

TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.17

SEX CRIMES

Sections:

- 7.17.1 Legislative Declaration.
- 7.17.2 Definitions.
- 7.17.3 Aggravated Sexual Abuse.
- 7.17.4 Sexual Abuse.
- 7.17.5 Abusive Sexual Contact.
- 7.17.6 Assault with Sexual Motivation.
- 7.17.7 Communication with a Minor for Sexual Purposes.
- 7.17.8 Luring with a Sexual Motivation.
- 7.17.9 Sexual Exploitation of a Minor or Adjudicated Vulnerable Adult.
- 7.17.10 Possessing Depictions of a Minor Engaged in Sexually Explicit Conduct.
- 7.17.11 Sending or Bringing Depictions of a Minor Engaged in Sexually Explicit Conduct.
- 7.17.12 Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct.
- 7.17.13 Commercial Sexual Abuse of a Minor.
- 7.17.14 Promoting Commercial Sexual Abuse of a Minor.
- 7.17.15 Indecent Exposure.
- 7.17.16 Voyeurism.
- 7.17.17 Prostitution.
- 7.17.18 Promoting Prostitution.
- 7.17.19 Patronizing a Prostitute.
- 7.17.20 Patronizing a Child Prostitute.
- 7.17.21 Provisions Generally Applicable to Sexual Crimes.
- 7.17.22 Nonwaiver of Sovereign Immunity.
- 7.17.23 Severability.
- 7.17.24 Effective Date.

7.17.1. Legislative Declaration. Sexual assault inflicts humiliation, degradation, and terror on victims. Studies have consistently shown that American Indian and Alaska Native people experience significantly higher levels of sexual violence than the general population. Sexual abuse and unwanted sexual contact are contrary to traditional Suquamish Tribal culture and values, and to the interest of our community and our sense of well-being and growth. Sexual abuse and unwanted sexual contact will not be tolerated. (Res. 2020-155, passed Oct. 13, 2020)

7.17.2. Definitions. As used in this chapter:

(a) "Adjudicated vulnerable adult", for the purpose of this chapter, means an elder over the age of fifty-five (55) or a person eighteen (18) years of age or older who does not have the functional, mental, emotional, or physical ability to protect and care for him- or her self (STC § 8.7.2 (f)), and who has been adjudicated as such either by the Suquamish Tribal Court or other court of competent jurisdiction.

(b) "Consent", in terms of sexual activities, means that at the time of the act of sexual intercourse there are actual words or conduct indicating freely given agreement to have sexual contact, sexual intercourse, or other sexual acts.

(c) "Custodial, supervisory, or disciplinary authority" includes, but is not limited to, the special authoritative or confidential relationship relating to the provision of education, health care, any kind of counseling, coaching, religious advice, public safety services, or other professional services.

(d) "Intimate parts" means the external genitalia, the perineum, the anus, the buttocks, the pubis, or the breast of any person.

(e) "Minor", for the purpose of this chapter, is defined as a person under the age of eighteen (18).

(f) "Photographs" or "films," when used as a verb, means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person.

(g) "Place where he or she would have a reasonable expectation of privacy" means:

(1) 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

(2) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.

(h) "Sexual act" means: (1) Contact between the penis and the vulva or the penis and the anus, and for purposes of this subsection contact involving the penis occurs upon penetration, however slight; or

(2) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

(3) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or to arouse or gratify the sexual desire of any person; or

(4) The intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of sixteen (16) years with an intent to abuse, humiliate, harass, degrade, or to arouse or gratify the sexual desire of any person.

(i) "Sexual contact" means the intentional touching by a person either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or to arouse or gratify the sexual desire of any person. Any intentional or knowing touching of the clothed or unclothed body of a child under the age of sixteen (16), if done for the purpose of sexual gratification or arousal, is also sexual contact.

(j) "Sexual intercourse" (1) Has its ordinary meaning and occurs upon any penetration, however slight; and

(2) 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

(3) 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.

(k) "Sexual motivation" means for the purpose of arousing or gratifying the sexual desire of any person.

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

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

(2) Bestiality; or

(3) Masturbation; or

(4) Sadistic or masochistic abuse; or

(5) Lascivious exhibition of the genitals or pubic area of a person or animal.

(m) "Surveillance," for the purpose of this chapter, means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person. (Res. 2020-155, passed Oct. 13, 2020)

7.17.3. Aggravated Sexual Abuse. (a) By Force or Threat. Any person who knowingly causes another person to engage in a sexual act:

(1) By using force against that other person; or

(2) By threatening or placing the other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping, or attempting to do so, is guilty of a felony.

