implicit offer for a commercial sex act to occur within any Tribal property or in Washington.

(b) "Commercial sex act" means any act of sexual contact or sexual intercourse, both as defined in chapter 3.2A.44 of this Title, for which something of value is given or received by any person.

(c) "Depiction" as used in this section means any photograph or visual or printed matter as defined in sections 3.2.68A.011 (2) and (3).

(2) In a prosecution under this statute it is not a defense that the defendant did not know the age of the minor depicted in the advertisement. It is a defense, which the defendant must prove by a preponderance of the evidence, that the defendant made a reasonable bona fide attempt to ascertain the true age of the minor depicted in the advertisement by requiring, prior to publication, dissemination, or display of the advertisement, production of a driver's license, marriage license, birth certificate, or other Tribal or educational identification card or paper of the minor depicted in the advertisement and did not rely solely on oral or written representations of the minor's age, or the apparent age of the minor as depicted. In order to invoke the defense,

the defendant must produce for inspection by law enforcement a record of the identification used to verify the age of the person depicted in the advertisement.

(3) Advertising commercial sexual abuse of a minor is a felony.

3.2.68A.110 Certain Defenses Barred, Permitted.
(1) In a prosecution under section 3.2.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of sections 3.2.68A.090, 3.2.68A.100 through 3.2.68A.102, except for the purpose of facilitating an investigation where the minor is also the alleged victim and the:

(a) Investigation is authorized pursuant to federal intercept policy, procedure and law; or

(b) Minor's aid in the investigation involves only telephone or electronic communication with the defendant.

(2) In a prosecution under sections 3.2.68A.050, 3.2.68A.060, 3.2.68A.070, or 3.2.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under sections 3.2.68A.040, 3.2.68A.090, 3.2.68A.100, 3.2.68A.101, or 3.2.68A.102, it is not a defense that the defendant did not know the alleged victim's age. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other Tribal or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) In a prosecution under sections 3.2.68A.050, 3.2.68A.060, 3.2.68A.070, or 3.2.68A.075, it shall be an affirmative defense that the defendant was a law enforcement officer or a person specifically authorized, in writing, to assist a law enforcement officer and acting at the direction of a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Tribal or other jurisdiction law. Nothing is intended to in any way affect or diminish the immunity afforded an electronic communication service provider, remote computing service provider, or domain name registrar acting in the performance of its reporting or preservation responsibilities under Title 18 U.S.C., Sections. 2258a, 2258b, or 2258c.

(5) In a prosecution under sections 3.2.68A.050, 3.2.68A.060, 3.2.68A.070, or 3.2.68A.075, the Tribe is not required to establish the identity of the alleged victim.

(6) In a prosecution under sections 3.2.68A.070, or 3.2.68A.075 it shall be an affirmative defense that:

(a) The defendant was employed at or conducting research in partnership or in cooperation with any institution of higher education, and:

(i) He or she was engaged in a research activity;

(ii) The research activity was specifically approved prior to the possession or viewing activity being conducted in writing by a person, or other such entity vested with the authority to grant such approval by the institution of higher education; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the authorized research; or

(b) The defendant was an employee of the Jamestown S'Klallam Tribe engaged in research at the request of a member of the Tribe's Council, Boards, Commissions or Committees and:

(i) The request for research is made prior to the possession or viewing activity being conducted in writing by a member of the Tribe's Council, Boards, Commissions or Committees;

(ii) The research is directly related to a Tribal Council, Boards, Commissions or Committees activity; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the requested research and Tribal Counsel, Boards, Commissions or Committees activity.

(7) Nothing in this section authorizes otherwise unlawful viewing or possession of visual or printed matter depicting a minor engaged in sexually explicit conduct.

3.2.68A.120 Seizure And Forfeiture Of Property.
The following are subject to seizure and forfeiture:

(1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.

(2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of section 3.2.68A.050 or section 3.2.68.060, but:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) No property is subject to forfeiture under this section by reason of any act or omission

established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(d) When the owner of a conveyance has been arrested under this chapter the conveyance may not be subject to forfeiture unless it is seized or process is issued for its seizure within 60 days of the owner's arrest.

(3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

(4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this Tribe upon process issued by the Tribal Court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the Tribe in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the Tribal Court.

In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the seized items.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the Tribal Court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to that agency for the exclusive use of enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual court costs.

(c) Remove it for disposition in accordance with Tribal law.

3.2.68A.130 Recovery Of Costs Of Suit By Minor.
A minor prevailing in a civil action arising from violation of this chapter is entitled to recover the costs of the suit, including an award of reasonable attorneys' fees.

3.2.68A.170 Criminal Proceedings — Depictions Of Minors Engaged In Sexually Explicit Conduct — Restrictions On Access.
(1) In any criminal proceeding, any property or material that constitutes a depiction of a minor engaged in sexually explicit conduct shall remain in the care, custody, and control of either a law enforcement agency or the court.

(2) Despite any request by the defendant or prosecution, any property or material that constitutes a depiction of a minor engaged in sexually explicit conduct shall not be copied, photographed, duplicated, or otherwise reproduced, so long as the property or material is made reasonably available to the parties. Such property or material shall be deemed to be reasonably available to the parties if the prosecution, defense counsel, or any individual sought to be qualified to furnish

expert testimony at trial has ample opportunity for inspection, viewing, and examination of the property or material at a law enforcement facility or a neutral facility approved by the court upon petition by the defense.

(3) The defendant may view and examine the property and materials only while in the presence of his or her attorney. If the defendant is proceeding pro se, the court will appoint an individual to supervise the defendant while he or she examines the materials.

(4) The court may direct that a mirror image of a computer hard drive containing such depictions be produced for use by an expert only upon a showing that an expert has been retained and is prepared to conduct a forensic examination while the mirror imaged hard drive remains in the care, custody, and control of a law enforcement agency or the court.

Upon a substantial showing that the expert's analysis cannot be accomplished while the mirror imaged hard drive is kept within the care, custody, and control of a law enforcement agency or the court, the court may order its release to the expert for analysis for a limited time. If release is granted, the court shall issue a protective order setting forth such terms and conditions as are necessary to protect the rights of the victims, to document the chain of custody, and to protect physical evidence.

3.2.68A.180 Criminal Proceedings — Depictions Of Minors Engaged In Sexually Explicit Conduct — Sealing, Storage, Destruction Of Exhibits.

(1) Whenever a depiction of a minor engaged in sexually explicit conduct, regardless of its format, is marked as an exhibit in a criminal proceeding, the prosecutor shall seek an order sealing the exhibit at the close of the trial. Any exhibits sealed under this section shall be sealed with evidence tape in a manner that prevents access to, or viewing of, the depiction of a minor engaged in sexually explicit conduct and shall be labeled so as to identify its contents. Anyone seeking to view such an exhibit must obtain permission from the superior court after providing at least ten days' notice to the prosecuting attorney. Appellate attorneys for the defendant and the state shall be given access to the exhibit, which must remain in the care and custody of either a law enforcement agency or the court. Any other person moving to view such an exhibit must demonstrate to the court that his or her reason for viewing the exhibit is of sufficient importance to justify another violation of the victim's privacy.

(2) Whenever the clerk of the court receives an exhibit of a depiction of a minor engaged in sexually explicit conduct, he or she shall store the exhibit in a secure location, such as a safe. The clerk may arrange for the transfer of such exhibits to a law enforcement agency evidence room for safekeeping provided the agency agrees not to destroy or dispose of the exhibits without an order of the court.

(3) If the criminal proceeding ends in a conviction, the clerk of the court shall destroy any exhibit containing a depiction of a minor engaged in sexually explicit conduct five years after the judgment is final. Before any destruction, the clerk shall contact the prosecuting attorney and verify that there is no collateral attack on the judgment pending in any court. If the criminal proceeding ends in a mistrial, the clerk shall either maintain the exhibit or return it to the law enforcement agency that investigated the criminal charges for safekeeping until the matter is set

for retrial. If the criminal proceeding ends in an acquittal, the clerk shall return the exhibit to the law enforcement agency that investigated the criminal charges for either safekeeping or destruction.

3.2.69 DUTY OF WITNESSES.
3.2.69.100 Duty Of Witness Of Offense Against Child Or Any Violent Offense — Penalty.
(1) A person who witnesses the actual commission of:

(a) A violent offense as defined within this criminal code or preparations for the commission of such an offense;

(b) A sexual offense against a child or an attempt to commit such a sexual offense; or

(c) An assault of a child that appears reasonably likely to cause substantial bodily harm to the child,

shall as soon as reasonably possible notify the prosecuting attorney, law enforcement, medical assistance, or other public officials.

(2) This section shall not be construed to affect privileged relationships as provided by law.

(3) The duty to notify a person or agency under this section is met if a person notifies or attempts to provide such notice by telephone or any other means as soon as reasonably possible.

(4) Failure to report as required by subsection (1) of this section is a gross misdemeanor. However, a person is not required to report under this section where that person has a reasonable belief that making such a report would place that person or another family or household member in danger of immediate physical harm.

3.2.72 PERJURY.
3.2.72.090 Committal Of Witness — Detention Of Documents.
Whenever it shall appear probable to a judge, or other officer lawfully authorized to conduct any hearing, proceeding or investigation, that a person who has testified before such judge, magistrate, or officer has committed perjury in any testimony so given, or offered any false evidence, he or she may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for such person's appearance to answer such charge. In such case such judge, magistrate, or officer may detain any book, paper, document, record or other instrument produced before him or her or direct it to be delivered to the prosecuting attorney.

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3.2A.28 ANTICIPATORY OFFENSES.

3.2A.28.020 Criminal Attempt.

(1) A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.

(2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.

(3) An attempt to commit a crime is a:

(a) A felony when the crime attempted is a felony;

(b) Gross misdemeanor when the crime attempted is a gross misdemeanor;

(c) Misdemeanor when the crime attempted is a misdemeanor.

3.2A.28.030 Criminal Solicitation.

(1) A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he or she offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.

(2) Criminal solicitation shall be punished in the same manner as criminal attempt under section 3.2A.28.020.

3.2A.28.040 Criminal Conspiracy.

(1) A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

(2) It shall not be a defense to criminal conspiracy that the person or persons with whom the

accused is alleged to have conspired:

(a) Has not been prosecuted or convicted; or

(b) Has been convicted of a different offense; or

(c) Is not amenable to justice; or

(d) Has been acquitted; or

(e) Lacked the capacity to commit an offense; or

(f) Is a law enforcement officer or other government agent who did not intend that a crime be committed.

(3) Criminal conspiracy is a:

(a) A felony when an object of the conspiratorial agreement is a felony;

(b) Gross misdemeanor when an object of the conspiratorial agreement is a gross misdemeanor;

(e) Misdemeanor when an object of the conspiratorial agreement is a misdemeanor.

3.2A.32 HOMICIDE.
3.2A.32.010 Homicide Defined.
Homicide is the killing of a human being by the act, procurement, or omission of another, death occurring at any time.
3.2A.32.020 Premeditation — Limitations.
(1) As used in this chapter, the premeditation required in order to support a conviction of the crime of murder in the first degree must involve more than a moment in point of time.

(2) Nothing contained in this chapter shall affect vehicular homicide.

3A.32.030 Murder In The First Degree.
(1) A person is guilty of murder in the first degree when:

(a) With a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person; or

(b) Under circumstances manifesting an extreme indifference to human life, he or she engages in conduct which creates a grave risk of death to any person, and thereby causes the death of a person; or

(c) He or she commits or attempts to commit the crime of either (1) robbery, (2) rape, (3) burglary, (4) arson, or (5) kidnapping, and in the course of or in furtherance of such crime or in

immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants: Except that in any prosecution under this subdivision (1)(c) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the first degree is a felony.

3.2A.32.040 Murder In The First Degree — Sentence.
Any person convicted of the crime of murder in the first degree shall be sentenced to the maximum sentence as allowed by federal law.

3.2A.32.050 Murder In The Second Degree.
(1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person; or

(b) He or she commits or attempts to commit any felony, including assault, other than those enumerated in section 3.2A.32.030 (1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision (1)(b) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the second degree is a felony.

3.2A.32.055 Homicide By Abuse.
(1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of said child, person under sixteen years of age, developmentally disabled person, or dependent person.

(2) As used in this section, "dependent adult" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

3.2A.32.060 Manslaughter In The First Degree.
(1) A person is guilty of manslaughter in the first degree when:

(a) He or she recklessly causes the death of another person; or

(b) He or she intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child.

(2) Manslaughter in the first degree is a felony.

3.2A.32.070 Manslaughter In The Second Degree.
(1) A person is guilty of manslaughter in the second degree when, with criminal negligence, he or she causes the death of another person.

(2) Manslaughter in the second degree is a felony.

3.2A.36 ASSAULT -- PHYSICAL HARM.
3.2A.36.011 Assault In The First Degree.
(1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm:

(a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death; or

(b) Administers, exposes, or transmits to or causes to be taken by another, poison, the human immunodeficiency virus, or any other destructive or noxious substance; or

(c) Assaults another and inflicts great bodily harm.
(2) A person is also guilty of assault in the first degree if he or she:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or

(g) Assaults another by strangulation or suffocation.

(3) A person is also guilty of assault in the first degree if he or she:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, fire marshal's office, fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault.

(j) Assaults a judicial officer, court-related employee, county clerk, or Tribal clerk employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions.

(4) Assault in the first degree is a felony.

3.2A.36.041 Assault In The Second Degree.
(1) A person is guilty of assault in the second degree if, under circumstances not amounting to assault in the first degree, or custodial assault, he or she assaults another.

(2) Assault in the second degree is a gross misdemeanor.

3.2A.36.045 Drive-By Shooting.
(1) A person is guilty of drive-by shooting when he or she recklessly discharges a firearm in a manner which creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge.

(2) A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

(3) Drive-by shooting is a felony.

3.2A.36.050 Reckless endangerment.
(1) A person is guilty of reckless endangerment when he or she recklessly engages in conduct not amounting to drive-by shooting but that creates a substantial risk of death or serious physical injury to another person.

(2) Reckless endangerment is a gross misdemeanor.

3.2A.36.060 Promoting A Suicide Attempt.
(1) A person is guilty of promoting a suicide attempt when he or she knowingly causes or aids another person to attempt suicide.

(2) Promoting a suicide attempt is a felony.

3.2A.36.070 Coercion.

(1) A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in section 3.2A.04.110 (27) (a), (b), or (c).

(3) Coercion is a gross misdemeanor.

3.2A.36.078 Malicious Harassment — Finding.
The Tribe finds that crimes and threats against persons because of their race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicaps are serious and increasing.

The Tribe also finds that crimes and threats are often directed against interracial couples and their children or couples of mixed religions, colors, ancestries, or national origins because of bias and bigotry against the race, color, religion, ancestry, or national origin of one person in the couple or family.

The Tribe finds that preventing crimes and threats motivated by bigotry and bias goes beyond the Tribal interest in preventing other felonies or misdemeanors such as criminal trespass, malicious mischief, assault, or other crimes that are not motivated by hatred, bigotry, and bias, and that prosecution of those other crimes inadequately protects citizens from crimes and threats motivated by bigotry and bias.

Therefore, the Tribe finds that protection of those citizens from threats of harm due to bias and bigotry is a compelling Tribal interest.

The Tribe also finds that in many cases, certain discrete words or symbols are used to threaten the victims. Those discrete words or symbols have historically or traditionally been used to connote hatred or threats towards members of the class of which the victim or a member of the victim's family or household is a member.

The Tribe also finds that a hate crime committed against a victim because of the victim's gender may be identified in the same manner that a hate crime committed against a victim of another protected group is identified. Affirmative indications of hatred towards gender as a class is the predominant factor to consider. Other factors to consider include the perpetrator's use of language, slurs, or symbols expressing hatred towards the victim's gender as a class; the severity of the attack including mutilation of the victim's sexual organs; a history of similar attacks against victims of the same gender by the perpetrator or a history of similar incidents in the same area; a lack of provocation; an absence of any other apparent motivation; and common sense.

3.2A.36.080 Malicious Harassment — Definition And Criminal Penalty.
(1) A person is guilty of malicious harassment if he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:

(a) Causes physical injury to the victim or another person;

(b) Causes physical damage to or destruction of the property of the victim or another person; or

(c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under all the circumstances. For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical, or sensory handicap as the victim. Words alone do not constitute malicious harassment unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute malicious harassment if it is apparent to the victim that the person does not have the ability to carry out the threat.

(2) In any prosecution for malicious harassment, unless evidence exists which explains to the trier of fact's satisfaction that the person did not intend to threaten the victim or victims, the trier of fact may infer that the person intended to threaten a specific victim or group of victims because of the person's perception of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap if the person commits one of the following acts:

(a) Burns a cross on property of a victim who is or whom the actor perceives to be of African American heritage; or

(b) Defaces property of a victim who is or whom the actor perceives to be of Jewish heritage by defacing the property with a swastika.

This subsection only applies to the creation of a reasonable inference for evidentiary purposes. This subsection does not restrict the state's ability to prosecute a person under subsection (1) of this section when the facts of a particular case do not fall within (a) or (b) of this subsection.

(3) It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender, or sexual orientation, or had a mental, physical, or sensory handicap.

(4) Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this chapter shall affect the rules of evidence governing impeachment of a witness.

(5) Every person who commits another crime during the commission of a crime under this

section may be punished and prosecuted for the other crime separately.

(6) For the purposes of this section:

(a) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

(b) "Threat" means to communicate, directly or indirectly, the intent to:

(i) Cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) Cause physical damage immediately or in the future to the property of a person threatened or that of any other person.

(7) Malicious harassment is a felony.

(8) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law.

(9) Nothing in this section confers or expands any civil rights or protections to any group or class identified under this section, beyond those rights or protections that exist under the Tribal Constitution, Federal Constitution or the civil laws of the State of Washington.

3.2A.36.083 Malicious Harassment — Civil Action.
In addition to the criminal penalty provided for committing a crime of malicious harassment, the victim may bring a civil cause of action for malicious harassment against the harasser. A person may be liable to the victim of malicious harassment for actual damages, punitive damages of up to ten thousand dollars, and reasonable attorneys' fees and costs incurred in bringing the action.

3.2A.36.090 Threats Against Tribal Council Members Or Family.
(1) Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon any Tribal Council Member or his or her immediate family, the Council Member-elect, other officer next in the order of succession to the Council, or knowingly and willfully otherwise makes any such threat against any Council Member, other officer next in the order of succession to the Council shall be guilty of a felony.

(2) As used in this section, the term "Council Member-elect" means such persons as are the successful candidates for the offices of Tribal Council, as ascertained from the results of the general election. As used in this section, the phrase "other officer next in the order of succession to the office of the Tribal Council" means the person next in order of succession to the office of

Tribal Council Article 3, sections 2 and 3 of the Tribe's Constitution.

(3) The Tribal Police and the Federal Bureau of Investigation may investigate for violations of this section.

3.2A.36.100 Custodial Assault.
(1) A person is guilty of custodial assault if that person is not guilty of an assault in the first or second degree and where the person:

(a) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any juvenile corrections institution or local juvenile detention facilities who was performing official duties at the time of the assault;

(b) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any adult corrections institution or local adult detention facilities who was performing official duties at the time of the assault;

(c)(i) Assaults a full or part-time community correction officer while the officer is performing official duties; or

(ii) Assaults any other full or part-time employee who is employed in a community corrections office while the employee is performing official duties; or

(d) Assaults any volunteer who was assisting a person described in (c) of this subsection at the time of the assault.

(2) Custodial assault is a felony.

3.2A.36.120 Assault Of A Child In The First Degree.
(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the first degree, as defined in section 3.2A.36.011, against the child; or

(b) Intentionally assaults the child and either:

(i) Recklessly inflicts great bodily harm; or

(ii) Causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (B) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the first degree is a felony.

3.2A.36.130 Assault Of A Child In The Second Degree.
(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the second degree if the child is under the age of thirteen and the person commits the crime of assault in the second degree, as defined in section 3.2A.36.041, against a child.

(2) Assault of a child in the second degree is a gross misdemeanor.

3.2A.36.150 Interfering With The Reporting Of Domestic Violence.
(1) A person commits the crime of interfering with the reporting of domestic violence if the person:

(a) Commits a crime of domestic violence; and

(b) Prevents or attempts to prevent the victim of or a witness to that domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.

(2) Commission of a crime of domestic violence under subsection (1) of this section is a necessary element of the crime of interfering with the reporting of domestic violence.

(3) Interference with the reporting of domestic violence is a gross misdemeanor.

3.2A.36.160 Failing To Summon Assistance.
A person is guilty of the crime of failing to summon assistance if:

(1) He or she was present when a crime was committed against another person; and

(2) He or she knows that the other person has suffered substantial bodily harm as a result of the crime committed against the other person and that the other person is in need of assistance; and

(3) He or she could reasonably summon assistance for the person in need without danger to himself or herself and without interference with an important duty owed to a third party; and

(4) He or she fails to summon assistance for the person in need; and

(5) Another person is not summoning or has not summoned assistance for the person in need of such assistance.

3.2A.36.161 Failing To Summon Assistance — Penalty.
A violation of section 3.2A.36.160 is a misdemeanor.

3.2A.40 KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE.
3.2A.40.010 Definitions.
The following definitions apply in this chapter:

(1) "Abduct" means to restrain a person by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly force.

(2) "Commercial sex act" means any act of sexual contact or sexual intercourse for which something of value is given or received.

(3) "Forced labor" means knowingly providing or obtaining labor or services of a person by: (a) Threats of serious harm to, or physical restraint against, that person or another person; or (b) means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

(4) "Involuntary servitude" means a condition of servitude in which the victim was forced to work by the use or threat of physical restraint or physical injury, or by the use of threat of coercion through law or legal process.

(5) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse.

(6) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his or her liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.

(7) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or a commercial sex act in order to avoid incurring that harm.

3.2A.40.020 Kidnapping.
(1) A person is guilty of kidnapping in the first degree if he or she intentionally abducts another person with intent:

(a) To hold him or her for ransom or reward, or as a shield or hostage; or

(b) To facilitate commission of any felony or flight thereafter; or

(c) To inflict bodily injury on him or her; or

(d) To inflict extreme mental distress on him, her, or a third person; or

(e) To interfere with the performance of any Tribal function.

(2) A person is guilty of kidnapping in the second degree if he or she intentionally abducts another person under circumstances not amounting to kidnapping in the first degree.

(3) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that (a) the abduction does not include the use of or intent to use or threat to use deadly force, and (b) the actor is a relative of the person abducted, and (c) the actor's sole intent is to assume custody of that person. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.

(4) Kidnapping is a felony.

3.2A.40.040 Unlawful Imprisonment.
(1) A person is guilty of unlawful imprisonment if he or she knowingly restrains another person.

(2) Unlawful imprisonment is a felony.

3.2A.40.060 Custodial Interference In The First Degree.
(1) A relative of a child under the age of eighteen or of an incompetent person is guilty of custodial interference in the first degree if, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the child or incompetent person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and:

(a) Intends to hold the child or incompetent person permanently or for a protracted period; or

(b) Exposes the child or incompetent person to a substantial risk of illness or physical injury; or

(c) Causes the child or incompetent person to be removed from the state of usual residence; or

(d) Retains, detains, or conceals the child or incompetent person in another state after expiration of any authorized visitation period with intent to intimidate or harass a parent, guardian, institution, agency, or other person having lawful right to physical custody or to prevent a parent, guardian, institution, agency, or other person with lawful right to physical custody from regaining custody.

(2) A parent of a child is guilty of custodial interference in the first degree if the parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan, and:

(a) Intends to hold the child permanently or for a protracted period; or

(b) Exposes the child to a substantial risk of illness or physical injury; or

(c) Causes the child to be removed from the state of usual residence.

(3) A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order or parenting plan has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.

(4) Custodial interference in the first degree is a felony.

3.2A.40.070 Custodial Interference In The Second Degree.
(1) A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person. This subsection shall not apply to a parent's noncompliance with a court-ordered parenting plan.

(2) A parent of a child is guilty of custodial interference in the second degree if: (a) The parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan; or (b) the parent has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.160(3); or (c) if the court finds that the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.

(3) Nothing in subsection (2)(b) of this section prohibits conviction of custodial interference in the second degree under subsection (2)(a) or (c) of this section in absence of findings of contempt.

(4)(a) The first conviction of custodial interference in the second degree is a gross misdemeanor.

(b) The second or subsequent conviction of custodial interference in the second degree is a felony.

3.2A.40.080 Custodial Interference — Assessment Of Costs — Defense — Consent Defense, Restricted.
(1) Any reasonable expenses incurred in locating or returning a child or incompetent person shall be assessed against a defendant convicted under sections 3.2A.40.060 or 3.2A.40.070.

(2) In any prosecution of custodial interference in the first or second degree, it is a complete defense, if established by the defendant by a preponderance of the evidence, that:

(a) The defendant's purpose was to protect the child, incompetent person, or himself or herself

from imminent physical harm, that the belief in the existence of the imminent physical harm was reasonable, and that the defendant sought the assistance of the police, sheriff's office, protective agencies, or the court of any state before committing the acts giving rise to the charges or within a reasonable time thereafter;

(b) The complainant had, prior to the defendant committing the acts giving rise to the crime, for a protracted period of time, failed to exercise his or her rights to physical custody or access to the child under a court-ordered parenting plan or order granting visitation rights, provided that such failure was not the direct result of the defendant's denial of access to such person;

(c) The acts giving rise to the charges were consented to by the complainant; or

(d) The offender, after providing or making a good faith effort to provide notice to the person entitled to access to the child, failed to provide access to the child due to reasons that a reasonable person would believe were directly related to the welfare of the child, and allowed access to the child in accordance with the court order within a reasonable period of time. The burden of proof that the denial of access was reasonable is upon the person denying access to the child.

(3) Consent of a child less than sixteen years of age or of an incompetent person does not constitute a defense to an action under sections 3.2A.40.060 or 3.2A.40.070.

3.2A.40.090 Luring.
A person commits the crime of luring if the person:

(1)(a) Orders, lures, or attempts to lure a minor or a person with a developmental disability into any area or structure that is obscured from or inaccessible to the public, or away from any area or structure constituting a bus terminal, airport terminal, or other transportation terminal, or into a motor vehicle;

(b) Does not have the consent of the minor's parent or guardian or of the guardian of the person with a developmental disability; and

(c) Is unknown to the child or developmentally disabled person.

(2) It is a defense to luring, which the defendant must prove by a preponderance of the evidence, that the defendant's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the minor or the person with the developmental disability.

(3) For purposes of this section:

(a) "Minor" means a person under the age of sixteen;

(b) "Person with a developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an

individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

3.2A.40.100 Human Trafficking.
(1)(a) A person is guilty of trafficking in the first degree when:

(i) Such person:

(A) Recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion as defined 3A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act; or

(B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and

(ii) The acts or venture set forth in (a)(i) of this subsection:

(A) Involve committing or attempting to commit kidnapping;

(B) Involve a finding of sexual motivation;

(C) Involve the illegal harvesting or sale of human organs; or

(D) Result in a death.

(b) Trafficking in the first degree is a felony.

(2)(a) A person is guilty of trafficking in the second degree when such person:

(i) Recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act; or

(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

(b) Trafficking in the second degree is a felony.

(3)(a) A person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or non-statutory diversion agreement as a result of an arrest for a violation of a trafficking crime shall be assessed a three thousand dollar fee.

(b) The court shall not reduce, waive, or suspend payment of all or part of the fee assessed in

this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(4) For purposes of this section, "sexually explicit act" means a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.

3.2A.42 CRIMINAL MISTREATMENT.

3.2A.42.005 Findings And Intent— Rules Of Evidence.

The Tribe finds that there is a significant need to protect children and dependent persons, including frail elder and vulnerable adults, from abuse and neglect by their parents, by persons entrusted with their physical custody, or by persons employed to provide them with the basic necessities of life.

The Tribe further finds that such abuse and neglect often takes the forms of either withholding from them the basic necessities of life, including food, water, shelter, clothing, and health care, or abandoning them, or both.

Therefore, it is the intent of the Tribe that criminal penalties be imposed on those guilty of such abuse or neglect. Prosecutions under this chapter shall be consistent with the rules of evidence, including hearsay, under law.

3.2A.42.010 Definitions.

As used in this chapter:

(1) "Basic necessities of life" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

(2)(a) "Bodily injury" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily part or organ.

(3) "Child" means a person under eighteen years of age.

(4) "Dependent person" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life. A resident of a nursing home, a resident of an adult family home, and a frail elder or

vulnerable adult, is presumed to be a dependent person for purposes of this chapter.

(5) "Employed" means hired by a dependent person, another person acting on behalf of a dependent person, or by an organization or Tribal entity, to provide to a dependent person any of the basic necessities of life. A person may be "employed" regardless of whether the person is paid for the services or, if paid, regardless of who pays for the person's services.

(6) "Parent" has its ordinary meaning and also includes a guardian and the authorized agent of a parent or guardian.

(7) "Abandons" means leaving a child or other dependent person without the means or ability to obtain one or more of the basic necessities of life.

(8) "Good Samaritan" means any individual or group of individuals who: (a) Is not related to the dependent person; (b) voluntarily provides assistance or services of any type to the dependent person; (c) is not paid, given gifts, or made a beneficiary of any assets valued at five hundred dollars or more, for any reason, by the dependent person, the dependent person's family, or the dependent person's estate; and (d) does not commit or attempt to commit any other crime against the dependent person or the dependent person's estate.

3.2A.42.020 Criminal Mistreatment In The First Degree.
(1) A parent of a child, the person entrusted with the physical custody of a child or dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the first degree if he or she recklessly:

(a) Causes great bodily harm to a child or dependent person by withholding any of the basic necessities of life,

(b) Creates an imminent and substantial risk of death or great bodily harm, or

(c) Causes substantial bodily harm by withholding any of the basic necessities of life.

(d) With criminal negligence, creates an imminent and substantial risk of substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life; or

(e) With criminal negligence, causes substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(2) For purposes of this section, "a person who has assumed the responsibility to provide to a dependent person the basic necessities of life" means a person other than:

(a) A government agency that regularly provides assistance or services to dependent persons, including but not limited to the department of social and health services; or

(b) a Good Samaritan.

(3) Criminal mistreatment in the first degree is a felony.

