

TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.25

DRIVING A MOTOR VEHICLE

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7.25.1. Driving while under the Influence of Intoxicating Alcohol, Marijuana, or Any Drug. (a) A person is guilty of driving while under the influence of intoxicating alcohol, marijuana, or any drug if he or she drives a vehicle within the reservation:

(1) With 0.08 grams or more of alcohol per two hundred and ten (210) liters of breath as shown by analysis of the person's breath;

(2) With 0.08 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood; or

(3) With a THC concentration of 5.00 or higher as shown by analysis of the person's blood; or

(4) Under the influence of or affected by intoxicating alcohol, marijuana, or any drug.

(b) For the purposes of Chapter 7.26, the following definitions will apply. (1) "Illegal drug" means an "illegal substance" under Suquamish Tribal Code Chapter 7.26 or any other prescription-only drug for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(2) "Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term includes any substances or products regulated under Suquamish Tribal Code Chapter 11.10 or Section 7.26.4, including but not limited to marijuana concentrates, marijuana-infused products, and useable marijuana, as defined in RCW 69.50.101.

(3) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant Cannabis, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant Cannabis regardless of moisture content.

(c) Driving while under the influence is a gross misdemeanor.

(d) Penalty. (1) Proof that a person charged under this section has been convicted of driving under the influence in any jurisdiction within thirty-six (36) months prior to the date of the current offense shall raise the penalty for the current offense to a felony.

(2) Proof that a person has been convicted of driving under the influence in any jurisdiction four (4) or more times within ten (10) years prior to the date of the current offense or has ever been convicted of vehicular homicide or vehicular assault while under the influence shall raise the penalty for the current offense to a felony.

(3) Proof required under §7.25.1(d)(1) shall be by certified copy of judgment and sentence. (Res. 93-025 (part), passed Mar. 8, 1993; Res. 2003-030, passed Mar. 10, 2003; amended by Res. 2008-020, passed Mar. 24, 2008; amended by Res. 2015-133 (part), passed Jun. 22, 2015)

7.25.2. Physical Control of Vehicle while under the Influence of Intoxicating Alcohol, Marijuana, or Any Drug. (a) A person is guilty of being in physical control of a motor vehicle while under the influence of intoxicating alcohol, marijuana, or any drug if the person:

(1) Has actual physical control of a vehicle while under the influence or combined influence of or affected by intoxicating alcohol, marijuana, and/or any drug; or

(2) Has an alcohol concentration of 0.08 or higher as measured in §7.25.1(a)(1–2) within two (2) hours after being in such physical control; or

(3) Has a THC concentration of 5.00 or higher as measured in §7.25.1(a)(3) within two (2) hours after being in such physical control.

(b) No person may be convicted under this section if prior to being pursued by a police officer, the person has moved the vehicle safely off the roadway.

(c) It is an affirmative defense to a violation of §7.25.2(a)(2) which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol between being in physical control of the vehicle and the administration of a breath or blood analysis to cause his or her alcohol concentration to be 0.08 or more within two (2) hours of being in such control. The Court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(d) It is an affirmative defense to a violation of §7.25.2(a)(3) which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of marijuana between being in physical control of the vehicle and the administration of a blood analysis to cause his or her THC concentration to be 5.00 or more within two (2) hours of being in such control. The Court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(e) Analysis of breath or blood samples obtained more than two (2) hours after the alleged being in physical control of a vehicle may be used as evidence that within two (2) hours a person had an alcohol concentration in violation of §7.25.2(a)(2) and a concentration above zero (0.00) may be used as evidence that a person was in violation of §7.25.2(a)(1).

(f) Analysis of blood samples obtained more than two (2) hours after the alleged being in physical control of a vehicle may be used as evidence that within two (2) hours a person had a THC concentration in violation of §7.25.2(a)(3) and a concentration above zero (0.00) may be used as evidence that a person was in violation of §7.25.2(a)(1).

(g) Except as provided in §7.25.2(h), a violation of this section is a gross misdemeanor.

(h) Proof that a person has been convicted of driving under the influence in any jurisdiction four (4) or more times within ten (10) years prior to the date of the current offense or has ever been convicted of vehicular homicide or vehicular assault while under the influence shall raise the penalty for the current offense to a felony. (Res. 2008-020, passed Mar. 24, 2008; amended by Res. 2015-133 (part), passed Jun. 22, 2015)

7.25.3. Reckless Driving. (a) Any person who shall drive or operate any motor vehicle in any manner dangerous to the public safety or properties of the people of the Port Madison Indian Reservation shall be deemed guilty of reckless driving.

