

TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapters:

- 7.1 Application; Jurisdiction
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- 7.3 Anticipatory Offenses
- 7.4 Homicide
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Chapter 7.1

APPLICATION; JURISDICTION

Sections:

7.1.1	Title.
7.1.2	Application.
7.1.3	Severability.
7.1.4	Jurisdiction.
7.1.5	Definitions.
7.1.6	Proof beyond a Reasonable Doubt.
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7.1.1. Title. This title shall be known as the “Suquamish Tribal Criminal Code.” (Res. 93-025 (part), passed Mar. 8, 1993)

7.1.2. Application. The provisions of this title shall apply to any offense committed after the passage of a resolution by the Suquamish Tribal Council authorizing its enactment. (Res. 93-025 (part), passed Mar. 8, 1993)

7.1.3. Severability. If any part of this title shall be held invalid, the remainder shall remain in effect. (Res. 93-025 (part), passed Mar. 8, 1993)

7.1.4. Jurisdiction. (a) **Generally.** A person is subject to prosecution in Tribal Court for any offense enumerated in Suquamish Tribal Code Chapter 7 or another Tribal ordinance which is committed totally or partially within the exterior boundaries of the Suquamish Reservation. An offense is committed partially within the Suquamish Reservation if any element of the offense occurs within the exterior boundaries of the Suquamish Reservation. An offense based on an omission to perform a duty imposed by Tribal law is committed within the exterior boundaries of the Suquamish Reservation, regardless of the location of the defendant at the time of the omission.

(b) **Usual and Accustomed Hunting and Fishing Areas.** A Tribal member is subject to prosecution in Tribal Court for any offense related to the exercise of treaty rights, and for any general criminal offense committed while that member is exercising treaty rights, which is committed totally or partially on lands reserved or obtained by the Tribes and its people for their use by any treaty or law or in any other manner, except where such exercise of criminal jurisdiction is limited by Federal law. An offense is committed partially on lands reserved or obtained by the Tribes if any element of the offense occurs on such lands.

(c) **Special Tribal Criminal Jurisdiction.** The Suquamish Tribe hereby exercises criminal jurisdiction as a participating tribe to the fullest extent possible as defined within 25 U.S.C. 1304 as presently constituted or hereafter amended. Defendants in Tribal Court will be provided with notice as required by 25 U.S.C. 1304(g). Whether the elements of an offense are sufficient to also prove the jurisdictional requirements of special Tribal

criminal jurisdiction is a question of law for the judge to decide. The judge shall include additional jurisdiction elements in the judge's instruction of the jury if necessary to prove jurisdiction.

~~The Suquamish Tribal Courts shall have jurisdiction, pursuant to Suquamish Tribal Code Chapter 3.2, over all actions arising under this title. (Res. 93-025 (part), passed Mar. 8, 1993; amended by Res. 94-156 (part), passed Nov. 21, 1994)~~

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

(a) "Abuse" means physical, verbal, or mental mistreatment, intimidation, or injury which harms or threatens a person's well-being.

(b) "Acted" includes, where relevant, omitted to act.

(c) "Actor" includes, where relevant, a person failing to act.

(d) "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.

(e) "Bodily injury" or "physical injury" means physical pain, illness, or an impairment of physical condition.

(f) "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.

(g) "Child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child; shall not include discipline administered by a parent or legal guardian to his or her child, provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(h) "Conviction" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.

(i) "Covered crime" means the list of offenses defined by 25 USC § 1304(a)(5).

(j) "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 great or serious bodily injury.

(j) "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, or an an elder or vulnerable adult, as defined in STC 8.7.2(f) is presumed to be a dependent person for purposes of this chapter.

(k) "Deprive" means to withhold the property interest of another either permanently or for so long a time period that a substantial portion of its economic value or usefulness or enjoyment is lost, to withhold with the intent to restore it only on payment of any reward or other compensation or to transfer or dispose of it so that it is unlikely to be recovered.

(lg) "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.

(m) "Force" means:

(1) the use of a weapon;

(2) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or

(3) inflicting physical harm to coerce or compel submission by the victim.

(nh) "Government" includes any branch, subdivision, or agency of the Suquamish tribal government or the United States government.

(oi) "Government function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government.

(p) "Grievous bodily harm" means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose.

(qj) "Indicted" and "indictment" include "informed against" and "information," and "informed against" and "information" include "indicted" and "indictment."

(rk) "Judge" includes every judicial officer or court officer authorized alone or with others to hold or preside over a court.

(s) "Law enforcement officer" means any person who by virtue of his or her office of public or Tribal employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his or her authority. Law

enforcement officer does not include a probation employed by either the Suquamish Police Department or the Suquamish Tribal Court

(tl) "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.

(u) "Mental mistreatment" means an injury to a child's or dependent person's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(v) "Neglect" means, in regards to the care of a child, that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them.

(wm) "Officer" and "public officer" means a person holding office under tribal 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.

(xn) "Omission" means a failure to act.

(ye) "Peace officer" means a duly appointed or authorized tribal or federal law enforcement officer. A peace officer includes any Suquamish Police Department officer certified by the Washington Criminal Justice Training Commission.

(zp) "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.

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

(bbf) "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.

(ccs) "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.

(ddt) "Prisoner" includes any person held in custody under process of law or under lawful arrest.

(eeu) "Property" means anything of value, whether tangible or intangible, real or personal.

(ffv) "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 legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function.

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

(hnx) "Statute" means the Tribal Constitution or an act of the Tribal Council or General Council.

(ii) "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.

(jj) "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 member or organ, or which causes a fracture of any bodily member.

(kk) "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.

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

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

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

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

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

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

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

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

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

(9) 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

(10) 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.

(mmz) "Torture" means the intentional infliction of extreme mental anguish, or extreme psychological or physical injury.

(nn) "Tribal justice personnel" shall mean any individual authorized to act for, or on behalf of, the Suquamish Tribe, or serving the Suquamish Tribe and whose performance or duties of that individual include:

- (1) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime
- (2) adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime; or
- (3) detaining, providing supervision for, or providing services for persons charged with a covered crime; or
- (4) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.

Tribal justice personnel may include individuals such as, but not limited to, Tribal Court Staff, Tribal Child Welfare Caseworkers, Human Service Caseworkers, and jurors.

(oo) "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.

(pp) “Violence” means physical harm, bodily injury, assault, or the infliction of fear or imminent physical harm, bodily injury, or assault.

(~~qqaa~~) 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. (Res. 93-025 (part), passed Mar. 8, 1993)

7.1.6. Proof beyond a Reasonable Doubt. (a) 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.

(b) 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. (Res. 93-025 (part), passed Mar. 8, 1993)

7.1.7. Peace Officers — Immunity. No peace officer may be held criminally or civilly liable for actions under this title if the police officer acts in good faith and without malice. (Res. 93-025 (part), passed Mar. 8, 1993)

Note: The following subsections renumbered for consistency. (Res. 2016-090, Jun. 20, 2016)

7.1.5(1)-(27) changed to 7.1.5(a)-(aa); 7.1.5(25)(a)-(j) changed to 7.1.5(y)(1)-(10)
7.1.6(1)-(2) changed to 7.1.6(a)-(b)

TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.5

PHYSICAL HARM

Sections:

- 7.5.1 Assault in the First Degree.
- 7.5.2 Assault in the Second Degree.
- 7.5.3 Assault in the Third Degree.
- 7.5.4 Assault in the Fourth Degree.
- 7.5.5 Reckless Endangerment.
- 7.5.6 ~~Attempted Suicide-Reserved.~~
- 7.5.7 Promoting a Suicide Attempt.
- 7.5.8 Coercion.
- 7.5.9 Child Abuse, ~~or Neglect.~~
- 7.5.10 Malicious Harassment.
- 7.5.11 Aggravated Criminal Mistreatment.
- 7.5.12 Criminal Mistreatment.
- 7.5.13 Abandoning or Endangering a Child.
- 7.5.14 Assault of a Child in the First Degree.
- 7.5.15 Assault of a Child in the Second Degree.
- 7.5.16 Assault of a Child in the Third Degree.

7.5.1. Assault in the First Degree. (a) Every person who with intent to kill a human being or to commit a felony upon the person or property of the one assaulted or of another is guilty of assault in the first degree when he or she:

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

(2) Administers to or cause to be taken by another poison or any other destructive or noxious thing so as to endanger the life of another person.

(b) Assault in the first degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.5.2. Assault in the Second Degree. (a) Every person who under circumstances not amounting to assault in the first degree is guilty of assault in the second degree when he or she:

(1) With intent to injure, unlawfully administers to or causes to be taken by another poison or any other destructive or noxious thing or any drug or medicine the use of which is dangerous to life or health;

(2) Knowingly inflicts grievous bodily harm upon another with or without a weapon;

(3) Knowingly assaults another with a weapon or other instrument or thing likely to produce bodily harm;

(4) Knowingly assaults another with intent to commit a felony; ~~or~~

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

(6) Assaults another by strangulation or suffocation;-

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

(8) The person has previously been convicted of assaulting the same victim.

(b) Assault in the second degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.5.3. Assault in the Third Degree. (a) Every person who under circumstances not amounting to assault in either the first or second degree be guilty of assault in the third degree when he or she uses, attempts to use, or threatens the use of physical force against tribal justice personnel or any individual authorized to act for, or on behalf of, the Suquamish Tribe, or serving the Suquamish Tribe during, or because of, the performance or duties of that individual. ~~assaults another 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 him or herself or another person is guilty of assault in the third degree.~~

(b) Assault in the third degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.5.4. Assault in the Fourth Degree. (a) Every person who commits an assault ~~or an assault and battery~~ not amounting to assault in the first, second, or third degree is guilty of assault in the fourth degree.

(b) Assault in the fourth degree is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.5.5. Reckless Endangerment. (a) A person is guilty of reckless endangerment when he or she recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person.

(b) Reckless endangerment is a felony if a person under the age of eighteen (18) years or a dependent adult is endangered; in other cases, reckless endangerment is a gross misdemeanor.

"Dependent adult" means a person who because of physical or mental disability or because of advanced age is dependent upon another person to provide the basic necessities of life. (Res. 93-025 (part), passed Mar. 8, 1993; amended by Res. 2023-178, passed Aug. 14, 2023)

7.5.6. Attempted Suicide. ~~Any person who willfully attempts to cause his or her own death, by any means, is guilty of an offense and upon conviction will be sentenced to mandatory counseling for a period not to exceed one (1) year. The nature, form, and duration of the counseling will be determined in accordance with the circumstances of each case.~~ Reserved (Res. 87-100 (part.), passed Dec. 7, 1987; §7.3.20 renumbered for 1995 supplement)

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

(b) Promoting a suicide attempt is a felony. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered for 1995 supplement)

7.5.8. Coercion. (a) A person is guilty of coercion if by use of a threat he or she compels or induces a person:

(1) To engage in conduct which the latter has a legal right to abstain from;
or

(2) To abstain from conduct which he or she has a legal right to engage in.

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

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

(2) Threats as defined in §7.1.5(y)(1-10).

(c) Coercion is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered for 1995 supplement)

7.5.9. Child Abuse or Neglect. (a) ~~A person who is a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person is guilty of child abuse if he or she commits an act of violence or abuse, on a child under the age of eighteen (18) years causing harm or injury to that child. A person is guilty of child abuse or neglect if he or she commits an act of violence, abuse,~~

~~or neglect on a child under the age of eighteen (18) years causing harm or injury to that child.~~

~~(b) Child abuse is a felony, and upon conviction thereof, the offender may be required by the Court to undergo medical evaluation and treatment in addition to or instead of any other sentence imposed by the Court. Child abuse or neglect is a gross misdemeanor, and upon conviction thereof, the offender may be required by the Court to undergo medical evaluation and treatment in addition to or instead of any other sentence imposed by the Court. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered for 1995 supplement)~~

7.5.10. Malicious Harassment. (a) A person is guilty of malicious harassment if he or she, with intent to intimidate or harass another person because of that person's race, sexual preference, color, religion, ancestry, national origin, or mental, physical, or sensory handicap:

(1) Causes physical injury to another person;

(2) By words or conduct threatens harm to another person or another's property or harm to the person or property of a third person; or

(3) Causes physical damage to or destruction of the property of another person.

(b) Malicious harassment is a gross misdemeanor. A person who commits malicious harassment may be required by the Court to compensate the victim(s) for actual and punitive damages. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered for 1995 supplement)

7.5.11. Aggravated Criminal Mistreatment. (a) 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 aggravated criminal mistreatment if he or she, through criminal negligence, causes bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(b) Aggravated criminal mistreatment is a felony.

7.5.12. Criminal Mistreatment. (a) A person is guilty of the crime of criminal mistreatment 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:

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- (1) With criminal negligence, creates an imminent and substantial risk of bodily harm to a child or dependent person by withholding any of the basic necessities of life; or
- (2) With criminal negligence, mentally mistreats a child or dependent person by withholding the basic necessities of life.

(b) Criminal mistreatment is a gross misdemeanor.

7.5.13. Abandoning or Endangering a Child. (a) In this section, "abandon" means to leave a child in any place without providing reasonable and necessary care for the child, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability.