3.2A.42.037 Criminal Mistreatment In The Second Degree.
(1) A person is guilty of the crime of criminal mistreatment in the second degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, and either:

(a) With criminal negligence, creates an imminent and substantial risk of bodily injury to a child or dependent person by withholding any of the basic necessities of life; or

(b) With criminal negligence, causes bodily injury or extreme emotional distress manifested by more than transient physical symptoms to a child or dependent person by withholding the basic necessities of life.

(2) For purposes of this section, "a person who has assumed the responsibility to provide to a dependent person the basic necessities of life" means a person other than: (a) A government agency that regularly provides assistance or services to dependent persons, including but not limited to the department of social and health services; or (b) a good Samaritan.

(3) Criminal mistreatment in the second degree is a misdemeanor.

3.2A.42.039 Arresting Officer, Notification By.
(1) When a law enforcement officer arrests a person for criminal mistreatment of a child, the officer must notify the appropriate Indian Child Welfare or child protective services.

(2) When a law enforcement officer arrests a person for criminal mistreatment of a dependent person other than a child, the officer must notify adult protective services.

3.2A.42.040 Withdrawal Of Life Support Systems.
Sections 3.2A.42.020 -030-035 and 037 do not apply to decisions to withdraw life support systems made by the dependent person, his or her legal surrogate, or others with a legal duty to care for the dependent person.

3.2A.42.045 Palliative Care.
Sections 3.2A.42.020-030-035 and 037 do not apply when a terminally ill or permanently unconscious person or his or her legal surrogate requests, and the person receives, palliative care from a licensed home health agency, hospice agency, nursing home, or hospital providing care under the medical direction of a physician.

3.2A.42.050 Defense Of Financial Inability.
In any prosecution for criminal mistreatment, it shall be a defense that the withholding of the basic necessities of life is due to financial inability only if the person charged has made a

reasonable effort to obtain adequate assistance. This defense is available to a person employed to provide the basic necessities of life only when the agreed-upon payment has not been made.

3.2A.42.060 Abandonment Of A Dependent Person In The First Degree — Exception.
(1) Except as provided in subsection (2) of this section, a person is guilty of the crime of abandonment of a dependent person in the first degree if:

(a) The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or other dependent person any of the basic necessities of life;

(b) The person recklessly abandons the child or other dependent person; and

(c) As a result of being abandoned, the child or other dependent person suffers great bodily harm.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location pursuant to the emergency department of a hospital during the hours the hospital is in operation; a fire station during its hours of operation and while fire personnel are present; or a federally designated rural health clinic during its hours of operation is not subject to criminal liability under this section.

(3) Abandonment of a dependent person in the first degree is a felony to which the maximum possible sentence allowed by law shall be imposed.

3.2A.42.070 Abandonment Of A Dependent Person In The Second Degree — Exception.
(1) Except as provided in subsection (2) of this section, a person is guilty of the crime of abandonment of a dependent person in the second degree if:

(a) The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or other dependent person any of the basic necessities of life; and

(b) The person recklessly abandons the child or other dependent person; and:

(i) As a result of being abandoned, the child or other dependent person suffers substantial bodily harm; or

(ii) Abandoning the child or other dependent person creates an imminent and substantial risk that the child or other dependent person will die or suffer great bodily harm.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location pursuant to the emergency department of a hospital during the hours the hospital is in operation; a fire station during its hours of operation and while fire personnel are present; or a

federally designated rural health clinic during its hours of operation is not subject to criminal liability under this section.

(3) Abandonment of a dependent person in the second degree is a felony to which a lesser sentence than the maximum possible sentence shall be imposed.

3.2A.42.080 Abandonment Of A Dependent Person In The Third Degree — Exception.
(1) Except as provided in subsection (2) of this section, a person is guilty of the crime of abandonment of a dependent person in the third degree if:

(a) The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person any of the basic necessities of life; and

(b) The person recklessly abandons the child or other dependent person; and:

(i) As a result of being abandoned, the child or other dependent person suffers bodily harm; or

(ii) Abandoning the child or other dependent person creates an imminent and substantial risk that the child or other person will suffer substantial bodily harm.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location pursuant to the emergency department of a hospital during the hours the hospital is in operation; a fire station during its hours of operation and while fire personnel are present; or a federally designated rural health clinic during its hours of operation is not subject to criminal liability under this section.

(3) Abandonment of a dependent person in the third degree is a gross misdemeanor.

3.2A.42.090 Abandonment Of A Dependent Person — Defense.
It is an affirmative defense to the charge of abandonment of a dependent person, that the person employed to provide any of the basic necessities of life to the child or other dependent person, gave reasonable notice of termination of services and the services were not terminated until after the termination date specified in the notice.

The notice must be given to the child or dependent person, and to other persons or organizations that have requested notice of termination of services furnished to the child or other dependent person.

The Tribe’s Department of Social and Community Services or other authorized social and health servicesmay adopt rules establishing procedures for termination of services to children and other dependent persons.

3.2A.42.100 Endangerment With A Controlled Substance.

A person is guilty of the crime of endangerment with a controlled substance if the person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with any non-prescribed controlled substance as listed in the Federal Controlled Substance Act.

Endangerment with a controlled substance is a felony.

3.2A.42.110 Leaving A Child In The Care Of A Sex Offender.
(1) A person is guilty of the crime of leaving a child in the care of a sex offender if the person is (a) the parent of a child; (b) entrusted with the physical custody of a child; or (c) employed to provide to the child the basic necessities of life, and leaves the child in the care or custody of another person who is not a parent, guardian, or lawful custodian of the child, knowing that the person is registered or required to register as a sex offender under the laws of this state, or a law or ordinance in another jurisdiction with similar requirements, because of a sex offense against a child.

(2) It is an affirmative defense to the charge of leaving a child in the care of a sex offender under this section, that the defendant must prove by a preponderance of the evidence, that a court has entered an order allowing the offender to have unsupervised contact with children, or that the offender is allowed to have unsupervised contact with the child in question under a family reunification plan, which has been approved by a court, the department of corrections, or the department of social and health services in accordance with department policies.

(3) Leaving a child in the care of a sex offender is a misdemeanor.

3.2A.44 SEX OFFENSES.
3.2A.44.010 Definitions.
As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and
(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

(3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

(4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.

(5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

(7) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(8) "Significant relationship" means a situation in which the perpetrator is:

(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;

(b) A person who in the course of his or her employment supervises minors; or

(c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed, and home health, hospice, or home care agencies licensed or required to be licensed, but not including a consensual sexual partner.

(9) "Abuse of a supervisory position" means:

(a) To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor; or

(b) To exploit a significant relationship in order to obtain the consent of a minor.

(10) "Person with a developmental disability," means a person with a developmental disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(11) "Person with supervisory authority," means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled, mentally

disordered, or chemically dependent persons at the facility.

(12) "Person with a mental disorder" means a person with a "mental disorder" defined as organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions.

(13) "Person with a chemical dependency" means a person who is "chemically dependent" defined as alcoholism; drug addiction; or dependence on alcohol and one or more other psychoactive chemicals.

(14) "Health care provider" means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession regardless of whether the health care provider is licensed, certified, or registered by any jurisdiction.

(15) "Treatment" means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide.

(16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found incapacitated, a person over eighteen years of age who has a developmental disability, a person admitted to a long-term care facility that is licensed or required to be licensed, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed.

3.2A.44.020 Testimony — Evidence — Written Motion — Admissibility.
(1) In order to convict a person of any crime defined in this chapter it shall not be necessary that the testimony of the alleged victim be corroborated.

(2) Article IV of the United States Federal Rules of Evidence, Rule 413, shall be available to the prosecutor wherein “In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant.”

(3) Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3) of this section, but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

(4) In any prosecution for the crime of rape or for an attempt to commit, or an assault with an intent to commit any such crime evidence of the victim's past sexual behavior including but not limited to the victim's marital behavior, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is not admissible if offered to attack the credibility of the victim and is admissible on the issue of consent only pursuant to the

following procedure:

(a) A written pretrial motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim.

(b) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.

(d) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent; is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant; the court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(5) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing pursuant to subsection (4) of this section concerning such evidence.

3.2A.44.030 Defenses To Prosecution Under This Chapter.
(1) In any prosecution under this chapter in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

(2) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be: PROVIDED, That it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be the age identified in subsection (3) of this section based upon declarations as to age by the alleged victim.

(3) The defense afforded by subsection (2) of this section requires that for the following defendants, the reasonable belief be as indicated:

(a) For a defendant charged with rape of a child in the first degree, that the victim was at least twelve, or was less than twenty-four months younger than the defendant;

(b) For a defendant charged with rape of a child in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

(c) For a defendant charged with rape of a child in the third degree, that the victim was at least sixteen, or was less than forty-eight months younger than the defendant;

(d) For a defendant charged with sexual misconduct with a minor in the first degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant;

(e) For a defendant charged with child molestation in the first degree, that the victim was at least twelve, or was less than thirty-six months younger than the defendant;

(f) For a defendant charged with child molestation in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

(g) For a defendant charged with child molestation in the third degree, that the victim was at least sixteen, or was less than thirty-six months younger than the defendant;

(h) For a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant.

3.2A.44.040 Rape In The First Degree.
(1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

(a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or

(b) Kidnaps the victim; or

(c) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or

(d) Feloniously enters into the building or vehicle where the victim is situated.

(2) Rape in the first degree is a felony.

3.2A.44.050 Rape In The Second Degree.
(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

(a) By forcible compulsion;

(b) When the victim is incapable of consent by reason of being physically helpless or

mentally incapacitated;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2) Rape in the second degree is a felony.

3.2A.44.060 Rape In The Third Degree.
(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator:

(a) Where the victim did not consent, to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or

(b) Where there is threat of substantial unlawful harm to property rights of the victim.

(2) Rape in the third degree is a felony.

3.2A.44.073 Rape Of A Child In The First Degree.
(1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a felony.

3.2A.44.076 Rape Of A Child In The Second Degree.
(1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Rape of a child in the second degree is a felony.

3.2A.44.079 Rape Of A Child In The Third Degree.
(1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Rape of a child in the third degree is a felony.

3.2A.44.083 Child Molestation In The First Degree.
(1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the first degree is a felony.

3.2A.44.086 Child Molestation In The Second Degree.
(1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the second degree is a felony.

3.2A.44.089 Child Molestation In The Third Degree.
(1) A person is guilty of child molestation in the third degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Child molestation in the third degree is a felony.

3.2A.44.093 Sexual Misconduct With A Minor In The First Degree.
(1) A person is guilty of sexual misconduct with a minor in the first degree when:

(a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old

and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim;

(b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or

(c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the first degree is a felony.

(3) For the purposes of this section:

(a) "Enrolled student" means any student enrolled at or attending a program hosted or sponsored by a common school, or a student enrolled at or attending a program hosted or sponsored by a private school, or any person who receives home-based instruction.

(b) "School employee" means an employee of a common school, or a grade kindergarten through twelve employee of a private school who is not enrolled as a student of the common school or private school.

3.2A.44.096 Sexual Misconduct With A Minor In The Second Degree.
(1) A person is guilty of sexual misconduct with a minor in the second degree when:

(a) The person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim;

(b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or

(c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual contact with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor.

(3) For the purposes of this section:

(a) "Enrolled student" means any student enrolled at or attending a program hosted or sponsored by a common school, or a student enrolled at or attending a program hosted or sponsored by a private school, or any person who receives home-based instruction.

(b) "School employee" means an employee of a common school, or a grade kindergarten through twelve employee of a private school who is not enrolled as a student of the common school or private school.

3.2A.44.100 Indecent Liberties.
(1) A person is guilty of indecent liberties when he or she knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another:

(a) By forcible compulsion;

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2) Indecent liberties is a felony.

3.2A.44.105 Sexually Violating Human Remains.
(1) Any person who has sexual intercourse or sexual contact with a dead human body is guilty of a felony.

(2) As used in this section:

(a) "Sexual intercourse" (i) has its ordinary meaning and occurs upon any penetration, however slight; and (ii) also means any penetration of the vagina or anus however slight, by an object, when committed on a dead human body, except when such penetration is accomplished as part of a procedure authorized or required under law; and also means any act of sexual contact between the sex organs of a person and the mouth or anus of a dead human body.

(b) "Sexual contact" means any touching by a person of the sexual or other intimate parts of a dead human body done for the purpose of gratifying the sexual desire of the person.

3.2A.44.115 Voyeurism.
(1) As used in this section:

(a) "Intimate areas" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view;

(b) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person;

(c) "Place where he or she would have a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or

(ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;

(d) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;

(e) "Views" means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(2) A person commits the crime of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films:

(a) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or

(b) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(3) Voyeurism is a felony.

(4) This section does not apply to viewing, photographing, or filming by personnel of the department of corrections or of a local jail or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of the department of corrections or the local jail or correctional facility.

(5) If a person is convicted of a violation of this section, the court may order the destruction of any photograph, motion picture film, digital image, videotape, or any other recording of an image that was made by the person in violation of this section.

3.2A.44.120 Admissibility Of Child's Statement — Conditions.
A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another, describing any attempted act of sexual contact with or on the child by another, or describing any act of physical abuse of the child by another that results in substantial bodily harm not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings and criminal proceedings, including juvenile offense adjudications, in the Tribal Court if:

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

(2) The child either:

(a) Testifies at the proceedings; or

(b) Is unavailable as a witness: PROVIDED, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

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

3.2A.44.128 Definitions Applicable To 3.2A.44.130 Through 3.2A.44.145.
(1) "Business day" means any day other than Saturday, Sunday, or a legal tribal, local, state, or federal holiday.

(2) "Conviction" means any adult conviction or juvenile adjudication for a sex offense or kidnapping offense.

(3) "Disqualifying offense" means a conviction for: Any offense that is a felony; a sex offense as defined in this section; a crime against children or persons, an offense with a domestic violence designation; permitting the commercial sexual abuse of a minor; or any violation of indecent exposure.

(4) "Employed" or "carries on a vocation" means employment that is full time or part time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(5) "Fixed residence" means a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

(6) "In the community" means residing outside of confinement or incarceration for a disqualifying offense.

(7) "Institution of higher education" means any public or private institution dedicated to postsecondary education, including any college, university, community college, trade, or professional school.

(8) "Kidnapping offense" means:

(a) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in section 3.2A.40, where the victim is a minor and the offender is not the minor's parent;

(b) Any offense that is, under section 3.2A.28, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection; and

(c) Any federal or out-of-state conviction for: An offense for which the person would be required to register as a kidnapping offender if residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a kidnapping offense under this subsection.

(9) "Lacks a fixed residence" means the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

(10) "Sex offense" means:

(a) Any offense defined as a sex offense;

(b) Any violation under section 3.2A.44.096 (sexual misconduct with a minor);

(c) Any violation under section 3.2A.68A.090 (communication with a minor for immoral purposes);

(d) A violation under section 3.2A.88.070 (promoting prostitution) or 3.2A.88.080 (promoting prostitution) if the person has a prior conviction for one of these offenses;

(e) Any gross misdemeanor that is, under chapter 3.2A.28, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under section 3.2.94A.030 or this subsection;

(f) Any out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a sex offense under this subsection;

(g) Any federal conviction classified as a sex offense under Title 42 U.S.C., Section 16911 (SORNA);

(h) Any military conviction for a sex offense. This includes sex offenses under the uniform code of military justice, as specified by the United States Secretary of Defense;

(i) Any conviction in a foreign country for a sex offense if it was obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established pursuant to Title 42 U.S.C., Section 16912.

(11) "School" means a public or private school.

(12) "Student" means a person who is enrolled, on a full-time or part-time basis, in any school or institution of higher education.

3.2A.44.130 Registration Of Sex Offenders And Kidnapping Offenders — Procedures — Definition — Penalties.

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty

by reason of insanity of committing any sex offense or kidnapping offense, shall register with the Tribal Police, or county sheriff for the county of the person's residence, or if the person is not a resident of any Tribal property or within the State of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section.

When a person required to register under this section is in custody of any state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

(b) Any adult or juvenile who is required to register under (a) of this subsection must give notice to the Tribal Police or county sheriff of the county with whom the person is registered within three business days:

(i) Prior to arriving at a school or institution of higher education to attend classes;

(ii) Prior to starting work at an institution of higher education; or

(iii) After any termination of enrollment or employment at a school or institution of higher education.

(2)(a) A person required to register under this section must provide the following information when registering: (i) Name and any aliases used; (ii) complete and accurate residential address or, if the person lacks a fixed residence, where he or she plans to stay; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) social security number; (viii) photograph; and (ix) fingerprints.

(b) A person may be required to update any of the information required in this subsection in conjunction with any address verification conducted by the Tribal Police or county sheriff or as part of any notice required by this section.

(c) A photograph or copy of an individual's fingerprints may be taken at any time to update an individual's file.

(3)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of any state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender.

The agency should cooperate with the Tribe and within three days forward the registration information to the Tribal Police or county sheriff for the county of the offender's anticipated residence. The offender must also register within three business days from the time of release with the Tribal Police or county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender should provide notice to the offender of the duty to register.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency should notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence.

(iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States Bureau of Prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within three business days from the time of release with the Tribal Police or county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation.

Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States Bureau of Prisons, United States Courts, United States Parole Commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States Bureau of Prisons, United States

Courts, United States Parole Commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997.

A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation.

(iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the Tribal Police or county sheriff to register within three business days of being sentenced.

(v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS. Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within three business days of establishing residence or reestablishing residence if the person is a former Washington resident.

The duty to register under this subsection applies to sex offenders convicted under the laws of another tribe, state or a foreign country, federal or military statutes for offenses committed before, on, or after February 28, 1990, or Washington state for offenses committed before, on, or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed before, on, or after July 27, 1997.

Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within three business days of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult or juvenile who has been found not guilty by reason of insanity under law such as Washington State Law RCW 10.77of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of a state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within three business days from the time of release with the Tribal Police or county sheriff for the county of the person's residence.

The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within three business days of receiving notice of this registration requirement.

(vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the Tribal Police or county sheriff not more than three business days after entering the county and provide the information required in subsection (2)(a) of this section.

(viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION. Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within three business days of moving to the new state or to a foreign country to the Tribal Police or county sheriff with whom the person last registered in Washington state. The Tribal Police or county sheriff shall promptly forward this information to the Washington state patrol.

(b) The Tribal Police or county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, or a complaint for a violation of section 3.2A.44.132, or arraignment on charges for a violation of section 3.2A.44.132, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under section 3.2A.44.132 who asserts as a defense the lack of notice of the duty to register shall register within three business days following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (3)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4)(a) If any person required to register pursuant to this section changes his or her residence

address within the same county, the person must provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address to the county sheriff within three business days of moving.

(b) If any person required to register pursuant to this section moves to a new county, the person must register with that Tribal Police or county sheriff within three business days of moving. Within three business days, the person must also provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom the person last registered. The Tribal Police or county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the Tribal Police or county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(5)(a) Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the Tribal Police or sheriff of the county where he or she last registered within three business days after ceasing to have a fixed residence. The notice shall include the information required by subsection (2)(a) of this section, except the photograph and fingerprints. The Tribal Police or county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The Tribal Police or sheriff shall forward this information to the Tribal Police or sheriff of the county in which the person intends to reside, if the person intends to reside in another tribe or county.

(b) A person who lacks a fixed residence must report weekly, in person, to the Tribal Police or sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the Tribal Police or county sheriff's office, and shall occur during normal business hours. The person must keep an accurate accounting of where he or she stays during the week and provide it to the Tribal Police or county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the Tribal Police or sheriff of the county where he or she last registered within three business days of ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (3)(a)(vii) or (viii) and (5) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(6) A sex offender subject to registration requirements under this section who applies to change his or her name shall submit a copy of the application to the Tribal Police or county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural

reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the Tribal Police or county sheriff of the county of the person's residence and to the state patrol within three business days of the entry of the order.

(7) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a peace officer, including the Tribal Police, a county sheriff, or law enforcement agency, for failing to release information authorized under this section.

3.2A.44.132 Failure To Register As Sex Offender Or Kidnapping Offender.
(1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under section 3.2A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of section 3.2A.44.130.

(a) The failure to register as a sex offender pursuant to this subsection is a felony if:

(i) It is the person's first conviction for a felony failure to register; or

(ii) The person has previously been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state.

(b) If a person has been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state on two or more prior occasions, the failure to register under this subsection is a felony.

(2) A person is guilty of failure to register as a sex offender if the person has a duty to register under section 3.2A.44.130 for a sex offense other than a felony and knowingly fails to comply with any of the requirements of section 3.2A.44.130. The failure to register as a sex offender under this subsection is a gross misdemeanor.

(3) A person commits the crime of failure to register as a kidnapping offender if the person has a duty to register under section 3.2A.44.130 for a kidnapping offense and knowingly fails to comply with any of the requirements of section 3.2A.44.130.

(a) If the person has a duty to register for a felony kidnapping offense, the failure to register as a kidnapping offender is a felony.

(b) If the person has a duty to register for a kidnapping offense other than a felony, the failure to register as a kidnapping offender is a gross misdemeanor.

(4) Unless relieved of the duty to register pursuant to sections 3.2A.44.141 and 3.2A.44.142, a violation of this section is an ongoing offense for purposes of the statute of limitations under section 3.2A.04.080.

3.2A.44.135 Address Verification.

(1) When an offender registers with the Tribal Police or county sheriff pursuant to section 3.2A.44.130, the Tribal Police or county sheriff shall notify the police chief or town marshal of the jurisdiction in which the offender has registered to live. If the offender registers to live in an unincorporated area of the county, the Tribal Police or sheriff shall make reasonable attempts to verify that the offender is residing at the registered address. If the offender registers to live in an incorporated city or town, the police chief or town marshal shall make reasonable attempts to verify that the offender is residing at the registered address.

Reasonable attempts require a yearly mailing by certified mail, with return receipt requested, a non-forwardable verification form to the offender at the offender's last registered address sent by the chief law enforcement officer of the jurisdiction where the offender is registered to live. For offenders who have been previously designated sexually violent predators or the equivalent procedure in another jurisdiction, even if the designation has subsequently been removed, this mailing must be sent every ninety days.

The offender must sign the verification form, state on the form whether he or she still resides at the last registered address, and return the form to the chief law enforcement officer of the jurisdiction where the offender is registered to live within ten days after receipt of the form.

(2) The chief law enforcement officer of the jurisdiction where the offender has registered to live shall make reasonable attempts to locate any sex offender who fails to return the verification form or who cannot be located at the registered address.

If the offender fails to return the verification form or the offender is not at the last registered address, the chief law enforcement officer of the jurisdiction where the offender has registered to live shall promptly forward this information to the Tribal Police or county sheriff and to the Washington state patrol for inclusion in the central registry of sex offenders.

(3) When an offender notifies the Tribal Police or county sheriff of a change to his or her residence address pursuant to section 3.2A.44.130, and the new address is in a different law enforcement jurisdiction, the Tribal Police or county sheriff shall notify the police chief or town marshal of the jurisdiction from which the offender has moved.

(4) Tribal Police, county sheriffs and police chiefs or town marshals may enter into agreements for the purposes of delegating the authority and obligation to fulfill the requirements of this section.

3.2A.44.138 Attendance, Employment Of Registered Sex Offenders And Kidnapping Offenders At Institutions Of Higher Education — Notice To School Districts, Principal, Department Of Public Safety At Institution — Confidentiality.

(1) Upon receiving notice from a registered person pursuant to section 3.2A.44.130 that the person will be attending a school or institution of higher education or will be employed with an institution of higher education, the sheriff must promptly notify the school district and the school principal or institution's department of public safety and shall provide that school or department with the person's: (a) Name and any aliases used; (b) complete residential address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of

conviction; (g) social security number; (h) photograph; and (i) risk level classification.

(2) A principal or department receiving notice under this subsection must disclose the information received from the Tribal Police or sheriff as follows:

(a) If the student is classified as a risk level II or III, the principal shall provide the information received to every teacher of the student and to any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record;

(b) If the student is classified as a risk level I, the principal or department shall provide the information received only to personnel who, in the judgment of the principal or department, for security purposes should be aware of the student's record.

(3) The Tribal Police or sheriff shall notify the applicable school district and school principal or institution's department of public safety whenever a student's risk level classification is changed or the Tribal Police or sheriff is notified of a change in the student's address.

(4) Any information received by school or institution personnel under this subsection is confidential and may not be further disseminated except as provided by Tribal law, other statutes or case law, and the family and educational and privacy rights act of 1994, Title 20 U.S.C. , Section 1232g et seq.

3.2A.44.140 Registration Of Sex Offenders And Kidnapping Offenders — Duty To Register — Expiration Of Subsection.
The duty to register under section 3.2A.44.130 shall continue for the duration provided in this section.

(1) For a person convicted in this state of a class A felony or an offense listed in section 3.2A.44.142 (5), or a person convicted in this state of any sex offense or kidnapping offense who has one or more prior convictions for a sex offense or kidnapping offense, the duty to register shall continue indefinitely.

(2) For a person convicted in this jurisdiction of a felony who does not have one or more prior convictions for a sex offense or kidnapping offense and whose current offense is not listed in section 3.2A.44.142 (5), the duty to register shall end fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of a disqualifying offense during that time period.

(3) For a person convicted in this jurisdiction of a felony, a violation of sections 3.2.68A.090 or 3.2A.44.096, or an attempt, solicitation, or conspiracy to commit a felony, and the person does not have one or more prior convictions for a sex offense or kidnapping offense and the person's current offense is not listed in section 3.2A.44.142 (5), the duty to register shall end ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten

consecutive years in the community without being convicted of a disqualifying offense during that time period.

(4) For a person required to register for another tribe's or federal or out-of-state conviction, the duty to register shall continue indefinitely.

(5) Nothing in this section prevents a person from being relieved of the duty to register under sections 3.2A.44.142 and 3.2A.44.143.

(6) Nothing relating to the discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to section 3.2A.44.130.

(7) For purposes of determining whether a person has been convicted of more than one sex offense, failure to register as a sex offender or kidnapping offender is not a sex or kidnapping offense.

(8) The provisions of this section and sections 3.2A.44.141 through 3.2A.44.143 apply equally to a person who has been found not guilty by reason of insanity of a sex offense or kidnapping offense.

3.2A.44.141 Investigation — End Of Duty To Register — Removal From Registry — Civil Liability.

(1) Upon the request of a person who is listed in the central registry of sex offenders and kidnapping offenders, the Tribal Police or county sheriff shall investigate whether a person's duty to register has ended by operation of law pursuant to section 3.2A.44.140.

(a) Using available records, the Tribal Police or county sheriff shall verify that the offender has spent the requisite time in the community and has not been convicted of a disqualifying offense.

(b) If the Tribal Police or county sheriff determines the person's duty to register has ended by operation of law, the Tribal Police or county sheriff shall request the Washington state patrol remove the person's name from the central registry.

(2) Nothing in this subsection prevents the Tribal Police or a county sheriff from investigating, upon his or her own initiative, whether a person's duty to register has ended by operation of law pursuant to section 3.2A.44.140.

(3)(a) A person who is listed in the central registry as the result of a Tribal, federal or out-of-state conviction may request the Tribal Police or county sheriff to investigate whether the person should be removed from the registry if:

(i) A court in the person's Tribal or state of conviction has made an individualized determination that the person should not be required to register; and

(ii) The person provides proof of relief from registration to the Tribal Police or county sheriff.

(b) If the Tribal Police or county sheriff determines the person has been relieved of the duty to register in his or her state of conviction, the Tribal Police or county sheriff shall request the Washington state patrol remove the person's name from the central registry.

(4) An appointed or elected tribal official, public employee, or tribal agency, or units of local tribe and its employees, are immune from civil liability for damages for removing or requesting the removal of a person from the central registry of sex offenders and kidnapping offenders or the failure to remove or request removal of a person within the time frames provided in section 3.2A.44.140.

3.2A.44.142 Relief From Duty To Register — Petition — Exceptions.
(1) A person who is required to register under section 3.2A.44.130 may petition the Tribal Court to be relieved of the duty to register:

(a) If the person has a duty to register for a sex offense or kidnapping offense committed when the offender was a juvenile, regardless of whether the conviction was in this jurisdiction or state, as provided in section 3.2A.44.143;

(b) If the person is required to register for a conviction in this state and is not prohibited from petitioning for relief from registration under subsection (2) of this section, when the person has spent ten consecutive years in the community without being convicted of a disqualifying offense during that time period; or

(c) If the person is required to register for a Tribal, federal or out-of-state conviction, when the person has spent fifteen consecutive years in the community without being convicted of a disqualifying offense during that time period.

(2)(a) A person may not petition for relief from registration if the person has been:

(i) Determined to be a sexually violent predator,

(ii) Convicted as an adult of a sex offense or kidnapping offense that is a Tribal Felony or a Washington State class A felony and that was committed with forcible compulsion on or after June 8, 2000; or

(iii) Until July 1, 2012, convicted of one aggravated offense or more than one sexually violent offense, as defined in subsection (5) of this section, and the offense or offenses were committed on or after March 12, 2002. After July 1, 2012, this subsection (2)(a)(iii) shall have no further force and effect.

(b) Any person who may not be relieved of the duty to register may petition the court to be exempted from any community notification requirements that the person may be subject to fifteen years after the later of the entry of the judgment and sentence or the last date of release from confinement, including full-time residential treatment, pursuant to the conviction, if the person has spent the time in the community without being convicted of a disqualifying offense.

(3) A petition for relief from registration or exemption from notification under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in the county where the person is registered at the time the petition is sought. The prosecuting attorney of the county shall be named and served as the respondent in any such petition.

(4)(a) The court may relieve a petitioner of the duty to register only if the petitioner shows by clear and convincing evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(b) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the registry, the following factors are provided as guidance to assist the court in making its determination:

(i) The nature of the registrable offense committed including the number of victims and the length of the offense history;

(ii) Any subsequent criminal history;

(iii) The petitioner's compliance with supervision requirements;

(iv) The length of time since the charged incident(s) occurred;

(v) Any input from community corrections officers, law enforcement, or treatment providers;

(vi) Participation in sex offender treatment;

(vii) Participation in other treatment and rehabilitative programs;

(viii) The offender's stability in employment and housing;

(ix) The offender's community and personal support system;

(x) Any risk assessments or evaluations prepared by a qualified professional;

(xi) Any updated polygraph examination;

(xii) Any input of the victim;

(xiii) Any other factors the court may consider relevant.