(b) By Other Means. Any person who knowingly: (1) Renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) Administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby:

(A) Substantially impairs the ability of that other person to appraise or control conduct; and

(B) Engages in a sexual act with that other person, or attempts to do so, is guilty of a felony.

(c) With Children. Any person who knowingly engages in a sexual act with a person who has not attained the age of twelve (12) years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) of this section with another person who has attained the age of twelve (12) years but has not attained the age of sixteen (16) years and is at least four (4) years younger than the person so engaging, or attempts to do so, is guilty of a felony.

(d) State of Mind Proof Requirement. In a prosecution under subsection (c) of this section, the Tribe need not prove that the defendant knew the age of the other person engaging in the sexual act. In a prosecution under subsection (c) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person engaging in the sex act had attained the age of sixteen (16) years. (Res. 2020-155, passed Oct. 13, 2020)

7.17.4. Sexual Abuse. Any person who knowingly: (a) Causes another person to engage in a sexual act by threatening or placing that other person in fear, other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or

(b) Engages in a sexual act with another person if that other person is:

(1) Incapable of appraising the nature of the conduct; or

(2) Physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act, or attempts to do so; or

(3) An adjudicated vulnerable adult;

(4) At least twelve (12) years of age but has not yet attained the age of sixteen (16) years, and is at least four (4) years younger than the person engaging the minor in the sexual act; or

(5) When a person is under the custodial, supervisory, or disciplinary authority of another person and that other person takes advantage of his or her authority to cause sexual contact, is guilty of a felony.

(c) In a prosecution under STC §7.17.4(b)(4), it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of sixteen (16) years. (Res. 2020-155, passed Oct. 13, 2020)

7.17.5. Abusive Sexual Contact. If the sexual conduct engaged in by a person, pursuant to circumstances set forth in STC §7.17.3 or STC §7.17.4, constitutes sexual contact rather than a sexual act, as defined in this chapter, the person commits the crime of abusive sexual contact, and is guilty of a felony. (Res. 2020-155, passed Oct. 13, 2020)

7.17.6. Assault with Sexual Motivation. (a) A person commits the offense of assault with sexual motivation where one of the purposes of committing the assault was that of personal sexual gratification.

(b) Assault with sexual motivation is a felony. (Res. 2020-155, passed Oct. 13, 2020)

7.17.7. Communication with a Minor for Sexual Purposes. (a) A person commits the offense of communication with a minor for sexual purposes when he or she speaks to or otherwise contacts or attempts to contact a minor or someone he or she believes to be a minor, about sexually explicit conduct, not to include communication for educational purposes by either a parent, guardian, or educator, or other person authorized by the parent or legal guardian.

(b) A person who communicates with a minor, or with someone the person believes to be a minor, for sexual purposes, is guilty of a felony. (Res. 2020-155, passed Oct. 13, 2020)

7.17.8. Luring with a Sexual Motivation. (a) A person commits the offense of luring with a sexual motivation if he or she orders, lures, or attempts to lure a minor or an adjudicated vulnerable adult into any area or structure that is obscured from or inaccessible to the public or into a motor vehicle, with a sexual motivation.

(b) Luring with a sexual motivation is a felony. (Res. 2020-155, passed Oct. 13, 2020)

7.17.9. Sexual Exploitation of a Minor or Adjudicated Vulnerable Adult. (a) A person commits the offense of sexual exploitation of a minor or adjudicated vulnerable adult if the person:

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

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

(3) Is a parent, legal guardian, or other person having custody or control of a minor or adjudicated vulnerable adult, and permits the person to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

(b) Sexual exploitation of a minor or adjudicated vulnerable adult is a felony. (Res. 2020-155, passed Oct. 13, 2020)

7.17.10. Possessing Depictions of a Minor Engaged in Sexually Explicit Conduct. (a) A person commits the offense of possessing depictions of a minor engaged in sexually explicit conduct when he or she:

(1) Knowingly possesses, creates, develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; or

(2) 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.

(b) Possessing depictions of a minor engaged in sexually explicit conduct is a felony.

(c) Each depiction or image of visual or printed matter that violates this section constitutes a separate offense. (Res. 2020-155, passed Oct. 13, 2020)

7.17.11. Sending or Bringing Depictions of a Minor Engaged in Sexually Explicit Conduct. (a) A person commits the crime of sending or bringing depictions of a minor engaged in sexually explicit conduct when he or she knowingly sends or causes to be sent, or brings or causes to be brought within the territorial jurisdiction of the Suquamish

Tribe as defined in STC §3.2.3 for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct.