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(b) A person commits the offense of abandoning or endangering a child if:

- (1) Having custody, care, or control of a child, he or she intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm; or
- (2) he or she intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental mistreatment.

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(c) For purposes of this section, it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, unreasonable risk of harm or physical or mental mistreatment if:

- (1) the person manufactured, possessed, or in any way introduced into the body of any person an illegal substance as defined by Chapter 7.26 of the Suquamish Tribal Code, other than marijuana, in the presence of the child; or
- (2) the person's conduct exposes a child to an illegal substance as defined by Chapter 7.26 of the Suquamish Tribal Code and an analysis of a specimen of the child's blood, urine, or other bodily substance indicates the presence of an illegal substance in the child's body.

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(d) Abandoning or Endangering a Child is a felony.

7.5.14 Assault of a Child in the First Degree. (a) 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:

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- (1) Commits the crime of assault in the first degree, as defined by STC 7.5.1, against the child; or

- (2) Intentionally assaults the child and either;
- a. recklessly causes substantial bodily harm, or
 - b. causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or causing the child physical pain or agony that is equivalent to that produced by torture.

(b) Assault of a Child in the First Degree is a felony.

7.5.15. Assault of a Child in the Second Degree. (a) 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:

- (1) Commits the crime of assault in the second degree, as defined by STC 7.5.2, against a child; or
- (2) Intentionally assaults the child and causes bodily harm that is greater than transient physical pain or minor temporary marks, and the person has previously engaged in a pattern or practice either of (i) assaulting the child which has resulted in bodily harm that is greater than transient pain or minor temporary marks, or (ii) causing the child physical pain or agony that is equivalent to that produced by torture.

(b) Assault of Child in the Second Degree is a felony.

7.5.16. Assault of a Child in the Third Degree. (a) A person eighteen years of age or older is guilty of the crime of assault of a child in the third degree if the child is under the age of thirteen and the person:

- (1) With criminal negligence, causes bodily harm to the child by means of a weapon or other instrument or thing likely to produce bodily harm; or
- (2) With criminal negligence, causes bodily harm to the child accompanied by substantial pain that extends for a period sufficient to cause considerable suffering.

(b) Assault of Child in the Third Degree is a felony.

Note: All subsections in this chapter have been renumbered for consistency, as follows. (Res. 2016-090, Jun. 20, 2016)

All Arabic numerals (1, 2, 3, etc.) used as subsection headings have been changed to lower case

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letters (a, b, c, etc.)

All lower case letters have been changed to Arabic numerals

Example: What was previously 7.5.1(1)(a) is now 7.5.1(a)(1)

TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.13

PERJURY

Sections:

- 7.13.1 Definitions.
- 7.13.2 Perjury in the First Degree.
- 7.13.3 Perjury in the Second Degree.
- 7.13.4 False Swearing.
- 7.13.5 Perjury and False Swearing — Inconsistent Statements — Degree of Crime.
- 7.13.6 Perjury and False Swearing — Retraction.
- 7.13.7 Perjury and False Swearing — Irregularities No Defense.
- 7.13.8 Statement of What One Does Not Know to Be True.
- 7.13.9 Bribing a Witness.
- 7.13.10 Bribe Received by a Witness.
- 7.13.11 Intimidating a Witness.
- 7.13.12 Tampering with a Witness.
- 7.13.13 Intimidating a Juror.
- 7.13.14 Jury Tampering.
- 7.13.15 Tampering with Physical Evidence.

7.13.1. Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(a) “Investigation” means an investigation of any criminal conduct, including an investigation of alleged or suspected criminal conduct and an investigation of whether criminal conduct has taken place.

(b) “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.

(c) “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:

(1) 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; or

(2) 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 and 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.

(~~de~~) “Official proceeding” means a proceeding heard before any 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.

(~~ed~~) “Juror” means any person who is a member of any jury, including a grand jury, impaneled by any court of this state 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.

(~~fe~~) “Testimony” includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.2. Perjury in the First Degree. (a) 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.

(b) 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.

(c) Perjury in the first degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.3. Perjury in the Second Degree. (a) A person is guilty of perjury in the second degree if, 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.

(b) Perjury in the second degree is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.4. False Swearing. (a) 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.

(b) False swearing is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.5. Perjury and False Swearing — Inconsistent Statements — Degree of Crime.

(a) Where in the course of one or more official proceedings, a person makes

inconsistent material statements under oath, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and known by the defendant to be false. In such case it shall not be necessary for the prosecution to prove which material statement was false but only that one or the other was false and known by the defendant to be false.

(b) The highest offense of which a person may be convicted in such an instance as set forth in §7.13.5(a) shall be determined by hypothetically assuming each statement to be false. If perjury of different degrees would be established by the making of the two statements, the person may only be convicted of the lesser degree. If perjury or false swearing would be established by the making of the two statements, the person may only be convicted of false swearing. For purposes of this section, no corroboration shall be required of either inconsistent statement. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.6. 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. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.7. Perjury and False Swearing — Irregularities No Defense. It is no defense to a prosecution for perjury or false swearing:

(a) That the oath was administered or taken in an irregular manner; or

(b) That the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.8. 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. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.9. Bribing a Witness. (a) 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 pending or instituted investigation, with intent:

(1) To influence the testimony of that person;

(2) To induce that person to avoid legal process summoning him or her to testify; or

(3) To induce that person to absent him- or herself from an official proceeding to which he or she has been legally summoned.

(b) Bribing a witness is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.10. Bribe Receiving by a Witness. (a) 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 pending or instituted investigation, 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:

(1) His or her testimony will thereby be influenced;

(2) He or she will attempt to avoid legal process summoning him or her to testify; or

(3) He or she will attempt to absent him- or herself from an official proceeding to which he or she has been legally summoned.

(b) Bribe receiving by a witness is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.11. Intimidating a Witness. (a) A person is guilty of intimidating a witness if by use of a threat directed to 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 pending or instituted investigation, he or she attempts:

(1) To influence the testimony of that person;

(2) To induce that person to elude legal process summoning him or her to testify; or

(3) To induce that person to absent him- or herself from such proceeding.

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

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

(2) Threats as defined in STC §7.1.5(y).

(c) Intimidating a witness is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.12. Tampering with a Witness. (a) 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 pending or instituted investigation.

(1) To testify falsely or, without right or privilege to do so, to withhold any testimony; or

(2) To absent him- or herself from such proceedings.

(b) Tampering with a witness is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.13. Intimidating a Juror. (a) A person is guilty of intimidating a juror 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.

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

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

(2) Threats as defined in §7.1.5(y).

(c) Intimidating a juror is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.14. Jury Tampering. (a) 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.

(b) Jury tampering is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.13.15. Tampering with Physical Evidence. (a) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding or investigation is pending or about to be instituted and acting without legal right or authority, he or she:

(1) 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

(2) Knowingly presents or offers any false physical evidence.

(b) "Physical evidence" as used in this section includes any article, object, document, record, or other thing of physical substance.

(c) Tampering with physical evidence is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

Note: All subsections in this chapter have been renumbered for consistency, as follows. (Res. 2016-090, Jun. 20, 2016)

All Arabic numerals (1, 2, 3, etc.) used as subsection headings have been changed to lower case letters (a, b, c, etc.)

All lower case letters have been changed to Arabic numerals

Example: What was previously 7.13.1(2)(a) is now 7.13.1(b)(1)

TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.14

OBSTRUCTING GOVERNMENTAL OPERATION

Sections:

- 7.14.1 Definitions.
- 7.14.2 Obstructing.
- 7.14.3 Refusing to Summon Aid for a Peace Officer.
- 7.14.4 Refusing to Aid an Officer.
- 7.14.5 Resisting Arrest.
- 7.14.6 ~~Rendering Criminal Assistance— Definition of Term Reserved.~~
- 7.14.7 ~~Relative Defined Reserved.~~
- 7.14.8 ~~Rendering Criminal Assistance in the First Degree Reserved.~~
- 7.14.9 ~~Rendering Criminal Assistance in the Second Degree Reserved.~~
- 7.14.10 ~~Accessory after the Fact. Rendering Criminal Assistance in the Third Degree.~~
- 7.14.11 Compounding.
- 7.14.12 ~~Escape in the First Degree.~~
- 7.14.13 ~~Escape in the Second Degree. Reserved~~
- 7.14.14 ~~Escape in the Third Degree. Reserved.~~
- 7.14.15 Bail Jumping.
- 7.14.16 Flight to Avoid Prosecution.
- 7.14.17 Intimidation.
- 7.14.18 ~~Disobedience of Lawful Order~~ Criminal Contempt of the Court.
- 7.14.19 Obstructing Governmental Operations

7.14.1. Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

- (a) "Custody" means restraint pursuant to a lawful arrest or an order of a court.
- (b) "Detention facility" means any place used for the confinement of a person:
 - (1) Arrested for, charged with, or convicted of an offense;
 - (2) Charged with being or adjudicated to be a dependent or delinquent child as now or hereafter amended;
 - (3) Held for extradition or as a material witness;
 - (4) Otherwise confined pursuant to an order of a court; or
 - (5) In any work release, furlough, or other such facility or program.

(c) "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. (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.2. Obstructing. Every person who:

(a) Without lawful excuse shall refuse or knowingly fail to make or furnish any statement, report, or information lawfully required of him or her by a law enforcement officer or public servant;

(b) In any such statement or report shall make any knowingly untrue statement or report to a public servant or law enforcement officer; or

(c) Shall knowingly hinder, delay, obstruct, or interfere in any way with a public servant or law enforcement officer in the discharge of his or her official powers or duties shall be guilty of a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.3. Refusing to Summon Aid for a Peace Officer. (a) 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.

(b) Refusing to summon aid for a peace officer is a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.4. Refusing to Aid an Officer. (a) A person is guilty of refusing to aid an officer if he or she neglects or refuses, when called upon by a law enforcement officer of the Suquamish Tribe, to assist that officer or any other law enforcement officer in the lawful arrest of any person charged or convicted of any offense or to assist in conveying the offender to the nearest place of confinement. It shall be a defense to this offense that the person refused to aid an officer because he or she had a reasonable belief that he or she would be physically endangered by assisting the officer.

(b) Refusing to aid an officer is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.5. Resisting Arrest. (a) 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.

(b) Resisting arrest is a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.6. Reserved. 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 is~~

~~being sought by law enforcement officials for the commission of a crime or has escaped from a detention facility, he or she:~~

~~(a) Harbors or conceals such person;~~

~~(b) Warns such person of impending discovery or apprehension;~~

~~(c) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension;~~

~~(d) 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;~~

~~(e) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or~~

~~(f) Provides such person with a weapon.~~ (Res. 93-025 (part), passed Mar. 8, 1993)

~~**7.14.7. Reserved. Relative Defined.** As used in §7.14.8 and §7.14.9, "relative" means a person:~~

~~(a) 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~~

~~(b) Who does not render criminal assistance to another person in one or more of the means defined in §7.14.6(d-f).~~ (Res. 93-025 (part), passed Mar. 8, 1993)

~~**7.14.8. Reserved. Rendering Criminal Assistance in the First Degree.** (a) 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 in the first degree or any felony.~~

~~(b) Rendering criminal assistance in the first degree is:~~

~~(1) A gross misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in §7.14.7.~~

~~(2) A felony in all other cases.~~ (Res. 93-025 (part), passed Mar. 8, 1993)

~~**7.14.9. Reserved. Rendering Criminal Assistance in the Second Degree.** (a) 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.~~

~~(b) Rendering criminal assistance in the second degree is:~~

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~~(1) A misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in §7.14.7;~~

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~~(2) A gross misdemeanor in all other cases.~~ (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.10. Accessory After the Fact. ~~(a) A person is guilty of accessory after the fact when, knowing that an offender has committed an offense contrary to the Suquamish Tribal Code, relieves, comforts or assists that offender in order to hinder or prevent his or her apprehension, trial or punishment.~~

~~(b) Accessory after the fact is a gross misdemeanor if the principal offender committed a felony. In all other cases, accessory after the fact is a misdemeanor.~~
~~Rendering Criminal Assistance in the Third Degree. (a) 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.~~

~~(b) Rendering criminal assistance in the third degree is a misdemeanor.~~ (Res. 93-025 (part), passed Mar. 8, 1993)

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7.14.11. Compounding. (a) A person is guilty of compounding if:

(1) 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

(2) He or she confers, 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.

(b) 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.

(c) Compounding is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.12. Escape. in the First Degree. ~~(a) A person is guilty of escape in the first degree if he or she escapes from custody or a detention facility, while being detained pursuant to a conviction of a felony.~~

(b) Escape ~~in the first degree~~ is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.13. Reserved. Escape in the Second Degree. ~~(a) A person is guilty of escape in the second degree if:~~

~~(1) He or she escapes from a detention facility; or~~

~~(2) Having been charged with a felony, he or she escapes from custody.~~

~~(b) Escape in the second degree is a felony.~~ (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.14. Reserved. Escape in the Third Degree. (a) A person is guilty of escape in the third degree if he or she escapes from custody.

~~(b) Escape in the third degree is a gross misdemeanor.~~ (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.15. Bail Jumping. (a) Any person having been released by court order or admitted to bail with the requirement of a subsequent personal appearance before the Suquamish Tribal Court who knowingly fails without lawful excuse to appear as required is guilty of bail jumping. Unless otherwise established, the failure to appear when required shall be inferred to have been without lawful excuse.

