TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.26

CONTROLLED SUBSTANCES

Sections:

7.26.1. Illegal Substances. Any substance that contains any quantity of a chemical that falls within the following categories is illegal to possess without a valid prescription. The full list of chemicals contained within these categories can be found in Article II of the Washington Uniform Controlled Substances Act, RCW 69.50.201 et seq. Illegal substances include:

(a) Opiates, including but not limited to substances commonly known as opium, heroin, morphine, methadone, and codeine;

(b) Hallucinogenic substances, including but not limited to substances commonly known as DMA, LSD, PCP, mescaline, psilocybin, and peyote except as provided in §7.26.2, but excluding marijuana;

(c) Cocaine in any form, including but not limited to the powder and the rock or "crack" form;

(d) Depressants, including but not limited to methaqualone, diazepam (Valium), secobarbital, and pentobarbitol; and

(e) Stimulants, including but not limited to any form of amphetamine.

The chemical composition of a substance may be proved by any acceptable method of identification, including but not limited to identification by a trained law enforcement officer, by field tests, or by laboratory tests. (Res. 93-025 (part), passed and amended by voice vote, Mar. 8, 1993; amended by Res. 93-060, passed July 12, 1993; amended

and renumbered by Res. 2008-021, passed Mar. 24, 2008; amended by Res. 2015-133 (part), passed Jun. 22, 2015)

7.26.2. Peyote. The use, possession, transportation, cultivation, and/or delivery of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful. Such use, possession, transportation, cultivation, and/or delivery must comply with federal regulations as authorized in 42 USC 1996a. (Res. 2008-021, passed Mar. 24, 2008)

7.26.3. Penalties for Illegal Substances. Each of the following is a felony:

(a) Possession of any substance listed in §7.26.1 unless the substance was obtained directly from, or pursuant to, a valid prescription;

(b) Growth, manufacture, delivery, or possession with intent to sell, deliver, or manufacture any substance listed in §7.26.1;

(c) Creation, delivery, or possession of a counterfeit illegal drug, which is a substance purported to contain and intended to be understood by others to be an illegal substance listed in §7.26.1 although not in fact containing any illegal substance; and

(d) Offering, arranging, or negotiating for the delivery of an illegal substance listed in §7.26.1 and then delivering any other substance in lieu of it. (Res. 93-025 (part), passed and amended by voice vote, Mar. 8, 1993; amended by Res. 93-060, passed July 12, 1993; amended and renumbered by Res. 2008-021, passed Mar. 24, 2008; amended by Res. 2015-133 (part), passed Jun. 22, 2015; renumbered by Res. 2016-086 (part), passed Jun. 20, 2016)

7.26.4. Marijuana Possession and Use. (a) The definitions of marijuana, marijuana concentrates, marijuana-infused products, useable marijuana, plant, qualifying patient, designated provider, authorization, recognition card, medical marijuana authorization database, health care professional, and housing unit as contained in RCW 69.50.101 and RCW 69.51A.010 are hereby incorporated by reference.

(b) The possession, by a person twenty-one (21) years of age or older, of marijuana concentrates, marijuana-infused products, or useable marijuana in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this chapter, or any other provision of Suquamish tribal law, absent express prohibition under the Suquamish Tribal Code, including those contained in this chapter.

(c) Beginning July 1, 2016, it will not constitute a violation of this chapter or any other provision of Suquamish tribal law, absent express prohibition to the contrary, for a qualifying patient or designated provider who has been entered into the medical marijuana authorization database and holds a valid recognition card to possess marijuana plants, marijuana concentrates, marijuana-infused products, or useable

marijuana in a manner that does not exceed the limits set forth in RCW 69.51A.210, for the personal medical use of the qualifying patient. If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described in RCW 69.51A.210 for the qualifying patient and designated provider, whether the plants, marijuana concentrates, marijuana-infused products, or useable marijuana are possessed individually or in combination between the qualifying patient and his or her designated provider.

(d) Criminal penalties may be imposed on persons guilty of possession of marijuana plants, marijuana concentrates, marijuana-infused products, or useable marijuana as described below:

(1) Possession of more than the limits authorized under subsections (b) and (c) of this section is a felony.