(5)(a) A person who has been convicted of an aggravated offense, or has been convicted of one or more prior sexually violent offenses or criminal offenses against a victim who is a minor, as defined in (b) of this subsection:

(i) Until July 1, 2012, may not be relieved of the duty to register;

(ii) After July 1, 2012, may petition the court to be relieved of the duty to register as provided in this section;

(iii) This provision shall apply to convictions for crimes committed on or after July 22, 2001.

(b) Unless the context clearly requires otherwise, the following definitions apply only to the federal lifetime registration requirements under this subsection:

(i) "Aggravated offense" means an adult conviction that meets the definition of Title 18 U.S.C., Section 2241, which is limited to the following:

(A) Any sex offense involving sexual intercourse or sexual contact where the victim is under twelve years of age;

(B) Sections 3.2A.44.040 (rape), 3.2A.44.073 (rape of a child), or 3.2A.44.083 (child molestation);

(C) Any of the following offenses when committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct: rape in the second degree, indecent liberties, custodial sexual misconduct, incest, or sexual exploitation of a minor;

(D) Any of the following offenses when committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct, if the victim is twelve years of age or over but under sixteen years of age and the offender is eighteen years of age or over and is more than forty-eight months older than the victim: rape of a child in the second degree, rape of a child in the third degree, child molestation in the second degree, or child molestation in the third degree;

(E) A felony with a finding of sexual motivation where the victim is under twelve years of age or that is committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct;

(F) An offense that is, under section 3.2A.28, an attempt or solicitation to commit such an offense; or

(G) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(i)(A) through (F) of this subsection.

(ii) "Sexually violent offense" means an adult conviction that meets the definition of Title 42 U.S.C., Section 14071(a)(1)(A), which is limited to the following:

(A) An aggravated offense;

(B) An offense that is not an aggravated offense but meets the definition of Title 18 U.S.C., Section 2242, which is limited to section 32.A.44.050 (1) (b) through (f) (rape) and section 3.2A.44.100 (1) (b) through (f) (indecent liberties);

(C) A felony with a finding of sexual motivation where the victim is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, the conduct;

(D) An offense that is, under section 3.2A.28, an attempt or solicitation to commit such an offense; or

(E) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(ii)(A) through (D) of this subsection.

(iii) "Criminal offense against a victim who is a minor" means, in addition to any aggravated offense or sexually violent offense where the victim was under eighteen years of age, an adult conviction for the following offenses where the victim is under eighteen years of age:

(A) Sections 3.2A.44.060 (rape third degree), 3.2A.44.076 (rape of a child in the second degree), 3.2A.44.079 (rape of a child in the third degree), 3.2A.44.086 (child molestation in the second degree), 3.2A.44.089 (child molestation in the third degree), 3.2A.44.093 (sexual misconduct with a minor in the first degree), 3.2A.44.096 (sexual misconduct with a minor in the second degree), 3.2A.44.160 (custodial sexual misconduct in the first degree), 3.2A.64.020 (incest), 3.2.68A.040 (sexual exploitation of a minor), 3.2.68A.090 (communication with a minor for immoral purposes), or 3.2.68A.100 (commercial sexual abuse of a minor);

(B) Sections 3.2A.40.020 (kidnapping in the first degree), 3.2A.40.030 (kidnapping in the second degree), or 3.2A.40.040 (unlawful imprisonment), where the victim is a minor and the offender is not the minor's parent;

(C) A felony with a finding of sexual motivation where the victim is a minor;

(D) An offense that is, under chapter 3.2A.28, an attempt or solicitation to commit such an offense; or

(E) An offense defined by federal law or the laws of another tribe or state that is equivalent to the offenses listed in (b)(iii)(A) through (D) of this subsection.

3.2A.44.143 Relief From Duty To Register For Sex Offense Or Kidnapping Offense Committed When Offender Was A Juvenile — Petition — Exception.

(1) An offender having a duty to register under section 3.2A.44.130 for a sex offense or kidnapping offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty as provided in this section.

(2) For class A sex offenses or kidnapping offenses committed when the petitioner was fifteen years of age or older, the court may relieve the petitioner of the duty to register if:

(a) At least sixty months have passed since the petitioner’s adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses;

(b) The petitioner has not been adjudicated or convicted of a violation of section 3.2A.44.132 (failure to register) during the sixty months prior to filing the petition; and

(c) The petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(3) For all other sex offenses or kidnapping offenses committed by a juvenile not included in subsection (2) of this section, the court may relieve the petitioner of the duty to register if:

(a) At least twenty-four months have passed since the petitioner's adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses;

(b) The petitioner has not been adjudicated or convicted of a violation of section 3.2A.44.132 (failure to register) during the twenty-four months prior to filing the petition; and

(c) The petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(4) A petition for relief from registration under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register. The prosecuting attorney of the jurisdiction shall be named and served as the respondent in any such petition.

(5) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders, the following factors are provided as guidance to assist the court in making its determination, to the extent the factors are applicable considering the age and circumstances of the petitioner:

(a) The nature of the registrable offense committed including the number of victims and the length of the offense history;

(b) Any subsequent criminal history;

(c) The petitioner's compliance with supervision requirements;

(d) The length of time since the charged incident(s) occurred;

(e) Any input from community corrections officers, juvenile parole or probation officers, law enforcement, or treatment providers;

(f) Participation in sex offender treatment;

(g) Participation in other treatment and rehabilitative programs;

(h) The offender's stability in employment and housing;

(i) The offender's community and personal support system;

(j) Any risk assessments or evaluations prepared by a qualified professional;

(k) Any updated polygraph examination;

(l) Any input of the victim;

(m) Any other factors the court may consider relevant.

(6) A juvenile prosecuted and convicted of a sex offense or kidnapping offense as an adult may not petition to the superior court under this section.

3.2A.44.145 Notification To Offenders Of Changed Requirements And Ability To Petition For Relief From Registration.
(1) The Tribal Police shall notify:

(a) Registered sex and kidnapping offenders of any change to the registration requirements; and

(b) No less than annually, an offender having a duty to register under section 3.2A.44.143 for a sex offense or kidnapping offense committed when the offender was a juvenile of their ability to petition for relief from registration as provided in section 3.2A.44.140.

(2) For economic efficiency, the Tribal Police may combine the notices in this section into one notice.

3.2A.44.150 Testimony Of Child By Closed-Circuit Television.
(1) On motion of the prosecuting attorney in a criminal proceeding, the court may order that a child under the age of ten may testify in a room outside the presence of the defendant and the jury while one-way closed-circuit television equipment simultaneously projects the child's

testimony into another room so the defendant and the jury can watch and hear the child testify if:

(a) The testimony will:

(i) Describe an act or attempted act of sexual contact performed with or on the child witness by another person or with or on a child other than the child witness by another person;

(ii) Describe an act or attempted act of physical abuse against the child witness by another person or against a child other than the child witness by another person; or

(iii) Describe a violent offense committed against a person known by or familiar to the child witness or by a person known by or familiar to the child witness;

(b) The testimony is taken during the criminal proceeding;

(c) The court finds by substantial evidence, in a hearing conducted outside the presence of the jury, that requiring the child witness to testify in the presence of the defendant will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at the trial. If the defendant is excluded from the presence of the child, the jury must also be excluded;

(d) As provided in subsection (1)(a) and (b) of this section, the court may allow a child witness to testify in the presence of the defendant but outside the presence of the jury, via closed-circuit television, if the court finds, upon motion and hearing outside the presence of the jury, that the child will suffer serious emotional distress that will prevent the child from reasonably communicating at the trial in front of the jury, or, that although the child may be able to reasonably communicate at trial in front of the jury, the child will suffer serious emotional or mental distress from testifying in front of the jury. If the child is able to communicate in front of the defendant but not the jury the defendant will remain in the room with the child while the jury is excluded from the room;

(e) The court finds that the prosecutor has made all reasonable efforts to prepare the child witness for testifying, including informing the child or the child's parent or guardian about community counseling services, giving court tours, and explaining the trial process. If the prosecutor fails to demonstrate that preparations were implemented or the prosecutor in good faith attempted to implement them, the court shall deny the motion;

(f) The court balances the strength of the Tribe's case without the testimony of the child witness against the defendant's constitutional rights and the degree of infringement of the closed-circuit television procedure on those rights;

(g) The court finds that no less restrictive method of obtaining the testimony exists that can adequately protect the child witness from the serious emotional or mental distress;

(h) When the court allows the child witness to testify outside the presence of the defendant, the defendant can communicate constantly with the defense attorney by electronic transmission

and be granted reasonable court recesses during the child's testimony for person-to-person consultation with the defense attorney;

(i) The court can communicate with the attorneys by an audio system so that the court can rule on objections and otherwise control the proceedings;

(j) All parties in the room with the child witness are on camera and can be viewed by all other parties. If viewing all participants is not possible, the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child;

(k) The court finds that the television equipment is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment; and

(l) The court imposes reasonable guidelines upon the parties for conducting the filming to avoid trauma to the child witness or abuse of the procedure for tactical advantage.

The prosecutor, defense attorney, and a neutral and trained victim's advocate, if any, shall always be in the room where the child witness is testifying. The court in the court's discretion depending on the circumstances and whether the jury or defendant or both are excluded from the room where the child is testifying, may remain or may not remain in the room with the child.

(2) During the hearing conducted under subsection (1) of this section to determine whether the child witness may testify outside the presence of the defendant and/or the jury, the court may conduct the observation and examination of the child outside the presence of the defendant if:

(a) The prosecutor alleges and the court concurs that the child witness will be unable to testify in front of the defendant or will suffer severe emotional or mental distress if forced to testify in front of the defendant;

(b) The defendant can observe and hear the child witness by closed-circuit television;

(c) The defendant can communicate constantly with the defense attorney during the examination of the child witness by electronic transmission and be granted reasonable court recesses during the child's examination for person-to-person consultation with the defense attorney; and

(d) The court finds the closed-circuit television is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment. Whenever possible, all the parties in the room with the child witness shall be on camera so that the viewers can see all the parties. If viewing all participants is not possible, then the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child.

(3) The court shall make particularized findings on the record articulating the factors upon which the court based its decision to allow the child witness to testify via closed-circuit television pursuant to this section. The factors the court may consider include, but are not limited to, a consideration of the child's age, physical health, emotional stability, expressions by the child of

fear of testifying in open court or in front of the defendant, the relationship of the defendant to the child, and the court's observations of the child's inability to reasonably communicate in front of the defendant or in open court. The court's findings shall identify the impact the factors have upon the child's ability to testify in front of the jury or the defendant or both and the specific nature of the emotional or mental trauma the child would suffer. The court shall determine whether the source of the trauma is the presence of the defendant, the jury, or both, and shall limit the use of the closed-circuit television accordingly.

(4) This section does not apply if the defendant is an attorney pro se unless the defendant has a court-appointed attorney assisting the defendant in the defense.

(5) This section may not preclude the presence of both the child witness and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

(6) The Tribal Court may adopt rules of procedure regarding closed-circuit television procedures.

(7) All recorded tapes of testimony produced by closed-circuit television equipment shall be subject to any protective order of the court for the purpose of protecting the privacy of the child witness.

(8) Nothing in this section creates a right of the child witness to a closed-circuit television procedure in lieu of testifying in open court.

(9) The Tribe shall bear the costs of the closed-circuit television procedure.

(10) A child witness may or may not be a victim in the proceeding.

(11) Nothing in this section precludes the court, under other circumstances arising under subsection (1)(a) of this section, from allowing a child to testify outside the presence of the defendant and the jury so long as the testimony is presented in accordance with the standards and procedures required in this section.

3.2A.44.160 Custodial Sexual Misconduct In The First Degree.
(1) A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person:

(a) When:

(i) The victim is a resident of a Tribal, state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and

(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the first degree is a felony.

3.2A.44.170 Custodial Sexual Misconduct In The Second Degree.
(1) A person is guilty of custodial sexual misconduct in the second degree when the person has sexual contact with another person:

(a) When:

(i) The victim is a resident of a Tribal, state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and

(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the second degree is a gross misdemeanor.

3.2A.44.180 Custodial Sexual Misconduct — Defense.
It is an affirmative defense to prosecution under sections 3.2A.44.160 or 3.2A.44.170, to be proven by the defendant by a preponderance of the evidence that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person.

3.2A.44.190 Criminal Trespass Against Children — Definitions.
As used in this section and sections 3.2A.44.193 and 3.2A.44.196:

(1) "Covered entity" means any public facility or private facility whose primary purpose, at any time, is to provide for the education, care, or recreation of a child or children, including but not limited to community and recreational centers, playgrounds, schools, swimming pools, and state or municipal parks.

(2) "Child" means a person under the age of eighteen, unless the context clearly indicates that the term is otherwise defined in statute.

(3) "Public facility" means a facility operated by a unit of local, state or tribal government, or by

a nonprofit organization.

(4) "Schools" means public and private schools, but does not include home-based instruction.

(5) "Covered offender" means a person required to register under section 3.2A.44.130 who is eighteen years of age or older, who is not under the jurisdiction of the juvenile rehabilitation authority or currently serving a special sex offender disposition alternative, whose risk level classification has been assessed at a risk level II or a risk level III pursuant to law, and who, at any time, has been convicted of one or more of the following offenses:

(a) Rape of a child in the first, second, and third degree; child molestation in the first, second, and third degree; indecent liberties against a child under age fifteen; sexual misconduct with a minor in the first and second degree; incest in the first and second degree; luring with sexual motivation; possession of depictions of minors engaged in sexually explicit conduct; dealing in depictions of minors engaged in sexually explicit conduct; bringing into the state depictions of minors engaged in sexually explicit conduct; sexual exploitation of a minor; communicating with a minor for immoral purposes; patronizing a juvenile prostitute;

(b) Any felony in effect at any time prior to March 20, 2006, that is comparable to an offense listed in (a) of this subsection, including, but not limited to, statutory rape in the first and second degrees [degree] and carnal knowledge;

(c) Any felony offense for which:

(i) There was a finding that the offense was committed with sexual motivation; and

(ii) The victim of the offense was less than sixteen years of age at the time of the offense;

(d) An attempt, conspiracy, or solicitation to commit any of the offenses listed in (a) through (c) of this subsection;

(e) Any conviction from any other jurisdiction which is comparable to any of the offenses listed in (a) through (d) of this subsection.

3.2A.44.193 Criminal Trespass Against Children — Covered Entities.

(1) An owner, manager, or operator of a covered entity may order a covered offender from the legal premises of a covered entity as provided under this section. To do this, the owner, manager, or operator of a covered entity must first provide the covered offender, or cause the covered offender to be provided, personal service of a written notice that informs the covered offender that:

(a) The covered offender must leave the legal premises of the covered entity and may not return without the written permission of the covered entity; and

(b) If the covered offender refuses to leave the legal premises of the covered entity, or thereafter returns and enters within the legal premises of the covered entity without written permission, the offender may be charged and prosecuted for a felony offense as provided in

section 3.2A.44.196.

(2) A covered entity may give written permission of entry and use to a covered offender to enter and remain on the legal premises of the covered entity at particular times and for lawful purposes, including, but not limited to, conducting business, voting, or participating in educational or recreational activities. Any written permission of entry and use of the legal premises of a covered entity must be clearly stated in a written document and must be personally served on the covered offender. If the covered offender violates the conditions of entry and use contained in a written document personally served on the offender by the covered entity, the covered offender may be charged and prosecuted for a felony offense as provided in section 3.2A.44.196.

(3) An owner, employee, or agent of a covered entity shall be immune from civil liability for damages arising from excluding or failing to exclude a covered offender from a covered entity or from imposing or failing to impose conditions of entry and use on a covered offender.

(4) A person provided with written notice from a covered entity under this section may file a petition with the district court alleging that he or she does not meet the definition of "covered offender" in section 3.2A.44.190. The district court must conduct a hearing on the petition within thirty days of the petition being filed.

In the hearing on the petition, the person has the burden of proving that he or she is not a covered offender. If the court finds, by a preponderance of the evidence, that the person is not a covered offender, the court shall order the covered entity to rescind the written notice and shall order the covered entity to pay the person's costs and reasonable attorneys' fees.

3.2A.44.196 Criminal Trespass Against Children.
(1) A person is guilty of the crime of criminal trespass against children if he or she:

(a) Is a covered offender as defined in section 3.2A.44.190; and

(b)(i) Is personally served with written notice complying with the requirements of section 3.2A.44.193 that excludes the covered offender from the legal premises of the covered entity and remains upon or reenters the legal premises of the covered entity; or

(ii) Is personally served with written notice complying with the requirements of section 3.2A.44.193 that imposes conditions of entry and use on the covered offender and violates the conditions of entry and use.

(2) Criminal trespass against children is a felony.

3.2A.46 HARASSMENT.
3.2A.46.010 Finding.
The Tribe finds that the prevention of serious, personal harassment is an important Tribe objective. Toward that end, this section is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce,

intimidate, or humiliate the victim.

The Tribe further finds that the protection of such persons from harassment can be accomplished without infringing on constitutionally protected speech or activity.

3.2A.46.020 Definition — Penalties.
(1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a felony if any of the following apply:

(i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in section 3.2A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order;

(ii) The person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person;

(iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or

(iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties.

For the purposes of (b)(iii) and (iv) of this subsection, the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the

person does not have the present and future ability to carry out the threat.

(3) For purposes of this section, a criminal justice participant includes any (a) Tribal, federal, state, or local law enforcement agency employee; (b) Tribal, federal, state, or local prosecuting attorney or deputy prosecuting attorney; (c) staff member of any adult corrections institution or local adult detention facility; (d) staff member of any juvenile corrections institution or local juvenile detention facility; (e) community corrections officer, probation, or parole officer; (f) member of the indeterminate sentence review board; (g) advocate from a crime victim/witness program; or (h) defense attorney.

(4) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law.

3.2A.46.030 Place Where Committed.
Any harassment offense committed as set forth in sections 3.2A.46.020 or 3.2A.46.110 may be deemed to have been committed where the conduct occurred or at the place from which the threat or threats were made or at the place where the threats were received.

3.2A.46.040 Court-Ordered Requirements Upon Person Charged With Crime — Violation.
(1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may require that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(2) Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under section 3A.46. A certified copy of the order shall be provided to the victim by the clerk of the court.

3.2A.46.050 Arraignment — No-Contact Order.
A defendant who is charged by citation, complaint, or information with an offense involving harassment and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information. At that appearance, the court shall determine the necessity of imposing a no-contact or no-harassment order, and consider the provisions of section 3.41.800, or other conditions of pretrial

release according to the procedures established by court rule for preliminary appearance or an arraignment.

3.2A.46.060 Crimes Included In Harassment.
As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

(1) Harassment,

(2) Malicious harassment;

(3) Telephone harassment;

(4) Assault;

(5) Assault of a child;

(6) Reckless endangerment;

(7) Extortion;

(8) Coercion;

(9) Burglary;

(10) Criminal trespass;

(11) Malicious mischief;

(12) Kidnapping;

(13) Unlawful imprisonment;

(14) Rape;

(15) Indecent liberties;

(16) Rape of a child;

(17) Child molestation;

(18) Stalking;

(19) Cyberstalking;

(20) Violation of a temporary, permanent, or final protective order issued by the Tribal Court or other jurisdiction;

(21) Unlawful discharge of a laser.

3.2A.46.070 Enforcement Of Orders Restricting Contact.
Any Tribal Police or sheriff or other law enforcement agency may enforce this section as it relates to orders restricting the defendants' ability to have contact with the victim or others.

3.2A.46.080 Order Restricting Contact — Violation.
The victim shall be informed by Tribal Police local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under section 3A.46 and will subject a violator to arrest.

3.2A.46.090 Non-Liability Of Peace Officer.
A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of harassment brought by any party to the incident.

3.2A.46.100 "Convicted," Time When.
A person has been "convicted" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing, post-trial motions, and appeals.

3.2A.46.110 Stalking.
(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even

if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

(5)(a) Except as provided in (b) of this subsection, a person who stalks another person is guilty of a gross misdemeanor.

(b) A person who stalks another is guilty of a felony if any of the following applies:

(i) The stalker has previously been convicted in this state or any other state of any crime of harassment of the same victim or members of the victim's family or household or any person specifically named in a protective order;

(ii) the stalking violates any protective order protecting the person being stalked;

(iii) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person;

(iv) the stalker was armed with a deadly weapon while stalking the person;

(v)(A) the stalker's victim is or was a law enforcement officer; judge; juror; attorney; victim advocate; legislator; community corrections' officer; an employee, contract staff person, or volunteer of a correctional agency; or an employee of the child protective, child welfare, or adult protective services division within the department of social and health services; and (B) the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or

(vi) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(6) As used in this section:

(a) "Correctional agency" means a person working in a correctional setting or any Tribal, state, county, or municipally operated agency with the authority to direct the release of a person serving a sentence or term of confinement and includes but is not limited to the department of corrections.

(b) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(c) "Harasses" means unlawful harassment defined as a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

(d) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(e) "Repeatedly" means on two or more separate occasions.

3.2A.46.120 Criminal Gang Intimidation.
A person commits the offense of criminal gang intimidation if the person threatens another person with bodily injury because the other person refuses to join or has attempted to withdraw from a gang, if the person who threatens the victim or the victim attends or is registered in a public or alternative school.

Criminal gang intimidation is a felony.

3.2A.48 ARSON, RECKLESS BURNING, AND MALICIOUS MISCHIEF.
3.2A.48.010 Definitions.
(1) For the purpose of this chapter, unless the context indicates otherwise:

(a) "Building" in in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods; and where a building consists of two or more units separately secured or occupied, each unit shall not be treated as a separate building;

(b) "Damages", in addition to its ordinary meaning, includes any charring, scorching, burning, or breaking, or agricultural or industrial sabotage, and shall include any diminution in the value of any property as a consequence of an act;

(c) "Property of another" means property in which the actor possesses anything less than exclusive ownership.

(2) To constitute arson it is not necessary that a person other than the actor has ownership in the building or structure damaged or set on fire.

3.2A.48.020 Arson.
(1) A person is guilty of arson if he or she knowingly and maliciously:

(a) Causes a fire or explosion which is manifestly dangerous to any human life, including firefighters; or

(b) Causes a fire or explosion which damages a dwelling; or

(c) Causes a fire or explosion in any building in which there shall be at the time a human being who is not a participant in the crime; or

(d) Causes a fire or explosion on property valued at ten thousand dollars or more with intent to collect insurance proceeds; or

(e) Knowingly and maliciously causes a fire or explosion which damages a building, or any structure or erection appurtenant to or joining any building, or any wharf, dock, machine, engine, automobile, or other motor vehicle, watercraft, aircraft, bridge, or trestle, or hay, grain, crop, or timber, whether cut or standing or any range land, or pasture land, or any fence, or any lumber, shingle, or other timber products, or any property.

(2) Arson is a felony.

3.2A.48.040 Reckless Burning In The First Degree.
(1) A person is guilty of reckless burning in the first degree if he or she recklessly damages a building or other structure or any vehicle, railway car, aircraft, or watercraft or any hay, grain, crop, or timber whether cut or standing, by knowingly causing a fire or explosion.

(2) Reckless burning in the first degree is a felony.

3.2A.48.050 Reckless Burning In The Second Degree.
(1) A person is guilty of reckless burning in the second degree if he or she knowingly causes a fire or explosion, whether on his or her own property or that of another, and thereby recklessly places a building or other structure, or any vehicle, railway car, aircraft, or watercraft, or any hay, grain, crop or timber, whether cut or standing, in danger of destruction or damage.

(2) Reckless burning in the second degree is a gross misdemeanor.

3.2A.48.060 Reckless Burning — Defense.

In any prosecution for the crime of reckless burning in the first or second degrees, it shall be a defense if the defendant establishes by a preponderance of the evidence that:

(1) No person other than the defendant had a possessory, or pecuniary interest in the damaged or endangered property, or if other persons had such an interest, all of them consented to the defendant's conduct; and

(2) The defendant's sole intent was to destroy or damage the property for a lawful purpose.

3.2A.48.070 Malicious Mischief In The First Degree.
(1) A person is guilty of malicious mischief in the first degree if he or she knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding five hundred dollars;

(b) Causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication;

(c) Causes an impairment of the safety, efficiency, or operation of an aircraft by physically damaging or tampering with the aircraft or aircraft equipment, fuel, lubricant, or parts.

(2) Malicious mischief in the second degree is a felony.

3.2A.48.080 Malicious Mischief In The Second Degree.
(1) A person is guilty of malicious mischief in the second degree if he or she:

(a) Knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first degree; or

(b) Writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person unless the person has obtained the express permission of the owner or operator of the property, under circumstances not amounting to malicious mischief in the first degree.

(2) Malicious mischief in the third degree is a gross misdemeanor.

3.2A.48.100 Malicious Mischief — "Physical Damage" Defined.
For the purposes of sections 3.2A.48.010 and 3.2A.48.080 inclusive:

(1) "Physical damage", in addition to its ordinary meaning, shall include the total or partial alteration, damage, obliteration, or erasure of records, information, data, computer programs, or their computer representations, which are recorded for use in computers or the impairment, interruption, or interference with the use of such records, information, data, or computer

programs, or the impairment, interruption, or interference with the use of any computer or services provided by computers. "Physical damage" also includes any diminution in the value of any property as the consequence of an act;

(2) If more than one item of property is physically damaged as a result of a common scheme or plan by a person and the physical damage to the property would, when considered separately, constitute mischief in the second degree because of value, then the value of the damages may be aggregated in one count. If the sum of the value of all the physical damages exceeds five hundred dollars, the defendant may be charged with and convicted of malicious mischief in the first degree.

3.2A.48.105 Criminal Street Gang Tagging And Graffiti.
(1) A person is guilty of criminal street gang tagging and graffiti if he or she commits malicious mischief in the second degree under section 3.2A.48.080 (1)(b) and he or she:

(a) Has multiple current convictions for malicious mischief in the second degree offenses under section 3.2A.48.080 (1)(b); or

(b) Has previously been convicted for a malicious mischief in the second degree offense under section 3.2A.48.080 (1)(b) or a comparable offense under a code provision of any tribe, city or town; and

(c) The current offense or one of the current offenses is a "criminal street gang-related offense" as defined by the Tribal Court.

(2) Criminal street gang tagging and graffiti is a gross misdemeanor offense.

3.2A.48.110 Defacing A Tribal Monument.
(1) A person is guilty of defacing a Tribal monument if he or she knowingly defaces a monument or memorial on Tribal property.

(2) Defacing a state monument is a misdemeanor.

3.2A.52 BURGLARY AND TRESPASS.
3.2A.52.010 Definitions.
The following definitions apply in this chapter:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, directly or by electronic means.

(2) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.

(3) "Data" means a representation of information, knowledge, facts, concepts, or instructions that are being prepared or have been prepared in a formalized manner and are intended for use in a computer.

(4) "Enter." The word "enter" when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his or her body, or any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person or to detach or remove property;

(5) "Enters or remains unlawfully." A person "enters or remains unlawfully" in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public.

A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

Land that is used for commercial aquaculture or for growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible or if notice is given by posting in a conspicuous manner. Similarly, a field fenced in any manner is not unimproved and apparently unused land.

A license or privilege to enter or remain on improved and apparently used land that is open to the public at particular times, which is neither fenced nor otherwise enclosed in a manner to exclude intruders, is not a license or privilege to enter or remain on the land at other times if notice of prohibited times of entry is posted in a conspicuous manner.

(6) "Premises" includes any building, dwelling, structure used for commercial aquaculture, or any real property.

3.2A.52.020 Burglary In The First Degree.

(1) A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

(2) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

(3) Burglary is a felony. In establishing sentencing guidelines and disposition standards, residential burglary is to be considered a more serious offense.

3.2A.52.030 Burglary In The Second Degree.

(1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a

vehicle or a dwelling.

(2) Burglary in the second degree is a felony

3.2A.52.040 Inference Of Intent.
In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent.

3.2A.52.050 Other Crime In Committing Burglary Punishable.
Every person who, in the commission of a burglary shall commit any other crime, may be punished therefor as well as for the burglary, and may be prosecuted for each crime separately.

3.2A.52.060 Making Or Having Burglar Tools.
(1) Every person who shall make or mend or cause to be made or mended, or have in his or her possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of making or having burglar tools.

(2) Making or having burglar tools is a gross misdemeanor.

3.2A.52.070 Criminal Trespass In The First Degree.
(1) A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains unlawfully in a building.

(2) Criminal trespass in the first degree is a gross misdemeanor.

3.2A.52.080 Criminal Trespass In The Second Degree.
(1) A person is guilty of criminal trespass in the second degree if he or she knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor.

3.2A.52.095 Vehicle Prowling In The First Degree.
(1) A person is guilty of vehicle prowling in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a motor home, or in a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the first degree is a felony.

3.2A.52.100 Vehicle Prowling In The Second Degree.

(1) A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a vehicle other than a motor home, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the second degree is a gross misdemeanor.

3.2A.52.110 Computer Trespass In The First Degree.
(1) A person is guilty of computer trespass in the first degree if the person, without authorization, intentionally gains access to a computer system or electronic database of another; and

(a) The access is made with the intent to commit another crime; or

(b) The violation involves a computer or database maintained by a tribal agency.

(2) Computer trespass in the first degree is a felony.

3..2A.52.120 Computer Trespass In The Second Degree.
(1) A person is guilty of computer trespass in the second degree if the person, without authorization, intentionally gains access to a computer system or electronic database of another under circumstances not constituting the offense in the first degree.

(2) Computer trespass in the second degree is a gross misdemeanor.

3.2A.52.130 Computer Trespass — Commission Of Other Crime.
A person who, in the commission of a computer trespass, commits any other crime may be punished for that other crime as well as for the computer trespass and may be prosecuted for each crime separately.

3.2A.56 THEFT AND ROBBERY.
3.2A.56.010 Definitions.
The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(2) "Appropriate lost or mis-delivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(3) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of . . . . .," "owned by . . . . .," or other

markings or words identifying ownership;

(4) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(5) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed;

(6) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(7) "Mail," in addition to its common meaning, means any letter, postal card, package, bag, or other item that is addressed to a specific address for delivery by the United States Postal Service or any commercial carrier performing the function of delivering similar items to residences or businesses, provided the mail:

(a)(i) Is addressed with a specific person's name, family name, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(ii) Is not addressed to a generic unnamed occupant or resident of the address without an identifiable person, family, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(b) Has been left for collection or delivery in any letter box, mailbox, mail receptacle, or other authorized depository for mail, or given to a mail carrier, or left with any private business that provides mailboxes or mail addresses for customers or when left in a similar location for collection or delivery by any commercial carrier; or

(c) Is in transit with a postal service, mail carrier, letter carrier, commercial carrier, or that is at or in a postal vehicle, postal station, mailbox, postal airplane, transit station, or similar location of a commercial carrier; or

(d) Has been delivered to the intended address, but has not been received by the intended addressee.