(b) Bail jumping is a felony if the person was held for, charged with, or convicted of a felony; a gross misdemeanor if a gross misdemeanor; and a misdemeanor if a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.16. Flight to Avoid Prosecution. (a) A person is guilty of flight to avoid prosecution if he or she willfully and knowingly flees from the jurisdiction of the Suquamish Tribe or the Suquamish Tribal Court to avoid prosecution in any case pending before the Tribal Court.

(b) Flight to avoid prosecution is a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993)

7.14.17. Intimidation. (a) A person is guilty of intimidating a public servant or a law enforcement officer if by use of a threat he or she attempts to influence the vote, opinion, decision, or other official action of a public servant or a law enforcement officer.

(b) For purposes of this section, "public servant" shall not include jurors.

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

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

(2) Threats as defined in §7.1.5(y).

(d) Intimidation is a felony. (Res. 93-025 (part), passed Mar. 8, 1993)

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7.14.18. Disobedience of Lawful Order Criminal Contempt of the Court. (a) A person is guilty of contempt of court when they:

- (1) Act disorderly, contemptuously, or insolently during the sitting of the tribal court, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority, or;
- (2) Commit breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of the court, or;
- (3) Willfully disobey the terms, as written, of a process or court order or out-of-state court order, lawfully issued by a court of competent jurisdiction, including orders pending trial, or;
- (4) Resist willfully the lawful order or process of the tribal court or court of competent jurisdiction, or;
- (5) Unlawfully refuse to be sworn as a witness or, when so sworn, the like refusal to answer a material question, or;
- (6) Willfully disobey of the terms of an injunction, lawfully issued by a court, including an order pending trial.

(b) Nothing in this section shall be construed to alter the court's power to punish civil contempt.

(c) Criminal contempt of court is a gross misdemeanor.

7.14.19 Obstructing Governmental Operations. (a) A person commits the crime of obstructing governmental operations if, by means of intimidation, physical force or interference or by any other independently unlawful act, they:

- _____ (1) Intentionally obstructs, impairs or hinders the administration of law or other governmental function; or
- _____ (2) Intentionally prevents a public servant from performing a governmental function.

_____ (b) This section does not apply to the obstruction, impairment or hindrance of the making of an arrest.

_____ (c) Obstructing governmental operations is gross misdemeanor.

~~—Any person who shall willfully disobey any order, subpoena, warrant, or command duly issued, made, or given by any court of the Suquamish Tribe of the Port Madison Indian~~

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~~Reservation or any judge thereof shall be guilty of an offense and upon conviction thereof shall be sentenced to confinement for a period of not more than three (3) months or to pay a fine of not more than one hundred and eighty dollars (\$180) or both, with costs.~~

(Prior code Ch. III, Art. I, §24; and §7.4.20 renumbered during the 1995 supplement)

Note: All subsections in this chapter have been renumbered for consistency, as follows. (Res. 2016-090, Jun. 20, 2016)

All Arabic numerals (1, 2, 3, etc.) used as subsection headings have been changed to lower case letters (a, b, c, etc.)

All lower case letters have been changed to Arabic numerals

Example: What was previously 7.14.1(2)(a) is now 7.14.1(b)(1)

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~~ Commercial Sexual Solicitation.
- 7.17.20 ~~Commercial Sexual Solicitation of a Minor~~ Patronizing a Child Prostitute.
- 7.17.21 Provisions Generally Applicable to Sexual Crimes.
- 7.17.22 Trafficking in Persons
- ~~7.17.23~~ Nonwaiver of Sovereign Immunity.
- 7.17.24 Severability.
- 7.17.25 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", means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance does not constitute consent. Submission resulting from the use of force, threat of force, or placing another person in fear also does not constitute consent. A current or previous dating or social or sexual relationship or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent.

(1) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear or under the circumstances described in Sections 7.17.3 and 7.17.4.

(2) All the surrounding circumstances are to be considered in determining whether a person gave 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) "Incapable of consenting" means the person is:

(1) incapable of appraising the nature of the conduct at issue; or

(2) physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act at issue.

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

(gf) "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.

(hg) "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.

(ih) "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.

(j) "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.

(kj) "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.

(m) "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.

(n) "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

Or:-

(3) commits a sexual act upon another person without the consent of the other person; or

(4) when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring.

(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 consenting to the sexual act or unable to appraise
~~incapable of appraising~~ the nature of the conduct; or

(2) incapable of consenting due to impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or ~~Physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act, or attempts to do so;~~
or

(3) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person;

(4) An adjudicated vulnerable adult;

(54) 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

(65) 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)(54), 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) ~~(4) Uses force or intimidation to cCompels another to engage in or promote prostitution or attempt prostitution; or,~~

(2) ~~(2) Induces or causes a person under eighteen (18) years of age to engage in prostitution or aids or facilitates the commission of prostitution or attempted prostitution, 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 spouse 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. Commercial Sexual Solicitation Patronizing a Prostitute. (a) A person commits the offense of patronizing a prostitute commercial sexual solicitation if:

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(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~~ commercial sexual solicitation 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 facilitate a commercial sexual solicitation ~~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~~ Commercial sexual solicitation is a misdemeanor. (Res. 2020-155, passed Oct. 13, 2020)

7.17.20. Commercial Sexual Solicitation of a Minor. ~~Patronizing a Child Prostitute.~~ (a) A person commits the offense of commercial sexual solicitation of a minor ~~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) Commercial sexual solicitation of a minor ~~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.

(j) In prosecutions under this chapter, marital or relationship status is not a defense to any offense.

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

7.12.22 Trafficking in Persons. (a) A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and:

(1) The person knows that the other person will be subjected to involuntary servitude; or

(2) The person knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act; or

(3) The person knows or recklessly disregards the fact that the other person is under 18 years of age and will be used in a commercial sex act.

(b) A person commits the crime of trafficking in persons if the person knowingly benefits financially or receives something of value from participation in a venture that involves an act prohibited by section (a).

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(c) As used in this section, "commercial sex act" means sexual explicit conduct or sexual contact, as those terms are defined in this Chapter, performed in return for a fee or anything of value.

(d) As used in this section, "venture" means any group of two or more individuals associated in fact, whether or not a legal entity

(e) Violation of subsection (a) of this section is a felony.

(f) Violation of subsection (b) of this section is a felony.

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7.17.232. 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)

7.17.243. 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)

7.17.254. 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.

TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.19

FIREARMS

Sections:

- 7.19.1 Definitions.
- 7.19.2 ~~Committing Crime When Armed — Penalties. Armed Criminal Action~~
- 7.19.3 Being Armed Prima Facie Evidence of Intent.
- 7.19.4 ~~Possession by a Prohibited Possessor. Certain Persons Forbidden to Possess Firearms.~~
- 7.19.5 Sale, Possession, or Use of Certain Weapons.
- 7.19.6 Sale or Possession of Machine Guns, ~~Other Guns or Prohibited Weapons.~~
- 7.19.7 ~~Aiming or~~ Discharging Firearms.
- 7.19.8 ~~Pointing Firearm at Another. Intimidation by Use of Certain Weapons.~~
- 7.19.9 ~~Reserved. Exceptions to Sections 7.19.7(b), 7.19.8, and 7.19.13.~~
- 7.19.10 Possession of Firearms by a Minor.
- 7.19.11 Delivery of Pistol to Certain Persons.
- 7.19.12 Alteration of Identifying Marks.
- 7.19.13 Forfeiture of Weapons by the Court.
- 7.19.14 Carrying a Dangerous Weapon or Firearm in Suquamish Government Buildings Prohibited.
- 7.19.15 Trafficking of a Prohibited Weapon.
- 7.19.16 Reckless or Malicious use of Explosives.
- 7.19.17 Abandonment of Explosives.
- 7.19.18 Malicious Possession of a Destructive Device.
- 7.19.19 Possession of Explosives.
- 7.19.20 Unlawful Possession of Concealed Firearm.
- 7.19.21 Carrying a Concealed Firearm While Under the Influence.
- 7.19.22 Unlawful Use of Weapon.
- 7.19.23 Restoration of Firearms Rights – Eligibility.
- 7.19.24 Restoration of Firearms Rights – Petition Process.

7.19.1. Definitions. (a) “Ammunition” means cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(b) “Armor-piercing ammunition” means:

- (i) A projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) A full-jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

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(c) "Bump-fire stock" means a butt stock designed to be attached to a semiautomatic firearm with the effect of increasing the rate of fire achievable with the semiautomatic firearm to that of a fully automatic firearm by using the energy from the recoil of the firearm to generate reciprocating action that facilitates repeated activation of the trigger.

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(d) "Community event" means any event that is open to the public, or any community-sponsored event, or any event on the grounds of a community building or facility, including, but not limited to, the following: funerals, memorials, wakes, dances, parades, pow wows, Canoe Journeys, community sporting events, Fourth of July events, Thanksgiving events, Christmas or winter holiday events, New Year's Eve and New Year's Day events, and other cultural celebrations or events.

(e) "Dangerous weapon" means any sand club, metal knuckles, karate stars, spring blade knife or any knife the blade of which 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 movement.

(f) "Deface" means to remove, alter, or destroy the manufacturer's serial number.

(g) "Destructive device" means:

(i) Bomb;

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(ii) Rocket

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(iii) Grenade

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(iv) Missile having an explosive or incendiary charge of more than one-quarter ounce;

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(v) Mine;

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(vi) Any device similar to any of the devices described in the preceding clauses;

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(vii) Any type of weapon by whatever name known that will, or that may be readily converted to, expel a projectile by the action of an

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explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; or

(viii) Any combination of parts either designed or intended for use in converting any device into any destructive device described in subsection (a) or (b) of this definition and from which a destructive device may be readily assembled.

(ix) The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; or any other device that is not likely to be used as a weapon or is an antique. "Destructive device" does not include fireworks that are not prohibited by Chapter 11.3 STC, Fireworks.

(h) "Explosive" means any dynamite, nitroglycerin, black powder, or other similar explosive material, including plastic explosives. "Explosive" does not include ammunition or ammunition components such as primers, percussion caps, smokeless powder, black powder and black powder substitutes used for hand-loading purposes. "Explosives" does not include fireworks that are not prohibited by Chapter 11.3 STC, Fireworks.

(i) "Firearm" means:

(i) Any weapon (including a starter gun) which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive but does not include an antique firearm;

(ii) The frame or receiver of any such weapon;

(iii) Air guns and other guns fired by the release of compressed gas;

(iv) Any firearm muffler or firearm silencer; or

(v) Any destructive device.

(j) "Machine gun" shall be defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, 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 such weapon, mechanism, or instrument and fired therefrom at the rate of five (5) or more shots per second.

(k) "Prohibited possessor" means a person who:

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(i) Is subject to a court order that:

a. Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

b. Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

c. Either:

i. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

ii. By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

(ii) Has been convicted in any court of a crime of domestic violence or family violence;

(iii) Has been convicted of a crime punishable by imprisonment for a term exceeding one year;

(iv) Has been adjudicated as a mental defective or who has been committed to a mental institution;

(v) Is, at the time of possession, prohibited from possessing a firearm by a court order from any jurisdiction; or

(vi) Is subject to firearms disqualification under STC 7.28.14

(vii) The term "prohibited possessor" does not include a person who would be a prohibited possessor solely by reason of a conviction, judgment, or adjudication from another jurisdiction which has been expunged or set aside, or when that person has had their right to possess a firearm restored by that jurisdiction.

~~"Firearm" shall be defined as a weapon or device from which a projectile may be fired by an explosive such as gunpowder. Air guns and other guns fired by the release of compressed gas are firearms. Firearm shall also include any explosive, incendiary, or poison gas (1) bomb, (2) grenade, (3) rocket having a propellant charge of more than four (4) ounces, (4) missile having an explosive or incendiary charge of more than one-quarter (1/4) ounce, (5) mine, or (6) similar device.~~

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(m) "Prohibited weapon" includes the following:

(i) Armor-piercing ammunition;

(ii) A firearm that is defaced;

(iii) A destructive device;

(iv) A firearm muffler, firearm silencer, or any device that is designed, made, or adapted to muffle the report of a firearm;

(v) A firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger;

(vi) A short-barreled shotgun, a short-barreled rifle, or rifle with a barrel length of less than 16 inches, or shotgun with a barrel length of less than 18 inches, or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than 26 inches;

(vii) A breakable container that contains a flammable liquid with a flash point of 150 degrees Fahrenheit or less and that has a wick or similar device capable of being ignited;

(viii) A bump fire stock; or

(ix) An improvised explosive device.

(x) The term "prohibited weapon" does not include any fireworks that are not prohibited by Chapter 11.3 STC, Fireworks.

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

(o) "Short firearm or pistol" as used in this chapter means any firearm with a barrel less than twelve (12) inches in length and is designed to be held in one hand.

(p) "Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than 26 inches.

(r) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than 26 inches.