(2) No person under the age of twenty-one (21) may possess marijuana in any amount unless he or she is a qualifying patient with a valid recognition card and possesses only amounts consistent with his or her authorization and no more than the limits set forth in RCW 69.51A.210. A violation of this subsection by a person at least age eighteen (18) but less than twenty-one (21) is a misdemeanor, which is punishable by imprisonment of not more than ninety (90) days, or by a fine not to exceed one thousand dollars ($1,000) or both. A violation of this subsection by a person under the age of eighteen (18) is punishable by one or more of the following: (i) zero to thirty (0-30) days of confinement; (ii) zero to twelve (0-12) months of community supervision; (iii) zero to one hundred fifty (0-150) hours of community restitution; (iv) a fine not to exceed five hundred dollars ($500); or (v) a drug treatment alternative approved by the Suquamish Tribal Court.

(e) Unless otherwise authorized by resolution of the Suquamish Tribe or tribal law, a person cannot use marijuana in any public place, or possess marijuana within public view, on the Port Madison Indian Reservation. Public view includes, but is not limited to: carrying marijuana in an open shirt pocket, an open purse, on the body of a person visible to the public, etc. Public places include, but are not limited to: tribal schools, tribal parking lots, tribal governmental vehicles, tribally-owned open spaces, tribal businesses and enterprises, tribal governmental offices, and tribal medical clinics. Any violation of this subsection will constitute a civil infraction punishable by a fine not to exceed fifty dollars ($50). (Res. 93-025 (part), passed and amended by voice vote, Mar. 8, 1993; replaced and renumbered by Res. 2008-021, passed Mar. 24, 2008; replaced and renumbered by Res. 2015-133 (part), passed Jun. 22, 2015; amended by Res. 2016-086 (part), passed Jun. 20, 2016)

7.26.5. Marijuana Production, Processing, and Sale. (a) No person may plant, grow, produce, cultivate, or process marijuana in any form, including those defined in §7.26.4(a), within the boundaries of the Port Madison Indian Reservation or on

Suquamish tribal lands, for personal or commercial use, absent an exception contained in this chapter.

(b) No person may sell marijuana, marijuana concentrates, marijuana-infused products, or useable marijuana within the boundaries of the Port Madison Indian Reservation or on Suquamish tribal lands, absent an exception expressly contained in this chapter.

(c) Any violation of this section is a felony.

(d) The prohibitions contained in §7.26.4 and §7.26.5(a)-(c) are not applicable to commercial marijuana activity authorized pursuant to chapter 11.10 of the Suquamish Tribal Code, provided that such commercial marijuana activity is conducted in accordance with the Suquamish Tribal Code.

(e) The prohibitions contained in §7.26.4 and §7.26.5(a)-(c) are not applicable to persons or entities as employees, agents, or vendors of any entity engaged in commercial marijuana activity authorized pursuant to §11.10.10 of the Suquamish Tribal Code, provided that such person or entity acts in accordance with the Suquamish Tribal Code.

(f) Notwithstanding the prohibitions contained in §7.26.5(a) and (c), beginning July 1, 2016, a qualifying patient who is eighteen (18) years of age or older or a designated provider may grow, in his or her domicile, marijuana plants for the personal medical use of the qualifying patient as follows:

(1) Prior to growing any marijuana plants for medical use under subsections (2), (3), or (4), the qualifying patient or designated provider must file and maintain with the Suquamish tribal police: (i) a copy of the qualified patient's valid authorization; (ii) except as to subsection (4), a copy of the qualified patient's and, if applicable, designated provider's valid recognition card; (iii) the address of the domicile where the plants will be grown; and (iv) the number of plants to be grown.

(2) A qualifying patient or designated provider with a valid authorization from a health care professional that has been entered into the medical marijuana database and a valid recognition card may grow, in his or her domicile, up to six (6) plants for the personal medical use of the qualifying patient and possess up to eight (8) ounces of useable marijuana produced from his or her plants in his or her domicile. These amounts must be specified on the recognition card that is issued to the qualifying patient or designated provider.

(3) If the health care professional determines that the medical needs of a qualifying patient exceed the amounts provided for in subsection (2) of this section, the health care professional must specify on the authorization that it is recommended that the patient be allowed to grow, in his or her domicile, up to

fifteen (15) plants for the personal medical use of the patient. A patient so authorized may possess up to sixteen (16) ounces of useable marijuana in his or her domicile. The number of plants must be entered into the medical marijuana authorization database and specified on the recognition card that is issued to the qualifying patient or designated provider.