(8) "Mailbox," in addition to its common meaning, means any authorized depository or receptacle of mail for the United States Postal Service or authorized depository for a commercial carrier that provides services to the general public, including any address to which mail is or can be addressed, or a place where the United States Postal Service or equivalent commercial carrier delivers mail to its addressee;

(9) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed before or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;

(10) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(11) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

(12) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle;

(13) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

(14) "Received by the intended addressee" means that the addressee, owner of the delivery mailbox, or authorized agent has removed the delivered mail from its delivery mailbox;

(15) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(16) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

(17) "Stolen" means obtained by theft, robbery, or extortion;

(18) "Subscription television service" means cable or encrypted video and related audio and data services intended for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

(19) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

(20) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the transmission, transfer, or reception of a telephonic communication or an electronic communication;

(21) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Except as provided in sections 3.2A.56.340 (3), 3.2A.56.350 (2) whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a criminal episode or a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

For purposes of this subsection, "criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a

five-day period.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved. Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

(22) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement.

3.2A.56.020 Theft — Definition, Defense.
(1) "Theft" means:

(a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

(2) In any prosecution for theft, it shall be a sufficient defense that:

(a) The property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable; or

(b) The property was merchandise pallets that were received by a pallet recycler or repairer in the ordinary course of its business.

3.2A.56.030 Theft In The First Degree.
(1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) five hundred dollars in value other than a firearm;

(b) Property of any value, other than a firearm or a motor vehicle, taken from the person of another;

(c) A search and rescue dog, while the search and rescue dog is on duty; or

(d) Metal wire, taken from a public service company, or a consumer-owned utility, and the costs of the damage to the public service company's or consumer-owned utility's property exceed five hundred dollars in value.

(e) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant;

(f) An access device.

(2) Theft in the second degree is a felony.

3.2A.56.040 Theft In The Second Degree.
(1) A person is guilty of theft in the second degree if he or she commits theft of property or services which (a) does not exceed five hundred dollars in value, or (b) includes ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.

(2) Theft in the third degree is a gross misdemeanor.

3.2A.56.060 Unlawful Issuance Of Checks Or Drafts.
(1) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he or she has not sufficient funds in, or credit with the bank or other depository, to meet the check or draft, in full upon its presentation, is guilty of unlawful issuance of bank check. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of such check or draft, and the uttering or delivery of such a check or draft to another person without such fund or credit to meet the same shall be prima facie evidence of an intent to defraud.

(2) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft on a bank or other depository for the payment of money and who issues a stop-payment order directing the bank or depository on which the check is drawn not to honor the check, and who fails to make payment of money in the amount of the check or draft or

otherwise arrange a settlement agreed upon by the holder of the check within twenty days of issuing the check or draft is guilty of unlawful issuance of a bank check.

(3) When any series of transactions which constitute unlawful issuance of a bank check would, when considered separately, constitute unlawful issuance of a bank check in an amount of seven hundred fifty dollars or less because of value, and the series of transactions are a part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining whether the unlawful issuance of a bank check is to be punished as a felony or a gross misdemeanor.

(4) Unlawful issuance of a bank check in an amount greater than five hundred dollars is a felony.

(5) Unlawful issuance of a bank check in an amount of less than five hundred dollars is a gross misdemeanor.

3.2A.56.063 Making Or Possessing Motor Vehicle Theft Tools.
(1) Any person who makes or mends, or causes to be made or mended, uses, or has in his or her possession any motor vehicle theft tool, that is adapted, designed, or commonly used for the commission of motor vehicle related theft, under circumstances evincing an intent to use or employ, or allow the same to be used or employed, in the commission of motor vehicle theft, or knowing that the same is intended to be so used, is guilty of making or having motor vehicle theft tools.

(2) For the purpose of this section, motor vehicle theft tool includes, but is not limited to, the following: Slim jim, false master key, master purpose key, altered or shaved key, trial or jiggler key, slide hammer, lock puller, picklock, bit, nipper, any other implement shown by facts and circumstances that is intended to be used in the commission of a motor vehicle related theft, or knowing that the same is intended to be so used.

(3) For the purposes of this section, the following definitions apply:

(a) "False master" or "master key" is any key or other device made or altered to fit locks or ignitions of multiple vehicles, or vehicles other than that for which the key was originally manufactured.

(b) "Altered or shaved key" is any key so altered, by cutting, filing, or other means, to fit multiple vehicles or vehicles other than the vehicles for which the key was originally manufactured.

(c) "Trial keys" or "jiggler keys" are keys or sets designed or altered to manipulate a vehicle locking mechanism other than the lock for which the key was originally manufactured.

(4) Making or having motor vehicle theft tools is a gross misdemeanor.

3.2A.56.065 Theft Of Motor Vehicle.

(1) A person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle.

(2) Theft of a motor vehicle is a felony.

3.2A.56.068 Possession Of Stolen Vehicle.
(1) A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.

(2) Possession of a stolen motor vehicle is a felony.

3.2A.56.070 Taking Motor Vehicle Without Permission.
(1) A person is guilty of taking a motor vehicle without permission if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away an automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, and he or she:

(a) Alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification number plates;

(b) Removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;

(c) Exports, or attempts to export, the motor vehicle across state lines or out of the Tribe for profit;

(d) Intends to sell the motor vehicle; or

(e) Is engaged in a conspiracy and the central object of the conspiratorial agreement is the theft of motor vehicles for sale to others for profit or is engaged in a conspiracy and has solicited a juvenile to participate in the theft of a motor vehicle.

(2) A person is also guilty of taking a motor vehicle without permission if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

(3) Taking a motor vehicle without permission in the second degree is a felony.

3.2A.56.080 Theft Of Livestock.
(1) Every person who, with intent to sell or exchange and to deprive or defraud the lawful owner thereof, willfully takes, leads, or transports away, conceals, withholds, slaughters, or otherwise appropriates any horse, mule, cow, heifer, bull, steer, swine, goat, or sheep is guilty of theft of livestock in the first degree.

(2) A person who commits what would otherwise be theft of livestock in the first degree but without intent to sell or exchange, and for the person's own use only, is guilty of theft of livestock in the second degree.

(3) Theft of livestock in the second degree is a felony.

3.2A.56.096 Theft Of Rental, Leased, Lease-Purchased, Or Loaned Property.

(1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented, leased, or loaned by written agreement to the person, is guilty of theft of rental, leased, lease-purchased, or loaned property.

(2) The finder of fact may presume intent to deprive if the finder of fact finds either of the following:

(a) That the person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property to the owner or the owner's agent within seventy-two hours after receipt of proper notice following the due date of the rental, lease, lease-purchase, or loan agreement; or

(b) That the renter, lessee, or borrower presented identification to the owner or the owner's agent that was materially false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

(3) As used in subsection (2) of this section, "proper notice" consists of a written demand by the owner or the owner's agent made after the due date of the rental, lease, lease-purchase, or loan period, mailed by certified or registered mail to the renter, lessee, or borrower at: (a) The address the renter, lessee, or borrower gave when the contract was made; or (b) the renter, lessee, or borrower's last known address if later furnished in writing by the renter, lessee, borrower, or the agent of the renter, lessee, or borrower.

(4) The replacement value of the property obtained must be utilized in determining the amount involved in the theft of rental, leased, lease-purchased, or loaned property.

(5)(a) Theft of rental, leased, lease-purchased, or loaned property is a felony if the rental, leased, lease-purchased, or loaned property is valued at five hundred dollars or more.

(b) Theft of rental, leased, lease-purchased, or loaned property is a gross misdemeanor if the rental, leased, lease-purchased, or loaned property is valued at less than five hundred dollars.

(6) The crime of theft of rental, leased, lease-purchased, or loaned property may be deemed to have been committed either at the physical location where the written agreement for the rental, lease, lease-purchase, or loan of the property was executed under subsection (1) of this section, or at the address where proper notice may be mailed to the renter, lessee, or borrower under subsection (3) of this section.

3.2A.56.110 Extortion — Definition.
"Extortion" means knowingly to obtain or attempt to obtain by threat property or services of the owner, and specifically includes sexual favors.

3.2A.56.120 Extortion.
(1) A person is guilty of extortion in the first degree if he or she commits extortion by means of a threat as defined in section 3.2A.04.110 (27) (a), (b), or (c).

(2) A person is guilty of extortion in the second degree if he or she commits extortion by means of a wrongful threat as defined in section 3.2A.04.110 (25) (d) through (j).

(3) In any prosecution under this section based on a threat to accuse any person of a crime or cause criminal charges to be instituted against any person, it is a defense that the actor reasonably believed the threatened criminal charge to be true and that his or her sole purpose was to compel or induce the person threatened to take reasonable action to make good the wrong which was the subject of such threatened criminal charge.

(4) Extortion is a felony.

3.2A.56.140 Possessing Stolen Property — Definition — Presumption.
(1) "Possessing stolen property" means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

(2) The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of possessing stolen property.

(3) When a person has in his or her possession, or under his or her control, stolen access devices issued in the names of two or more persons, or ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates, he or she is presumed to know that they are stolen.

(4) The presumption in subsection (3) of this section is rebuttable by evidence raising a reasonable inference that the possession of such stolen access devices, merchandise pallets, or beverage crates was without knowledge that they were stolen.

(5) In any prosecution for possessing stolen property, it is a sufficient defense that the property was merchandise pallets that were received by a pallet recycler or repairer in the ordinary course of its business.

3.2A.56.150 Possessing Stolen Property In The First Degree — Other Than Firearm Or Motor Vehicle.
(1) A person is guilty of possessing stolen property in the first degree if he or she possesses stolen property, other than a firearm or a motor vehicle, which exceeds five hundred dollars in value.

(a) He or she possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or

(b) He or she possesses a stolen access device.

(2) Possessing stolen property in the first degree is a felony.

3.2A.56.170 Possessing Stolen Property In The Second Degree.
(1) A person is guilty of possessing stolen property in the third degree if he or she possesses (a) stolen property which does not exceed five hundred dollars in value, or (b) ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates.

(2) Possessing stolen property in the third degree is a gross misdemeanor.

3.2A.56.180 Obscuring The Identity Of A Machine.
(1) A person is guilty of obscuring the identity of a machine if he or she knowingly:

(a) Obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any vehicle, machine, engine, apparatus, appliance, or other device with intent to render it unidentifiable; or

(b) Possesses a vehicle, machine, engine, apparatus, appliance, or other device held for sale knowing that the serial number or other identification number or mark has been obscured.

(2) "Obscure" means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable.

(3) Obscuring the identity of a machine is a gross misdemeanor.

3.2A.56.190 Robbery — Definition.
A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone.

Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

3.2A.56.200 Robbery In The First Degree.
(1) A person is guilty of robbery in the first degree if:

(a) In the commission of a robbery or of immediate flight therefrom, he or she:

(i) Is armed with a deadly weapon; or

(ii) Displays what appears to be a firearm or other deadly weapon; or

(iii) Inflicts bodily injury; or

(b) He or she commits a robbery within and against a financial institution.

(2) Robbery in the first degree is a felony.

3.2A.56.210 Robbery In The Second Degree.
(1) A person is guilty of robbery in the second degree if he or she commits robbery.

(2) Robbery in the second degree is a felony.

3.2A.56.220 Theft Of Subscription Television Services.
(1) A person is guilty of theft of subscription television services if, with intent to avoid payment of the lawful charge of a subscription television service, he or she:

(a) Obtains or attempts to obtain subscription television service from a subscription television service company by trick, artifice, deception, use of a device or decoder, or other fraudulent means without authority from the company providing the service;

(b) Assists or instructs a person in obtaining or attempting to obtain subscription television service without authority of the company providing the service;

(c) Makes or maintains a connection or connections, whether physical, electrical, mechanical, acoustical, or by other means, with cables, wires, components, or other devices used for the distribution of subscription television services without authority from the company providing the services;

(d) Makes or maintains a modification or alteration to a device installed with the authorization of a subscription television service company for the purpose of interception or receiving a program or other service carried by the company that the person is not authorized by the company to receive; or

(e) Possesses without authority a device designed in whole or in part to receive subscription television services offered for sale by the subscription television service company, regardless of whether the program or services are encoded, filtered, scrambled, or otherwise made unintelligible, or to perform or facilitate the performance of any other acts set out in (a) through (d) of this subsection for the reception of subscription television services without authority.

(2) Theft of subscription television services is a gross misdemeanor.

3.2A.56.280 Credit, Debit Cards, Checks, Etc. — Definitions.

(1) "Cardholder" means a person to whom a credit card or payment card is issued or a person who otherwise is authorized to use a credit card or payment card.

(2) "Check" means a negotiable instrument, or a blank form instrument that would meet the definition if it were completed and signed.

(3) "Credit card" means a card, plate, booklet, credit card number, credit card account number, or other identifying symbol, instrument, or device that can be used to pay for, or to obtain on credit, goods or services.

(4) "Credit card or payment card transaction" means a sale or other transaction in which a credit card or payment card is used to pay for, or to obtain on credit, goods or services.

(5) "Credit card or payment card transaction record" means a record or evidence of a credit card or payment card transaction, including, without limitation, a paper, sales draft, instrument, or other writing and an electronic or magnetic transmission or record.

(6) "Debit card" means a card used to obtain goods or services by a transaction that debits the cardholder's account, rather than extending credit.

(7) "Financial information" means any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit:

(a) Account numbers and balances;

(b) Transactional information concerning an account; and

(c) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicard numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

(8) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized under state or federal law to do business and accept deposits in Tribal jurisdiction or Washington.

(9) "Means of identification" means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including: A current or former name of the person, telephone number, an electronic address, or identifier of the individual or a member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver's license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

(10) "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such

owner or operator. "Merchant" also means a person who receives from an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.

(11) "Payment card" means a credit card, charge card, debit card, stored value card, or any card that is issued to an authorized card user and that allows the user to obtain goods, services, money, or anything else of value from a merchant.

(12) "Person" means an individual, partnership, corporation, trust, or unincorporated association, but does not include a financial institution or its authorized employees, representatives, or agents.

(13) "Personal identification" means any driver's license, passport, or identification card actually or purportedly issued by any federal, state, local or foreign Tribal entity; any credit card or debit card; or any employee identification card actually or purportedly issued by any employer, public or private, including but not limited to a badge or identification or access card.

(14) "Reencoder" means an electronic device that places encoded information from a payment card onto a different payment card.

(15) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card.

3.2A.56.290 Credit, Payment Cards — Unlawful Factoring Of Transactions.

(1) A person commits the crime of unlawful factoring of a credit card or payment card transaction if the person:

(a) Uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card without the permission of the authorized user of the payment card or with the intent to defraud the authorized user, another person, or a financial institution;

(b) Uses a reencoder to place information encoded on a payment card onto a different card without the permission of the authorized issuer of the card from which the information is being reencoded or with the intent to defraud the authorized user, another person, or a financial institution;

(c) Presents to or deposits with, or causes another to present to or deposit with, a financial institution for payment a credit card or payment card transaction record that is not the result of a credit card or payment card transaction between the cardholder and the person;

(d) Employs, solicits, or otherwise causes a merchant or an employee, representative, or agent of a merchant to present to or deposit with a financial institution for payment a credit card or payment card transaction record that is not the result of a credit card or payment card transaction between the cardholder and the merchant; or

(e) Employs, solicits, or otherwise causes another to become a merchant for purposes of engaging in conduct made unlawful by this section.

(2) Normal transactions conducted by or through airline reporting corporation-appointed travel agents or cruise-only travel agents recognized by passenger cruise lines are not considered factoring for the purposes of this section.

(3) In a proceeding under this section that is related to an identity theft, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(4) Unlawful factoring of a credit card or payment card transaction is a felony.

3.2A.56.300 Theft Of A Firearm.
(1) A person is guilty of theft of a firearm if he or she commits a theft of any firearm.

(2) This section applies regardless of the value of the firearm taken in the theft.

(3) Each firearm taken in the theft under this section is a separate offense.

(4) The definition of "theft" and the defense allowed against the prosecution for theft under section 3.2A.56.020 shall apply to the crime of theft of a firearm.

(5) As used in this section, "firearm" means any firearm.

(6) Theft of a firearm is a felony.

3.2A.56.310 Possessing A Stolen Firearm.
(1) A person is guilty of possessing a stolen firearm if he or she possesses, carries, delivers, sells, or is in control of a stolen firearm.

(2) This section applies regardless of the stolen firearm's value.

(3) Each stolen firearm possessed under this section is a separate offense.

(4) The definition of "possessing stolen property" and the defense allowed against the prosecution for possessing stolen property under section 3.2A.56.140 shall apply to the crime of possessing a stolen firearm.

(5) As used in this section, "firearm" means any firearm.

(6) Possessing a stolen firearm is a felony.

3.2A.56.320 Financial Fraud — Unlawful Possession, Production Of Instruments Of.

(1) A person is guilty of unlawful production of payment instruments if he or she prints or produces a check or other payment instrument in the name of a person or entity, or with the routing number or account number of a person or entity, without the permission of the person or entity to manufacture or reproduce such payment instrument with such name, routing number, or account number.

(2)(a) A person is guilty of unlawful possession of payment instruments if he or she possesses two or more checks or other payment instruments, alone or in combination:

(i) In the name of a person or entity, or with the routing number or account number of a person or entity, without the permission of the person or entity to possess such payment instrument, and with intent either to deprive the person of possession of such payment instrument or to commit theft, forgery, or identity theft; or

(ii) In the name of a fictitious person or entity, or with a fictitious routing number or account number of a person or entity, with intent to use the payment instruments to commit theft, forgery, or identity theft.

(b) subsection (a)(i) of this sectiondoes not apply to:

(i) A person or financial institution that has lawful possession of a check, which is endorsed to that person or financial institution; and

(ii) A person or financial institution that processes checks for a lawful business purpose.

(3) A person is guilty of unlawful possession of a personal identification device if the person possesses a personal identification device with intent to use such device to commit theft, forgery, or identity theft. "Personal identification device" includes any machine or instrument whose purpose is to manufacture or print any driver's license or identification card issued by any state, federal or tribe, or any employee identification issued by any employer, public or private, including but not limited to badges and identification cards, or any credit or debit card.

(4) A person is guilty of unlawful possession of fictitious identification if the person possesses a personal identification card with a fictitious person's identification with intent to use such identification card to commit theft, forgery, or identity theft, when the possession does not amount to a violation of Identity Theft.

(5) A person is guilty of unlawful possession of instruments of financial fraud if the person possesses a check-making machine, equipment, or software, with intent to use or distribute checks for purposes of defrauding an account holder, business, financial institution, or any other person or organization.

(6) This section does not apply to:

(a) A person, business, or other entity, that has lawful possession of a check, which is endorsed to that person, business, or other entity;

(b) A financial institution or other entity that processes checks for a lawful business purpose;

(c) A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of that lawful business;

(d) A person who obtains another person's personal identification for the sole purpose of misrepresenting his or her age; and

(e) A law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification devices for investigative or educational purposes.

(7) In a proceeding under this section that is related to an identity theft, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(8) A violation of this section is a felony.

3.2A.56.330 Possession Of Another's Identification.
(1) A person is guilty of possession of another's identification if the person knowingly possesses personal identification bearing another person's identity, when the person possessing the personal identification does not have the other person's permission to possess it, and when the possession does not amount to a violation of Identity Theft.

(2) This section does not apply to:

(a) A person who obtains, by means other than theft, another person's personal identification for the sole purpose of misrepresenting his or her age;

(b) A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of business;

(c) A person who finds another person's lost personal identification, does not intend to deprive the other person of the personal identification or to use it to commit a crime, and takes reasonably prompt steps to return it to its owner; and

(d) A law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification for investigative or educational purposes.

(3) In a proceeding under this section that is related to an identity theft, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(4) A violation of this section is a gross misdemeanor.

3.2A.56.340 Theft With The Intent To Resell.
(1) A person is guilty of theft with the intent to resell if he or she commits theft of property with a value of at least two hundred fifty dollars from a mercantile establishment with the intent to resell the property for monetary or other gain.

(2) The person is guilty of theft with the intent to resell if the property has a value of five hundred dollars or more. Theft with the intent to resell in the first degree is a felony.

(3) For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the theft with the intent to resell involved.

3.2A.56.350 Organized Retail Theft.
(1) A person is guilty of organized retail theft if he or she:

(a) Commits theft of property with a value of at least seven hundred fifty dollars from a mercantile establishment with an accomplice;

(b) Possesses stolen property, with a value of at least five hundred dollars from a mercantile establishment with an accomplice; or

(c) Commits theft of property with a cumulative value of at least five hundred dollars from one or more mercantile establishments within a period of up to one hundred eighty days.

(2) For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the organized retail theft involved.

(3) Organized retail theft is a felony.

3.2A.56.360 Retail Theft With Extenuating Circumstances.
(1) A person commits retail theft with extenuating circumstances if he or she commits theft of property from a mercantile establishment with one of the following extenuating circumstances:

(a) To facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;

(b) The person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers; or

(c) The person committed theft at three or more separate and distinct mercantile establishments within a one hundred eighty-day period.

(2) Retail theft with extenuating circumstances is a felony.

3.2A.56.370 Mail Theft.
(1) A person is guilty of mail theft if he or she: (a) Commits theft of mail addressed to three or more different addresses; and (b) commits theft of a minimum of ten separate pieces of mail.

(2) Each set of ten separate pieces of stolen mail addressed to three or more different mailboxes constitutes a separate and distinct crime and may be punished accordingly.

(3) Mail theft is a felony.

3.2A.56.380 Possession Of Stolen Mail.
(1) A person is guilty of possession of stolen mail if he or she: (a) Possesses stolen mail addressed to three or more different mailboxes; and (b) possesses a minimum of ten separate pieces of stolen mail.

(2) "Possesses stolen mail" means to knowingly receive, retain, possess, conceal, or dispose of stolen mail knowing that it has been stolen, and to withhold or appropriate to the use of any person other than the true owner, or the person to whom the mail is addressed.

(3) The fact that the person who stole the mail has not been convicted, apprehended, or identified is not a defense to the charge of possessing stolen mail.

(4) Each set of ten separate pieces of stolen mail addressed to three or more different mailboxes constitutes a separate and distinct crime and may be punished accordingly.

(5) Possession of stolen mail is a felony.

3.2A.56.390 Mail Theft — Possession Of Stolen Mail — Commission Of Other Crime.
Every person who, in the commission of mail theft or possession of stolen mail, shall commit any other crime, may be punished therefor as well as for the mail theft or possession of stolen mail, and may be prosecuted for each crime separately.

3.2A.58 IDENTIFICATION DOCUMENTS.
3.2A.58.005 Findings.
The Tribe finds that:

(1) The Jamestown S’Klallam Tribe recognizes the importance of protecting its citizens from unwanted wireless surveillance.

(2) Enhanced drivers' licenses and enhanced identicards are intended to facilitate efficient travel at land and sea borders between the Tribal communities, United States, Canada, and Mexico, not

to facilitate the profiling and tracking of individuals.

(3) Easy access to the information found on enhanced drivers' licenses and enhanced identicards could facilitate the commission of other unwanted offenses, such as identity theft.

3.2A.58.010 Definitions.
The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Enhanced driver's license" means a driver's license that is issued under state law.

(2) "Enhanced identicard" means an identicard that is issued under state law.

(3) "Identification document" means an enhanced driver's license or an enhanced identicard.

(4) "Radio frequency identification" means a technology that uses radio waves to transmit data remotely to readers.

(5) "Reader" means a scanning device that is capable of using radio waves to communicate with an identification document and read the data transmitted by the identification document.

(6) "Remotely" means that no physical contact between the identification document and a reader is necessary in order to transmit data using radio waves.

(7) "Unique personal identifier number" means a randomly assigned string of numbers or symbols issued by the department of licensing that is encoded on an identification document and is intended to be read remotely by a reader to identify the identification document that has been issued to a particular individual.

3.2A.58.020 Possessing, Or Reading Or Capturing, Information Contained On Another Person's Identification Document — Exceptions.
(1) Except as provided in subsection (2) of this section, a person is guilty of a felony if the person intentionally possesses, or reads or captures remotely using radio waves, information contained on another person's identification document, including the unique personal identifier number encoded on the identification document, without that person's express knowledge or consent.

(2) This section does not apply to:

(a) A person or entity that reads an identification document to facilitate border crossing;

(b) A person or entity that reads a person's identification document in the course of an act of good faith security research, experimentation, or scientific inquiry including, but not limited to, activities useful in identifying and analyzing security flaws and vulnerabilities; or

(c) A person or entity that unintentionally reads an identification document remotely in the

course of operating its own radio frequency identification system, provided that the inadvertently received information:

(i) Is not disclosed to any other party;

(ii) Is not used for any purpose; and

(iii) Is not stored or is promptly destroyed.

3.2A.60 FRAUD.
3.2A.60.010 Definitions.
The following definitions and the definitions of section 3.2A.56.010 are applicable in this section unless the context otherwise requires:

(1) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;

(2) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;

(3) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;

(4) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;

(5) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he or she did not authorize the making or drawing thereof;

(6) "Forged instrument" means a written instrument which has been falsely made, completed, or altered;

(7) "Written instrument" means: (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or (b) any access device, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification.

3.2A.60.020 Forgery.
(1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He or she falsely makes, completes, or alters a written instrument or;

(b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.

(2) In a proceeding under this section that is related to an identity theft, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

3.2A.60.030 Obtaining A Signature By Deception Or Duress.
(1) A person is guilty of obtaining a signature by deception or duress if by deception or duress and with intent to defraud or deprive he or she causes another person to sign or execute a written instrument.

(2) Obtaining a signature by deception or duress is a felony.

3.2A.60.040 Criminal Impersonation In The First Degree.
(1) A person is guilty of criminal impersonation in the first degree if the person:

(a) Assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any other unlawful purpose; or

(b) Pretends to be a representative of some person or organization or a law enforcement officer or a public servant and does an act in his or her pretended capacity with intent to defraud another or for any other unlawful purpose.

(2) Criminal impersonation in the first degree is a felony.

3.2A.60.045 Criminal Impersonation In The Second Degree.
(1) A person is guilty of criminal impersonation in the second degree if the person:

(a)(i) Claims to be a law enforcement officer or creates an impression that he or she is a law enforcement officer; and

(ii) Under circumstances not amounting to criminal impersonation in the first degree, does an act with intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer; or

(b) Falsely assumes the identity of a veteran or active duty member of the armed forces of the United States with intent to defraud for the purpose of personal gain or to facilitate any unlawful activity.

(2) Criminal impersonation in the second degree is a gross misdemeanor.

3.2A.60.050 False Certification.
(1) A person is guilty of false certification, if, being an officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, he or she knowingly certifies

falsely that the execution of such instrument was acknowledged by any party thereto or that the execution thereof was proved.

(2) False certification is a gross misdemeanor.

3.2A.60.060 Fraudulent Creation Or Revocation Of A Mental Health Advance Directive.
(1) For purposes of this section "mental health advance directive" means a written document that is a "mental health advance directive" defined as a written document in which the principal makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the principal regarding the principal's mental health treatment, or both

(2) A person is guilty of fraudulent creation or revocation of a mental health advance directive if he or she knowingly:

(a) Makes, completes, alters, or revokes the mental health advance directive of another without the principal's consent;

(b) Utters, offers, or puts off as true a mental health advance directive that he or she knows to be forged; or

(c) Obtains or prevents the signature of a principal or witness to a mental health advance directive by deception or duress.

(3) Fraudulent creation or revocation of a mental health advance directive is a felony.

3.2A.60.070 False Academic Credentials — Unlawful Issuance Or Use — Definitions — Penalties.
(1) A person is guilty of issuing a false academic credential if the person knowingly:

(a) Grants or awards a false academic credential or offers to grant or award a false academic credential in violation of this section;

(b) Represents that a credit earned or granted by the person in violation of this section can be applied toward a credential offered by another person;

(c) Grants or offers to grant a credit for which a representation as described in (b) of this subsection is made; or

(d) Solicits another person to seek a credential or to earn a credit the person knows is offered in violation of this section.

(2) A person is guilty of knowingly using a false academic credential if the person knowingly uses a false academic credential or falsely claims to have a credential issued by an institution of higher education that is accredited by an accrediting association recognized as such by rule of the student achievement council:

(a) In a written or oral advertisement or other promotion of a business; or

(b) With the intent to:

(i) Obtain employment;

(ii) Obtain a license or certificate to practice a trade, profession, or occupation;

(iii) Obtain a promotion, compensation or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(iv) Obtain admission to an educational program in this state; or

(v) Gain a position in government with authority over another person, regardless of whether the person receives compensation for the position.

(3) The definitions in this subsection apply throughout this section.

(a) "False academic credential" means a document that provides evidence or demonstrates completion of an academic or professional course of instruction beyond the secondary level that results in the attainment of an academic certificate, degree, or rank, and that is not issued by a person or entity that:

(i) Is an entity accredited by an agency recognized as such by rule of the student achievement council or has the international equivalents of such accreditation; or

(ii) is an entity authorized as a degree-granting institution by the student achievement council; or

(iii) is an entity exempt from the requirements of authorization as a degree-granting institution by the student achievement council; or

(iv) is an entity that has been granted a waiver by the student achievement council from the requirements of authorization by the council. Such documents include, but are not limited to, academic certificates, degrees, coursework, degree credits, transcripts, or certification of completion of a degree.

(b) "Grant" means award, bestow, confer, convey, sell, or give.

(c) "Offer," in addition to its usual meanings, means advertise, publicize, or solicit.

(d) "Operate" includes but is not limited to the following:

(i) Offering courses in person, by correspondence, or by electronic media at or to any Washington location for degree credit;

(ii) Granting or offering to grant degrees in Washington;

(iii) Maintaining or advertising a Washington location, mailing address, computer server, or telephone number, for any purpose, other than for contact with the institution's former students for any legitimate purpose related to the students having attended the institution.

(4) Issuing a false academic credential is a felony.

(5) Knowingly using a false academic credential is a gross misdemeanor.

3.2A.64 FAMILY OFFENSES.

3.2A.64.010 Bigamy.