(b) Sending or bringing depictions of a minor engaged in sexually explicit conduct is a felony.

(c) Each depiction or image of visual or printed matter that violates this section constitutes a separate offense. (Res. 2020-155, passed Oct. 13, 2020)

7.17.12. Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct. (a) Any person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct commits the offense of viewing depictions of a minor engaged in sexually explicit conduct.

(b) Viewing depictions of a minor engaged in sexually explicit conduct is a felony.

(c) For the purposes of determining whether a person intentionally viewed over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct, the trier of fact will 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.

(d) 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. (Res. 2020-155, passed Oct. 13, 2020)

7.17.13. Commercial Sexual Abuse of a Minor. (a) A person commits the offense of commercial sexual abuse if:

(1) He or she compensates a minor or a third person for a minor having engaged in sexually explicit conduct with him or her;

(2) He or she compensates or agrees to compensate a minor or a third person pursuant to an understanding that in return for that compensation such minor will engage in sexually explicit conduct with him or her; or

(3) He or she solicits, offers, or requests to engage in sexually explicit conduct with a minor in return for compensation.

(b) Commercial sexual abuse of a minor is a felony. (Res. 2020-155, passed Oct. 13, 2020)

7.17.14. Promoting Commercial Sexual Abuse of a Minor. (a) A person commits the offense of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse of a minor or profits from a minor engaged in sexually explicit conduct.

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

(c) For the purposes of this section:

(1) A person “advances commercial sexual abuse of a minor” if, acting other than as a minor receiving compensation for personally rendered sexually explicit 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.

(2) A person “profits from commercial sexual abuse of a minor” if, acting other than as a minor receiving compensation for personally rendered sexually explicit 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. (Res. 2020-155, passed Oct. 13, 2020)

7.17.15. Indecent Exposure. (a) A person commits the offense of indecent exposure if he or she, with a sexual motivation, exposes his or her intimate parts under circumstances in which the person knows the conduct is likely to cause affront or alarm.

(b) Indecent exposure is a gross misdemeanor, unless the offender has previously been convicted of a sex offense, in which case it is a felony. (Res. 2020-155, passed Oct. 13, 2020)

7.17.16. Voyeurism. (a)(1) A person commits the offense of voyeurism in the first degree 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 parts 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.

(2) Voyeurism in the first degree is a gross misdemeanor.

(b)(1) A person commits the crime of voyeurism in the second degree if he or she intentionally photographs or films another person, under circumstances where the person has a reasonable expectation of privacy, for the purpose of photographing or filming the intimate parts of that person with the intent to distribute or disseminate the photograph or film, without that person's knowledge and consent, and whether in a public or private place.

(2) Voyeurism in the second degree is a misdemeanor.

(3) Voyeurism in the second degree is not a sex offense for the purposes of sentencing or sex offender registration requirements under STC §7.29.

(c) "Another person," as used in this section, means an adult age eighteen (18) or older.

(d) "Views," for the purpose of this section, 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.

(e) This section does not apply to viewing, photographing, or filming by personnel of a jail or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of a jail or correctional facility. (Res. 2020-155, passed Oct. 13, 2020)

7.17.17. Prostitution. (a) A person commits the offense of prostitution if such person knowingly engages in or offers or agrees to engage in sexual contact or sexual intercourse with another person, not his or her spouse, significant other, or dating partner, for compensation, whether such compensation is paid or to be paid.

(b) This section does not apply to a child under the age of eighteen (18) who engages in or offers or agrees to engage in sexual contact or sexual intercourse with another person, not his or her spouse, significant other, or dating partner, for compensation, whether such compensation is paid or to be paid.

(c) Prostitution is a misdemeanor. (Res. 2020-155, passed Oct. 13, 2020)

7.17.18. Promoting Prostitution. (a) Promoting Prostitution. A person commits the offense of promoting prostitution if, with intent to promote prostitution, that person knowingly:

(1) Owns, controls, manages, supervises, or otherwise maintains a place of prostitution or a prostitution enterprise;

(2) Induces or causes a person to engage in prostitution or to remain in a place of prostitution;

(3) Receives or agrees to receive money or other compensation pursuant to an agreement or understanding that the money or other compensation is derived from a prostitution activity; or

(4) Engages in any conduct that institutes, aids, or facilitates an act or enterprise of prostitution.