(4) If a qualifying patient or designated provider with an authorization from a health care professional has not been entered into the medical marijuana authorization database, he or she may grow, in his or her domicile, up to four (4) plants for the personal medical use of the qualifying patient and possess up to six (6) ounces of useable marijuana in his or her domicile.

(5) Notwithstanding any other provision of this chapter and even if multiple qualifying patients or designated providers reside in the same housing unit, no more than fifteen (15) plants may be grown or located in any one housing unit.

(6) Notwithstanding any provision of this chapter, no marijuana plants may be grown in any U.S. Department of Housing and Urban Development ("HUD") housing unit, tribal rental property or any other property designated by Tribal Council.

(7) Qualifying patients or designated providers may extract or separate the resin from marijuana using only the following noncombustible methods: (i) heat, screens, presses, steam distillation, ice water, and other methods without employing combustible solvents or gases to create kief, hashish, or bubble hash; (ii) dairy butter, cooking oils or fats derived from natural sources, or other home cooking substances; (iii) food grade glycerin and propylene glycol solvent based extraction; (iv) CO2 may be used if used in a closed loop system as referenced in WAC 314-55-104, or as amended.

(8) Neither the production nor processing of marijuana or marijuana-infused products pursuant to this section nor the storage or growing of plants may occur if any portion of such activity can be readily seen by normal unaided vision or readily smelled from a public place or the private property of another housing unit. (Res. 93-025 (part), passed and amended by voice vote, Mar. 8, 1993; replaced and renumbered by Res. 2008-021 passed Mar. 24, 2008; amended and renumbered by Res. 2015-133 (part), passed Jun. 22, 2015; amended by Res. 2016-086 (part), passed Jun. 20, 2016)

7.26.6. Inhaling Toxic Fumes. (a) A person is guilty of inhaling toxic fumes if he or she sniffs or inhales the fumes of a substance containing a solvent having the property of releasing toxic vapors or fumes as identified in RCW 9.47A.010.

(b) Inhaling toxic fumes is a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; amended and renumbered by Res. 2008-021, passed Mar. 24, 2008; amended by Res. 2015-133 (part), passed Jun. 22, 2015)

7.26.7. Distribution of Alcohol, Marijuana, or Illegal Substances to Person Under the Age of Twenty-One (21). (a) A person is guilty of distribution of alcohol, marijuana, or illegal substances to an under-aged person if he or she sells, barters, or gives to a person under the age of twenty-one (21) years any alcoholic beverage, marijuana, or any illegal substance, as defined in §7.26.1, without a valid prescription; or if he or she permits a person under the age of twenty-one (21) years to use alcohol, marijuana, or illegal substances, without a prescription, on his or her property.

(b) Notwithstanding the foregoing, any designated provider that has been entered into the medical marijuana authorization database as being the designated provider to a particular qualifying patient holding a valid recognition card who provides marijuana to that qualified patient is not guilty of distribution of marijuana to an under-aged person. A person who permits a qualified patient under the age of twenty-one (21) years with a valid recognition card to use marijuana for medical purposes on his or her property is not guilty of a crime.

(c) Distribution of alcohol to a person under the age of twenty-one (21) is a gross misdemeanor.

(d) Distribution of marijuana, except as stated in subsection (b), or any illegal substance, as defined in §7.26.1, without a valid prescription, to a person under the age of twenty-one (21) is a felony. (Res. 93-025 (part), passed Mar. 8, 1993; amended and renumbered by Res. 2008-021, passed Mar. 24, 2008; amended by Res. 2015-133 (part), passed Jun. 22, 2015; amended by Res. 2016-086 (part), passed Jun. 20, 2016)

7.26.8. Minors Entering or Being Served by a Marijuana Retail Outlet.

(a) Except as otherwise provided by this chapter or chapter 11.10 of the Suquamish Tribal Code, it is a gross misdemeanor to serve or allow any person under the age of twenty-one (21) years to enter or remain in any area of a commercial marijuana retail facility operating pursuant to chapter 11.10 of the Suquamish Tribal Code.