(1) A person is guilty of bigamy if he or she intentionally marries or purports to marry another person when either person has a living spouse.

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

(a) The actor 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 actor reasonably believed that he or she was legally eligible to marry.

(3) A prosecution limitation for bigamy does not begin to run until the death of the prior or subsequent spouse of the actor or until a court enters a judgment terminating or annulling the prior or subsequent marriage.

(4) Bigamy is a felony.

3.2A.64.020 Incest.

(1)(a) A person is guilty of incest in the first degree if he or she engages in sexual intercourse or sexual contact with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(b) Incest is a felony.

(2) As used in this section:

(a) "Descendant" includes stepchildren and adopted children under eighteen years of age;

(b) "Sexual contact" has the same meaning as in 3.2A.44.010; and

(c) "Sexual intercourse" has the same meaning as in 3.2A.44.010.

3.2A.64.030 Child Selling — Child Buying.
(1) It is unlawful for any person to sell or purchase a minor child.

(2) A transaction shall not be a purchase or sale under subsection (1) of this section if any of the following exists:

(a) The transaction is between the parents of the minor child; or

(b) The transaction is between a person receiving or to receive the child and an agency recognized under law; or

(c) The transaction is between the person receiving or to receive the child and a Tribal or state agency or other Tribal agency; or

(d) The transaction is pursuant to the Indian Child Welfare Act; or

(e) The transaction is pursuant to court order; or

(f) The only consideration paid by the person receiving or to receive the child is intended to pay for the prenatal hospital or medical expenses involved in the birth of the child, or attorneys' fees and court costs involved in effectuating transfer of child custody.

(3) Child selling is a felony.

3.2A.68 BRIBERY AND CORRUPT INFLUENCE.
3.2A.68.010 Bribery.
(1) A person is guilty of bribery if:

(a) With the intent to secure a particular result in a particular matter involving the exercise of the public servant's vote, opinion, judgment, exercise of discretion, or other action in his or her official capacity, he or she offers, confers, or agrees to confer any pecuniary benefit upon such public servant; or

(b) Being a public servant, he or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that his or her vote, opinion, judgment, exercise of discretion, or other action as a public servant will be used to secure or attempt to secure a particular result in a particular matter.

(2) It is no defense to a prosecution under this section that the public servant sought to be influenced was not qualified to act in the desired way, whether because he or she had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a felony.

3.2A.68.020 Requesting Unlawful Compensation.

(1) A public servant is guilty of requesting unlawful compensation if he or she requests a pecuniary benefit for the performance of an official action knowing that he or she is required to perform that action without compensation or at a level of compensation lower than that requested.

(2) Requesting unlawful compensation is a felony.

3.2A.68.030 Receiving Or Granting Unlawful Compensation.
(1) A person is guilty of receiving or granting unlawful compensation if:

(a) Being a public servant, he or she requests, accepts, or agrees to accept compensation for advice or other assistance in preparing a bill, contract, claim, or transaction regarding which he or she knows he or she is likely to have an official discretion to exercise; or

(b) He or she knowingly offers, pays, or agrees to pay compensation to a public servant for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction regarding which the public servant is likely to have an official discretion to exercise.

(2) Receiving or granting unlawful compensation is a felony.

3.2A.68.040 Trading In Public Office.
(1) A person is guilty of trading in public office if:

(a) He or she offers, confers, or agrees to confer any pecuniary benefit upon a public servant pursuant to an agreement or understanding that such actor will or may be appointed to a public office; or

(b) Being a public servant, he or she requests, accepts, or agrees to accept any pecuniary benefit from another person pursuant to an agreement or understanding that such person will or may be appointed to a public office.

(2) Trading in public office is a felony.

3.2A.68.050 Trading In Special Influence.
(1) A person is guilty of trading in special influence if:

(a) He or she offers, confers, or agrees to confer any pecuniary benefit upon another person pursuant to an agreement or understanding that such other person will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter; or

(b) He or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he or she will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter.

(2) Trading in special influence is a felony.

3.2A.68.060 Commercial Bribery.
(1) For purposes of this section:

(a) "Claimant" means a person who has or is believed by an actor to have an insurance claim.

(b) "Service provider" means a person who directly or indirectly provides, advertises, or otherwise claims to provide services.

(c) "Services" means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim.

(d) "Trusted person" means:

(i) An agent, employee, or partner of another;

(ii) An administrator, executor, conservator, guardian, receiver, or trustee of a person or an estate, or any other person acting in a fiduciary capacity;

(iii) An accountant, appraiser, attorney, physician, or other professional adviser;

(iv) An officer or director of a corporation, or any other person who participates in the affairs of a corporation, partnership, or unincorporated association; or

(v) An arbitrator, mediator, or other purportedly disinterested adjudicator or referee.

(2) A person is guilty of commercial bribery if:

(a) He or she offers, confers, or agrees to confer a pecuniary benefit directly or indirectly upon a trusted person under a request, agreement, or understanding that the trusted person will violate a duty of fidelity or trust arising from his or her position as a trusted person;

(b) Being a trusted person, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself, herself, or another under a request, agreement, or understanding that he or she will violate a duty of fidelity or trust arising from his or her position as a trusted person; or

(c) Being an employee or agent of an insurer, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself or herself, or a person other than the insurer, under a request, agreement, or understanding that he or she will or a threat that he or she will not refer or induce claimants to have services performed by a service provider.

(3) It is not a defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because the person had not yet assumed his or her position, lacked authority, or for any other reason.

(4) Commercial bribery is a felony.

3.2A.72 PERJURY AND INTERFERENCE WITH OFFICIAL PROCEEDINGS.
3.2A.72.010 Definitions.
The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

(2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable;

(b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he or she made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(c) It is a statement, declaration, verification, or certificate, made within or outside the Tribe's jurisdiction, which is certified or declared to be true under penalty of perjury as provided in section 3.2A.72.085.

(3) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute or regulatory provision or when the oath is administered by a person authorized by Tribal, state or federal law to administer oaths;

(4) "Official proceeding" means a proceeding heard before any Tribal, legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;

(5) "Juror" means any person who is a member of any jury, impaneled by any court of this Tribe or by any public servant authorized by law to impanel a jury; the term juror also includes any person who has been drawn or summoned to attend as a prospective juror;

(6) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

3.2A.72.020 Perjury In The First Degree.

(1) A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his or her statement was not material is not a defense to a prosecution under this section.

(3) Perjury in the first degree is a felony.

3.2A.72.030 Perjury In The Second Degree.
(1) A person is guilty of perjury in the second degree if, in an examination under oath under the terms of a contract of insurance, or with intent to mislead a public servant in the performance of his or her duty, he or she makes a materially false statement, which he or she knows to be false under an oath required or authorized by law.

(2) Perjury in the second degree is a gross misdemeanor.

3.2A.72.040 False Swearing.
(1) A person is guilty of false swearing if he or she makes a false statement, which he or she knows to be false, under an oath required or authorized by law.

(2) False swearing is a gross misdemeanor.

3.2A.72.060 Perjury And False Swearing — Retraction.
No person shall be convicted of perjury or false swearing if he or she retracts his or her false statement in the course of the same proceeding in which it was made, if in fact he or she does so before it becomes manifest that the falsification is or will be exposed and before the falsification substantially affects the proceeding. Statements made in separate hearings at separate stages of the same trial, administrative, or other official proceeding shall be treated as if made in the course of the same proceeding.

3.2A.72.070 Perjury And False Swearing — Irregularities No Defense.
It is no defense to a prosecution for perjury or false swearing:

(1) That the oath was administered or taken in an irregular manner; or

(2) That the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law.

3.2A.72.080 Statement Of What One Does Not Know To Be True.
Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false.

3.2A.72.085 Unsworn Statements, Certification.

Whenever, under any law of this Tribe or under any rule, order, or requirement made under the law of this Tribe, any matter in an official proceeding is required or permitted to be supported, evidenced, established, or proved by a person's sworn written statement, declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved in the official proceeding by an unsworn written statement, declaration, verification, or certificate, which:

(1) Recites that it is certified or declared by the person to be true under penalty of perjury;

(2) Is subscribed by the person;

(3) States the date and place of its execution; and

(4) States that it is so certified or declared under the laws of the Jamestown S'Klallam Tribe.

3.2A.72.090 Bribing A Witness.
(1) A person is guilty of bribing a witness if he or she offers, confers, or agrees to confer any benefit upon a witness or a person he or she has reason to believe is about to be called as a witness in any official proceeding or upon a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child, with intent to:

(a) Influence the testimony of that person; or

(b) Induce that person to avoid legal process summoning him or her to testify; or

(c) Induce that person to absent himself or herself from an official proceeding to which he or she has been legally summoned; or

(d) Induce that person to refrain from reporting information relevant to a criminal investigation or the abuse or neglect of a minor child.

(2) Bribing a witness is a felony.

3.2A.72.100 Bribe Receiving By A Witness.
(1) A witness or a person who has reason to believe he or she is about to be called as a witness in any official proceeding or that he or she may have information relevant to a criminal investigation or the abuse or neglect of a minor child is guilty of bribe receiving by a witness if he or she requests, accepts, or agrees to accept any benefit pursuant to an agreement or understanding that:

(a) The person's testimony will thereby be influenced; or

(b) The person will attempt to avoid legal process summoning him or her to testify; or

(c) The person will attempt to absent himself or herself from an official proceeding to which

he or she has been legally summoned; or

(d) The person will not report information he or she has relevant to a criminal investigation or the abuse or neglect of a minor child.

(2) Bribe receiving by a witness is a felony.

3.2A.72.110 Intimidating A Witness.
(1) A person is guilty of intimidating a witness if a person, by use of a threat against a current or prospective witness, attempts to:

(a) Influence the testimony of that person;

(b) Induce that person to elude legal process summoning him or her to testify;

(c) Induce that person to absent himself or herself from such proceedings; or

(d) Induce that person not to report the information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have the crime or the abuse or neglect of a minor child prosecuted, or not to give truthful or complete information relevant to a criminal investigation or the abuse or neglect of a minor child.

(2) A person also is guilty of intimidating a witness if the person directs a threat to a former witness because of the witness's role in an official proceeding.

(3) As used in this section:

(a) "Threat" means:

(i) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(ii) Threat as defined in 3.2A.04.110 (27).

(b) "Current or prospective witness" means:

(i) A person endorsed as a witness in an official proceeding;

(ii) A person whom the actor believes may be called as a witness in any official proceeding; or

(iii) A person whom the actor has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child.

(c) "Former witness" means:

(i) A person who testified in an official proceeding;

(ii) A person who was endorsed as a witness in an official proceeding;

(iii) A person whom the actor knew or believed may have been called as a witness if a hearing or trial had been held; or

(iv) A person whom the actor knew or believed may have provided information related to a criminal investigation or an investigation into the abuse or neglect of a minor child.

(4) Intimidating a witness is a felony.

(5) For purposes of this section, each instance of an attempt to intimidate a witness constitutes a separate offense.

3.2A.72.120 Tampering With A Witness.
(1) A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to:

(a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or

(b) Absent himself or herself from such proceedings; or

(c) Withhold from a law enforcement agency information which he or she has relevant to a criminal investigation or the abuse or neglect of a minor child to the agency.

(2) Tampering with a witness is a felony.

(3) For purposes of this section, each instance of an attempt to tamper with a witness constitutes a separate offense.

3.2A.72.130 Intimidating A Juror.
(1) A person is guilty of intimidating a juror if a person directs a threat to a former juror because of the juror's vote, opinion, decision, or other official action as a juror, or if, by use of a threat, he or she attempts to influence a juror's vote, opinion, decision, or other official action as a juror.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in section 3.2A.04.110.

3.2A.72.140 Jury Tampering.

(1) A person is guilty of jury tampering if with intent to influence a juror's vote, opinion, decision, or other official action in a case, he or she attempts to communicate directly or indirectly with a juror other than as part of the proceedings in the trial of the case.

(2) Jury tampering is a gross misdemeanor.

3.2A.72.150 Tampering With Physical Evidence.
(1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or

(b) Knowingly presents or offers any false physical evidence.

(2) "Physical evidence" as used in this section includes any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a gross misdemeanor.

3.2A.72.160 Intimidating A Judge.
(1) A person is guilty of intimidating a judge if a person directs a threat to a judge because of a ruling or decision of the judge in any official proceeding, or if by use of a threat directed to a judge, a person attempts to influence a ruling or decision of the judge in any official proceeding.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in section 3.2A.04.110 (25).

(3) Intimidating a judge is a felony.

3.2A.76 OBSTRUCTING TRIBAL OPERATION.
3.2A.76.010 Definitions.
The following definitions are applicable in this section unless the context otherwise requires:

(1) "Contraband" means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation, or order of a court;

(2) "Custody" means restraint pursuant to a lawful arrest or an order of a court, or any period of service on a work crew;

(3) "Detention facility" means any place used for the confinement of a person (a) arrested for,

charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court, or (e) in any work release, furlough, or other such facility or program;

(4) "Uncontrollable circumstances" means an act of nature such as a flood, earthquake, or fire, or a medical condition that requires immediate hospitalization or treatment, or an act of a human being such as an automobile accident or threats of death, forcible sexual attack, or substantial bodily injury in the immediate future for which there is no time for a complaint to the authorities and no time or opportunity to resort to the courts.

3.2A.76.020 Obstructing A Law Enforcement Officer.
(1) A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.

(2) "Law enforcement officer" means any general authority, limited authority, or specially commissioned Tribal Police Officer, Washington peace officer or federal peace officer as those terms are defined by law, and other public officers who are responsible for enforcement of fire, building, zoning, and life and safety codes.

3.2A.76.023 Disarming A Law Enforcement Or Corrections Officer.
(1) A person is guilty of disarming a law enforcement officer if with intent to interfere with the performance of the officer's duties the person knowingly removes a firearm or weapon from the person of a law enforcement officer or corrections officer or deprives a law enforcement officer or corrections officer of the use of a firearm or weapon, when the officer is acting within the scope of the officer's duties, does not consent to the removal, and the person has reasonable cause to know or knows that the individual is a law enforcement or corrections officer.

(2)(a) Except as provided in (b) of this subsection, disarming a law enforcement or corrections officer is a felony.

(b) Disarming a law enforcement or corrections officer is a felony if the firearm involved is discharged when the person removes the firearm.

3.2A.76.025 Disarming A Law Enforcement Or Corrections Officer — Commission Of Another Crime.
A person who commits another crime during the commission of the crime of disarming a law enforcement or corrections officer may be punished for the other crime as well as for disarming a law enforcement officer and may be prosecuted separately for each crime.

3.2A.76.027 Law Enforcement Or Corrections Officer Engaged In Criminal Conduct.
Sections 3.2A.76.023 and 3.2.76.025 do not apply when the law enforcement officer or corrections officer is engaged in criminal conduct.

3.2A.76.030 Refusing To Summon Aid For A Peace Officer.

(1) A person is guilty of refusing to summon aid for a peace officer if, upon request by a person he or she knows to be a peace officer, he or she unreasonably refuses or fails to summon aid for such peace officer.

(2) Refusing to summon aid for a peace officer is a misdemeanor.

3.2A.76.040 Resisting Arrest.
(1) A person is guilty of resisting arrest if he or she intentionally prevents or attempts to prevent a peace officer from lawfully arresting him or her.

(2) Resisting arrest is a misdemeanor.

3.2A.76.050 Rendering Criminal Assistance — Definition Of Term.
A person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense or has escaped from a detention facility, he or she:

(1) Harbors or conceals such person; or

(2) Warns such person of impending discovery or apprehension; or

(3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or

(4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or

(5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or

(6) Provides such person with a weapon.

3.2A.76.060 Relative Defined.
A "relative" means a person:

(1) Who is related as husband or wife, brother or sister, parent or grandparent, child or grandchild, stepchild or stepparent to the person to whom criminal assistance is rendered; and

(2) Who does not render criminal assistance to another person in one or more of the means defined in subsections (4), (5), or (6) of section 3.2A.76.050.

3.2A.76.070 Rendering Criminal Assistance In The First Degree.
(1) A person is guilty of rendering criminal assistance in the first degree if he or she renders criminal assistance to a person who has committed or is being sought for murder, rape, burglar, robbery, assault or arson or equivalent juvenile offense.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the first degree is a felony.

(b) Rendering criminal assistance in the first degree is a gross misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in section 3.2A.76.060 and under the age of eighteen at the time of the offense.

3.2A.76.080 Rendering Criminal Assistance In The Second Degree.
(1) A person is guilty of rendering criminal assistance in the second degree if he or she renders criminal assistance to a person who has committed or is being sought for a felony or an equivalent juvenile offense or to someone being sought for violation of parole, probation, or community supervision.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the second degree is a gross misdemeanor.

(b) Rendering criminal assistance in the second degree is a misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in section 3.2A.76.060.

3.2A.76.090 Rendering Criminal Assistance In The Third Degree.
(1) A person is guilty of rendering criminal assistance in the third degree if he or she renders criminal assistance to a person who has committed a gross misdemeanor or misdemeanor.

(2) Rendering criminal assistance in the third degree is a misdemeanor.

3.2A.76.100 Compounding.
(1) A person is guilty of compounding if:

(a) He or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he or she will refrain from initiating a prosecution for a crime; or

(b) He or she confers, or offers or agrees to confer, any pecuniary benefit upon another pursuant to an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

(2) In any prosecution under this section, it is a defense if established by a preponderance of the evidence that the pecuniary benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

(3) Compounding is a gross misdemeanor.

3.2A.76.110 Escape.
(1) A person is guilty of escape if he or she knowingly escapes from custody or a detention facility while being detained pursuant to a conviction of a crime or an equivalent juvenile

offense.

(2) It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from remaining in custody or in the detention facility or from returning to custody or to the detention facility, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to remain or return, and that the person returned to custody or the detention facility as soon as such circumstances ceased to exist.

(3) Escape is a felony.

3.2A.76.115 Sexually Violent Predator Escape.
(1) A person is guilty of sexually violent predator escape if:

(a) Having been found to be a sexually violent predator and confined to the special commitment center or another secure facility under court order, the person escapes from the secure facility;

(b) Having been found to be a sexually violent predator and being under an order of conditional release, the person leaves or remains absent from the Tribe or State of Washington without prior court authorization; or

(c) Having been found to be a sexually violent predator and being under an order of conditional release, the person: (i) Without authorization, leaves or remains absent from his or her residence, place of employment, educational institution, or authorized outing; (ii) tampers with his or her electronic monitoring device or removes it without authorization; or (iii) escapes from his or her escort.

(2) Sexually violent predator escape is a felony.

3.2A.76.140 Introducing Contraband.
(1) A person is guilty of introducing contraband if he or she knowingly provides any deadly weapon to any person confined in a detention facility.

(2) A person is guilty of introducing contraband if he or she knowingly and unlawfully provides contraband to any person confined in a detention facility with the intent that such contraband be of assistance in an escape or in the commission of a crime.

(3) A person is guilty of introducing contraband if he or she knowingly and unlawfully provides contraband to any person confined in a detention facility.

(4) Introducing contraband in the first degree is a felony.

3.2A.76.170 Bail Jumping.
(1) Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence, and who fails to appear or

who fails to surrender for service of sentence as required is guilty of bail jumping.

(2) It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

(3) Bail jumping is:

(a) A felony if the person was held for, charged with, or convicted of a felony;

(b) A misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor or misdemeanor.

3.2A.76.175 Making A False Or Misleading Statement To A Public Servant.
A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor.

"Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

3.2A.76.177 Amber Alert — Making A False Or Misleading Statement To A Public Servant.
A person who, with the intent of causing an activation of the voluntary broadcast notification system commonly known as the "Amber alert," or as the same system may otherwise be known, which is used to notify the public of abducted children, knowingly makes a false or misleading material statement to a public servant that a child has been abducted and which statement causes an activation, is guilty of a felony.

3.2A.76.180 Intimidating A Public Servant.
(1) A person is guilty of intimidating a public servant if, by use of a threat, he or she attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant.

(2) For purposes of this section "public servant" shall not include jurors.

(3) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in section 3.2A.04.110.

(4) Intimidating a public servant is a felony.

3.2A.76.200 Harming A Police Dog, Accelerant Detection Dog, Or Police Horse — Penalty.

(1) A person is guilty of harming a police dog, accelerant detection dog, or police horse, if he or she maliciously injures, disables, shoots, or kills by any means any dog or horse that the person knows or has reason to know to be a police dog or accelerant detection dog, or police horse, as defined in subsection (2) of this section, whether or not the dog or horse is actually engaged in police or accelerant detection work at the time of the injury.

(2) "Police horse" means any horse used or kept for use by a law enforcement officer in discharging any legal duty or power of his or her office.

(3) Harming a police dog, accelerant detection dog, or police horse is a felony.

(4)(a) In addition to the criminal penalty provided in this section for harming a police dog or police horse:

(i) The court may impose a civil penalty of up to five thousand dollars for harming a police dog or horse.

(ii) The court shall impose a civil penalty of at least five thousand dollars and may increase the penalty up to a maximum of ten thousand dollars for killing a police dog or horse.

(b) Moneys collected must be distributed to the jurisdiction that owns the police dog or horse.

3.2A.84 PUBLIC DISTURBANCE.

3.2A.84.010 Riot.

(1) A person is guilty of the crime of riot if, acting with three or more other persons, he or she knowingly and unlawfully uses or threatens to use force, or in any way participates in the use of such force, against any other person or against property.

(2)(a) Except as provided in (b) of this subsection, the crime of riot is a gross misdemeanor.

(b) The crime of riot is a felony if the actor is armed with a deadly weapon.

3.2A.84.020 Failure To Disperse.

(1) A person is guilty of failure to disperse if:

(a) He or she congregates with a group of three or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person, or substantial harm to property; and

(b) He or she refuses or fails to disperse when ordered to do so by a peace officer or other public servant engaged in enforcing or executing the law.

(2) Failure to disperse is a misdemeanor.

3.2A.84.030 Disorderly Conduct.

(1) A person is guilty of disorderly conduct if the person:

(a) Uses abusive language and thereby intentionally creates a risk of assault;

(b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority;

(c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority; or

(d)(i) Intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise, within five hundred feet of:

(A) The location where a funeral or burial is being performed;

(B) A funeral home during the viewing of a deceased person;

(C) A funeral procession, if the person described in this subsection (1)(d) knows that the funeral procession is taking place; or

(D) A building in which a funeral or memorial service is being conducted; and

(ii) Knows that the activity adversely affects the funeral, burial, viewing, funeral procession, or memorial service.

(2) Disorderly conduct is a misdemeanor.

3.2A.84.040 False Reporting.
(1) A person is guilty of false reporting if with knowledge that the information reported, conveyed, or circulated is false, he or she initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, or emergency knowing that such false report is likely to cause evacuation of a building, place of assembly, or transportation facility, or to cause public inconvenience or alarm.

(2) False reporting is a gross misdemeanor.

3.2A.88 INDECENT EXPOSURE – PROSTITUTION
3.2A.88.010 Indecent Exposure.
(1) A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.

(2)(a) Except as provided in (b) and (c) of this subsection, indecent exposure is a misdemeanor.

(b) Indecent exposure is a gross misdemeanor on the first offense if the person exposes himself or herself to a person under the age of fourteen years.

(c) Indecent exposure is a felony if the person has previously been convicted under this section or of a sex offense.

3.2A.88.030 Prostitution.
(1) A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) For purposes of this section, "sexual conduct" means "sexual intercourse" or "sexual contact," both as defined in section 3.2A.44.

(3) Prostitution is a misdemeanor.

3.2A.88.040 Prosecution For Prostitution Under 3.2A.88.030 — Affirmative Defense.
In any prosecution for prostitution, it is an affirmative defense that the actor committed the offense as a result of being a victim of trafficking, sections 3.2A.40.100, promoting prostitution in the first degree, 3.2A.88.070, or trafficking in persons under the trafficking victims protection act of 2000, Title 22 U.S.C. , Section 7101 et seq.

Documentation that the actor is named as a current victim in an information or the investigative records upon which a conviction is obtained for trafficking, promoting prostitution in the first degree, or trafficking in persons shall create a presumption that the person's participation in prostitution was a result of having been a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons.

3.2A.88.050 Prostitution — Sex Of Parties Immaterial — No Defense.
In any prosecution for prostitution, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is no defense that:

(1) Such persons were of the same sex; or

(2) The person who received, agreed to receive, or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was female.

3.2A.88.060 Promoting Prostitution — Definitions.
The following definitions are applicable in sections 3.2A.88.070 through 3.2A.88.090:

(1) "Advances prostitution." A person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he or she causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(2) "Profits from prostitution." A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she accepts

or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.

3.2A.88.070 Promoting Prostitution In The First Degree.
(1) A person is guilty of promoting prostitution in the first degree if he or she knowingly advances prostitution:

(a) By compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or

(b) By compelling a person with a mental incapacity or developmental disability that renders the person incapable of consent to engage in prostitution or profits from prostitution that results from such compulsion.

(2) A person is guilty of promoting prostitution if he or she knowingly:

(a) Profits from prostitution; or

(b) Advances prostitution.

(3) Promoting prostitution is a felony.

3.2A.88.085 Promoting Travel For Prostitution.
(1) A person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be patronizing a prostitute or promoting prostitution, if occurring in the state.

(2) For purposes of this section, "travel services" includes transportation by air, sea, or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

(3) Promoting travel for prostitution is a felony.

3.2A.88.090 Permitting Prostitution.
(1) A person is guilty of permitting prostitution if, having possession or control of premises which he or she knows are being used for prostitution purposes, he or she fails without lawful excuse to make reasonable effort to halt or abate such use.

(2) Permitting prostitution is a misdemeanor.

3.2A.88.110 Patronizing A Prostitute.
(1) A person is guilty of patronizing a prostitute if:

(a) Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or

(b) He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with him or her; or

(c) He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

(2) For purposes of this section, "sexual conduct" has the meaning given in section 3A.88.030.

(3) Patronizing a prostitute is a misdemeanor.

3.2A.88.150 Seizure And Forfeiture Incident To Sex Crimes.
(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) Any property or other interest acquired or maintained in violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88.070 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070;

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate a violation of sections 3..268A.100, 3..268A.101 or 3.2A.88070, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(iv) When the owner of a conveyance has been arrested for a violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070, the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within 60 days of the owner's arrest;

(c) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070;

(d) All proceeds traceable to or derived from an offense defined in sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070 and all moneys, negotiable instruments, securities, and other things

of value significantly used or intended to be used significantly to facilitate commission of the offense;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070;

(f) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070.

A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(f), to the extent of the interest of an owner, by reason of any act or omission, which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(g) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for a violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070, if a substantial nexus exists between the violation and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this section may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency.

Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security

interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the Tribe in a criminal injunction or forfeiture proceeding; or

(c) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of sections 3.2.68A.100, 3.2.68A.101 or 3.2A.88070.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within 60 days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property.

Service of notice of seizure of real property shall be made according to the rules of civil actions. However, the Tribe may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state.

Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including, but not limited to, service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the 60 day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within 90 days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right.

The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the 90 day period following service of the notice of seizure in the case of personal property and within the ninety day period following service of the notice of seizure in the case of real property.

The hearing shall be before the Tribal Court. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1) of this section.

(6) When property is forfeited under this chapter, the seizing law enforcement agency may sell the property that is not required to be destroyed by law and that is not harmful to the public.

(7)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the Tribal treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(e) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages claimed incident to this section.

(f) The value of sold forfeited property is the sale price. The value of destroyed property and retained firearms or illegal property is zero.

(8) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the Tribal Court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(9) This section will not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (11) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

SECTION 21.3.3 OFFENSES UNDER WASHINGTON STATE LAW

As the Tribe is currently a party to an Interlocal Agreement with the Clallam County Sheriff's Office whereby the Sheriff's Department employees are authorized to perform as Tribal Police and therein exercise the Tribe's law enforcement powers over Indians as well as non-Indians in Jamestown Indian Country, all applicable Washington State law shall be available for law enforcement purposes incident to non-Indians for processing in the Washington State criminal justice system. Tribal and Washington State laws regarding sex offenders and registration of sex offenders are meant to co-exist and supplements each other, and shall be available and applicable to all persons as necessary.

SECTION 21.3.4 CONTROLLED SUBSTANCES

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3.4.1. PURPOSE

The Tribe recognizes the need to maintain the health, safety and welfare of its citizens as well as those individuals who attend the Tribe's facilities and properties, and therein too recognizes that illegal and abused controlled substances can cause serious social, criminal, health and economic problems that may affect the existence and future of our Tribal community.

The Tribe recognizes the need to protect the social and economic well-being of our people, and to preserve our culture, institutions, freedom, and to advance our mutual welfare.

3.4.2 GENERAL PROVISIONS

Reference is made to the Federal Controlled Substance Act, Title 21, United States Code, which is hereby incorporated into and made a part of this Section, with the full force and effect of Tribal Law. Any part of Title 21 U.S.C may be utilized for the enforcement of any unlawful act not herein described within this Section.

3.4.3 OFFENSES/ PROHIBITED ACTS

3.4.3.1 Except as authorized within this section, it shall be unlawful for any person knowingly or

intentionally:

(1) To manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled or regulated substance as described in the federal Controlled Substance Act; or

(2) To create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(3) Nothing in the section shall make illegal those substances that are legally prescribed by a licensed medical physician.

(4) A violation of 3.4.3.1 is a felony

3.4.3.2 Attempt And Conspiracy
(1) Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(2) A violation of 3.4.3.2 is a felony

3.4.3.3 Transportation Safety Offenses
(1) No person shall violate section 3.4.3.1 of this title or section 3.4.4 of this title by distributing or possessing with intent to distribute a controlled or regulated substance in or on, or within 50 feet of, a Tribal car/truck stop or safety or rest area is guilty of a felony.

(2) Definitions of this section:

(a) “Safety rest area” means a roadside facility with parking facilities for the rest or other needs of motorists.

(b) “Car/Truck stop”, “Rest stop” means a facility (including any parking lot appurtenant thereto) that:

(i) has the capacity to provide fuel or service, or both civilian and any commercial motor vehicle operating in commerce; and

(ii) is located on or within 50 feet of any Tribal property.

(3) It is a felony to violate section 3.4.3.3.

3.4.4 MAINTAINING DRUG-INVOLVED PREMISES – UNLAWFUL ACTS
(1) Except as authorized by this chapter, it shall be unlawful to:
(a) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;

(b) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit

from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

(2) Any person who violates any section 3.4.3.6 is guilty of a felony.