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(s) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(te) "Suquamish government building" includes but is not limited to: Suquamish administrative buildings, Suquamish Wellness Center, Suquamish justice buildings, Suquamish gaming facilities, schools and educational institutions, Suquamish community cemeteries, any community parks, any Tribal community building housing the various departments performing community governmental functions, any building housing the various entities or businesses owned and operated by Port Madison Enterprises or the Suquamish Tribe, or any other building owned and controlled by the Suquamish Tribe or Port Madison Enterprises, not being lawfully used for a private residence. Any driveways, parking lots, or curtilage of any of these described buildings or facilities shall constitute a "community building or facility" for purposes of this chapter. ~~means any building owned by the Suquamish tribal government, except that a tribal housing unit managed by the Suquamish tribal housing program is not considered a Suquamish government building for the purposes of §7.19.14.~~

(u) "Trafficking" means to sell, transfer, distribute, dispense or otherwise dispose of a weapon or explosive to another person, or to buy, receive, possess or obtain control of a weapon or explosive, with the intent to sell, transfer, distribute, dispense or otherwise dispose of the weapon or explosive to another person.

(Res. 93-025 (part), passed Mar. 8, 1993; renumbered for consistency May 24, 2007; amended by motion Apr. 23, 2008, affirmed by Res. 08-074, passed May 5, 2008)

7.19.2. ~~G Armed criminal action. emmitting Crime When Armed — Penalties.~~ (a) Any person who commits or attempts to commit any felony offense while armed by, with, or through the use, assistance, or aid of a firearm is also guilty of the crime of armed criminal action.

(b) The punishment imposed pursuant to this subsection shall be in addition to any punishment provided by law for the crime committed by, with, or through the use, assistance, or aid of a firearm.

(c) Armed criminal action is a felony offense.

~~Any person who shall commit or attempt to commit any offense under this title while armed with or in the possession of any firearm shall upon conviction, in addition to the penalty provided by statute for the crime committed without use or possession of a firearm, be guilty of a felony. This section shall not apply to offenses committed while in possession of an unloaded hunting rifle secured in a vehicle if the rifle is in no way connected to the commission of the offense. (Res. 93-025 (part), passed Mar. 8, 1993)~~

7.19.3. Being Armed Prima Facie Evidence of Intent. In the trial of a person for committing or attempting to commit a crime of violence, the fact that he or she was

armed with a pistol and had no license to carry the same shall be prima facie evidence of his or her intention to commit said crime of violence. (Res. 93-025 (part), passed Mar. 8, 1993)

~~7.19.4. Certain Persons Forbidden to Possess Firearms~~Possession by a Prohibited Possessor. (a) It is unlawful for any prohibited possessor to operate, possess, receive, transport, or ship any firearm or ammunition.

(b) Possession by a prohibited possessor is a felony

~~No person who has been convicted under this code or elsewhere of a crime of violence or of a felony in which a firearm has been used or displayed shall own a pistol or short firearm or have one in his or her possession or under his or her control. Such person upon being convicted of a violation of this section shall be guilty of a felony.~~ (Res. 93-025 (part), passed Mar. 8, 1993)

7.19.5. Sale, Possession, or Use of Certain Weapons. (a) No person shall:

(1) Sell, dispose of, manufacture, or have in his or her possession a dangerous weapon;

~~(2) Use a device for suppressing the noise of any firearm;~~

~~(2)~~ Carry with intent to conceal a dagger or dangerous weapon; or

~~(3)~~ Carry a concealed pistol without a license from the Suquamish Tribe, if required, or the State of Washington.

(b) Any violation of this section shall be a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered for consistency May 24, 2007)

7.19.6. Sale or Possession of Machine Guns or Other Guns Prohibited Weapons. (a) No person shall sell, furnish, manufacture, or have in possession any:

(1) Machine gun or any part thereof capable of use or assembling or repairing any machine gun; or

~~(2) Shotgun having a barrel(s) of less than eighteen (18) inches in length; Any prohibited weapon.~~

~~(3) A weapon made from a shotgun if such weapon as modified has an overall length of less than twenty six (26) inches or a barrel(s) of less than eighteen (18) inches in length;~~

~~(4) A rifle having a barrel(s) of less than sixteen (16) inches in length; or~~

~~(5) A weapon made from a rifle if such weapon as modified has an overall length of less than twenty six (26) inches or a barrel(s) of less than sixteen (16) inches in length.~~

(b) No person shall set a spring gun.

(c) Any violation of this section shall be a felony. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered for consistency May 24, 2007)

7.19.7. ~~Aiming or Discharging Firearms.~~ (a) No person shall willfully discharge, ~~without legal justification,~~ any firearm or air gun or throw any destructive device within a settled community or any other place where any person might be endangered by it, although no injury results.

~~(b) No person shall aim a firearm, whether loaded or not, at or toward any person.~~

(~~D~~e) Any violation of this section shall be a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered for consistency May 24, 2007)

7.19.8. ~~Pointing Firearm at Another. Intimidation by Use of Certain Weapons.~~ (a) ~~It is unlawful for any person to, with or without malice, intentionally and without legal justification point or aim any loaded or empty firearm at or toward any other person. No person shall carry, exhibit, display, or draw any firearm, dagger, sword, knife, 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 another.~~

(b) Violation of this section shall be a gross misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered for consistency May 24, 2007)

7.19.9. ~~Reserved. Exceptions to Sections 7.19.7(b), 7.19.8, and 7.19.13.~~ Sections ~~7.19.7(b) and 7.19.8 and 7.19.13 shall not apply to the following:~~

~~(a) Any person vested by law with a duty to preserve public safety, maintain public order, or make arrests for offenses while performing such duty;~~

~~(b) Any person acting to protect himself 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;~~

~~(c) Any person making or assisting in making a lawful arrest of a felon; or~~

~~(d) Any person engaged in military activities sponsored by the federal government.~~
(Res. 93-025 (part), passed Mar. 8, 1993; renumbered for consistency May 24, 2007)

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7.19.10. Possession of Firearms by a Minor. (a) No minor under fourteen (14) years shall have in his or her possession any firearm for target practice or any other purpose except:

(1) While accompanied by or under the immediate charge of his or her parent or guardian or other adult approved for the purpose of this section by the parent or guardian; or

(2) While under the supervision of a certified safety instructor at an established gun range or firearm training class.

(b) Violation of this section shall be a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; amended by Tribal Council, Sept. 27, 1993; renumbered for consistency May 24, 2007)

7.19.11. Delivery of Pistol to Certain Persons. (a) No person shall deliver a pistol to any person under the age of twenty-one (21) years or to one who he or she has reasonable cause to believe has been convicted of a crime of violence or is a drug addict, an habitual drunkard, or of unsound mind.

(b) Any violation of this section is a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered for consistency May 24, 2007)

7.19.12. Alteration of Identifying Marks. (a) No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol-firearm. Possession of any pistol-firearm upon which any such mark has been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor changed, altered, removed, or obliterated the same.

(b) This section shall not apply to replacement barrels in old firearms, which barrels are produced by current manufacturers and therefore do not have the markings on the barrels of the original manufacturers who are no longer in business.

(c) Any violation of this section is a misdemeanor. (Res. 93-025 (part), passed Mar. 8, 1993; renumbered for consistency May 24, 2007)

7.19.13. Forfeiture of Weapons by the Court. The Court may order forfeiture of any weapon possessed or used in violation of this chapter. The Court in its discretion may order the weapon to be sold, used, or otherwise disposed of for the benefit of the Suquamish Tribe or may order the weapon be destroyed. (Res. 93-025 (part), passed Mar. 8, 1993)

7.19.14. Carrying a Dangerous Weapon or Firearm in Suquamish Government Buildings Prohibited. (a) Any person who shall enter or remain in a Suquamish government building located within the exterior boundaries of the Port Madison Indian Reservation while armed with a dangerous weapon or loaded or unloaded machine gun,

firearm, short firearm, destructive device, or pistol as defined in §7.19.1 or as may hereafter be amended, loaded or unloaded, whether or not concealed upon his or her person, shall be guilty of a gross misdemeanor.

(b) This section shall not apply to any law enforcement officer of a tribal, federal, state, or local government agency. (Passed by motion Apr. 23, 2008, affirmed by Res. 08-074, passed May 5, 2008)

7.19.15. Trafficking of a Prohibited Weapon. (a) It is unlawful for any person to engage in trafficking of any prohibited weapon unless such weapon has been rendered permanently inoperable and such inoperability has been certified by the Suquamish Police Department.

(b) Trafficking a prohibited weapon is a felony.

7.19.16. Reckless or Malicious use of Explosives. (a) It is unlawful for a person to recklessly or maliciously use, handle, or have in his or her possession any explosive substance whereby any human being is intimidated, terrified, or endangered.

(b) Reckless or malicious use of explosives is a gross misdemeanor.

7.19.17. Abandonment of Explosives. (a) It is unlawful for any person to abandon explosives or improvised devices.

(b) Abandonment of explosives is a misdemeanor offense.

7.19.18. Malicious Possession of a Destructive Device. (a) A person commits the offense of malicious possession of a destructive device when:

- (i) A person willfully and unlawfully makes, possesses, throws, projects, places, discharges, or attempts to make, possess, throw, project, place, or discharge any destructive device; and
- (ii) The act is perpetrated with the intent to do bodily harm to any person, or with the intent to do property damage, or if the act results in a disruption of governmental operations, commerce, or the private affairs of another person.

(b) Malicious possession of a destructive device is a felony.

(c) The punishment imposed pursuant to this section shall be in addition to any punishment provided by law for the possession of a prohibited weapon.

7.19.19. Possession of Explosives. (a) A person commits the offense of possession of explosives if he or she possesses, manufactures, transports, buys, or sells explosives, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and:

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(i) Has the purpose to use such explosive material or device to commit an offense;
or

(ii) Knows that another has the purpose to use such explosive material or device to
commit an offense.

(b) This subsection does not apply to the transportation, possession, use, or transfer of
any improvised explosive device by any armed forces or National Guard personnel or to
any peace officer in the line of duty or as part of a duty-related function or exercise. The
restriction on transportation in this subsection does not apply to common carriers.

(c) Possession of explosives is a gross misdemeanor.

7.19.20. Unlawful Possession of Concealed Firearm. (a) Any person who carries a pistol
upon his or her person without a valid concealed firearm license issued in compliance
by the permitting jurisdiction, or who carries a concealed firearm other than a pistol
upon his or her person, commits the crime of unlawful possession of a concealed
firearm.

(b) A firearm is "upon his or her person" within the meaning of this section if the firearm
is within the passenger compartment of a vehicle, provided, however, that if the vehicle
is a motorcycle, an all-terrain vehicle, a vessel, or a snowmobile, a firearm is not upon
his person within the meaning of this section if the firearm is in a locked container within
or affixed to the vehicle, or the firearm is equipped with a trigger lock or other locking
mechanism that prevents the discharge of the firearm.

(c) This section shall not apply to law enforcement officers or to persons in their place of
residence.

(d) Unlawful possession of a concealed firearm is a misdemeanor.

7.19.21. Carrying a Concealed Firearm While Under the Influence. (a) A person
commits the offense of carrying a concealed firearm while under the influence if he or
she carries a concealed firearm while under the influence of an intoxicating substance.
For the purpose of this section, "under the influence" means that as a result of taking
into the body alcohol, drugs, or any combination of alcohol and drugs, a person is
impaired.

(b) It is not a defense that the person is licensed to carry a concealed firearm.

(c) In addition to any other penalty, any person who enters a plea of guilty, who is found
guilty or who is convicted of a violation of subsection (a) of this section shall be ineligible
to carry a concealed firearm within the Port Madison Reservation for a period of three
years.

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(d) Carrying a concealed firearm while under the influence is a gross misdemeanor.

7.19.22. Unlawful Use of Weapon. (a) A person commits the crime of unlawful use of a weapon if the person:

(i) Attempts to use unlawfully against another, or carries or possesses with intent to use unlawfully against another, any dangerous or deadly weapon; or

(ii) Intentionally discharges a firearm, blowgun, bow and arrow, crossbow, or explosive device at or in the direction of any person, building, structure or vehicle within the range of the weapon without having legal authority for such discharge.

(b) This section does not apply to:

(i) Police officers or military personnel in the lawful performance of their official duties;

(ii) Persons lawfully defending life or property;

(iii) Persons discharging firearms, blowguns, bows and arrows, crossbows or explosive devices upon public or private shooting ranges, shooting galleries or other areas designated and built for the purpose of target shooting;

(iv) Persons lawfully engaged in hunting in compliance with rules and regulations adopted by the Suquamish Tribe.

(c) Unlawful use of a weapon is a felony.

7.19.23. Restoration of Firearms Rights – Eligibility. (a) A person who is prohibited from possessing a firearm as defined by STC 7.19.1 by reason of having been found by a court of competent jurisdiction to constitute a danger to self or to others, or having been committed to a mental institution, may petition for restoration of his or her firearm rights if:

(i) At least one year has passed since the individual was found to constitute a danger to self or others; and

(ii) The individual is not currently committed to a mental institution.

(b) A person who is prohibited from possessing a firearm as defined by STC 7.19.1 by reason of a Suquamish conviction for a crime punishable by imprisonment for a term exceeding one year, other than murder, manslaughter, robbery, assault, arson, kidnapping, or any offense in Chapter 7.17 STC, other than 7.17.17 and 7.17.19, may petition for restoration of his or her firearm rights if:

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(i) It has been more than five years since the individual's most recent disqualifying conviction;

(ii) The individual has not been convicted of a felony or misdemeanor crime involving the use of a firearm or deadly weapon within the last 10 years

(iii) The individual has not been convicted of or found not guilty by reason of insanity of any crimes in the past two years; and

(iv) The individual is not currently charged with a crime.