(b) Except as otherwise provided by this chapter or chapter 11.10 of the Suquamish Tribal Code, it is a misdemeanor for any person under the age of twenty-one (21) years to:

(1) Enter or remain in any commercial marijuana retail facility operated pursuant to chapter 11.10 of the Suquamish Tribal Code; or

(2) Represent his or her age as being twenty-one (21) or more years for the purpose of purchasing marijuana or entering or remaining in a commercial marijuana retail facility operated pursuant to chapter 11.10 of the Suquamish Tribal Code.

(c) Subsections (a) and (b) of this section do not apply to any person between the ages of eighteen (18) and twenty-one (21) years who enters a commercial marijuana retail facility operated pursuant to chapter 11.10 of the Suquamish Tribal Code if the person (1) entered for the purpose of having his or her authorization entered into the medical marijuana authorization database by an employee of the commercial marijuana retail facility and obtaining a recognition card; (2) is already entered into the medical marijuana authorization database and holds a valid recognition card; or (3) is participating in an authorized compliance check pursuant to section 11.10.9 of the Suquamish Tribal Code. (Res. 93-025 (part), passed Mar. 8, 1993; amended and renumbered by Res. 2008-021, passed Mar. 24, 2008; amended by Res. 2015-133 (part), passed Jun. 22, 2015; replaced and renumbered by Res. 2016-086 (part), passed Jun. 20, 2016)

7.26.9. Possession of Drug Paraphernalia. "Possession of drug paraphernalia" means to knowingly receive, retain, possess, or conceal drug paraphernalia.

(a) Drug Paraphernalia Defined. As used in this chapter, "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, or concealing a controlled substance or for injecting, ingesting, inhaling, or otherwise introducing into the human body an illegal substance. The definitions and examples of drug paraphernalia in RCW 69.50.102 are hereby incorporated by reference, except as provided otherwise by this chapter.

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 factors, the following:

(1) Statements by an owner or person in control of the object concerning its use;

(2) The proximity of the object, in time and space, to a direct violation of this chapter;

(3) The proximity of the object to illegal substances; and

(4) The existence of any residue of illegal substances on the object.

(b) Marijuana Paraphernalia for Production, Processing, or Sale of Marijuana. Within the boundaries of the Port Madison Indian Reservation or on Suquamish tribal lands only those authorized under §7.26.5 may possess paraphernalia for the production, processing, or sale of marijuana.

(c) Penalties. Possession of individual drug paraphernalia objects for personal use in inhaling, ingesting, or otherwise introducing an illegal substance, as defined in

§7.26.1, into the human body is a misdemeanor. (Res. 2000-073 (part), passed Nov. 27, 2000; amended and renumbered by Res. 2008-021, passed Mar. 24, 2008; amended by Res. 2015-133 (part), passed Jun. 22, 2015; renumbered by Res. 2016-086 (part), passed Jun. 20, 2016)

7.26.10. Unauthorized Use of State Medical Marijuana Database.

(a) It is unlawful for a person to knowingly or intentionally:

(1) Access the medical marijuana authorization database for any reason not related to adding a qualifying patient or designated provider and noting the amount of product for which the qualifying patient is authorized; confirming the validity of a recognition card; issuing a replacement recognition card for a card that is lost or stolen; or, by Suquamish tribal police engaged in a bona fide specific investigation of a suspected marijuana-related activity that may be illegal under tribal law or state law to confirm validity of a recognition card;

(2) Disclose any information received from the medical marijuana authorization database in violation of the provisions contained in RCW 69.51A.230 including, but not limited to, qualifying patient or designated provider names, addresses, or amount of marijuana for which they are authorized;

(3) Produce a recognition card or to tamper with a recognition card for the purpose of having it accepted by a tribal medical marijuana retailer in order to purchase marijuana as a qualifying patient or designated provider [or to grow marijuana plants in accordance with this chapter];

(4) If a person is a designated provider to a qualifying patient, sell, donate, or supply marijuana produced or obtained for the qualifying patient to another person, or use the marijuana produced or obtained for the qualifying patient for the designated provider's own personal use or benefit; or

(5) If the person is a qualifying patient, sell, donate, or otherwise supply marijuana produced or obtained by the qualifying patient to another person.

(b) A person who violates this section is guilty of a felony. (Res. 2016-086 (part), passed Jun. 20, 2016)

7.26.11. Good Samaritan Overdose Prevention Immunity from Prosecution.

(a) For the purposes of this subsection, the words and phrases listed below have the following meanings:

(1) "First responder" means a law enforcement officer, paramedic, career or volunteer firefighter, or first responder or emergency medical technician.