(3) Violation as offense against property**.** A violation of any section of 3.4.3.6 shall be considered an offense against property for purposes of restitution.

(4) Civil penalties**.** Any person who violates subsection (a) of this section shall be subject to a civil penalty of not more than $5,000.

(5) Declaratory and injunctive remedies. Any person who violates subsection 1. of this section shall be subject to declaratory and injunctive remedies as appropriate.

3.4.5 ENDANGERING HUMAN LIFE WHILE ILLEGALLY MANUFACTURING CONTROLLED SUBSTANCE

Whoever, while manufacturing a controlled substance in violation of this subchapter, or attempting to do so, or transporting or causing to be transported materials, including chemicals, to do so, creates a substantial risk of harm to human life shall be guilty of a felony.

3.4.6 DISTRIBUTION OR MANUFACTURING IN OR NEAR SCHOOLS AND COLLEGES

Any person who violates any section of 3.4.3 by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within 500 feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is guilty of a felony.

3.4.7 DISTRIBUTION TO PERSONS UNDER AGE TWENTY-ONE

Any person at least eighteen years of age who violates any section 3.4.3 by distributing a controlled substance to a person under twenty-one years of age is guilty of a felony.

3.4.8 DRUG PARAPHERNALIA

(1) “Drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

> (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(j) Containers and other objects used, intended for use, or designed for use in storing and concealing controlled substances;

(k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, or hashish oil into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) Miniature cocaine spoons, and cocaine vials;

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;

(xi) Chillums;

(xii) Bongs; and

(xiii) Ice pipes, or chillers.

(2) In determining whether an object is drug paraphernalia under this section, a Court or other authority should consider, in addition to all other logically relevant facts, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use;

(b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any State, Federal or Tribal law relating to any controlled substance;

(c) The proximity of the object, in time and space, to a direct violation of this chapter;

(d) The proximity of the object to controlled substances;

(e) The existence of any residue of controlled substances on the object;

(f) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;

(g) Instructions, oral or written, provided with the object concerning its use;

(h) Descriptive materials accompanying the object which explain or depict its use;

(i) National and local advertising concerning its use;

(j) The manner in which the object is displayed for sale;

(k) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(l) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(m) The existence and scope of legitimate uses for the object in the community; and

(n) Expert testimony concerning its use.

(3) Possession of drug paraphernalia is a felony.

3.4.9 INVESTMENT OF ILLICIT DRUG PROFITS - PROHIBITION

(1) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a violation of this chapter or section of chapter punishable by imprisonment for more than one year in which such person has participated as a principal to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce.

A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any violation of this chapter or section of this chapter after such purchase do not amount in the aggregate to 1 per centum of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(2) Whoever violates this section shall be guilty of a felony.

(3) “Enterprise” defined.
As used in this section, the term “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

(4) Construction
The provisions of this section shall be liberally construed to effectuate its remedial purposes.

3.4.10 CRIMINAL FORFEITURES
3.4.10.A.1 Subject Property.

The following shall be subject to forfeiture to the Tribe and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this section or chapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or listed chemical in violation of this section or chapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9).

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this section or chapter.

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this section or chapter punishable by more than one year's imprisonment.

(8) All controlled substances which have been possessed in violation of this section or chapter.

(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, dispensed, acquired, or intended to be distributed, dispensed, acquired, imported, or exported, in violation of this chapter or section.

(10) Any drug paraphernalia.

(11) Any firearm used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) and any proceeds traceable to such property.

3.4.10.A.2. Seizure Procedures.
Any property subject to forfeiture to the Tribe under this section may be seized by the Prosecuting Attorney a manner set forth by the Tribe.

3.4.10.A.3. Custody Of Tribe.

Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Tribe, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this section or chapter, the Tribe may:

(1) place the property under seal;

(2) remove the property to a place designated by the Tribe; or

(3) require that an authorized person or entity take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

3.4.10.A.4. Other Laws And Proceedings Applicable.
The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this section or chapter, insofar as applicable and not inconsistent with the provisions hereof.

3.4.10.A.5. Disposition Of Forfeited Property.
(1) Whenever property is civilly or criminally forfeited under this subchapter the Tribe may:

(a) retain the property for official use or, transfer the property to any Tribal or Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property;

(b) sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(c) require that the General Services Administration take custody of the property and dispose of it in accordance with law;

(d) forward it to any Federal or State agency for medical or scientific use.

(e) The proceeds from any sale under subparagraph (b) of paragraph (1) and any moneys forfeited under this subchapter shall be used to payall property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs.

3.4.10.A.6. Forfeiture And Destruction Of Controlled And Regulated Substances.
All controlled substances that are possessed, transferred, sold, or offered for sale in violation of the provisions of this section or chapter; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture; and any equipment or container subject to forfeiture which cannot be separated safely from such raw materials or products shall be deemed contraband and seized and summarily forfeited to the Tribe.

Similarly, all controlled and regulated substances which are seized or come into the possession of the Tribe, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the Tribe.

3.4.10.A.7. Vesting Of Title In Tribe.
All right, title, and interest in property described in section 3.4.10 shall vest in the Tribe upon commission of the act giving rise to forfeiture under this section.

3.4.10.A.8. Venue
In the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the Tribal Court in which the defendant owning such property is found or in which the criminal prosecution is brought.

3.4.10.B.1 Forfeitures -General
Property subject to criminal forfeiture:
Any person convicted of a violation of this section punishable by imprisonment for more than one year shall forfeit to the Tribe, irrespective of any provision of State law:

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise such as a violation of Title 21 USC, Section 848, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the Tribe all property described in this section. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

3.4.10.B.2 Meaning of term "property"
Property subject to criminal forfeiture under this section includes:

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

3.4.10.B.3 Third party transfers
All right, title, and interest in property described in section 3.4.10 vests in the Tribe upon the commission of the act giving rise to forfeiture under this section. Any such property that is

subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the Tribe, unless the transferee establishes in a hearing pursuant of this subsection 3.4.10.B.13. (Third party interests) that he or she is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

3.4.10.B.4 Rebuttable presumption
There is a rebuttable presumption at trial that any property of a person convicted of a felony under this section is subject to forfeiture under this section if the Tribe establishes by a preponderance of the evidence that:

(1) such property was acquired by such person during the period of the violation of this section or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this section .

3.4.10.B.5 Protective orders
(1) Upon application of the Tribe, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in section 3.4.10 for forfeiture under this section:

(a) upon the filing of a complaint charging a violation of this section of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(b) prior to the filing of such a complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that:

(i) there is a substantial probability that the Tribe will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, that an order entered pursuant to subparagraph (b) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (a) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the Tribe without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the Tribe demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than

fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this section, evidence and information that would be inadmissible under the Tribe's and Federal Rules of Evidence.

(4) Order to repatriate and deposit.

> (a) **In general.** Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the Tribe in an interest-bearing account, if appropriate.
>
> (b) **Failure to comply.** Failure to comply with an order under this section, or an order to repatriate property under subsection (p) of this section, shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under obstruction of justice.

3.4.10.B.6 Warrant of seizure

The Tribe may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under section 3.4.10 may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

3.4.10.B.7 Execution

Upon entry of an order of forfeiture under this section, the court shall authorize the Tribal Police to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the Tribe, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the Tribe in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the Tribe or third parties.

3.4.10.B.8 Disposition of property

Following the seizure of property ordered forfeited under this section, the Prosecuting Attorney shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the Tribe shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the Tribe. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court

may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

3.4.10.B.9. Authority of the Prosecuting Attorney
With respect to property ordered forfeited under this section, the Prosecuting Attorney is authorized to:

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) direct the disposition by the Tribe, in accordance with the provisions of this section or chapter, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(3) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

3.4.10.B.10 Bar on intervention
Except as necessary in the interests of justice, no party claiming an interest in property subject to forfeiture under this section may:

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the Tribe concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

3.4.10.B.11 Jurisdiction to enter orders
The Tribal Court shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

3.4.10.B.12 Depositions
In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the Tribe, the court may, upon application of the Tribe, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions such as under Rule 15 of the Federal Rules of Criminal Procedure.

3.4.10.B.13Third party interests

(1) Following the entry of an order of forfeiture under this section, the Tribe shall publish notice of the order and of its intent to dispose of the property in such manner as the necessary. The Tribe may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the Tribe pursuant to this section may, within thirty days of the final publication of notice or his or her receipt of notice under section 3.4.10, whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The Tribe may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:

> (a) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or
>
> (b) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section; the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the Tribe shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

3.4.10.B.14 Construction
The provisions of this section shall be liberally construed to effectuate its remedial purposes.

3.4.10.B.15 Forfeiture of substitute property
(1) In general
Paragraph (2) of this subsection shall apply, if any property described in section 3.4.10, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(b) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty.

(2) Substitute property
In any case described in any of subparagraphs (a) through (e) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (a) through (e) of paragraph (1), as applicable.

(3) Return of property to jurisdiction
In the case of property described in paragraph (1)(c), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

3.4.10.B.16 Restitution for cleanup of clandestine laboratory sites
The court, when sentencing a defendant convicted of an offense involving the manufacture, the possession, or the possession with intent to distribute, of amphetamine or methamphetamine, shall:

(1) order restitution;

(2) order the defendant to reimburse the Tribe, the State or local government concerned, or both the Tribe and the State or local government concerned for the costs incurred by the Tribe or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant, or on premises or in property that the defendant owns, resides, or does business in; and

(3) order restitution to any person injured as a result of the offense.

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3.5.1 AUTHORITY AND PURPOSE

3.5.1.1 Constitution Of The Jamestown S'Klallam Indian Tribe

The Constitution of the Jamestown S'Klallam Indian Tribe provides that the Tribal Council is the governing body of the Jamestown S'Klallam Indian Tribe with the authority to enact laws and ordinances governing the conduct of individuals and defining offenses against the Tribe; to maintain order and to protect the safety and welfare of all persons within the Jamestown S'Klallam Tribe's jurisdiction; to provide for the enforcement of laws and ordinances of the Jamestown S'Klallam Tribe; and to provide for the jurisdiction and procedures of the Jamestown S'Klallam Tribal Court.

3.5.1.2 Purpose

It is the duty and obligation of the Jamestown S'Klallam Tribal Council to safeguard, protect,

manage, administer and develop the natural resources of Tribal lands for the sole economic, cultural, and social benefit of the members of the Tribal Community. The peace, property, and public safety of all persons, both Indian and non-Indian, may be threatened by disruptive, destructive, negligent, or malicious acts.

The Tribal Council possesses the inherent and constitutional authority and obligation, subject to the limitations of applicable Federal law, to protect the people; property; natural, historic and archeological resources; culture; land; water; riparian rights; livestock; and wildlife from any threat or conduct by any person which might diminish, degrade, damage, injure, destroy or threaten Tribal Community members, their natural resources, or the social, cultural, religious, political or economic well-being of the Tribal Community in any manner.

It is the purpose of this ordinance to regulate such threats or conduct, and to provide relief to the Tribal Community and its individual members for damages which result therefrom, and to provide for remedies in the nature of civil sanctions.

Nothing in this section 21.3.5 is intended to supersede any possible similar sections of the Law and Order Code.

3.5.1.3 Sovereign Immunity

The Sovereign immunity of the Jamestown S'Klallam Indian Tribe shall in no manner be waived by this Title. The Tribal Council, Court Personnel, employees, and Tribal representatives are cloaked with the sovereign immunity of the Jamestown S'Klallam Indian Tribe.

3.5.2 GENERAL PROVISIONS

3.5.2.1 Definitions

As used in section 21.3.5:

(1) "Defendant" means the person against whom an action is file under this ordinance.

(2) "Infraction" means a civil offense against the Jamestown S'Klallam Tribe for which the remedy involved is monetary fines/damages. An infraction is not a incarcerationable offense and the punishment shall not affect or impair the rights or credibility of any person convicted thereof.

(3) "Public place" means a location, exclusive of a private residence, to which the members of the tribal community have general access or a location in which three or more members of the tribal community have gathered. Public places include, but are not limited to, tribal buildings; parks; highways and roads; beaches, shorelines, river banks and waterways; transport facilities; schools; jails and prisons; the common areas of apartment buildings; places of business or amusement; and the common areas of any neighborhood.

3.5.2.2 Duties And Authority Of Officers; Warrants Not Required

(1) It shall be the duty of tribal law enforcement officers to enforce the provisions of this Ordinance without the necessity of procuring a warrant.

(2) A tribal law enforcement officer is authorized to arrest any person who resists, delays, prevents or obstructs any such officer, in the discharge, or attempt to discharge, of any duty under this Ordinance or gives a false report to any peace officer.

Any person who is subject to the criminal laws of the tribe and who is arrested under this section shall be guilty of a misdemeanor and may be prosecuted pursuant to the criminal provisions of the Jamestown S'Klallam Tribal Code.

To the extent authorized by law, any person who is not subject to the criminal laws of the Tribe and who is detained under this section may be held for a reasonable time until a State or Federal law enforcement officer takes the defendant into custody or transported without unnecessary delay to the nearest authority for the State of Washington or the Tribe.

3.5.3 OFFENSES

3.5.3.1 Trespass

A person commits the infraction of trespass if he or she:

(1) Enters upon the real property of the Jamestown S'Klallam Tribe or members of the Jamestown S'Klallam Tribe that is posted to prohibit trespassing, is fenced, or contains obvious outward signs of habitability without permission of the owner or the owner's agent;

(2) Enters tribal lands that are not specifically posted as open to the public;

(3) Is a non-tribal member and enters or remains on lands of the Jamestown S'Klallam Tribe and its members that lie within the boundaries of the Jamestown S'Klallam Reservation the banks of such portion of the Jamestown S'Klallam River and any of its tributaries or any fish bearing stream that lie within the boundaries of the Jamestown S'Klallam Indian Reservation unless s/he has the authority of the Jamestown S'Klallam Tribal Business Committee or s/he is the spouse or minor child of a tribal member;

(4) Refuses to depart from or reenters the Jamestown S'Klallam Reservation in violation of an verbal or order of exclusion issued by the Tribal Court as provided by the Jamestown S'Klallam Tribal Code.

3.5.3.2 Vandalism

A person commits the infraction of vandalism if he or she injures, defaces, damages or destroys:

:

(1) Private property in which any other person has an interest without the consent of such other person;

(2) Tribal or other public property without the lawful consent of the appropriate governing body; or

(3) An obvious place of burial or established archaeological site.

3.5.3.3 Use Or Possession Of Alcohol At A Public Facility Or Public Event

A person commits the infraction of use or possession of alcohol at a public facility or a public

event if s/he consumes any kind of alcohol beverage or has any kind of alcoholic beverage in his or her possession or under his or her control at a public place where alcohol is prohibited as defined in section 3.5.2.1(3), above.

The transport of alcoholic beverages in closed containers in a vehicle on the public highways by a person over twenty-one (21) years of age is not a violation of this section.

3.5.3.4 Harassment

A person commits the infraction of harassment if, without lawful authority, s/he, by words or conduct directed at another within the Jamestown S'Klallam Indian Reservation, acts to or threatens to:
:

(1) Cause bodily injury in the future to any person;

(2) Cause physical damage to the property of a person other than the actor;

(3) Subject any person to physical confinement or restraint

(4) Do any other act which is intended to substantially harm any person with respect to his or her physical or mental health or safety;

(5) The person by words or conduct places the person threatened in reasonable fear that the treat will be carried out; and

(6) Prevents or substantially interferes with members of the Jamestown S'Klallam Tribe lawfully engaged in hunting, fishing or trapping activities, including but not limited to possession of legally taken fish and wildlife.

3.5.3.5 False Reporting

A person commits the infraction of false reporting if s/he initiates a false alarm or report which is transmitted to a fire department, law enforcement agency or other organization that responds to emergencies involving danger to life or property.

3.5.3.6 Curfew

(1) Any person sixteen (16) through seventeen (17) years of age, found on the reservation public areas, including its streets, roadways, and paths between the hours of 10:00 pm and 5:00 am on school nights and 12:00 midnight and 5:00 am on non-school nights has committed a civil infraction, unless they are accompanied by someone with parental permission, who is at least eighteen (18) years old.

(2) Any person thirteen (13) through fifteen (15) years of age, found on the reservation's public areas, including its streets, roadways, and paths between the hours of 10:00 pm and 5:00 am on school nights and 11:00 pm and 5:00 am on non-school nights has committed a civil infraction, unless they are accompanied by someone with parental permission, who is at least eighteen (18) years old.

(3) Any person eight (8) through twelve (12) years of age, found on the reservation's public areas, including its streets, roadways, and paths between the hours of 9:00 pm and 5:00 am on school nights and 10:00 pm and 5:00 am on non-school nights has committed a civil infraction, unless they are accompanied by someone with parental permission, who is at least eighteen (18) years old.

(4) Any person from birth through seven (7) years of age, found on the reservation's public areas, including its streets, roadways, and paths after dusk has committed a civil infraction, unless they are accompanied by someone with parental permission, who is at least eighteen (18) years old.

A Court appearance for this infraction shall be mandatory.

3.5.3.7 Littering

A person commits the infraction of littering if s/he deposits, throws, or propels any garbage or waste material, including but not limited to disposable packaging or containers, upon any highway, roadway, runway, waterway or railroad track, or from any boat or vehicle while such boat or vehicle is either in motion or stationary, or upon any public or private property, UNLESS such garbage or waste material is deposited for purposes of storage, disposal or collection in accordance with any valid and lawful contract for the storage, disposal, or collection of garbage, recyclables, or other waste material.

3.5.3.8 Disturbing The Peace

A person who causes or allows a public disturbance or noise to originate from property where he or she is located, has committed a civil infraction.

The following are determined to be public disturbances:

(1) Frequent, repetitive or continuous sounds made by any animal which unreasonably disturbs or interferes with the peace, comfort, or rest of the Jamestown S'Klallam Reservation community members;

(2) Frequent, repetitive or continuous sounds made by any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by Code or Regulation of the Jamestown S'Klallam Tribe;

(3) The creation of frequent, repetitive or continuous sounds in connection with the starting operation, repair, rebuilding or testing of any motor vehicle or internal combustion engine, so as to unreasonably disturbs or interferes with the peace, comfort, or rest of the Jamestown S'Klallam community members;

(4) The creation of frequent, repetitive or continuous sounds in connection with the use of a musical instrument, radio, television, recording player, so as to unreasonably disturbs or interferes with the peace, comfort, or rest of the Jamestown S'Klallam Reservation community members;

(5) The creation of frequent, repetitive or continuous sounds in connection with the fireworks, construction, remodeling, or repair work, so as to unreasonably disturbs or interferes with the peace, comfort, or rest of the Jamestown S'Klallam Reservation community members;

(6) The possession and/or use of any controlled substance or related paraphernalia as described in Section 3.4 of this Title without a prescription;

(7) Any excessive behavior that unreasonably disturbs or interferes with the peace, comfort, or rest of the Jamestown S'Klallam Reservation community members.

3.5.3.09 Minor Under The Influence/Possession
Any person under the age of twenty one (21) years of age who shall possess, purchase, consume, be under the influence of, obtain, or sell any alcoholic beverage has committed a civil infraction.

Possess shall include both actual and constructive possession.

Actual possession means that the alcohol was found on the person.

Constructive possession means that the person had dominion and control over the alcohol or the location where the alcohol was found.

Dominion and control need not have been exclusive to the person.

3.5.3.10 Dangerous Use Of Firearms
Any person who shall use a firearm on the Jamestown S'Klallam Reservation in a manner that is dangerous to persons, property, or non-game animals has committed a civil infraction.

A person who discharges a firearm in any building within the Reservation or uses a firearm in a manner that is contrary to the Tribe's safety and welfare, hunting regulations or any Federal hunting or firearms regulation is in automatic violation of this section.

For the purposes of this section "firearm" means any weapon, which will, is designed to , or may readily expel a projectile, including but not limited to BB guns, bow and arrow, slingshots, wrist rockets, etc.'

3.5.3.11 Concealed Firearm License
Every concealed weapon licensee shall have his or her concealed pistol license in his or her immediate possession at all times that he or she is required by this section to have a concealed pistol license and shall display the same upon demand to any police officer or to any other person when and if required by law to do so.

3.5.3.12 Dangerous Use Of Fireworks
No person shall use fireworks on the Jamestown S'Klallam Reservation in a manner that is dangerous to human life, animal life or dangerous to any property.

3.5.3.13 Disorderly Conduct
Any person who acts in a manner that disrupts the public order, peace or welfare of the Jamestown S'Klallam Tribe or its residents has committed the infraction of disorderly conduct.

Examples of disorderly conduct include but is not limited to:

(1) Uses abusive language and thereby intentionally creates a risk of assault;

(2) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority;

(3) Intentionally obstructs vehicular or pedestrian traffic without lawful authority; or

(4) Intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise, within five hundred feet of the location where a funeral or burial is being performed;

(5) Suffers or permits in any building or on property any riotous conduct, drunkenness, or fighting to the annoyance of the public;

(6) Consumes intoxicating beverages or controlled substances while on a public street or sidewalk or while in Tribally owned buildings unless authorized by the Tribal Council;

(7) Performs any other act not specifically described which disturbs public peace, provokes disorder or endangers the health, welfare and safety of others.

3.5.4 ENFORCEMENT
3.5.4.1 Notice Of Infraction
Tribal Law enforcement may issue a Notice of Infraction when it occurs in the officer's presence or when the officer finds reasonable cause to believe a civil infraction has been committed; or

The Tribal Prosecutor may file a Civil Complaint upon examination of any law enforcement report.

A person who has been issued a Notice of Infraction or has been served with a Notice of a Civil Complaint must respond to the notice within fifteen (15) days of the date the notice was received or reasonably should have been received. The response may be in person or by mail. If mailed the response must be postmarked no later than midnight on the date the response was due.

A person may respond to a civil infraction by:

(1) Pay the fine. The Tribal Court shall then enter a judgment that the person committed the civil infraction; (Not available for mandatory appearances)

(2) Request a hearing to explain the circumstances surrounding the occurrence of the civil infraction which may arguably lessen the amount of the fine; or

(3) Request a hearing to contest the determination that the infraction occurred.

3.5.4.2 Hearings

The Tribal Prosecutor shall represent the Tribe in all matters arising under the Civil Infraction provisions of this Title. The Prosecutor shall make all final decisions on the submission of complaints or other legal action to be taken in the prosecution of cases.

Except as otherwise provided for within this Title, hearings shall be conducted in a manner consistent with the provisions of Jamestown S'Klallam Code Titles 13, 15,19, and 20.

3.5.4.3 Burden Of Proof—Preponderance Of The Evidence

(1) The burden of proving that an infraction under this ordinance has been committed shall be on the Tribe.

(2) The Tribe shall be considered to have met the burden of proof if the Tribe's evidence shows it is more likely than not the infraction was committed.

3.5.4.4 Failure To Respond / Default Judgment

(1) Unless otherwise provided by this part, the Tribal Court shall enter a default judgment against any defendant who is cited/complained for an infraction of any provision of this section 21.3.5 or regulations promulgated under this section 21.3.5 and does not appear at the hearing or otherwise respond to the notice of infraction as provided in this subchapter.

If a default judgment is entered, the court clerk shall, if feasible, issue notice of judgment to the defendant advising him that he must pay the judgment by a date certain which shall not be less than fifteen (15) days after the date of the notice.

The notice shall state that failure to pay the judgment may result in forfeiture of any bond held pursuant to this ordinance, and/or a civil proceeding in Tribal Court to collect the Court ordered fine amount, and/or referred by the Tribal Court to an authorized collection agency. An additional administrative processing fee of one hundred and fifty dollars ($150.00) shall be added to any imposed fine.

Before ordering collection of the fine amount and any additional administrative processing fee, the Tribal Court shall find:

(a) The notice of infraction was issued;

(b) The defendant was informed of his duty to either pay the fine amount or enter an appearance; and

(c) The defendant did not appear at the hearing or otherwise respond to the notice of infraction as provided by this subchapter.

(2) Any defendant shall be deemed to have conceded to the correctness of the determination of the infraction and the fine amount imposed on the notice if s/he has:

(a) Requested a hearing to contest the determination that an infraction was committed or requested a hearing to explain mitigating circumstances, and without good cause fails to appear at the hearing scheduled; or

(b) Fails to respond to the notice.

3.5.4.5 Civil Fine/Damages Schedule

(1) As directed by the Tribal Council, the directors of the appropriate tribal department(s) shall prepare for the approval of the council, and from time to time shall review and, as necessary, propose revisions to a schedule of fines/damages consisting of a dollar determination or dollar determinations calculated to closely approximate the cost of providing equitable restitution to the Tribe for the damage or loss which would be caused by any infraction(s) of this ordinance or regulation adopted thereunder.

In calculating fines/damages, the Tribal Council may consider, in addition to any other factors they reasonably deem relevant:

(a) The cost to the Tribe of producing and/or protecting the tribal property or interest affected;

(b) The cost of replacing or restoring the tribal property or interest affected;

(c) The costs of enforcement including the general overall costs and costs particularized to individual infractions where appropriate;

(d) The loss to the Tribe of any revenue affected by the infraction;

(e) Fine/Damages for trespass;

The costs incurred in representing the Tribe in an action under this subchapter.

(2) The director of the tribal department preparing or updating the fine schedules shall post notice of the adoption of the schedule at all public buildings on the Jamestown S'Klallam Reservation. Such notice shall provide that schedules will be available at the Jamestown S'Klallam Tribal Department of Public Safety and the Jamestown S'Klallam Fisheries Department.

(3) The following fines/damages schedule shall apply to infractions set forth in section 21.3.5 of this Title. Copies of the fine schedule may be obtained from the Tribal Court Clerk.

3.5.3.1	Trespass	$100 to $5000
3.5.3.2	Vandalism	$100 to $5000
3.5.3.3	Use or Possession of Alcohol	$100 to $5000
3.5.3.4	Harassment	$100 to $5000
3.5.3.5	False Reporting	$100 to $5000

3.5.3.6	Curfew	
	A. First Offense	$25.00
	B. Second Offense	$50.00
	C. Third and Subsequent Offense(s)	$100.00
3.5.3.7	Littering	$100 to $5000
3.5.3.8	Disturbing the Peace	$100 to $5000
3.5.3.9	Disorderly Conduct	$100 to $5000
3.5.3.10	Minor under the Influence/Possession	$100 to $5000
3.5.3.11	Dangerous Use of Firearms	$100 to $5000
3.5.3.12	Concealed Firearm License	$100 to $5000
3.5.3.12	Dangerous Use of Fireworks	$100 to $5000

(NOTE: Fines may be paid through community service if permitted by the Court.)

3.5.4.6 Fine/Damages Presumption

(1) Since in most instances the exact amount of damages caused to the Tribe by a particular infraction of this ordinance or regulation adopted hereunder will be difficult or impossible to determine, it shall be presumed by the court adjudicating an infraction of this section 21.3.5 of this Title that the amount fixed within the schedule in subsection 3.5.4.5 represents the fine(s)/damages owed to the Tribe as restitution if the defendant is found to be guilty of the infraction.

This presumption may be rebutted by evidence which shows that the amount indicated by the schedule is inadequate or excessive, or special circumstances warrant a reduction of the imposed fine amount in a particular case. In any case in which the presumption is successfully rebutted, the parties may introduce evidence to prove the mitigating circumstances as in any other civil case.

(2) All persons shall be deemed to have consented to the provisions of this ordinance by their entry onto the Reservation, and where applicable, by their signature on a tribal permit or permits.

3.5.4.7 Expulsion

Nothing in section 21.3.5 of this Title shall be deemed to preclude the use of the remedy of expulsion of nonmembers for violation of this Title and any enforcement officer or other appropriate official may follow the procedure provided by tribal law to initiate an action for expulsion in addition to or in lieu of any other enforcement procedure provided for by this chapter.

3.5.4.8 Federal Prosecution

(1) Nothing in this chapter shall be deemed to preclude the federal prosecution under 18 U.S.C. 1165 of nonmembers who trespass on the Reservation. Any enforcement officer or attorney representing the Tribe may initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this ordinance.

(2) Certain titles of the Tribal Code have been enacted to protect the resources of the Jamestown S'Klallam Tribe, and the taking or using of tribal property or services

contrary to the terms of the Tribal Code constitutes theft of tribal assets. Nothing in the Tribal Code shall be deemed to preclude federal prosecution of violators under 18 U.S.C. 1163 for theft of tribal assets or any other federal law designed to protect tribal wildlife or other natural resources. Any conservation officer may initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this chapter.

3.5.4.9 Severability

Should a court of competent jurisdiction declare any provision of this Title invalid, such decision shall not affect the validity of any other part of the Title which can be given effect without the invalid part.

SECTION 21.3.6 MOTOR VEHICLES

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3.6.61.500 Reckless Driving -- Penalty.

(1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

Violation of the provisions of this section is a gross misdemeanor punishable by imprisonment for up to three hundred sixty-four days and by a fine of not more than five thousand dollars.

(2)(a) Subject to (b) of this subsection, the license or permit to drive or any nonresident privilege of any person convicted of reckless driving shall be suspended by the court for not less than thirty days.

(b) When a reckless driving conviction is a result of a charge that was originally filed as a violation of Driving Under the Influence or Physical Control, the court shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under an action arising out of the same incident.

During any period of suspension, revocation, or denial due to a conviction for reckless driving as the result of a charge originally filed as a violation of Driving Under the Influence or Physical Control, any person who has obtained an ignition interlock driver's license ordered by the court may continue to drive a motor vehicle pursuant to the provision of the ignition interlock driver's license.

(3)(a) Except as provided under (b) of this subsection, a person convicted of reckless driving who has one or more prior offenses as defined in section 3.6.61.5055 (14) within seven years shall be required, to install an ignition interlock device on all vehicles operated by the person if the conviction is the result of a charge that was originally filed as a violation of Driving Under the Influence or Physical Control.

(b) A person convicted of reckless driving shall be required, to install an ignition interlock device on all vehicles operated by the person if the conviction is the result of a charge that was originally filed as a violation of section 3.6.61.520 committed while under the influence of intoxicating liquor or any drug or violation of section 3.6.61.522 committed while under the influence of intoxicating liquor or any drug.

3.6.61.502 Driving Under The Influence.
(1) A person is guilty of driving while under the influence of intoxicating liquor, marijuana, or any drug if the person drives a vehicle within this Tribe’s jurisdiction:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under section 3.6.61.506; or

(b) The person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under section 3.6.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this Tribe shall not constitute a defense against a charge of violating this section.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a felony if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in section 3.6.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, as set forth in section 3.6.61.522 (1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, as set forth in 3.6.61.522 (1)(b);

(iii) An out-of-tribe or out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or section 3.6.61.504 (6).