(c) A person who is prohibited from possessing a firearm as defined by STC 7.19.1 by reason of a Suquamish conviction for a misdemeanor crime of domestic violence, family violence, stalking, or dating violence may petition for restoration of his or her firearm rights if:

(i) It has been more than three years since the individual's most recent disqualifying conviction;

(ii) The individual has not been convicted of a felony or misdemeanor crime involving the use of a firearm or deadly weapon within the last 10 years;

(iii) The individual has not been convicted of or found not guilty by reason of insanity of any crimes in the past two years; and

(iv) The individual is not currently charged with a crime.

7.19.24. Restoration of Firearms Rights – Petition Process. (a) A person eligible to petition for restoration of his or her firearm rights must file the petition in the Suquamish Tribal Court and pay any required filing fees.

(b) Within five judicial days of filing the petition, the petitioner shall serve a copy of the petition on the Chief of Police.

(c) The Court will schedule a hearing within 30 judicial days of the petitioner filing proof of service of the petition and provide notice of the hearing to the petitioner and Chief of Police.

(d) The Tribes and any other individual, without an attorney, may appear as a party to a proceeding under this section.

(e) The Court shall grant a petition under STC 7.19.23(a) if the petitioner demonstrates, by clear and convincing evidence, that:

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(i) The petitioner is eligible under STC 7.19.23 to file a petition for firearm restoration;

(ii) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(iii) The petitioner has successfully managed the condition related to the commitment or court finding;

(iv) The petitioner no longer presents a danger to himself or herself or the public; and

(v) The symptoms related to the commitment or court finding are not reasonably likely to recur.

(f) The Court shall grant a petition under STC 7.19.23(b) or (c) if the petitioner demonstrates, by clear and convincing evidence, that the petitioner is eligible under STC 7.19.23 to file a petition for firearms restoration and does not pose a threat to the safety of either the public or the petitioner.

(g) Any party to a judgment under this chapter may appeal to the Court of Appeals in the same manner as for any other civil action. The Court shall serve a copy of any judgment under this chapter on the Office of Tribal Attorney.

(h) When a person's right to possess a firearm has been restored under this chapter, the Tribe will forward, within five (5) business days after receiving service of the restoration order, notification that the person's right to possess a firearm has been restored to the National Instant Criminal Background Check System Index, Denied Persons File.

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TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.28

DOMESTIC VIOLENCE

Sections:

- 7.28.1 Purpose.
- 7.28.2 Legislative Findings.
- 7.28.3 General Jurisdiction.
- 7.28.4 ~~Special Domestic Violence~~ Criminal Jurisdiction.
- 7.28.5 ~~Special Domestic Violence Jurisdiction~~—Criminal Conduct Applicable.
- 7.28.6 Statute of Limitations.
- 7.28.7 Definitions.
- 7.28.8 Immunity from Liability.
- 7.28.9 Law Enforcement Officer Immunity.
- 7.28.10 Mandatory Arrest.
- 7.28.11 Authority to Seize and Hold Weapons.
- 7.28.12 Mandatory Arrest for Violations of Civil Protection Orders or Criminal No Contact Orders.
- 7.28.13 ~~Violation of a No Contact Order~~
- 7.28.14 ~~Firearms Disqualification~~
- 7.28.15 Law Enforcement Records on Domestic Violence to be Identifiable.
- 7.28.~~16~~4 Judgments and Convictions.
- 7.28.~~17~~5 Interfering with the Reporting of Domestic Violence.
- 7.28.~~18~~6 Interfering with the Prosecution of Domestic Violence.
- 7.28.~~19~~7 Victims' Rights.
- 7.28.~~20~~8 Advocates – Present During Prosecution or Defense Interviews.
- 7.28.~~21~~9 Habitual Domestic Violence Offender.
- 7.28.~~22~~0 Nonwaiver of Sovereign Immunity.
- 7.28.~~23~~1 Severability.
- 7.28.~~24~~2 Savings.

7.28.1. Purpose. The purpose of this chapter is to recognize domestic violence crimes as serious crimes against the Suquamish Tribal community and the family, and to provide victims of domestic violence with the maximum protection from further violence that the law, and those who enforce the law, can provide. Furthermore, the purpose of this chapter is to recognize that the strength of the Suquamish Tribe is founded upon healthy families, and that the safety of victims of domestic violence, including children who witness domestic violence, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.

It is the intent of the Suquamish Tribe that the official response to domestic violence will stress the enforcement of laws to protect victims and to hold perpetrators accountable, which will communicate the Tribe's policy that violent behavior against intimate partners or family members is criminal behavior that will not be excused or tolerated. This official response will encourage healing of families and the Tribal community, where possible, and also promote cultural teachings and traditional Tribal values of nonviolence and respect within families. This chapter will be interpreted and applied to give it the broadest possible scope to carry out these purposes. (Res. 2019-040, passed Mar. 11, 2019)

7.28.2. Legislative Findings. The Suquamish Tribe recognizes the United States Department of Justice findings that more than half of Native women have experienced physical violence by intimate partners in their lifetimes. A community response to domestic violence is necessary because domestic violence crimes and incidents impact the community as a whole.

The Suquamish Tribal Council declares that the official response to domestic violence is that the Tribe will neither tolerate nor excuse violent behavior under any circumstances. Domestic violence is not acceptable and is contrary to traditional Suquamish culture and values honoring the family, and is contrary to the interests of the community and its sense of well-being and growth. (Res. 2019-040, passed Mar. 11, 2019)

7.28.3. General Jurisdiction. Jurisdiction over domestic violence matters will be in accordance with § 3.2 and § 7.1. In addition, the Suquamish Tribal Court will retain jurisdiction over members of Federally-recognized Indian Tribes and any violations of orders of protection entered pursuant to this chapter that are alleged to have occurred outside of the boundaries of the Port Madison Indian Reservation, where such orders are entitled to recognition outside reservation boundaries as a matter of full faith and credit. (Res. 2019-040, passed Mar. 11, 2019)

7.28.4. Special Domestic Violence Criminal Jurisdiction. ~~(a) The Suquamish Tribe hereby exercises "special domestic violence criminal jurisdiction" as a "participating tribe," as defined within 25 U.S.C. § 1304.~~ Reserved

~~(b) In all proceedings in which the Suquamish Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by § 3.8 and Title 6, as well as those enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302, will apply to all defendants. Should there be any inconsistency between § 3.8 and S.T.C. Title 6, and 25 U.S.C. § 1302, then the U.S. Code will apply.~~

~~(c) Every defendant in proceedings in which the Suquamish Tribal Court is exercising special domestic violence jurisdiction as a participating tribe has the privilege of a writ of habeas corpus to test the legality of his or her detention by~~

the Suquamish Tribe, and may petition the Suquamish Tribal Court to stay further detention pending the habeas proceeding.

~~(1) The Court will grant a stay if the Court:~~

~~(A) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and~~

~~(B) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the Court, the petitioner is not likely to flee or pose a danger to any person or to the community if released.~~

~~(d) The Suquamish Tribe hereby declares its special domestic violence criminal jurisdiction over any person only if he or she:~~

~~(1) Resides within the Indian Country of the Suquamish Tribe; or~~

~~(2) Is employed within the Indian Country of the Suquamish Tribe;~~
or

~~(3) Is a spouse, intimate partner, or dating partner of:~~

~~(A) A member of the Suquamish Tribe; or~~

~~(B) A member of another Indian Tribe who resides within the Indian Country of the Suquamish Tribe.~~ (Res. 2019-040, passed Mar. 11, 2019)

7.28.5. ~~Special Domestic Violence Jurisdiction~~ — Criminal Conduct Applicable.

The Suquamish Tribe, ~~for the purposes of this Chapter, exercises~~ ~~exercises~~ ~~special domestic violence~~ criminal jurisdiction over a defendant for criminal conduct that is:

(a) Domestic violence or dating violence: An act of domestic violence or dating violence that occurs within the Indian Country of the Suquamish Tribe; or

(b) Violation of a Protection Order: An act that occurs within the Indian Country of the Suquamish Tribe and violates the portion of the protection order that:

(1) Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;

- (2) Was issued against the defendant;
- (3) Is enforceable by the Suquamish Tribe; and
- (4) Is consistent with 18 U.S.C. § 2265(b). (Res. 2019-040, passed Mar. 11, 2019)

7.28.6. Statute of Limitations. For purposes of this chapter, the statute of limitations will be consistent with and follow § 6.1.2 or any successor code section. (Res. 2019-040, passed Mar. 11, 2019)

7.28.7. Definitions. As used in this chapter, the following terms have the meanings given below:

(a) "Ammunition" means cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(b) "Contact" includes but is not limited to:

- (1) Repeatedly coming into and/or remaining in the visual or physical presence of the other person;
- (2) Following the other person, or having that person followed, where "follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time;
- (3) Waiting outside the home, property, work or school of the other person or the other person's children, grandchildren, siblings or other household members;
- (4) Sending or making written communications in any form, including electronic communications, to the other person;
- (5) Using technology to track, monitor, or otherwise gain knowledge of the other person's activity, including but not limited to the use of computer spy ware, surveillance equipment, tracking devices, or long-distance magnification devices;
- (6) Speaking with the other person by any means, including leaving a voicemail message;
- (7) Communicating with the other person through a third person;
- (8) Committing a crime against the other person;

(9) Communicating with a third person who has some relationship to the other person with the intent of impacting the third person's relationship with that other person;

(10) Communicating with business entities with the intent of affecting some right or interest of the other person, or gaining knowledge of the other person, including identity theft or an attempt to interfere with the victim's credit;

(11) Damaging or defacing the other person's home, real property, personal property, place of work, or school; or

(12) Delivering directly or through a third person any object to the home, property, place of work, or school of the other person.

(cb) "Criminal no contact order" means a court order issued pursuant to a criminal case that prohibits a criminal defendant from having contact with the victim.

(de) "Dating relationship" means a social relationship of a romantic nature. In determining whether parties have a "dating relationship," the trier of fact will consider:

- (1) The length of time the relationship has existed;
- (2) The nature of the relationship; and
- (3) The frequency of the interaction between the parties.

(ee) "Dating violence" means a crime committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(ef) "Domestic violence" means a crime committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person in a dating relationship with the victim, or by a person similarly situated to a spouse of the victim under the domestic violence laws of the Suquamish Tribe. Domestic violence can take many forms such as but not limited to use of intimidation, contact as defined within this chapter, manipulation, isolation, coercion, fear and/or violence, as well as other tactics of power and control to establish and maintain a relationship of dominance over an intimate partner, but does not include acts of self-defense. The following are examples of what form the domestic violence action may take.

~~but are not an exhaustive list, merely illustrative; means a crime committed by a current or former family member or household member of the victim, that is:~~

- ~~(1) Attempting to commit or committing any criminal offense as defined by Chapter 7 of the Suquamish Tribal Code against the victim; Physical harm, bodily injury, assault, or the infliction of fear or imminent physical harm, bodily injury, or assault; or~~
- ~~(2) Physically harming, attempting to physically harm, or placing a victim in reasonable fear of physical harm to himself or herself. Reasonable fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets; Sexual assault or unwanted sexual touching, which includes but is not limited to the crimes enumerated in S.T.C §§ 7.17.4 – 7.17.9; or~~
- ~~(3) Emotional or mental abuse of the victim, including physical or mental intimidation, controlling activities, or using demeaning language; Attempting to commit or committing any criminal offense as defined by § 7.7 against an intimate partner or family member;~~
- (4) Economic abuse of a victim
- (5) Causing a victim to engage involuntarily in sexual activity; or
- (6) Preventing the victim from accessing services.

(gf) “Domestic violence protection order” means a temporary or permanent court order, injunction or other order related to domestic violence, granted for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, who is a victim or alleged victim of domestic violence; and includes any temporary or final order issued by a civil or criminal court.

(hg) “Electronic communications” means any form of expression or exchange of information by speech, photographs, or written form using electronic means. Electronic communication includes, but is not limited to, communication via telephone, facsimile, electronic mail, social media, text messaging, instant messaging, and other electronic forms.

(ih) “Electronic surveillance” means monitoring the behavior, activities, or whereabouts of another person by electronic means, including but not limited to the use of computer spy ware, surveillance equipment, tracking devices, or long-distance magnification devices.

(ij) “Family or household member” means:

- (1) Persons who are related by blood, marriage, or adoption.
- (2) Minor children, by blood, marriage, or adoption.
- (3) Minor children who are part of the household.
- (4) Persons who have a child in common, regardless of whether they have been married or have lived together at any time.

(5) Persons who reside or have resided together in the past who are not or have not been intimate partners.

(6) Persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(kj) "Family violence" means the same or similar acts committed in domestic violence, but directed towards a family or household member instead of an intimate partner. The dynamics of power and control may not be present.

(l) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes.

(m) "Foreign Protection Order" means an injunction or other order related to domestic 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 state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, or a tribal court, in a civil or criminal action.

(nk) "Indian Country" has the definition found in 18 USC §1151.