(b) Reckless driving is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; amended and renumbered by Res. 2008-020, passed Mar. 24, 2008)

7.25.4. Negligent Driving. “Negligent” means the failure to exercise ordinary care and performing some act that a reasonably careful person would not do under the same or similar circumstances or, conversely, the failure to do something that a reasonably careful person would do. Any act prohibited by this section that also constitutes a crime under any other tribal law may be the basis of prosecution under such law as well as under this section.

(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 negligent and is likely to endanger any person or property and that exhibits the effects of having consumed alcohol, marijuana, or an illegal drug.

(1) “Exhibiting the effects of having consumed alcohol, marijuana, or an illegal drug” means that a person exhibits by speech, manner, appearance, behavior, lack of coordination, or otherwise having consumed alcohol, marijuana, or an illegal drug; or has the odor of alcohol or marijuana on his or her breath and either is shown by other evidence to have recently consumed alcohol, marijuana, or an illegal drug or is in possession of alcohol, marijuana, or an illegal drug or in close proximity to a container that holds or recently held alcohol or marijuana.

(2) 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 the driver has a valid prescription for the drug consumed and has been consuming it according to the prescription directions and warnings. This must be proven by the defendant by a preponderance of the evidence.

(3) Negligent driving in the first degree is a misdemeanor.

(b) If a person operates a motor vehicle in a manner that is both negligent and likely to endanger any person or property under circumstances not constituting negligent driving in the first degree, the person is guilty of negligent driving in the second degree.

(1) It is an affirmative defense to negligent driving in the second degree 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. This must be proven by the defendant by a preponderance of the evidence.

(2) Negligent driving in the second degree is a traffic infraction and is subject to a penalty of three hundred and fifty dollars (\$350). (Res. 2008-020, passed Mar. 24, 2008; amended by Res. 2015-133 (part), passed Jun. 22, 2015)

7.25.5. Hit and Run of an Unattended Vehicle. (a) A person operating any vehicle which collides with any unattended vehicle or any other property must immediately stop and notify the owner or operator of said vehicle or property of the person's name and address by either locating the owner or operator or by leaving a written notice in a conspicuous place in or on the vehicle or property. Failure to do so constitutes hit and run of an unattended vehicle or other property.

(b) Hit and run of an unattended car or other property is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; amended and renumbered by Res. 2008-020, passed Mar. 24, 2008)

7.25.6. Hit and Run of an Attended Vehicle. As used in this section, "driver" means the person driving the vehicle causing damage, injury, or death.

(a) A person is guilty of hit and run of an attended vehicle when:

(1) As driver in an accident resulting in injury to or death of any person, he or she fails to stop immediately at the scene of such accident or as close thereto as possible, without obstructing traffic more than necessary, and to remain at the scene of such accident until he or she has fulfilled the requirements of this section.

(2) As driver in an accident resulting only in damage to a vehicle driven or attended by any person, he or she fails to stop immediately at the scene of such accident or as close thereto as possible, without obstructing traffic more than necessary, and to remain at the scene of such accident until he or she has fulfilled the requirements of this section.

(b) The driver in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall:

(1) Give his or her name, address, and vehicle license number and exhibit his or her driver's license to any person struck or injured, or to the driver, any occupant of, or any person attending the other vehicle, and

(2) Assist any person injured in such accident in obtaining transportation to a physician or hospital for medical treatment.

If none of the persons specified are in a condition to receive the information to which they are entitled under this section and no police officer is present, the driver shall, after fulfilling all other requirements of this section insofar as possible, forthwith

report such accident to the police authority and submit thereto the information specified in this section.

(c) Hit and run of an attended vehicle is a felony. (Res. 93-025 (part), passed Mar. 8, 1993; amended and renumbered by Res. 2008-020, passed Mar. 24, 2008)

7.25.7. Vehicular Assault. As used in this section, “substantial bodily harm” means bodily injury which involves a temporary but substantial disfigurement, loss, or impairment of the function of any bodily part or organ or which causes a fracture of any bodily part.

(a) A person is guilty of vehicular assault if he or she causes substantial bodily harm to another while operating or driving any vehicle:

- (1) In a reckless manner;
- (2) While under the influence of intoxicants or inhalants; or
- (3) With disregard for the safety of others.