3.6.61.503 Driver Under Twenty-One Consuming Alcohol Or Marijuana-- Penalties.
(1) Notwithstanding any other provision of this title, a person is guilty of driving or being in physical control of a motor vehicle after consuming alcohol or marijuana if the person operates or is in physical control of a motor vehicle within this Tribe's jurisdiction and the person:

(a) Is under the age of twenty-one; and

(b) Has, within two hours after operating or being in physical control of the motor vehicle, either:

(i) An alcohol concentration of at least 0.02 but less than the concentration specified in 3.6.61.502, as shown by analysis of the person's breath or blood made under section 3.6.61.506; or

(ii) A THC concentration above 0.00 but less than the concentration specified in section 3.6.61.502, as shown by analysis of the person's blood made under section 3.6.61.506.

(2) It is an affirmative defense to a violation of subsection (1) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol or marijuana after the time of driving or being in physical control and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol or THC concentration to be in violation of subsection (1) of this section within two hours after driving or being in physical control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of: (a) Seven days prior to trial; or (b) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(3) Analyses of blood or breath samples obtained more than two hours after the alleged driving or being in physical control may be used as evidence that within two hours of the alleged driving or being in physical control, a person had an alcohol or THC concentration in violation of subsection (1) of this section.

(4) A violation of this section is a gross misdemeanor.

3.6.61.504 Physical Control Of Vehicle Under The Influence.
(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this Tribe's jurisdiction:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under section 3.6.61.506; or

(b) The person has, within two hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under section 3.6.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this Tribe does not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after being in control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in control of the vehicle, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a felony if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in section 3.6.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, as set forth in 3.6.61.520 (1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, as set forth in section 3.6.62.522 (1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or section 3.6.61.502 (6).

3.6.61.5054 Alcohol Violators -- Additional Fee -- Distribution.
(1)(a) In addition to penalties set forth in sections 3.6.61.5051 through 3.6.61.5053, a two hundred dollar fee shall be assessed to a person who is either convicted, sentenced to a lesser charge, or given deferred prosecution, as a result of an arrest for violating sections 3.6.61.502, 3.6.61.504, 3.6.61.520, or 3.6.61.522.

(b) Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay.

(c) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of sections 3.6.61.502, 3.6.61.504, 3.6.61.520 or 3.6.61.522, the court shall assess the two hundred dollar fee under (a) of this subsection. Upon a verified petition by a minor assessed the fee, the court may suspend payment of all or part of the fee if it finds that the minor does not have the ability to pay the fee.

3.6.61.5055 Alcohol Violators -- Penalty Schedule.

(1) Except as provided in sections 3.6.61.502 (6) or 3.6.61.504 (6), a person who is convicted of a violation of sections 3.6.61.502 or 3.6.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being.

Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based.

In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being.

Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based.

In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic

home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(2) Except as provided in sections 3.6.61.502 (6) or 3.6.61.504 (6), a person who is convicted of a violation of sections 3.6.61.502 or 3.6.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than three hundred sixty-four days and sixty days of electronic home monitoring.

In lieu of the mandatory minimum term of sixty days electronic home monitoring, the court may order at least an additional four days in jail. The offender shall pay for the cost of the electronic monitoring. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring.

Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than three hundred sixty-four days and ninety days of electronic home monitoring.

In lieu of the mandatory minimum term of ninety days electronic home monitoring, the court may order at least an additional six days in jail. The offender shall pay for the cost of the electronic monitoring. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring.

Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(3) Except as provided in sections 3.6.61.502 (6) or 3.6.61.504 (6), a person who is convicted of a violation of sections 3.6.61.502 or 3.6.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than three hundred sixty-four days and one hundred twenty days of electronic home monitoring.

In lieu of the mandatory minimum term of one hundred twenty days of electronic home monitoring, the court may order at least an additional eight days in jail. The offender shall pay for the cost of the electronic monitoring. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring.

Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than three hundred sixty-four days and one hundred fifty days of electronic home monitoring.

In lieu of the mandatory minimum term of one hundred fifty days of electronic home monitoring, the court may order at least an additional ten days in jail. The offender shall pay for the cost of the electronic monitoring. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring.

One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(4) A person who is convicted of a violation of sections 3.6.61.502 or 3.6.61.504 shall be punished as a felony if:

(a) The person has four or more prior offenses within ten years; or

(b) The person has ever previously been convicted of:

(i) A violation of section 3.6.61.520 committed while under the influence of intoxicating liquor or any drug;

(ii) A violation of section 3.6.61.522 committed while under the influence of intoxicating liquor or any drug;

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of subsections 3.6.61.502 (6) or 3.6.61.504 (6).

(5)(a) The court shall require any person convicted of a violation of sections 3.6.61.502 or 3.6.61.504 or an equivalent local ordinance to comply with the rules and requirements of the department regarding the installation and use of a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) If the court orders that a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system.

The person shall pay for the cost of the monitoring, unless the court specifies that the cost of monitoring will be paid with funds that are available from an alternative source identified by the court.

(6) If a person who is convicted of a violation of sections 3.6.61.502 or 3.6.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) Order the use of an ignition interlock or other device for an additional six months;

(b) In any case in which the person has no prior offenses within seven years, and except as provided in sections 3.6.61.502 (6) or 3.6.61.504 (6), order a penalty by a fine of not less than one thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent;

(c) In any case in which the person has one prior offense within seven years, and except as provided in sections 3.6.61.502 (6) or 3.6.61.504 (6), order a penalty by a fine of not less than two thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent;

(d) In any case in which the person has two or three prior offenses within seven years, and except as provided in sections 3.6.61.502 (6) or 3.6.61.504 (6), order a penalty by a fine of not less than three thousand dollars and not more than ten thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(7) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

(8) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of sections 3.6.61.5056.

(9) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the

court for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the court for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the court for three years;

(b) If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the court for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the court for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the court for four years; or

(c) If by reason of the person's refusal to take a test offered there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the court for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the court for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the court for four years.

The court shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed arising out of the same incident.

Upon its own motion or upon motion by a person, a court may find, on the record, that notice to the court has been delayed for three years or more as a result of a clerical or court error. If so, the court may order that the person's license, permit, or nonresident privilege shall not be revoked, suspended, or denied for that offense. The court shall send notice of the finding and order to the person and shall not revoke, suspend, or deny the license, permit, or nonresident privilege of the person for that offense.

For purposes of this subsection (9), the court shall refer to the driver's record maintained by Washington State when determining the existence of prior offenses.

(10) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the court shall place the offender's driving

privilege in probationary status.

(11)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years.

The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor.

The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), or (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days.

(12) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in Tribal areas or the State of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative

sentence would exceed three hundred sixty-four days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-four days.

(13) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth by the jail.

(14) For purposes of this section and sections 3.6.61.502 and 3.6.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of section 3.6.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of section 3.6.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of section 3.6.61.520 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of section 3.6.61.520 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of section 3.6.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of section 3.6.61.522 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of section 3.6.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of section 3.6.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of section 3.6.61.5249, 3.6.61.500, or 3A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of sections 3.6.61.502 or 3.6.61.504, or an equivalent local ordinance, or of sections 3.6.61.520 or 3.6.61.522;

(vi) An out-of-tribe or out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this Tribe's jurisdiction;

(vii) A deferred prosecution granted in a prosecution for a violation of sections 3.6.61.502,or 3.6.61.504, or an equivalent local ordinance;

(viii) A deferred prosecution granted in a prosecution for a violation of sections 3.6.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of sections 3.6.61.502 or 3.6.61.504, or an equivalent local ordinance, or of sections 3.6.61.520 or 3.6.61.522; or

(ix) A deferred prosecution granted in another tribe or state for a violation of driving or

having physical control of a vehicle while under the influence of intoxicating liquor or any drug if the out-of-state deferred prosecution is equivalent to the deferred Tribal prosecution, including a requirement that the defendant participate in a chemical dependency treatment program;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(c) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense.

3.6.61.5056 Alcohol Violators -- Information School -- Evaluation And Treatment.
(1) A person subject to alcohol assessment and treatment under section 3.6.61.5055 shall be required by the court to complete a course in an alcohol information school approved by the department of social and health services or to complete more intensive treatment in a program approved by the Tribe's Department of Social and Community Services, as determined by the court.

(2) A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the Department of Social and Community Services or a qualified probation department approved by the court. A copy of the report shall be forwarded to the court. Based on the diagnostic evaluation, the court shall determine whether the person shall be required to complete a course in an alcohol information school or more intensive treatment in a program approved by the Department of Social and Community Services.

(3) Standards for approval for alcohol treatment programs shall be prescribed by the Department of Social and Community Services.

(4) Any agency that provides treatment ordered under section 3.6.61.5055, shall immediately report to the court any noncompliance by a person with the conditions of his or her ordered treatment. The court shall notify the Department of Social and Community Services of any failure by an agency to so report noncompliance.

(5) The Department of Social and Community Services may adopt such rules as are necessary to carry out this section.

3.6.61.5057 Alcohol Violators Or Marijuana Violators -- Mandatory Appearances.
(1) A defendant who is charged with an offense involving driving while under the influence as defined in section 3.6.61.502, driving under age twenty-one after consuming alcohol or marijuana as defined in section 3.6.61.503, or being in physical control of a vehicle while under the influence as defined in section 3.6.61.504 shall be required to appear in person before a judicial officer within one judicial day after the arrest if the defendant is served with a citation or complaint at the time of the arrest. A court may by local court rule waive the requirement for

appearance within one judicial day if it provides for the appearance at the earliest practicable day following arrest and establishes the method for identifying that day in the rule.

(2) A defendant who is charged with an offense involving driving while under the influence as defined in section 3.6.61.502, driving under age twenty-one after consuming alcohol or marijuana as defined in section 3.6.61.503, or being in physical control of a vehicle while under the influence as defined in section 3.6.61.504, and who is not served with a citation or complaint at the time of the incident, shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of an appearance required by this section, the court shall determine the necessity of imposing conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.

(4) Appearances required by this section are mandatory and may not be waived.

3.6.61.5058 Alcohol Violators -- Vehicle Seizure And Forfeiture.
(1) Upon the arrest of a person or upon the filing of a complaint, citation, or information in a court of competent jurisdiction, based upon probable cause to believe that a person has violated sections 3.6.61.502 or 3.6.61.504 or any similar municipal ordinance, if such person has a prior offense within seven years as defined in section 3.6.61.5055, and where the person has been provided written notice that any transfer, sale, or encumbrance of such person's interest in the vehicle over which that person was actually driving or had physical control when the violation occurred, is unlawful pending either acquittal, dismissal, sixty days after conviction, or other termination of the charge, such person shall be prohibited from encumbering, selling, or transferring his or her interest in such vehicle, except as otherwise provided in (a), (b), and (c) of this subsection, until either acquittal, dismissal, sixty days after conviction, or other termination of the charge. The prohibition against transfer of title shall not be stayed pending the determination of an appeal from the conviction.

(a) A vehicle encumbered by a bona fide security interest may be transferred to the secured party or to a person designated by the secured party;

(b) A leased or rented vehicle may be transferred to the lessor, rental agency, or to a person designated by the lessor or rental agency; and

(c) A vehicle may be transferred to a third party or a vehicle dealer who is a bona fide purchaser or may be subject to a bona fide security interest in the vehicle unless it is established that (i) in the case of a purchase by a third party or vehicle dealer, such party or dealer had actual notice that the vehicle was subject to the prohibition prior to the purchase, or (ii) in the case of a security interest, the holder of the security interest had actual notice that the vehicle was subject to the prohibition prior to the encumbrance of title.

(2) On conviction for a violation of either section 3.6.61.502 or 3.6.61.504 or any similar municipal ordinance where the person convicted has a prior offense within seven years as

defined in section 3.6.61.5055, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, is subject to seizure and forfeiture pursuant to this section.

(3) A vehicle subject to forfeiture under this chapter may be seized by a law enforcement officer of this state upon process issued by a court of competent jurisdiction. Seizure of a vehicle may be made without process if the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) Seizure under subsection (3) of this section automatically commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized vehicle to be served within fifteen days after the seizure on the owner of the vehicle seized, on the person in charge of the vehicle, and on any person having a known right or interest in the vehicle, including a community property interest.

The notice of seizure may be served by any method authorized by law or court rule, including but not limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected on a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(5) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the vehicle is deemed forfeited.

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right.

The hearing shall be before the court. In a court hearing between two or more claimants to the vehicle involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the legal owner or the person claiming to have the lawful right to possession of the vehicle. The seizing law enforcement agency shall promptly return the vehicle to the claimant upon a determination by the court that the claimant is the present legal owner under law or is lawfully entitled to possession of the vehicle.

(7) When a vehicle is forfeited under this chapter the seizing law enforcement agency may sell the vehicle, or retain it for official use.

(8) When a vehicle is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the vehicle, the disposition of the vehicle, the value of the vehicle at the time of seizure, and the amount of proceeds realized from disposition of the

vehicle.

(9) Each seizing agency shall retain records of forfeited vehicles for at least seven years.

3.6.61.506 Persons Under Influence Of Intoxicating Liquor Or Drug -- Evidence -- Tests -- Information Concerning Tests.
(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08 or the person's THC concentration is less than 5.00, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

Any person who has an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath by any National Highway Traffic Safety Administration (NHTSA) conforming product or device to measure breath alcohol, shall be presumed to have been Driving While Under the Influence of alcohol.

(2)(a) The breath analysis of the person's alcohol concentration shall be based upon grams of alcohol per two hundred ten liters of breath.

(b) The blood analysis of the person's THC concentration shall be based upon nanograms per milliliter of whole blood.
(3)(a) A breath test performed by any instrument approved by the National Highway Transportation Safety Administration shall be admissible at trial or in an administrative proceeding if the prosecution produces prima facie evidence of the following:

(i) The person who performed the test was authorized to perform such test by the Tribe;

(ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least fifteen minutes prior to administration of the test;

(iii) The person being tested did not have any foreign substances, not to include dental work, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period;

(iv) Prior to the start of the test, the temperature of any liquid simulator solution utilized as an external standard, as measured by a thermometer approved of by the toxicologist was thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

(v) The internal standard test resulted in the message "verified" if applicable;

(vi) The two breath samples agree to within plus or minus ten percent of their mean;

(vii) The result [if applicable] of the test of the liquid simulator solution external standard or dry gas external standard result did lie between .072 to .088 inclusive; and

(viii) All blank tests gave results of .000.

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court is to assume the truth of the prosecution's evidence and all reasonable inferences from it in a light most favorable to the prosecution.

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, a licensed practical nurse, a nursing assistant, a physician assistant, a first responder, an emergency medical technician, a health care assistant, or any technician trained in withdrawing blood. This limitation shall not apply to the taking of breath specimens.

(6) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(7) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

3.6.61.508 Liability Of Medical Personnel Withdrawing Blood.
No physician, registered nurse, qualified technician, or hospital, or duly licensed clinical laboratory employing or utilizing services of such physician, registered nurse, or qualified technician, shall incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test, as now or hereafter amended: PROVIDED, That nothing in this section shall relieve any physician, registered nurse, qualified technician, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care.

3.6.61.513 Criminal History And Driving Record.
(1) Immediately before the court defers prosecution, dismisses a charge, or orders a sentence for any offense listed in subsection (2) of this section, the court and prosecutor shall verify the

defendant's criminal history and driving record. The order shall include specific findings as to the criminal history and driving record.

For purposes of this section, the criminal history shall include all previous convictions and orders of deferred prosecution, as reported through the judicial information system or otherwise available to the court or prosecutor, current to within the period specified in subsection (3) of this section before the date of the order. For purposes of this section, the driving record shall include all information reported to the court by the Tribe or the Washington State Department of Licensing.

(2) The offenses to which this section applies are violations of: (a) section 3.6.61.502 or an equivalent local ordinance; (b) section 3.6.61.504 or an equivalent local ordinance; (c) section 3.6.61.520 committed while under the influence of intoxicating liquor or any drug; (d) section 3.6.61.522 committed while under the influence of intoxicating liquor or any drug; and (e) sections 3.6.61.5249, 3.6.61.500, or 3A.36.050, or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of sections 3.6.61.502 or 3.6.61.504 or an equivalent local ordinance, or of sections 3.6.61.520 or 3.6.61.522.

3.6.61.5151 Sentences -- Intermittent Fulfillment -- Restrictions.
The court may allow a person convicted of a non-felony violation of sections 3.6.61.502 or 3.6.61.504 to fulfill the terms of the sentence provided in section 3.6.61.5055 in nonconsecutive or intermittent time periods. However, any mandatory minimum sentence under section 3.6.61.5055 shall be served consecutively unless suspended or deferred as otherwise provided by law.

3.6.61.5152 Attendance At Program Focusing On Victims.
In addition to penalties that may be imposed under section 3.6.61.5055, the court may require a person who is convicted of a non-felony violation of sections 3.6.61.502 or 3.6.61.504 or who enters a deferred prosecution program based on a non-felony violation of sections 3.6.61.502 or 3.6.61.504, to attend an educational program, such as a victim impact panel, focusing on the emotional, physical, and financial suffering of victims who were injured by persons convicted of driving while under the influence of intoxicants. The victim impact panel program must meet the minimum standards established by the State of Washington.

3.6.61.517 Refusal Of Test -- Admissibility As Evidence.
The refusal of a person to submit to a test of the alcohol or drug concentration in the person's blood or breath is admissible into evidence at a subsequent criminal trial.

3.6.61.519 Alcoholic Beverages -- Drinking Or Open Container In Vehicle On Highway -- Exceptions.
(1) It is a traffic infraction to drink any alcoholic beverage in a motor vehicle when the vehicle is upon a highway.

(2) It is a traffic infraction for a person to have in his or her possession while in a motor vehicle upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage if the container has been opened or a seal broken or the contents partially removed.

(3) It is a traffic infraction for the registered owner of a motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage which has been opened or a seal broken or the contents partially removed, unless the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(4) This section does not apply to a public conveyance that has been commercially chartered for group use or to the living quarters of a motor home or camper or, except as otherwise provided for in Tribal law, to any passenger for compensation in a for-hire vehicle licensed under Tribal, city, county, or state law, or to a privately owned vehicle operated by a person possessing a valid operator's license endorsed for the appropriate classification in the course of his or her usual employment transporting passengers at the employer's direction: PROVIDED, That nothing in this subsection shall be construed to authorize possession or consumption of an alcoholic beverage by the operator of any vehicle while upon a highway.

3.6.61.5195 Disguising Alcoholic Beverage Container.
(1) It is a traffic infraction to incorrectly label the original container of an alcoholic beverage and to then violate section 3.6.61.519.

(2) It is a traffic infraction to place an alcoholic beverage in a container specifically labeled by the manufacturer of the container as containing a nonalcoholic beverage and to then violate section 3.6.61.519.

3.6.61.520 Vehicular Homicide -- Penalty.
(1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:

(a) While under the influence of intoxicating liquor or any drug, as defined by section 3.6.61.502; or

(b) In a reckless manner; or

(c) With disregard for the safety of others.

(2) Vehicular homicide is a felony.

3.6.61.522 Vehicular Assault -- Penalty.
(1) A person is guilty of vehicular assault if he or she operates or drives any vehicle:

(a) In a reckless manner and causes substantial bodily harm to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by section

3.6.61.502, and causes substantial bodily harm to another; or

(c) With disregard for the safety of others and causes substantial bodily harm to another.

(2) Vehicular assault is a felony.

(3) As used in this section, "substantial bodily harm" has the same meaning as in section 3A.04.110.

3.6,61.524 Vehicular Homicide, Assault-Revocation Of Driving Privilege-Eligibility For Reinstatement.
The court shall revoke the license, permit to drive, or a nonresident privilege of a person convicted of vehicular homicide under section 3.6.61.520 or vehicular assault under section 3.6.61.522. The court shall determine the eligibility of a person convicted of vehicular homicide under section 3.6.61.520 (1)(a) or vehicular assault under section 3.6.61.522 (1)(b) to receive a license based upon the report provided by the designated alcoholism treatment facility, and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified.

3.6.61.5249 Negligent Driving -- First Degree.
(1)(a) A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal drug or exhibits the effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating or hallucinatory effects.

(b) It is an affirmative defense to negligent driving in the first degree by means of exhibiting the effects of having consumed an illegal drug that must be proved by the defendant by a preponderance of the evidence, that the driver has a valid prescription for the drug consumed, and has been consuming it according to the prescription directions and warnings.

(c) Negligent driving in the first degree is a misdemeanor.

(2) For the purposes of this section:

(a) "Negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

(b) "Exhibiting the effects of having consumed liquor" means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(i) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(ii) Is shown by other evidence to have recently consumed liquor.

(c) "Exhibiting the effects of having consumed an illegal drug" means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug and either:

(i) Is in possession of an illegal drug; or

(ii) Is shown by other evidence to have recently consumed an illegal drug.

(d) "Exhibiting the effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating or hallucinatory effects" means that a person by speech, manner, appearance, behavior, or lack of coordination or otherwise exhibits that he or she has inhaled or ingested a chemical and either:

(i) Is in possession of the canister or container from which the chemical came; or

(ii) Is shown by other evidence to have recently inhaled or ingested a chemical for its intoxicating or hallucinatory effects.

(e) "Illegal drug" means a controlled substance under section 21.3.4 of this Title for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or any other controlled substance for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(3) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section.

(4) A person convicted of negligent driving in the first degree who has one or more prior offenses as defined in section 3.6.61.5055 (14) within seven years shall be required, to install an ignition interlock device on all vehicles operated by the person.

3.6.61.525 Negligent Driving -- Second Degree.
(1)(a) A person is guilty of negligent driving in the second degree if, under circumstances not constituting negligent driving in the first degree, he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property.

(b) It is an affirmative defense to negligent driving in the second degree that must be proved by the defendant by a preponderance of the evidence, that the driver was operating the motor vehicle on private property with the consent of the owner in a manner consistent with the owner's consent.

(c) Negligent driving in the second degree is a traffic infraction and is subject to a penalty of

two hundred fifty dollars.

(2) For the purposes of this section, "negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

(3) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section.

3.6.61.527 Roadway Construction Zones.
(1) The Tribe may adopt standards and specifications for the use of traffic control devices in roadway construction zones on Tribal and state highways. A roadway construction zone is an area where construction, repair, or maintenance work is being conducted by public employees or private contractors, on or adjacent to any public roadway where a driving condition exists that would make it unsafe to drive at higher speeds, such as, redirecting or realigning lanes on or adjacent to any public roadway pursuant to ongoing construction.

(2) No person may drive a vehicle in a roadway construction zone at a speed greater than that allowed by traffic control devices.

(3) A person found to have committed any infraction relating to speed restrictions in a roadway construction zone shall be assessed a monetary penalty equal to twice the penalty required under law. This penalty may not be waived, reduced, or suspended.

(4) A person who drives a vehicle in a roadway construction zone in such a manner as to endanger or be likely to endanger any persons or property, or who removes, evades, or intentionally strikes a traffic safety or control device is guilty of reckless endangerment of roadway workers. A violation of this subsection is a gross misdemeanor.

(5) The court shall suspend for sixty days the license or permit to drive or a nonresident driving privilege of a person convicted of reckless endangerment of roadway workers.

3.6.61.530 Racing Of Vehicles On Highways -- Reckless Driving -- Exception.
No person or persons may race any motor vehicle or motor vehicles upon any public highway of within Tribal jurisdiction. Any person or persons who willfully compare or contest relative speeds by operation of one or more motor vehicles shall be guilty of racing, which shall constitute reckless driving under section 3.6.61.500, whether or not such speed is in excess of the maximum speed prescribed by law: PROVIDED HOWEVER, That any comparison or contest of the accuracy with which motor vehicles may be operated in terms of relative speeds not in excess of the posted maximum speed does not constitute racing.

3.6.61.535 Advertising Of Unlawful Speed -- Reckless Driving.
It shall be unlawful for any manufacturer, dealer, distributor, or any person, firm, or corporation to publish or advertise or offer for publication or advertisement, or to consent or cause to be

published or advertised, the time consumed or speed attained by a vehicle between given points or over given or designated distances upon any public highways within the Tribe's jurisdiction when such published or advertised time consumed or speed attained shall indicate an average rate of speed between given points or over a given or designated distance in excess of the maximum rate of speed allowed between such points or at a rate of speed which would constitute reckless driving between such points. Violation of any of the provisions of this section shall be prima facie evidence of reckless driving and shall subject such person, firm, or corporation to the penalties in such cases provided.

3.6.61.540 "Drugs," What Included.
The word "drugs," as used in sections 3.6.61.500 through 3.6.61.535, shall include but not be limited to those drugs and substances regulated by section 21.3.4 of this Title and any chemical inhaled or ingested for its intoxicating or hallucinatory effects.

SECTION 21.3.7 SENTENCING GUIDELINES
3.7.1 Sentencing Factors
(1) Factors that the court shall take into consideration when determining the character and duration of a convicted offender's sentence are: whether the offender has previously appeared before the court as a criminal defendant, and if so, whether the offender appears to the court to be establishing a pattern of criminal conduct; whether the immediate offense was of a willful or malicious nature; whether the offender has attempted to make amends, and if so, the extent of the offender's resources and the needs of his or her dependents, if any, and the needs of any victims.

(2) Title 25 United States Code, Section 15 provides:
A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than $5,000 but not to exceed $15,000, or both, if the defendant is a person accused of a criminal offense who:

(a) has been previously convicted of the same or a comparable offense by any jurisdiction in the Tribe; or

(b) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the Tribe or any of the States.

(3) The penalties set forth below are maximum penalties for each class of offense, and are intended to be imposed based upon the individual circumstances of each case.

(i) Felony: 3 years jail time and/or $15,000.00 fine and/or community service.

(ii) Gross Misdemeanor: 1 year jail time and/or $5,000.00 fine and/or community service.

(iii) Misdemeanor: 90 days jail time and/or $2,500.00 fine and/or community service.

(4) Restitution to be paid through the payment of money damages, the surrender of property, or the performance of any other act for the benefit of the injured party, may be ordered by the court and shall be considered to be in addition to any other penalty based on the class of offense committed and handed down by the court.

CHAPTER 21.4
DOMESTIC VIOLENCE

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4.99.010 PURPOSE - INTENT.

The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.

The Tribe finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies.

It is the intent of the Tribe that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated.

Furthermore, it is the intent of the Tribe that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

4.99.020 DEFINITIONS.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means a general authority Tribal Police or contract (Sheriff) law enforcement agency.

(2) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking of one family or household member by another family or household member, and includes but is not limited to any of the following crimes when committed by one family or household member against another:

(a) Assault;

(b) Drive-by shooting;

(c) Reckless endangerment;

(d) Coercion;

(e) Burglary;

(f) Criminal trespass;

(g) Malicious mischief;

(h) Kidnapping;

(i) Unlawful imprisonment;

(j) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(k) Rape;

(l) Stalking; and

(m) Interference with the reporting of domestic violence.

(5) "Employee" means any person currently employed with an agency.

(6) "Sworn employee" means a general authority Tribal Police or Washington peace officer appointed or elected to carry out the duties of law enforcement under law.

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

4.99.030 LAW ENFORCEMENT OFFICERS — TRAINING, POWERS, DUTIES — DOMESTIC VIOLENCE REPORTS.

(1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.

(3)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.

(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.

(4) When a peace officer responds to a domestic violence call, the officer shall advise victims of all reasonable 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 may include handing each person a copy of the following statement:
"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the Tribe’s prosecuting attorney to file a criminal complaint. You also have the right to file a petition in Tribal Court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other

parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available at the Tribal Court."

(5) The peace 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.

(6) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten 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.

(7) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.

(8) Records kept pursuant to subsections (6) and (7) of this section shall be made identifiable by means of a departmental code for domestic violence.

4.99.040 DUTIES OF COURT — NO-CONTACT ORDER.
(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2)(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court may prohibit that person from having any contact with the victim.

The court shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b) In issuing the order, the court shall consider the provisions of section 3.2.41.800

(Firearms).

(c) The no-contact order shall also be issued in writing as soon as possible, and shall state that it may be extended as provided in subsection (3) of this section.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order even if the defendant fails to appear at arraignment. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2), (3), or (7) of this section is punishable as Contempt of Court under Title 13 Tribal Court, Section .09.

(b) The written order releasing the person charged or arrested 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; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A certified copy of the order shall be provided to the victim.

(5) If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within a reasonable time period as specified by the court if charges are not filed.

(6) Whenever a no-contact order is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants.

Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order.

The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

4.99.045 APPEARANCES BY DEFENDANT — DEFENDANT'S HISTORY — NO-CONTACT ORDER.
(1) A defendant arrested for an offense involving domestic violence as defined by 4.99.020 shall be required to appear in person before a judge within three court days after the arrest.

(2) A defendant who is charged by citation, or complaint with an offense involving domestic violence and not arrested, shall appear in court for arraignment in person as soon as practicable, but in no event later than the next day on which court is in session following the issuance of the citation or the filing of the complaint.

(3)(a) At the time of the appearances provided in subsection (1) or (2) of this section, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.

(b) For the purposes of (a) of this subsection, the prosecutor shall provide for the court's review:

(i) The defendant's criminal history, if any, that occurred in the Tribe’s jurisdiction or any other jurisdiction; and

(iii) The defendant's individual order history.

(c) For the purposes of (b) of this subsection, criminal history includes all previous convictions and orders of deferred prosecution, as reported through the judicial information system or otherwise available to the court or prosecutor.

(4) Appearances required pursuant to this section are mandatory and cannot be waived.

(5) The no-contact order shall be issued and entered with the appropriate law enforcement agency pursuant to established Tribal procedures.

4.99.050 VICTIM CONTACT — RESTRICTION, PROHIBITION — VIOLATION, PENALTIES — WRITTEN ORDER — PROCEDURES — NOTICE OF CHANGE.
(1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

(2)(a) Willful violation of a court order issued under this section is punishable under the relevant provisions of the Tribal Code.

(b) The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under Contempt of Court under Title 13 Tribal Court, Section 13.09, and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(3) Whenever an order prohibiting contact is issued pursuant to this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants.

Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.