(ol) "Intimate partner" means:

- (1) Spouses;
- (2) Former spouses;
- (3) Persons who are or have been in a marital-like relationship, including same-sex relationships;

(4) Persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship.

(5) Persons who are dating or have dated in the past.

~~(p)~~ "Minor" or "juvenile" means any person under the age of 18 years.

~~(q)~~ "Repeatedly" means on two or more separate occasions.

~~(r)~~ "Tribal or state certified domestic violence perpetrator treatment program" means a state or tribally certified program that adopts, at a minimum, the state standards of Chapter 388-60 WAC or any successor code.

~~(s)~~ "Victim impact statement" means a written or oral statement given to the sentencing judge by the victim. (Res. 2019-040, passed Mar. 11, 2019)

7.28.8. Immunity from Liability. The following persons have immunity from liability in a civil action brought by a party for any action or omission in good faith under this chapter arising from alleged domestic violence or a crime involving domestic violence:

(a) Law enforcement officers;

(b) Victim advocates;

(c) Suquamish Tribal Child Welfare staff;

(d) Prosecutor's Office staff;

(e) Any Suquamish tribal employee assisting law enforcement, victim advocates, tribal child welfare staff or prosecutor staff. (Res. 2019-040, passed Mar. 11, 2019)

7.28.9. Law Enforcement Officer Immunity. No law enforcement officer will be held criminally or civilly liable for making an arrest under this chapter if the law enforcement officer acted in good faith. (Res. 2019-040, passed Mar. 11, 2019)

7.28.10. Mandatory Arrest. (a) The purpose of mandating arrest of perpetrators is to provide victims with immediate protection from the current violence, to afford them opportunities to consider legal options, to provide victims with time to safely relocate or obtain protection orders, and to ensure adequate and prompt law enforcement response to domestic violence. The person will be held in custody without bail, pending further action by the Court.

(b) A law enforcement officer will, without a warrant, arrest a person and charge him or her for the appropriate crime if the officer has probable cause to

believe that the person has committed a crime of domestic violence or family violence. The officer must make an arrest upon probable cause regardless of the express wishes of the victim, but those wishes should be noted in the report.

(c) If a law enforcement officer receives a complaint alleging a crime involving domestic violence from two or more persons, the officer will evaluate each person's account separately to determine who was more likely to have been the predominant physical aggressor. In determining whether a person was the predominant physical aggressor, the officer will consider the following as well as any other relevant factors:

- (1) Prior complaints of domestic violence or family violence;
- (2) The relative severity of the injuries inflicted on each person;
- (3) The likelihood of future injury to each person; and
- (4) Whether one of the persons acted in self-defense.

(d) If a law enforcement officer determines that one person was the predominant physical aggressor, the officer need not arrest the other person, even if the officer has probable cause to believe that the other person has committed a crime involving domestic violence against the predominant physical aggressor.

(e) A law enforcement officer who does not make an arrest, or who arrests two or more persons after investigating an alleged crime involving domestic violence, must include in the police report a detailed explanation as to why the officer did not make an arrest or arrested two or more parties.

(f) Persons arrested will be held pending a mandatory court appearance. (Res. 2019-040, passed Mar. 11, 2019)

7.28.11. Authority to Seize and Hold Weapons. (a) Incident to arrest for a crime involving domestic violence or family violence, the Suquamish Tribal Police will seize all weapons that are alleged to have been involved or were threatened to be used in the commission of the alleged crime.

(b) The Suquamish Tribal Police may also seize weapons that are in plain view of the officer(s) or that are discovered pursuant to a consensual search, an officer safety pat-down or a search incident to arrest as necessary for the protection of the officer(s) or other persons.

(c) Suquamish Tribal Police are authorized to confiscate weapons from a person who is prohibited from possessing or using them. (Res. 2019-040, passed Mar. 11, 2019)

7.28.12. Mandatory Arrest for Violations of Civil Protection Orders or Criminal No Contact Orders. (a) When a law enforcement officer has probable cause to believe that a person has violated a civil protection order or a criminal no contact order, the officer will, without a warrant, arrest the alleged violator. This section applies to all violations of any protection order or no contact order whether civil or criminal, regardless of whether the issuing authority is the Suquamish Tribal Court or another court of competent jurisdiction.

(b) Persons arrested will be held pending a mandatory court appearance. (Res. 2019-040, passed Mar. 11, 2019)

7.28.13. Violation of a No Contact Order. (a) A person commits the offense of violation of a no contact order by knowingly violating any provision of a criminal no contact order.

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(b) Violation of a no contact order subjects the defendant to criminal penalties under this chapter. Any defendant who is found guilty of violating the terms of a no contact order may also, subject to the Court's discretion, be held in contempt of court, and the Court may impose such sanctions as it deems appropriate.

(c) Violation of a no contact order is a gross misdemeanor.

(d) A second or subsequent violation of a no contact order is a felony.

(e) Consent is not a defense to a violation of a no contact order.

7.28.14 Firearms Disqualification. (a) It shall be the purpose of this section to prohibit any person who has been convicted of a felony or misdemeanor crime of domestic violence, family violence, sexual assault, stalking, or dating violence, as defined under the laws of the Suquamish Tribe; who is subject to a protection order based upon a finding that the person represents a credible threat to the physical safety of the victim; who is subject to a criminal no contact order entered in Suquamish Tribal Court or any court of competent jurisdiction; who has been found mentally incompetent to stand trial; or who has been committed for mental health reasons after a domestic violence, family violence, sexual assault, stalking, or dating violence offense, from possessing a firearm or ammunition.

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(b) It shall be unlawful for any person to possess a firearm or ammunition who:

(1) Is subject to any Court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact or assaulting an intimate partner or family member as defined in this chapter or engaging in any other conduct that would place an intimate partner or family member in reasonable fear of physical harm to the intimate partner or family

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member, except that this subsection shall apply only to those orders that:

(A) Were issued at a hearing at which such person was present and had the opportunity to participate; or at a hearing of which such person had notice and the opportunity to be heard, whether or not the person was present;

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(B) Include a finding that such person represents a credible threat to the physical safety of such household or family member; and

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(C) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family member.

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(2) Has been convicted under the law of any state, territory, possession, tribe, or United States military tribunal of any crime involving domestic violence or family violence which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against an intimate partner or family member, as defined by this chapter.

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(c) Violation of this section is a felony offense pursuant to which may result in exclusion from the Port Madison Indian Reservation as defined within Chapter 5.3 of the Suquamish Tribal Code. Any violations of related domestic violence or family violence sentences in this section or any violations of other sections of this chapter shall be served consecutively.

(d) Persons subject to a firearms disqualification pursuant to this section may petition the Tribal Court for a restoration of rights pursuant to Sections 7.19.23 and 7.19.24 of the Suquamish Tribal Code..

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7.28.153. Records on Domestic Violence to be Identifiable. All documents related to a criminal case where the alleged crime meets the definition of domestic violence or family violence should contain the designation of "DV" of FV, as applicable, following the crime alleged, as in "Assault in the Fourth Degree—DV." This includes, but is not limited to, records held by Suquamish Police Department such as arrest records, or incident reports; Suquamish Prosecutor's Office records; and Suquamish Tribal Court documents. (Res. 2019-040, passed Mar. 11, 2019)

7.28.164. Judgments and Convictions. (a) When entering a judgment upon conviction for a crime involving domestic violence or stalking, the Court must:

(1) Consider whether 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.

(2) Consider whether the offense occurred within the sight or sound of minor children, especially if the children are related to the defendant or the victim, including foster children and children in guardianships.

(3) Enter orders for the protection of the victim, including those set out within §§ 5.12 and 5.13;

(4) Order restitution as warranted, which includes withholding the Suquamish Tribe per capita payment of any tribal member convicted under this chapter for application to this restitution; and

(5) Order appropriate domestic violence perpetrator's treatment as warranted.

(A) For the purposes of this section, a domestic violence perpetrator's treatment assessment should include the following: an official copy of current and past criminal history; all violence history whether or not it resulted in a conviction; family and cultural issues; substance abuse issues; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual. The intake may not be based solely on the defendant's self-report and the evaluator must make reasonable efforts to contact the victim. The defendant must sign privacy releases for the evaluator to obtain any confidential information that is necessary to the evaluation.

(B) Satisfactory completion of domestic violence treatment required under this section must be based on meeting treatment goals, not merely the completion of a certain period of time or certain number of sessions. The treatment must focus on ending the violence and holding the defendant accountable for his or her behavior. The treatment must include education about the individual, family, and cultural dynamics of domestic violence. Treatment must include education about the effects of domestic violence on children. The defendant must sign privacy releases for the treatment provider to obtain any confidential information that is necessary to the treatment. The defendant must also sign a release for the treatment provider to provide information to the Court, the prosecutor and the probation office in order to monitor compliance with the court order.

(6) Inform the defendant that his or her rights to own or possess a firearm are restricted by tribal and federal law.

(7) Order any other lawful relief it deems necessary for the protection of any claimed, alleged, or potential victim(s) of domestic violence, including orders or directives to the Suquamish Police Department.

(b) Upon conviction of a crime involving domestic violence, the Tribe may commence exclusion proceedings consistent with § 5.3.1.

(c) The Suquamish Tribe per capita payment of any tribal member convicted under this chapter will be withheld by the Suquamish Tribe and applied to any restitution ordered by the Court for the victim and/or the victim's property. (Res. 2019-040, passed Mar. 11, 2019)

7.28.175. Interfering with the Reporting of Domestic Violence. (a) Any person who prevents or attempts to prevent a victim or witness of domestic violence or family violence from calling 911, the Suquamish Tribal Police, or any other law enforcement agency, or from obtaining medical assistance or making a report to any tribal, state or federal law enforcement official, commits the crime of interfering with the reporting of domestic violence.

(b) Interfering with the reporting of domestic violence is a gross misdemeanor offense. (Res. 2019-040, passed Mar. 11, 2019)

7.28.186. Interfering with the Prosecution of Domestic Violence. (a) Any person who prevents or attempts to prevent a witness from testifying in a court proceeding, or otherwise impedes the prosecution of a case involving domestic violence or family violence, commits the crime of interfering with the prosecution of domestic violence.

(b) Interfering with the prosecution of domestic violence is a gross misdemeanor offense. (Res. 2019-040, passed Mar. 11, 2019)

7.28.197. Victims' Rights. Notwithstanding other provisions of the Suquamish Tribal Code, victims of a crime under this chapter have the following rights:

(a) The right to be reasonably protected from the accused.

(b) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.

(c) The right not to be excluded from any such public court proceeding, unless the Court, after receiving clear and convincing evidence, determines that

testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

(d) The right to be reasonably heard at any public proceeding in court involving release, plea, sentencing, or any post-conviction proceeding.

(e) The reasonable right to confer with the prosecutor in the case.

(f) The right to full and timely restitution as provided in law.

(g) The right to proceedings free from unreasonable delay.

(h) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(i) The right to provide a victim impact statement. (Res. 2019-040, passed Mar. 11, 2019)

7.28.1820. Advocates – Present During Prosecution or Defense Interviews. (a) If requested by the victim, and if the presence of the advocate does not cause any unnecessary delay in the investigation or prosecution of the case, an advocate of the victim's choosing may be present at any interview with the victim and at any judicial proceeding related to alleged criminal acts committed against the victim.

(b) A victim impact statement may be prepared and presented to the sentencing judge. Such statements may include the impact of the crime on the victim, and how the crime affected the victim psychologically, financially, and physically. The prosecutor or victim advocate will assist the victim in providing this statement. All victim impact statements will be filed in the court file, and copies provided to the parties.

(c) The Court will make all reasonable efforts to accommodate the participation of the victim at the sentencing hearing, being mindful of the unique emotional and psychological barriers victims may experience when facing a perpetrator in court.

(d) The victim has the right to confidentiality of communications between him- or herself and the advocate, such that the advocate will not be examined as to any communication between the two, nor required to provide in discovery any records the advocate maintains. (Res. 2019-040, passed Mar. 11, 2019)

7.28.2149. Habitual Domestic Violence Offender. Any person with two or more convictions for crimes of domestic violence assault will be deemed an habitual domestic violence offender and the prosecutor or police department will refer any subsequent violation to the local FBI Office and/or the local United States

Attorney's Office for prosecution under 18 U.S.C. § 117 as a federal Habitual DV Offender. Should there be a declination of federal prosecution, the third or subsequent domestic violence charge will be prosecuted in Suquamish Tribal Court, and elevated to a felony charge, except where inconsistent with federal laws. (Res. 2019-040, passed Mar. 11, 2019)

7.28.229. 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. 2019-040, passed Mar. 11, 2019)

7.28.234. 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. 2019-040, passed Mar. 11, 2019)

7.28.242. Savings. This chapter takes effect thirty (30) days after it is enacted by the Suquamish Tribal Council, and does not extinguish nor modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this chapter. Any such code will be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty therefrom, forfeiture or liability. (Res. 2019-040, passed Mar. 11, 2019)

TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

Chapter 7.30

STALKING

Sections:

- 7.30.1 Definitions.
- 7.30.2 Stalking.
- 7.30.3 Attempts to Contact or Follow.
- 7.30.4 Authorized Sentences of Offenders.