(b) Vehicular assault is a felony. (Res. 2008-020, passed Mar. 24, 2008)

7.25.8. Vehicular Homicide. (a) When the death of any person ensues within three (3) years as a proximate result of injury 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:

- (1) In a reckless manner;
- (2) While under the influence of intoxicants or inhalants; or
- (3) With disregard for the safety of others.

(b) Vehicular homicide is a felony. (Prior code §7.4.6, negligent homicide, Res. 93-025 (part), passed Mar. 8, 1993; amended and moved to §7.25.8 by Res. 2008-020, passed Mar. 24, 2008)

7.25.9. Operating a Motor Vehicle while Privilege Is Suspended or Revoked. (a) A person is guilty of operating a motor vehicle while privilege is suspended or revoked if he or she operates a motor vehicle within the Port Madison Indian Reservation while the privilege to do so has been suspended or revoked by any jurisdiction.

(b) Operating a motor vehicle while privilege is suspended or revoked is a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; amended and renumbered by Res. 2008-020, passed Mar. 24, 2008)

7.25.10. Eluding a Law Enforcement Officer. As used in this section, “immediately” means stopping as soon as it is reasonably possible.

(a) Eluding in the first degree. (1) Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop once the driver knows that a law enforcement officer has given him or her a visible or audible signal to bring his or her vehicle to a stop and who drives in a manner indicating a wanton or willful disregard for the lives and property of others while attempting to elude a pursuing police vehicle is guilty of eluding a law enforcement officer in the first degree.

(2) Eluding a law enforcement officer in the first degree is a felony.

(b) Eluding in the second degree. (1) Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop once the driver knows that a law enforcement officer has given him or her a visible or audible signal to bring his or her vehicle to a stop is guilty of eluding a law enforcement officer in the second degree.

(2) Eluding a law enforcement officer in the second degree is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; amended by Res. 96-016, passed March 25, 1996; amended and renumbered by Res. 2008-020, passed Mar. 24, 2008)

7.25.11. Prohibited Use of Alcoholic Beverages in Vehicle. (a) A person is guilty of prohibited use of alcoholic beverages in a vehicle if:

(1) He or she drinks any alcoholic beverage in a motor vehicle when the vehicle is upon a roadway;

(2) He or she has an open or unsealed receptacle containing an alcoholic beverage in his or her possession while in a motor vehicle or while the vehicle is upon a roadway; or

(3) He or she is the driver of a motor vehicle which is on a roadway and in which an open or unsealed receptacle containing an alcoholic beverage is present, unless the receptacle is kept in the trunk or other area of the vehicle which is not normally accessible to the occupants.

(b) Prohibited use of alcoholic beverages in a vehicle is a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered by Res. (2008-020, passed Mar. 24, 2008)

7.25.12. Prohibited Use of Marijuana in a Vehicle. (a) A person is guilty of prohibited use of marijuana in a vehicle if:

(1) He or she consumes marijuana in a motor vehicle when the vehicle is upon a roadway; or

(2) He or she is the driver of a motor vehicle which is on a roadway and in which an open or unsealed receptacle containing marijuana is present, unless the marijuana is kept in the trunk or other area of the vehicle which is not normally accessible to the occupants.

(b) Prohibited use of marijuana in a vehicle is a misdemeanor. (Res. 2015-133 (part), passed Jun. 22, 2015)

7.25.13. Driver Under Twenty-One Consuming Alcohol or Marijuana. (a) 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 and the person:

(1) Is under the age of twenty-one (21); and

(2) Has, within two (2) hours after operating or being in physical control of the motor vehicle, either: an alcohol concentration of at least 0.02 but less than 0.08, as shown by analysis of the person's breath or blood, or a THC concentration above 0.00 but less than 5.00, as shown by analysis of the person's blood.

(b) It is an affirmative defense to a violation of this subsection, 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 this subsection within two (2) hours after driving or being in physical control.

(c) Analyses of blood or breath samples obtained more than two (2) hours after the alleged driving or being in physical control may be used as evidence that within two (2) 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.

(d) A violation of this section is a misdemeanor. (Res. 2015-133 (part), passed Jun. 22, 2015)

7.25.14. Entitlement to Use Substance Is Not a Defense. The fact that any person charged with any violation(s) of Chapter 7.25 of the Suquamish Tribal Code is or has been entitled to use of any substance under the laws of the Suquamish Tribe or under the laws of this state shall not constitute a defense. (Res. 2015-133 (part), passed Jun. 22, 2015)