(4) If an order prohibiting contact issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

4.99.055 ENFORCEMENT OF ORDERS.
A Tribal Police officer shall enforce an order issued by any recognized court restricting a defendant's ability to have contact with a victim by arresting and taking the defendant into custody, pending release on bail, personal recognizance, or court order, when the officer has probable cause to believe that the defendant has violated the terms of that order.

4.99.060 PROSECUTOR'S NOTICE TO VICTIM — DESCRIPTION OF AVAILABLE PROCEDURES.
The prosecuting attorney responsible for making the decision whether or not to prosecute shall advise the victim through the court clerk of that decision within five days, and, prior to making that decision shall advise the victim, upon the victim's request, of the status of the case. Notification to the victim that charges will not be filed shall include a description of the procedures available to the victim in that jurisdiction to initiate a criminal proceeding.

4.99.070 LIABILITY OF PEACE OFFICERS.
A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

4.99.080 PENALTY ASSESSMENT.
(1) The Tribal Court may impose a penalty assessment not to exceed one hundred dollars on any person convicted of a crime involving domestic violence. The assessment shall be in addition to, and shall not supersede, any other penalty, restitution, fines, or costs provided by law.

(2) Revenue from the assessment may be used for the purposes of establishing and funding domestic violence advocacy and domestic violence prevention and prosecution programs for the Tribe. Revenue from the assessment shall not be used for indigent criminal defense.

(3) For the purposes of this section, "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, or the levying of a fine.

(4) When determining whether to impose a penalty assessment under this section, judges are encouraged to solicit input from the victim or representatives for the victim in assessing the ability of the convicted offender to pay the penalty, including information regarding current financial obligations, family circumstances, and ongoing restitution.

4.99.100 SENTENCING - FACTORS - DEFENDANT'S CRIMINAL HISTORY.
(1) In sentencing for a crime of domestic violence as defined in this section the court shall consider, among other factors, whether:

(a) The defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;

(b) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; and

(c) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years.

(2) In sentencing for a crime of domestic violence as defined in this section, the prosecutor shall provide for the court's review:

(a) The defendant's criminal history, if any, that occurred in any tribal jurisdiction, federal or state ; and

(b) The defendant’s individual court order history.

CHAPTER 21.5
DOMESTIC RELATIONS

5.50 Domestic Violence Prevention **Page 234**
5.52 Foreign protection order full faith and credit **Page 251**

5.50 – DOMESTIC VIOLENCE PREVENTION
5.50.010 Definitions.
As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking of one family or household member by another family or household member.

(2) "Family or household members" means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Court" includes the Tribal Court or courts of the state of Washington.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.

5.50.020 Commencement Of Action — Jurisdiction — Venue.
(1)(a) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

(b) Any person thirteen years of age or older may seek relief under this chapter by filing a petition with a court alleging that he or she has been the victim of violence in a dating relationship and the respondent is sixteen years of age or older.

(2)(a) A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.

(b) A person under sixteen years of age who is seeking relief under subsection (1)(b) of this section is required to seek relief by a parent, guardian, guardian ad litem, or next friend.

(3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.

(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or

respondent who is a party to an action under this chapter.

(5) The Tribal Court has jurisdiction over proceedings under this section as allowed by law.

(6) An action under this section shall be filed in the Tribe's jurisdiction where the petitioner resides, unless the petitioner has left the residence or household to avoid abuse. In that case, the petitioner may bring an action in the jurisdiction of the previous or the new household or residence.

(7) A person's right to petition for relief under this section is not affected by the person leaving the residence or household to avoid abuse.

(8) For the purposes of this section "next friend" means any competent individual, over eighteen years of age, chosen by the minor and who is capable of pursuing the minor's stated interest in the action.

5.50.021 Actions On Behalf Of Vulnerable Adults — Authority Of Department Of Social And Health Services — Immunity From Liability.
The Tribe's appropriate department, in its discretion, may seek the relief provided in this section on behalf of and with the consent of any vulnerable adult as those persons are defined by law. Neither the department nor the Tribe shall be liable for failure to seek relief on behalf of any persons under this section.

5.50.030 Petition For An Order For Protection — Availability Of Forms And Informational Brochures — Bond Not Required.
There shall exist an action known as a petition for an order for protection in cases of domestic violence.

(1) A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation concerning the custody or residential placement of a child of the parties, and the existence of any other restraining, protection, or no-contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties except in cases where the court realigns petitioner and respondent in accordance with applicable law.

(3) All court clerk's offices shall make available the standardized forms, instructions, and informational brochures as required, and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) No filing fee may be charged for proceedings under this section. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

5.50.040 Fees Not Permitted — Filing, Service Of Process, Certified Copies.
No fees for filing or service of process may be charged to petitioners seeking relief under this chapter. Petitioners shall be provided the necessary number of certified copies at no cost

5.50.050 Hearing — Service — Time.
Upon receipt of the petition, the court shall order a hearing which shall be held not later than the next available court date from the date of the order. The court may schedule a hearing by telephone pursuant to court rules, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further acts of domestic violence.

The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. Except as provided in sections 5.50.085 and 5.50.123, personal service shall be made upon the respondent not less than five court days prior to the hearing.

If timely personal service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining personal service or permit service by publication as provided in section 5.50.085 or service by mail as provided in section 5.50.123.

The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or by mail unless the petitioner requests additional time to attempt personal service.

If the court permits service by publication or by mail, the court shall set the hearing date not later than the next available court day from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in sections 5.50/070, 5.50.085, and 5.50.123.

5.50.060 Relief — Duration — Realignment Of Designation Of Parties.
(1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain the respondent from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;

(c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) If necessary the court shall make residential provision with regard to minor children of the parties within Indian Child Welfare recommendations. However, parenting plans shall not be required;

(e) Order the respondent to participate in a domestic violence perpetrator treatment program

approved under section 5.50.150;

(f) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this section;

(g) Require the respondent to pay the administrative court costs and service fees, as established by the Tribe incurring the expense and to reimburse the petitioner for costs incurred in bringing the action;

(h) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(i) Restrain the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in section 3.2.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication";

(j) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

(k) Consider the provisions of firearms restrictions;

(l) 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 remove 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; and

(m) Order use of a vehicle.

(2) If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this section.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order.

Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in section 5.50.085, personal service shall be made on the respondent not less than five days before the hearing.

If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in section 5.50.085 or by mail as provided in section 5.50.123.

If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in section 5.50.070.

The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section.

(4) In providing relief under this chapter, the court 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 of domestic violence and may issue an ex parte temporary order for protection in accordance with section 5.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with section 5.50.030.

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with section 5.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for

protection, the court shall state in writing on the order the particular reasons for the court's denial.

5.50.070 Ex Parte Temporary Order For Protection.
(1) Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:

(a) Restraining any party from committing acts of domestic violence;

(b) Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the court;

(c) Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;

(e) Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(f) Considering the provisions of firearms restrictions; and

(g) Restraining the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication".

(2) Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.

(3) The court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

(4) An ex parte temporary order for protection shall be effective for a fixed period not to exceed the next available court day if the court has permitted service by publication under section 5.50.085 or by mail under section 5.50.123. The ex parte order may be reissued. A full hearing, as provided in this section, shall be set for not later than the next available court day from the issuance of the temporary order or service by publication or by mail if permitted.

Except as provided in sections 5.50.050, 5.50.085, and 5.50.123, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(5) Any order issued under this section shall contain the date and time of issuance and the expiration date and shall be entered into an information system by the clerk of the court within one judicial day after issuance.

(6) If the court declines to issue an ex parte temporary order for protection the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte order of protection shall be filed with the court.

5.50.080 Issuance Of Order — Assistance Of Law Enforcement Officer — Designation Of Appropriate Law Enforcement Agency.
(1) When an order is issued under this chapter upon request of the petitioner, the court may order a law enforcement officer to accompany the petitioner and assist in placing the petitioner in possession of those items indicated in the order or to otherwise assist in the execution of the order of protection. The order shall list all items that are to be included with sufficient specificity to make it clear which property is included. Orders issued under this section shall include a designation of the appropriate law enforcement agency to execute, serve, or enforce the order.

(2) Upon order of a court, a law enforcement officer shall accompany the petitioner in an order of protection and assist in placing the petitioner in possession of all items listed in the order and to otherwise assist in the execution of the order.

5.50.085 Hearing Reset After Ex Parte Order — Service By Publication — Circumstances.
(1) If the respondent was not personally served with the petition, notice of hearing, and ex parte order before the hearing, the court shall reset the hearing for the next available court days from the date of entry of the order and may order service by publication instead of personal service under the following circumstances:

(a) The Tribal Police, sheriff or municipal officer files an affidavit stating that the officer was unable to complete personal service upon the respondent. The affidavit must describe the number and types of attempts the officer made to complete service;

(b) The petitioner files an affidavit stating that the petitioner believes that the respondent is hiding from the server to avoid service. The petitioner's affidavit must state the reasons for the belief that the petitioner [respondent] is avoiding service;

(c) The server has deposited a copy of the summons, in substantially the form prescribed in subsection (3) of this section, notice of hearing, and the ex parte order of protection in the post office, directed to the respondent at the respondent's last known address, unless the server states that the server does not know the respondent's address; and

(d) The court finds reasonable grounds exist to believe that the respondent is concealing himself or herself to avoid service, and that further attempts to personally serve the respondent

would be futile or unduly burdensome.

(2) The court shall reissue the temporary order of protection not to exceed another twenty-four days from the date of reissuing the ex parte protection order and order to provide service by publication.

(3) The publication shall be made in a newspaper of general circulation in the jurisdiction where the petition was brought and in the area of the last known address of the respondent once a week for three consecutive weeks.

The newspaper selected must be one of the three most widely circulated papers in the area. The publication of summons shall not be made until the court orders service by publication under this section.

Service of the summons shall be considered complete when the publication has been made for three consecutive weeks. The summons must be signed by the petitioner. The summons shall contain the date of the first publication, and shall require the respondent upon whom service by publication is desired, to appear and answer the petition on the date set for the hearing. The summons shall also contain a brief statement of the reason for the petition and a summary of the provisions under the ex parte order.

The summons may be essentially in the following form:

IN THE JAMESTOWN TRIBAL COURT
FOR THE JAMESTOWN S'KLALLAM INDIAN TRIBE
BLYN, WASHINGTON

_____	)	Case No. JAM-
	)	
Petitioner,	)	
	)	Motion for Protection Order
vs.	)	
	)	
_____,	)	
	)	
_____Respondent._____	)	

The Jamestown S'Klallam Tribe to . . . . . (respondent):

You are hereby summoned to appear on the . . . . day of . . . . . , 20. . . , at . . . . a.m./p.m., and respond to the petition. If you fail to respond, an order of protection will be issued against you pursuant to the provisions of the domestic violence protection act, section _____for a minimum of one year from the date you are required to appear. A temporary order of protection has been issued against you, restraining you from the following: (Insert a brief statement of the provisions of the ex parte order). A copy of the petition, notice of hearing, and ex parte order has been filed with the clerk of this court.

_____Petitioner.

5.50.090 Order — Service — Fees.

(1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (6) and (7) of this section.

(2) The Tribal Police, sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If service by the Tribal Police, sheriff or municipal peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the Tribal Police, sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the Tribal Police, sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

(5) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(6) 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.

(7) If the court previously entered an order allowing service of the notice of hearing and temporary order of protection by publication pursuant to section 5.50.085 or by mail pursuant to section 5.50.123, the court may permit service by publication or by mail of the order of protection issued under section 5.50.060. Service by publication must comply with the requirements of section 5.50.085 and service by mail must comply with the requirements of section 5.50.123. The court order must state whether the court permitted service by publication or by mail.

5.50.095 Order Following Service By Publication.
Following completion of service by publication as provided in section 5.50.085 or by mail as provided in section 5.50.123, if the respondent fails to appear at the hearing, the court may issue an order of protection as provided in section 5.50.060. That order must be served pursuant to section 5.50.090, and forwarded to the appropriate law enforcement agency pursuant to section 5.50.100.

5.50.100 Order — Transmittal To Law Enforcement Agency — Record In Law Enforcement Information System — Enforceability.
(1) A copy of an order for protection granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any

computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order shall remain in the computer for the period stated in the order. The law enforcement agency shall only expunge from the computer-based criminal intelligence information system orders that are expired, vacated, or superseded. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable within in any tribe, county or state.

(2) The information entered into the computer-based criminal intelligence information system shall include notice to law enforcement whether the order was personally served, served by publication, or served by mail.

5.50.110 Violation Of Order — Penalties.
(1)(a) Whenever an order is granted under this section, or other authorizing section, or there is a valid foreign protection order, and the respondent or person to be restrained knows of the order,

A violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this this or any other authorizing section, or a valid foreign protection order, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person

restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this section, or other authorizing section, or of a valid foreign protection order, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this section or other authorizing section, or of a valid foreign protection order that does not amount to assault in the first or second degree under sections 3.2A.36.011 or 3.2A.36.012 is a felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a felony.

(5) A violation of a court order issued under this section, or other authorizing section, or of a valid foreign protection order, is a felony if the offender has at least two previous convictions for violating the provisions of an order previously issued. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any law enforcement officer alleging that the respondent has violated an order granted under this section, or any other authorizing section, or a valid foreign protection order, the court may issue an order to the respondent, requiring the respondent to appear and show cause by the next available court day why the respondent should not be found in contempt of court and punished accordingly.

5.50.115 Enforcement Of Ex Parte Order — Knowledge Of Order Prerequisite To Penalties — Reasonable Efforts To Serve Copy Of Order.

(1) When the court issues an ex parte order, or an order of protection, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in sections 5.50.110 for a violation of the order unless the respondent knows of the order.

(2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order.

If the law enforcement officer determines that the respondent did not or probably did not know about the protection order and the officer is provided a current copy of the order, the officer shall serve the order on the respondent if the respondent is present.

If the respondent is not present, the officer shall make reasonable efforts to serve a copy of the order on the respondent. If the officer serves the respondent with the petitioner's copy of the order, the officer shall give petitioner a receipt indicating that petitioner's copy has been served on the respondent.

After the officer has served the order on the respondent, the officer shall enforce prospective compliance with the order.

(3) Presentation of an unexpired, certified copy of a protection order with proof of service is sufficient for a law enforcement officer to enforce the order regardless of the presence of the order in the law enforcement computer-based criminal intelligence information system.

5.50.123 Service By Mail.
(1) In circumstances justifying service by publication under section 5.50.085(1), if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication and that the serving party is unable to afford the cost of service by publication, the court may order that service be made by mail.

Such service shall be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the order and other process to the party to be served at his or her last known address or any other address determined by the court to be appropriate.

Two copies shall be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) Proof of service under this section shall be consistent with court rules for civil actions.

(3) Service under this section may be used in the same manner and shall have the same jurisdictional effect as service by publication for purposes of this chapter. Service shall be deemed complete upon the mailing of two copies as prescribed in this section.

5.50.130 Order For Protection — Modification Or Termination — Service — Transmittal.
(1) Upon a motion with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection or may terminate an existing order for protection.

(2) A respondent's motion to modify or terminate an order for protection that is permanent or issued for a fixed period exceeding two years must include a declaration setting forth facts supporting the requested order for termination or modification.

The motion and declaration must be served according to subsection (7) of this section. The nonmoving parties to the proceeding may file opposing declarations.

The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the respondent established adequate cause, the court shall set a date for hearing the respondent's motion.

(3)(a) The court may not terminate an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence against the petitioner or those persons protected by the protection order if the order is terminated.

In a motion by the respondent for termination of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

(b) For the purposes of this subsection, a court shall determine whether there has been a "substantial change in circumstances" by considering only factors which address whether the respondent is likely to commit future acts of domestic violence against the petitioner or those persons protected by the protection order.

(c) 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:

(i) Whether the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts since the protection order was entered;

(ii) Whether the respondent has violated the terms of the protection order, and the time that has passed since the entry of the order;

(iii) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;

(iv) Whether the respondent has been convicted of criminal activity since the protection order was entered;

(v) Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered;

(vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

(vii) Whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly;

(viii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of domestic violence may be committed from any distance;

(ix) Other factors relating to a substantial change in circumstances.

(d) In determining whether there has been a substantial change in circumstances, the court may not base its determination solely on: (i) The fact that time has passed without a violation of the order; or (ii) the fact that the respondent or petitioner has relocated to an area more distant from the other party.

(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 that resulted in the issuance of the protection order were of such severity that the order should not be terminated.

(4) The court may not modify an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that the requested modification is warranted.

If the requested modification would reduce the duration of the protection order or would eliminate provisions in the protection order restraining the respondent from harassing, stalking, threatening, or committing other acts of domestic violence against the petitioner or the petitioner's children or family or household members or other persons protected by the order, the court shall consider the factors in subsection (3)(c) of this section in determining whether the protection order should be modified.

Upon a motion by the respondent for modification of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

(5) Upon a motion by a petitioner, the court may modify or terminate an existing order for protection. The court shall hear the motion without an adequate cause hearing.

(6) Except as provided in sections 5.50.085 and 5.50.123, a motion to modify or terminate an order for protection must be personally served on the nonmoving party not less than five court days prior to the hearing.

(a) If a moving party seeks to modify or terminate an order for protection that is permanent or issued for a fixed period exceeding two years, the Tribal Police, sheriff of the county or the peace officers of the municipality in which the nonmoving party resides or a licensed process server shall serve the nonmoving party personally except when a petitioner is the moving party and elects to have the nonmoving party served by a private party.

(b) If the Tribal Police, sheriff, municipal peace officer, or licensed process server cannot complete service upon the nonmoving party within ten days, the sheriff, municipal peace officer, or licensed process server shall notify the moving party. The moving party shall provide information sufficient to permit notification by the sheriff, municipal peace officer, or licensed process server.

(c) If timely personal service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining personal service or permit service by publication as provided in section 5.50.085 or service by mail as provided in section 5.50.123.

(d) The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or by mail unless the moving party requests additional time to attempt personal service.

(e) If the court permits service by publication or by mail, the court shall set the hearing date not later than twenty-four days from the date of the order permitting service by publication or by mail.

(7) In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

5.50.135 Residential Placement Or Custody Of A Child — Prerequisite.
(1) Before granting an order under this chapter directing residential placement of a child or restraining or limiting a party's contact with a child, the court shall consult with the Indian Child Welfare Department, if available, to determine the pendency of other proceedings involving the residential placement of any child of the parties for whom residential placement has been requested.

(2) Jurisdictional issues regarding out-of-state proceedings involving the custody or residential placement of any child of the parties shall be governed applicable Tribal law and/or Indian Child Welfare recommendations.

5.50.140 Peace Officers — Immunity.
No peace officer may be held criminally or civilly liable for making an arrest under section 5.50.110 if the police officer acts in good faith and without malice.

5.50.150 Domestic Violence Perpetrator Programs.
Any program that provides domestic violence treatment to perpetrators of domestic violence must be certified by the State of Washington Department of Social and Health Services and meet minimum standards of the Tribe for domestic violence treatment purposes.

5.50.220 Parenting Plan — Designation Of Parent For Other State And Federal Purposes.
Solely for the purposes of all other Tribal, state and federal statutes which require a designation or determination of custody, if necessary a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child.

However, this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time shall be deemed to be the custodian of the child for the purposes of such Tribal, federal and state statutes.

5.50.230 Protection Order Against Person With A Disability, Brain Injury, Or Impairment.
Any law enforcement officer who serves a protection order on a respondent with the knowledge that the respondent requires special assistance due to a disability, brain injury, or impairment

shall make a reasonable effort to accommodate the needs of the respondent to the extent practicable without compromise to the safety of the petitioner.

5.50.240 Personal Jurisdiction — Nonresident Individuals.
(1) In a proceeding in which a petition for an order for protection under this section is sought, a court of this Tribe may exercise personal jurisdiction over a nonresident individual if:

(a) The individual is personally served with a petition within the Tribe's jurisdiction;

(b) The individual submits to the jurisdiction of this Tribe by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction;

(c) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of an order for protection occurred within this Tribe's jurisdiction;

(d)(i) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of an order for protection occurred outside this Tribe's jurisdiction and are part of an ongoing pattern of domestic violence or stalking that has an adverse effect on the petitioner or a member of the petitioner's family or household and the petitioner resides in this Tribe's jurisdiction; or

(ii) As a result of acts of domestic violence or stalking, the petitioner or a member of the petitioner's family or household has sought safety or protection in this Tribe's jurisdiction and currently resides in this Tribe's jurisdiction; or

(e) There is any other basis consistent with this Title or with the Constitutions of the Jamestown S'Klallam Tribe and the United States.

(2) For jurisdiction to be exercised under subsection (1)(d)(i) or (ii) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides in this Tribe's jurisdiction.

For the purposes of subsection (1)(d)(i) or (ii) of this section, "communicated or made known" includes, but is not limited to, through the mail, telephonically, or a posting on an electronic communication site or medium. Communication on any electronic medium that is generally available to any individual residing in the Tribe's jurisdiction shall be sufficient to exercise jurisdiction under subsection (1)(d)(i) or (ii) of this section.

(3) For the purposes of this section, an act or acts that "occurred within this Tribe's jurisdiction" includes, but is not limited to, an oral or written statement made or published by a person outside of this jurisdiction to any person in this state by means of the mail, interstate commerce, or foreign commerce. Oral or written statements sent by electronic mail or the internet are deemed to have "occurred within this Tribe's jurisdiction."

5.50.250 Disclosure Of Information.
(1)(a) No court or administrative body may compel any person or domestic violence program to disclose the name, address, or location of any domestic violence program, including a shelter or transitional housing facility location, in any civil or criminal case or in any administrative proceeding unless the court finds by clear and convincing evidence that disclosure is necessary for the implementation of justice after consideration of safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the interests of the parties.

(b) The court's findings shall be made following a hearing in which the domestic violence program has been provided notice of the request for disclosure and an opportunity to respond.

(2) In any proceeding where the confidential name, address, or location of a domestic violence program is ordered to be disclosed, the court shall order that the parties be prohibited from further dissemination of the confidential information, and that any portion of any records containing such confidential information be sealed.

(3) Any person who obtains access to and intentionally and maliciously releases confidential information about the location of a domestic violence program for any purpose other than required by a court proceeding is guilty of a gross misdemeanor.

5.52 FOREIGN PROTECTION ORDER FULL FAITH AND CREDIT ACT

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5.52.005 FINDINGS — INTENT.
The problem of women fleeing across jurisdictional lines to escape their abusers is epidemic in the United States. In 1994, Congress enacted the Violence Against Women Act (VAWA) as Title IV of the Violent Crime Control and Law Enforcement Act (P.L. 103-322). The VAWA provides for improved prevention and prosecution of violent crimes against women and children. Section 2265 of the VAWA (Title IV, P.L. 103-322) provides for nationwide enforcement of civil and criminal protection orders in tribal and state courts throughout the country.

The Tribe finds that existing statutes may not provide an adequate mechanism for victims, police, prosecutors, and courts to enforce a foreign protection order in our state. It is the intent of the Tribe that the barriers faced by persons entitled to protection under a foreign protection order

will be removed and that violations of foreign protection orders be criminally prosecuted in this jurisdiction.

5.52.010 DEFINITIONS.
The definitions in this section apply throughout this section unless the context clearly requires otherwise.

(1) "Domestic or family violence" includes, but is not limited to, conduct when committed by one family member against another that is classified in the jurisdiction where the conduct occurred as a domestic violence crime or a crime committed in another jurisdiction that under the laws of this jurisdiction would be classified as domestic violence.

(2) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Foreign protection order" means an injunction or other order related to domestic 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 tribe, state, territory, or possession of the Tribe, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, in a civil or criminal action.

(4) "Harassment" includes, but is not limited to, conduct that is classified in the jurisdiction where the conduct occurred as harassment or a crime committed in another jurisdiction that under the laws of this Tribe would be classified as harassment under section 3A.46.040.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays observed by the Tribal Court.

(6) "Person entitled to protection" means a person, regardless of whether the person was the moving party in the foreign jurisdiction, who is benefited by the foreign protection order.

(7) "Person under restraint" means a person, regardless of whether the person was the responding party in the foreign jurisdiction, whose ability to contact or communicate with another person, or to be physically close to another person, is restricted by the foreign protection order.

(8) "Sexual abuse" includes, but is not limited to, conduct that is classified in the jurisdiction where the conduct occurred as a sex offense or a crime committed in another jurisdiction that under the laws of this Tribe would be classified as a sex offense.

(9) "Stalking" includes, but is not limited to, conduct that is classified in the jurisdiction where the conduct occurred as stalking or a crime committed in another jurisdiction that under the laws of this Tribe would be classified as stalking under 3.2A.46.110.

(10) "Tribal Court" includes any courts of the Jamestown S'Klallam Tribe.

5.52.020 FOREIGN PROTECTION ORDERS — VALIDITY.
A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the tribe, state, territory, possession, United States, or United States military tribunal. There is a presumption in favor of validity where an order appears authentic on its face.

A person under restraint must be given reasonable notice and the opportunity to be heard before the order of the foreign tribe, state, territory, possession, United States, or United States military tribunal was issued, provided, in the case of ex parte orders, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

5.52.030 FOREIGN PROTECTION ORDERS — FILING — ASSISTANCE.
(1) 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 the Clerk of the Tribal Court if the person entitled to protection resides within Tribal jurisdiction and enforcement may be necessary. 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 Tribal Court as long as it contains a facsimile or digital signature by any person authorized to make such transmission.

(2) Filing of a foreign protection order with the court and entry of the foreign protection order into any computer-based criminal intelligence information system available by law enforcement agencies to list outstanding warrants are not prerequisites for enforcement of the foreign protection order.

(3) The court shall accept the filing of a foreign protection order without a fee or cost.

(4) The clerk of the court shall provide information to a person entitled to protection of the availability of domestic violence, sexual abuse, and other services to victims in the Tribal community.

(5) The Clerk of the Court shall assist the person entitled to protection in completing an information form that must include, but need not be limited to, the following:

(a) The name of the person entitled to protection and any other protected parties;

(b) The name and address of the person who is subject to the restraint provisions of the foreign protection order;

(c) The date the foreign protection order was entered;

(d) The date the foreign protection order expires;

(e) The relief granted under the order. (specify the relief awarded and citations thereto, and designate which of the violations are arrestable offenses);

(f) The judicial district and contact information for court administration for the court in which the foreign protection order was entered;

(g) The social security number, date of birth, and description of the person subject to the restraint provisions of the foreign protection order;

(h) Whether the person who is subject to the restraint provisions of the foreign protection order is believed to be armed and dangerous;

(i) 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;

(j) 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.

An inability to answer any of the above questions does not preclude the filing or enforcement of a foreign protection order.

(6) The Clerk of the Court shall provide the person entitled to protection with a copy bearing proof of filing with the court.

(7) 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.

5.52.040 FILED FOREIGN PROTECTION ORDERS — TRANSMITTAL TO LAW ENFORCEMENT AGENCY — ENTRY INTO LAW ENFORCEMENT INFORMATION SYSTEM.

(1) The Clerk of the Court shall forward a copy of a foreign protection order that is filed under this section on or before the next judicial day to the Tribal Police or county sheriff along with the completed information form. The clerk may forward the foreign protection order to the Tribal Police or county sheriff by facsimile or electronic transmission.

Upon receipt of a filed foreign protection order, the Tribal Police or county sheriff shall immediately enter 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. The foreign protection order must remain in the computer for the period stated in the order.

The Tribal Police or county sheriff shall only expunge from the computer-based criminal intelligence information system foreign protection orders that are expired, vacated, or superseded. Entry into the law enforcement information system constitutes notice to all law

enforcement agencies of the existence of the foreign protection order. The foreign protection order is fully enforceable in any county in the state.

(2) The information entered into the computer-based criminal intelligence information system must include, if available, notice to law enforcement whether the foreign protection order was served and the method of service.

5.52.050 LAW ENFORCEMENT OFFICER IMMUNITY.
A law enforcement officer or a law enforcement officer's legal advisor may not be held criminally or civilly liable for making an arrest under this section if the law enforcement officer or the law enforcement officer's legal advisor acted in good faith and without malice.

5.52.060 FEES NOT PERMITTED FOR FILING, PREPARATION, OR COPIES.
A Tribal agency may not charge a fee for filing or preparation of certified, authenticated, or exemplified copies to a person entitled to protection who seeks relief under this section or to a foreign prosecutor or a foreign law enforcement agency seeking to enforce a protection order entered by the Tribal Court. A person entitled to protection and foreign prosecutors or law enforcement agencies must be provided the necessary number of certified, authenticated, or exemplified copies at no cost.

5.52.070 VIOLATION OF FOREIGN ORDERS — PENALTIES.
(1) Whenever a foreign protection order is granted to a person entitled to protection and the person under restraint knows of the foreign protection order, a violation of a provision prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person under restraint from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime, is punishable under section 5.50.110.

(2) A law enforcement officer shall arrest without a warrant and take into custody a person when the law enforcement officer has probable cause to believe that a foreign protection order has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order that prohibits the person under restraint from contacting or communicating with another person, or a provision that excludes the person under restraint from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

5.52.080 CHILD CUSTODY DISPUTES.
(1) Any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in

accordance with the appropriate Tribal law, and in accordance with the parental kidnapping prevention act, 28 U.S.C. 1738A.

(2) A law enforcement officer shall not remove a child from his or her current placement unless:

(a) A writ of habeas corpus to produce the child has been issued by the Tribal Court; or

(b) There is probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to a child custody hearing.

CHAPTER 21.6
CODIFICATION AND AMENDMENTS

Section 6.1 Date of Codification
Section 6.2 Amendments

6.1 DATE OF CODIFICATION

The original version of this Title 21, labeled "Crimes" was codified as a Title of the Tribal Code on November 8, 2005, at a Tribal Council meeting by Resolution #38-05.

6.2 AMENDMENTS

The first amended version of Title 21 - Crimes was amended on February 4, 2010 by Resolution #07-10. The original version of Title 21 – Crimes was repealed and a new version, labeled "Felonies, Misdemeanors and Infractions" was adopted by the Tribal Council on May 10, 2011 by Resolution #20-11.

Title 21 – "Felonies, Misdemeanors and Infractions" was repealed and a new version, labeled "Law and Order Code" was adopted by the Tribal Council on December 16, 2013 by Resolution #42-13.

Title 21 Law and Order Code was amended by the Tribal Council on February 25, 2015, by Resolution #08-15.

Title 21 Law and Order Code was further amended by the Tribal Council on March 31, 2015 by Resolutions #14-15.