(2) “Legend drug” means drugs that are approved by the U.S. Food and Drug Administration (FDA) and that are required by federal or state law to be dispensed to the public only on prescription of a licensed physician or other licensed provider.

(3) “Medical assistance” means professional services provided to a person experiencing a drug overdose by a health care professional licensed, registered, or certified under state law who, acting within his or her lawful scope of practice, may provide diagnosis, treatment, or emergency services for a person experiencing a drug overdose.

(4) “Opioid overdose medication” means any drug used to reverse an opioid overdose that binds opioid receptors and blocks or inhibits the effects of opioids acting on those receptors.

(5) “Opioid-related overdose” means a condition including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death that: (1) results from the consumption or use of an opioid or another substance with which an opioid was combined; or (2) a lay person would reasonably believe to be an opioid-related overdose requiring medical assistance.

(6) “Practitioner” means a health care practitioner who is authorized under tribal, state, and/or federal law to prescribe legend drugs.

(7) “Prescription” means a written order to be effective in legalizing the possession of legend drugs, that must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs.

(8) “Standing order” or “protocol” means written or electronically recorded instructions, prepared by a prescriber, for distribution and administration of a drug by designated and trained staff or volunteers of the Suquamish Tribe, including the tribal community, as well as other actions and interventions to be used upon the occurrence of clearly defined clinical events in order to improve patients’ timely access to treatment.

(b) A practitioner may prescribe, dispense, distribute, and deliver an opioid overdose medication directly to a person at risk of experiencing an opioid-related overdose or by collaborative drug therapy agreement, standing order, or protocol to a first responder, Suquamish Tribal staff, family member, community member, or other person or entity in a position to assist a person at risk of experiencing an opioid-related overdose. Any such prescription or protocol order is issued for a legitimate medical purpose in the usual course of professional practice. At the time of prescribing, dispensing, distributing, or delivering the opioid overdose medication, the practitioner must inform the recipient that as soon as possible after administration of the opioid

overdose medication, the person at risk of experiencing an opioid-related overdose should be transported to a hospital or a first responder should be summoned.

(c) A pharmacist may dispense an opioid overdose medication pursuant to a prescription issued in accordance with this section and may administer an opioid overdose medication to a person at risk of experiencing an opioid-related overdose. At the time of dispensing an opioid overdose medication, a pharmacist must provide written instructions on the proper response to an opioid-related overdose, including instructions for seeking immediate medical attention. The instructions to seek immediate medical attention must be clearly and obviously displayed.

(d) Any person or entity may lawfully possess, store, deliver, distribute, or administer an opioid overdose medication pursuant to a prescription or order issued by a practitioner or pharmacist in accordance with this section.

(e) A person who experiences an opioid-related overdose and is in need of medical assistance or a person acting in good faith and exercising reasonable care who seeks medical assistance for someone experiencing an opioid-related overdose will not be charged or prosecuted for possession of a controlled substance pursuant to S.T.C. § 7.26.3, or for possession of drug paraphernalia or penalized under S.T.C. § 7.26.9, if the evidence for the charge of possession of a controlled substance was obtained as a result of the person seeking medical assistance or rendering medical assistance. A person qualifies for the immunities provided in this subsection only if the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance. The protection in this subsection from prosecution for possession crimes under S.T.C. §§ 7.26.3 and 7.26.9 is not grounds for suppression of evidence in other criminal charges and does not affect laws prohibiting selling, delivery, or exchanging drugs arising from the same event. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred by this section.

(f) If acting in good faith and with reasonable care, the following individuals are not subject to criminal or civil liability or disciplinary action under tribal or state law for any actions authorized by this section or the outcomes of any actions authorized by this section: (1) a practitioner who prescribes, dispenses, distributes, or delivers an opioid overdose medication; (2) a pharmacist who dispenses an opioid overdose medication; (3) a person who possesses, stores, distributes, or administers an opioid overdose medication.

(g) The act of providing first aid or other medical assistance to someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided. (Res. 2018-071, passed May 15, 2018)

Note: In what was section 7.26.3(a)(1)-(4), the designation ‘(a)’ was dropped and the remaining subsections renumbered 7.26.3(a)-(d) because there was originally no subsection ‘(b)’.