(5) Promoting prostitution is a gross misdemeanor.

(b) **Aggravated Promotion of Prostitution.** A person commits the crime of aggravated promotion of prostitution if that person purposely or knowingly commits any of the following acts:

(1) Compels another to engage in or promote prostitution;

(2) Promotes prostitution of a person under eighteen (18) years of age, whether or not he or she is aware of the person's age; or

(3) Promotes the prostitution of one's child, ward, or any person for whose care, protection, or support he or she is responsible.

(4) Aggravated promotion of prostitution is a felony.

(c) **Evidence Required.** (1) A person may not be convicted for promoting prostitution solely on the uncorroborated testimony of the individual whose prostitution that person is alleged to have promoted or compelled.

(2) On the issue of whether a place is a place of prostitution, its general repute and repute of persons who reside in or frequent the place is competent evidence.

(3) Notwithstanding any other limitations, spouses are competent and compellable witnesses for or against either party in prosecutions for promoting prostitution and compelling prostitution. (Res. 2020-155, passed Oct. 13, 2020)

7.17.19. Patronizing a Prostitute. (a) A person commits the offense of patronizing a prostitute if:

(1) Pursuant to a prior understanding, he or she pays a fee to or compensates another person for such person or a third person having engaged in a sexual act with him or her; or

(2) He or she pays or agrees to pay a fee to or compensate another person pursuant to an understanding that in return therefor such person will engage in a sexual act with him or her; or

(3) He or she solicits or requests another person to engage in a sexual act with him or her in return for a fee or other compensation.

(b) The crime of patronizing a prostitute may be committed in more than one location. The crime is deemed to have been committed in any location in which the defendant commits any act under subsection (a)(1), (2), or (3) of this section that constitutes part of the crime. A person who sends a communication to patronize a prostitute is considered to have committed the crime both at the place from which the contact was made pursuant to subsection (a)(1), (2), or (3) of this section and where the communication is received, provided that this section must be construed to prohibit anyone from being prosecuted twice for substantially the same crime.

(c) Patronizing a prostitute is a misdemeanor. (Res. 2020-155, passed Oct. 13, 2020)

7.17.20. Patronizing a Child Prostitute. (a) A person commits the offense of patronizing a child prostitute if he or she pays, agrees to pay, or to compensate another person to engage in sexual contact or sexual acts with another person who has not attained the age of eighteen (18) years.

(b) Patronizing a child prostitute is a felony. (Res. 2020-155, passed Oct. 13, 2020)

7.17.21. Provisions Generally Applicable to Sexual Crimes. (a) When criminality depends on the victim being under the age of sixteen (16) or eighteen (18), it is a defense for the offender to prove by a preponderance of the evidence that he or she reasonably believed the child to be above that age. Such belief will not be deemed reasonable if the child is under fourteen (14) years of age.

(b) No evidence concerning the sexual activities of the victim is admissible in prosecutions under this section except evidence of the victim's past sexual activities with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(c) If the defendant proposes for any purpose to offer evidence described in subsection (b) of this section, the Court will order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (b) of this section.

(d) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(e) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

(f) In a prosecution under sections 7.17.10, 7.17.11, and 7.17.12 of this chapter, 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.

(g) In a prosecution under sections 7.17.10, 7.17.11, and 7.17.12 of this chapter, the prosecuting authority is not required to establish the identity of the alleged victim.

(h) The provisions of this chapter apply regardless of the sex, gender, or gender identity of the parties involved.

(i) If a person is convicted of a violation of this chapter, 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 chapter. (Res. 2020-155, passed Oct. 13, 2020)

7.17.22. Nonwaiver of Sovereign Immunity. Nothing in this chapter may be deemed to constitute a general or specific waiver by the Suquamish Tribe of its sovereign immunity for any reason whatsoever. (Res. 2020-155, passed Oct. 13, 2020)

7.17.23. Severability. If any part or parts, or the application of any part of this chapter is held invalid, such holding will not affect the validity of the remaining parts of this chapter. (Res. 2020-155, passed Oct. 13, 2020)

7.17.24. Effective Date. This chapter will be effective November 12, 2020. (Res. 2020-155, passed Oct. 13, 2020)

Note: This chapter was first published in the prior code as Chapter 7.17 – Rape; Public Indecency; Prostitution; Sex Crimes, authorized by Resolution 93-025 (part), passed March 8, 1993. The entire chapter was subsequently rewritten, and authorized by Resolution 2020-155, passed October 13, 2020.