7.30.1. Definitions. As used in this chapter, the following terms have the meanings given below:

(a) "Actual notice" includes, in addition to any other form of actual notice, circumstances in which the other person has a protective order in effect protecting him or her from the person. Actual notice is also presumed when the victim takes means to block the person's means of communication with them, such as blocking the perpetrators' social media accounts or phone number

(b) "Contact" includes, but is not limited to:

(1) Repeatedly coming into and/or remaining in the visual or physical presence of the victim;

(2) Speaking with the victim by any means, including leaving a voicemail message;

(3) Sending or making written communications in any form, including electronic communications, to the victim;

(4) Following the victim, or having that person followed, where "follow" means deliberately maintaining visual or physical proximity to a specific person over a period of time;

(5) Waiting outside the home, residence, real property, work or school of the victim or the victim's children, grandchildren, siblings or other household members;

(6) Committing a crime against the victim;

(7) Damaging or defacing the victim's residence, real property, personal property, place of work, or school;

(8) Delivering directly or through a third person any object to the home, real property, place of work, or school of the victim;

(9) Communicating with the victim through a third person;

(10) Communicating with a third person, with the intent of impacting the third person's relationship with the victim;

(11) Communicating with business entities with the intent of affecting some right or interest of the victim, or gaining knowledge about the victim, including identity theft or an attempt to interfere with the victim's credit;

(12) Using technology to track, monitor or otherwise gain knowledge of the victim's activity, including but not limited to the use of computer spy ware, surveillance equipment, tracking devices, or long-distance magnification devices;

(13) Using the legal system to harass a victim ("litigation abuse") by continuously filing motions for contempt or modifications, or by filing retaliatory protection order applications or criminal charges against the victim;

(14) Harassing a victim through visitation or custody arrangements;

(15) Harming or attempting to harm oneself in the presence of the victim;

(16) Using cultural context to stalk or scare a victim, such as immigration related threats or threats of community or religious ostracism;

(17) Killing a victim's family pet, or leaving a dead animal on the victim's property;

(18) Contacting a victim's employer or forcing a victim to take time off from work;

(19) Using humiliating or degrading tactics such as posting pictures of a victim on the internet, or disseminating embarrassing or inaccurate information about the victim;

(20) Interacting with children with whom the victim has a relationship, to harass or monitor the victim; or

(21) Impersonating the victim through technology or other means.

(c) "Course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(d)"Electronic communication" means any form of expression or exchange of information by speech, photographs or written form using electronic means. Electronic communication includes, but is not limited to, communication via telephone, facsimile, electronic mail, social media, text messaging, instant messaging, and other electronic forms.

(ee) "Follow" 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 appeared 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.

(fe) "Harass" means engaging in a credible threat of violence or a knowing and willful course of conduct directed at a specific person that seriously alarms or annoys the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must 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 his or her child.

(ge) "Protection order" means any valid temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person, including but not limited to a protection order from any jurisdiction, including but not limited to domestic violence protection orders, sexual assault protection orders, vulnerable adult protection orders, and anti-harassment protection orders.

(hf) "Repeatedly" means on two or more separate occasions. (Res. 2020-137, passed Sep. 14, 2020)

7.30.2. Stalking. (a)—A person commits the crime of stalking if, without lawful authority, the person:

(1a) Intentionally and repeatedly harasses another person;

(2) Intentionally and repeatedly follows another person;

(3) Intentionally contacts, follows, tracks, or monitors, or attempts to contact, follow, track, or monitor another person after being given actual notice that the person does not want to be contacted, followed, tracked, or monitored; or

(4) Knowingly and without consent installs or monitors an electronic tracking device, or causes an electronic tracking device to be installed, placed, or used, to track the location of another person; and

(b) The person being harassed, followed, tracked, or monitored suffers substantial emotional distress or is placed in fear that the stalker intends to injure him or her, or another person, or his or her property or the property of another person, or, in the circumstances identified in (a)(4) of this subsection, the victim's knowledge of the tracking device would reasonably elicit substantial emotional distress or fear. The feeling of substantial emotional distress or fear must be one that a reasonable person in the same situation would experience given the totality of the circumstances. He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(c) It is not a defense to the crime of stalking under subsection (a)(1), (2), or (4) of this section that the stalker was not given actual notice that the person did not want the stalker to contact, follow, track, or monitor him or her; and it is not a defense to the crime of stalking under subsection (a)(1) of this section that the stalker did not intend to frighten or intimidate the person or place the person in substantial emotional distress.

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~~(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 fear must be one that a reasonable person would experience under the same circumstances; and~~

~~(c) The stalker either: (1) Intends to frighten, intimidate, or harass the person; or~~

~~(2) 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.~~

~~(d) It is not a defense to the crime of stalking under subsection 7.30.2(c)(1) 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.~~

~~(e) It is not a defense to the crime of stalking under subsection 7.30.2(c)(2) of this section that the stalker did not intend to frighten, intimidate, or harass the person.~~ (Res. 2020-137, passed Sep. 14, 2020)

7.30.3. Attempts to Contact or Follow. 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. (Res. 2020-137, passed Sep. 14, 2020)

7.30.4. Authorized Sentences of Offenders. A person who stalks another person is guilty of a gross misdemeanor except that the person is guilty of a felony if any of the following applies:

(a) The stalker has previously been convicted in any jurisdiction of any crime of harassment, as defined in S.T.C. § 7.5.10, or RCW 9A.46.060 or similar statute of another jurisdiction;

(b) The stalking violates any protection order protecting the person being stalked;

(c) The stalker has previously been convicted of an offense under this section or a gross misdemeanor or felony stalking offense under federal or state law for stalking another person;

(d) The stalker was armed with a dangerous weapon while stalking the person;

(e) The stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, or probation officer, and 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

(f) 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. (Res. 2020-137, passed Sep. 14, 2020)

Title 6. CRIMINAL PROCEDURE

Appendix

SUQUAMISH TRIBAL COURT RULES OF CRIMINAL PROCEDURE *

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* Res. 94-152, passed Oct. 10, 1994, adopted the Suquamish Tribal Court Rules of Criminal Procedure. Section 3.0 amended by Res. 2020-038, passed Mar. 9, 2020. Amended by Res. 2024-XXX, passed Mmm. D, 2024.

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1.0. General: Interpretation.

1.1. These rules are made pursuant to authority conferred by §3.8.28 of the Suquamish Tribal Code and ~~shall~~ apply to all criminal actions brought in the Suquamish Tribal Court.

1.2. In the event of irreconcilable conflict between these rules and express provisions of the Tribal Code, the Tribal Code ~~shall~~ will govern. The Court ~~shall have has~~ discretion to determine whether such a conflict exists. The decision of the Court in such cases ~~shall be is~~ final and binding in the absence of manifest abuse of discretion.

1.3. The Court ~~shall have has~~ discretion to modify these rules in a particular matter when the interest of justice requires, subject, however, to the express requirements of the Tribal Code.

1.4. These rules may be cited as the Tribal Court Rules (TCR).

2.0. Procedures prior to Arraignment.

2.1. Complaint; Citation. (a) All criminal actions ~~shall~~must be initiated by issuance of a complaint or citation.

(b) Charges brought by the tribal prosecutor ~~shall be~~are initiated by filing and serving upon each defendant a written complaint which ~~shall~~must be a plain, concise, and definite written statement, signed by the prosecuting attorney or a tribal attorney, setting forth the essential facts which constitute the offense(s) charged and a citation to the provision(s) of the Tribal Code which define the offense(s) charged. (See STC §6.1.1.)

(c) Charges brought by the tribal police ~~shall be~~are initiated by serving upon the defendant a citation in standard printed form on which all information called for by the form ~~shall~~must be provided, including but not limited to the provision(s) of the Tribal Code which define the offense(s) charged. Each such citation ~~shall~~must include an appearance date and time which ~~shall~~will be the next scheduled regular court date ~~which that~~ is at least fourteen (14) days but no more than forty (40) days from the date of the citation. ~~Regular court dates shall be~~are the second and fourth Tuesdays of each calendar month at 9:00 a.m. unless the police have been advised otherwise in writing by the court clerk. (See STC §6.1.19(a)–(b).)

Commented [MD1]: Is this current? Or should it be every Tuesday at 10?

2.2. Warrant of Arrest or Summons upon Complaint. (a) Issuance of Arrest Warrant. If a complaint has been filed and the penalty for the offense charged may include a jail sentence, the Court, on its own motion or on motion of the tribal prosecutor, may direct the clerk to issue a warrant for the arrest of the defendant unless the defendant has already been arrested by the tribal police on any charge pursuant to the Tribal Code. Such warrant must be supported by an affidavit of circumstances which, in the opinion of the Court, establish (1) probable cause that a charged offense has been committed and (2) probable cause to believe either that the defendant will not appear in response to a summons or that arrest is appropriate in order to prevent bodily harm to the accused or to any other person. The finding of probable cause may be based in whole or in part on evidence which is hearsay or otherwise inadmissible under the rules of evidence, and the ultimate admissibility of such evidence at trial ~~shall~~will not be cause for objection to the warrant. A warrant may be issued without affidavit if a defendant has failed to appear in response to a summons previously issued in the same cause. A warrant may also be issued upon affidavit by the tribal police that it has not been possible to serve an earlier summons because the defendant's whereabouts are unknown or the defendant appears to be evading service of process. Each warrant ~~shall~~must be accompanied by a true copy of the complaint on which it is based.

(b) Arrest at Time of Citation. A tribal law enforcement officer may arrest a person for violation of the Tribal Code without a warrant if the alleged offense is committed in the presence of the officer or if the officer has probable cause to believe the person has committed the offense and would be likely to flee the jurisdiction before a warrant could be issued and served. A tribal law enforcement officer may also arrest a person without citation or warrant pursuant to STC §6.1.6. (See STC §§6.1.5–6.)

(c) Summons in Lieu of Warrant. Unless a warrant is issued ~~pursuant according~~ to paragraph 2.2(a), the court clerk ~~shall will~~, within three (3) business days after filing of the complaint, issue a summons instead of a warrant to each defendant directing ~~him or her that defendant~~ to appear for arraignment on a date and at a time specified in the summons, which ~~shall must~~ be not less than fourteen (14) days from date of issuance of the summons. Each summons ~~shall must~~ be accompanied by a true copy of the complaint on which it is based.

(d) Form of Warrant. Every arrest warrant ~~shall must~~ be in writing in the name of the Tribal Court, signed by the Tribal Court judge, and dated the date of issuance. It ~~shall must~~ name the defendant and the nature of the charge, recite that the Court has found probable cause to believe that the defendant has committed the alleged offense, and direct the tribal police or any authorized law enforcement agency to arrest and hold in custody any defendant pending arraignment pursuant to §3 of these rules.

(e) Form of Summons. Every summons ~~shall must~~ be in writing in the name of the Tribal Court, signed by the court clerk, and dated the date of issuance. It ~~shall must~~ name the defendant and the nature of the charge and ~~shall must~~ summon the defendant to appear before the Court at a stated time and date not less than fourteen (14) days from the date of issuance. The summons ~~shall must~~ advise the defendant that failure to appear as commanded may result in issuance of a warrant of arrest.

2.3. Execution of Warrants and Summonses. (See STC §§6.1.3–4.) (a) Service of Warrants. Each warrant ~~shall will~~ be directed to the chief of the tribal police and may be executed by ~~him or her the chief of police~~ or by any other officer of the tribal police or fisheries police.

(b) Delivery of Summons. A summons may be served at any place within the jurisdiction of the Tribal Court. A summons may be served by an officer of the tribal police or fisheries police or by certified mail, postage prepaid, from the court clerk to the defendant's last known address. For this purpose, unless the clerk has actual knowledge of a different address, the defendant's last known address ~~shall be is~~ considered to be the one on the defendant's tribal membership roll.

(c) Return of Service. Every person who effects personal service of a warrant or summons issued ~~pursuant according~~ to these rules ~~shall must~~ make a written return thereof to the Tribal Court affirming under penalty of perjury that the warrant or summons was duly served upon the defendant at the place and on the date and time set forth in the return. In the case of a summons by certified mail, the court clerk ~~shall must~~ file a written affirmation under penalty of perjury that the summons was duly mailed to defendant on the indicated date and in accordance with these rules.

2.4. Search and Seizure. (Reserved; see STC §6.1.9.)

3.0. Arraignment; Bail.

3.1. Persons in Custody. A person in custody following arrest will have an initial appearance within seventy-two (72) hours, excluding weekends and tribal holidays, unless released on standard bail as provided below. A person who remains in custody following the initial appearance will have an arraignment hearing within fourteen (14) days.

3.2. Probable Cause. If the Court does not find, or the Court has not previously found, probable cause, the accused will be released without conditions.

3.3. Personal Recognizance. Any person in custody, if otherwise eligible for bail, may be released on ~~his or her~~ that person's own personal recognizance subject to such conditions as the Court may find reasonable to require to assure ~~his or her~~ that person's appearance when required.

3.4. Conditions of Release. The conditions for the defendant's release will be determined at the defendant's initial appearance.

(a) Criteria. The criteria for determining the conditions of release include, but are not limited to, the following:

- (1) The defendant's employment status and work history;
- (2) The defendant's financial resources;
- (3) The nature and extent of the defendant's family relationships and ties to the reservation community;
- (4) The defendant's past and present place of residence;
- (5) The availability of persons who are willing to assume third party custody of the defendant;
- (6) The nature and circumstances of the current charge, including whether the offense involved the use of force or violence;
- (7) The defendant's prior criminal record, if any, and whether, at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for an offense;
- (8) The defendant's record of appearance at court proceedings;
- (9) The nature and seriousness of the danger to any person or the community that would be posed by the defendant's release;
- (10) The defendant's reputation, character and mental condition;

(11) The defendant's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

(12) Whether or not there is evidence of present threats or intimidation directed to witnesses;

(13) The defendant's past record of committing offenses while on pretrial release, probation, or parole;

(14) The defendant's past record of use or threatened use of deadly weapons or firearms, especially to victims or witnesses; and

(15) The willingness of the defendant to take drug or alcohol tests ordered by the Court at initial appearance; provided, however, that any results of such tests or statements made by the defendant during such tests may not be used as evidence against the defendant in the current or any future criminal prosecutions.

(b) Conditions. The Court may impose any condition that will reasonably ensure the defendant's appearance of the defendant as required, and that will ensure the safety of any person or the community, including, but not limited to the following conditions:

(1) Require the defendant to post bail, conditioned on compliance with all conditions of release;

(2) Require the defendant to remain in the custody of a designated person; if that person is reasonably able to assure the Court that the defendant will appear as required. The designated person must agree to supervise the defendant and report any violation of a release conditions to the Court;

(3) The defendant must not commit a criminal offense during the period of release;

(4) Require the defendant to maintain employment or, if unemployed, actively seek employment;

(5) Require the defendant to maintain or commence an educational program;

(6) Require the defendant to abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(7) Require that the defendant will not drive a motor vehicle without a valid driver's license and proof of current liability insurance;

(8) Require that the defendant will have no contact with an alleged victim and any potential witness who may testify concerning the offense;

(9) Require the defendant to comply with a specified curfew;

(10) Require that the defendant not possess a firearm, destructive device, or other dangerous weapon;

(11) Require the defendant to not use or possess alcohol, marijuana, or any dangerous drug or other controlled substance, or any prescribed drug without a legal prescription;

(12) Require the defendant to undergo available medical, psychological or psychiatric treatment, including chemical dependency treatment, and remain in a specified facility, if required, for that purpose;

(13) Require the defendant to attend a designated number of self-help meetings and provide proof to the eCourts;

(14) Require the defendant to report on a regular basis to a designated agency or individual, or both;

(15) Require the defendant comply with GPS or other electronic monitoring requirements of the Court;

(16) Require the defendant to return to custody for specified hours following release for employment, schooling, or other approved purposes;

(17) Require that the defendant satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

3.5. Changing Bail or Conditions of Release. Upon the Tribe's or the defendant's application ~~by the Tribe or the defendant~~, the Court may, upon a change of circumstances, new information, or showing of good cause, increase or reduce the amount of bail, alter the conditions in the release order, or revoke bail. The applicant must give reasonable notice of such application to the opposing parties or their attorneys.

3.6. Revocation of Release Order. If a defendant violates a condition of release, including failure to appear, the probation officer or prosecutor may request a warrant for the defendant's arrest. The Court, upon finding that there is probable cause to believe the defendant has violated a condition of release, may issue a warrant for the arrest of a defendant charged with violating a condition of release and declare the bail to be revoked. Upon arrest, the defendant will be brought before the Court and the Court will conduct a hearing and re-determine bail. On finding probable cause that the defendant has violated a tribal, federal, or state law, or on finding a violation of any other release, the Court may:

(a) Reinstate the original order on the same conditions and amount of bail;

(b) Revoke the original bail, increase the amount of the bail, and modify the conditions of release.

3.7. Exoneration of Bail. When all pretrial conditions of release have been satisfactorily performed and the defendant has been sentenced, or the Court has dismissed the case before sentencing, the Court will return any security posted by the defendant or posted by others on behalf of the defendant to satisfy bail requirements.

3.8. Forfeiture of Bail. (a) If a defendant fails to appear as required and bail has been posted, the prosecutor may move and the Court may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address(es) within five (5) days of issuance of the order.

(b) If at any time within ninety (90) days after the forfeiture, the defendant's sureties surrender the defendant or appear and satisfactorily excuse the defendant's failure to appear, the Court will direct the forfeiture to be vacated without penalty. If at any time within ninety (90) days after the forfeiture the defendant appears and satisfactorily excuses ~~his or her~~ the defendant's failure to appear, the Court will direct the forfeiture to be vacated. If within thirty (30) days of a forfeiture order, the defendant requests a Court hearing and appears to present evidence justifying the defendant's failure to appear or otherwise meet the conditions found in the release order, the Court may direct the forfeiture of the bail or bond to be vacated upon such terms as are just. If the Court does not vacate the forfeiture order, the Court will proceed with the forfeiture of bail.

3.9. Procedure at Arraignment. (a) Instruction Regarding Rights. At the arraignment hearing, the Court ~~shall will~~ first satisfy itself that the defendant understands the nature of the charge(s) ~~the Tribe has brought by the Tribe~~, the potential penalties if guilty, and the defendant's basic rights protected under the Suquamish Tribal Code and the Indian Civil Rights Act. The Court may request the defendant to sign a written statement thereof.

(b) Representation by Counsel. The Court ~~shall will~~ next determine whether the defendant wishes to consult an attorney or representative before entering a plea on the charges. If the defendant wishes to exercise this right, the Court ~~shall will~~ then determine whether the defendant is eligible for a court-appointed attorney ~~pursuant~~ according to §3.8.15 of the Tribal Code. In either event, the arraignment ~~shall must be~~ continued to a specified later date to allow reasonable time for the retention or assignment of counsel and for the defendant's initial consultation with counsel. In such case, the "speedy trial" period ~~shall will not commence begin~~ until the continuation date or such earlier date as the defendant may enter a "not guilty" plea. The defendant ~~shall will~~ then be returned to custody or released on such conditions, including bail, as the Court ~~deems determines~~ appropriate. A defendant may request that a plea of "not guilty" be entered at the initial hearing and that counsel be retained or appointed ~~thereafter that hearing~~. In such case, the "speedy trial" period ~~shall will~~ commence with such initial hearing. (See STC §3.8.15.)

(c) The Court ~~shall will~~ reserve the defendant's right to a jury trial until the pretrial or thirty (30) days before trial, whichever occurs first, at which time the defendant must demand a jury or the right is waived. (See STC §3.8.13.)

3.10. Order of Release. Every order of release ~~shall must~~ clearly set forth the conditions of release, if any, and amount of bail, if any, and whether such bail is to be cash or bond or cash only.

3.11. Amendment of Order of Release. ~~A~~The Court may amend an order of release ~~may be amended by the Court~~ at any time upon learning of changed circumstances, new information, or other good cause.

3.12. Revocation of Order of Release. (a) Prior to Conviction. A defendant or defendant's counsel ~~shall must~~ be given three (3) days' notice of a revocation of release conditions hearing, excluding weekends and holidays. An order of release prior to conviction may be revoked upon a showing, by clear and convincing evidence, that the defendant has willfully violated any condition of release. The Court may revoke conditions of release if it finds immediate clear and present danger of harm to the defendant or others if the defendant were allowed to remain free pending the hearing. If the defendant was previously required to attend a hearing and failed to appear, the Court may modify the release conditions as appropriate. The order of revocation may include an order forfeiting the bail bond.

(b) Following Conviction or Plea of Guilty. An order of release following conviction or plea of guilty may be revoked at any time for good cause shown, without prior notice to the defendant, provided that in such case, the defendant ~~shall have has~~ the right to demand a hearing and opportunity to show cause why the order of release should not be reinstated.

3.13. Writ of Habeas Corpus. (a) Availability of Writ. (1) Except as provided in subsection (a)(2) of this section, every person within the Suquamish Indian Tribe's jurisdiction imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire in to the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(2) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been found guilty of an offense by a court of competent jurisdiction and has not exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial right; nor may a writ of habeas corpus be issued in matters regarding the exclusion of an individual from the Port Madison Reservation or in any case or controversy regarding per capita distributions to tribal members.

Commented [MD2]: David's version used "adjudged."

(b) Issuance of Writ. Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the clerk of the court. It must specify:

(1) That the petitioner is unlawfully imprisoned or restrained of liberty;

(2) Why the imprisonment or restraint is unlawful; and

(3) Where or by whom the petitioner is confined or restrained.

(c) The parties to a writ, namely the Suquamish Prosecutor, Chief Judge of the Tribal Court, and the Suquamish Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

(d) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(e) Granting of the Writ. Any Justice of the Court of Appeals or the Chief Judge of the Tribal Court may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice or Judge that a writ ought to issue, it must be granted without delay, and may be made returnable to the Court of Appeals or the Tribal Court.

(f) Time of Issuance and Requirements for Service. A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and to the officer or party having the person under restraint.

(g) The writ must be served by a tribal police officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice, the Court or the employee of any correctional facility in which the petitioner is held.

(h) Return of the Writ. The Prosecutor or the Prosecutor's designee will make a return, signed and verified by affirmation or affidavit, and state in that return:

(1) Whether the person is in custody or under that person's power of restraint; and

(2) If the person is in custody or otherwise restrained, the authority for an cause of the custody or restraint; or

(3) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

(i) Hearing. The Chief Judge commanded by the writ will cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court will immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the Tribal Code governing criminal procedures and evidence.

(j) Refusal to Obey Writ Is Contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(k) Disposition of Petitioner. If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

~~3.143. Trial Date.~~ At the arraignment, the Court shall set a trial date which will not be later than sixty (60) days after arraignment for defendants in custody and not later than ninety (90) days after arraignment for defendants not in custody unless the defendant has agreed in writing or on the record to a later date. The trial date may be deferred one or more times for cause on motion of the defendant by agreement of the parties and with consent of the Court. A defendant not released from custody pending trial must be brought to trial no later than sixty (60) days after the date of arraignment. A defendant released from custody, whether or not subjected to conditions of release pending trial, must be brought to trial not later than ninety (90) days after the date of arraignment. The following extensions of time limits apply, regardless of the preceding time limits:

(a) Revocation of Release. A defendant whose release the Court has revoked must be brought to trial no later than sixty (60) days following the revocation or previously scheduled trial date, whichever is sooner.

(b) Failure to Appear. When a defendant fails to appear for any hearing, all future hearings will be stricken from the court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the judge, the speedy trial clock begins at zero.

(c) Trial Preparation Time. The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

(d) Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the Court's or the parties' control, the Court, even if the time for trial has expired, may extend the time within which trial must be held in increments of no more than five (5) judicial days, unless the defendant will be substantially prejudiced in the defendant's defense. The Court must state on the record or in writing the reasons for the extension.

(e) Disqualification of Judge. In the event that the trial judge is disqualified by affidavit or by recusal under [CITATION NEEDED], the speedy trial date will be extended beyond its current expiration by fifteen (15) days.

(f) Continuances. The Court may continue a trial beyond the speedy trial period as follows:

(1) Upon written agreement of the parties, which must be signed by the defendant or all defendants. The agreement is effective when approved by the Court on the record or in writing.

(2) On motion of the tribal prosecutor, the Court, or a party, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial, or the last day of any continuance or extension granted under this rule. The Court must state on the record or in writing the reasons for the continuance. The bringing of such a motion by, or on behalf of, any party waives that party's objection to the requested delay.

(g) Computation of Time. The following periods will be excluded in computing the time for arraignment and the time for trial:

(1) All proceedings relating to the competency of a defendant to stand trial, terminating when the court enters a written order finding the defendant to be competent.

(2) Preliminary proceedings and trial on another charge.

(3) The time during which a defendant is detained in jail or prison by authorities other than the Suquamish Indian Tribe and the time during which a defendant is subjected to conditions of release not imposed by the Suquamish Tribal Court.

(4) The time during which the defendant has left the jurisdiction of the Suquamish Tribal Court for purposes of avoiding such jurisdiction.

(5) The period of pendency of any appellate proceeding relating to the matter(s) charged.

(6) A period of up to forty (40) days following declaration of a mistrial.

Commented [MD3]: From section 3.17 below.

(7) All proceedings in juvenile court.

(h) Waiver. A defendant may waive the right to a speedy trial. Such waiver must be in writing and must be signed by the defendant. The waiver must be to a date certain.

(i) Refiling. (1) The Tribe must bring a defendant to trial on refiled charges within sixty (60) days after arraignment on those refiled charges, or within the time for trial remaining at the time of dismissal of those charges following arraignment, whichever is longer.

(2) For a second or subsequent refiling, the Tribe must bring the defendant to trial within thirty (30) days of arraignment on those refiled charges, or within the time for trial remaining at the time of dismissal of those charges following arraignment, whichever is longer. If a case is dismissed for a second or subsequent time, and the time for trial is less than thirty (30) days, the defendant may make a motion in writing for a dismissal with prejudice; the Court may consider the reasons for the dismissal and refiling, the prejudice to the defendant, witness availability, and any other relevant factors in its decision to grant the dismissal with or without prejudice.

3.154. Pretrial Hearings. At the arraignment, the Court may set a pretrial hearing date for the consideration of motions, deadlines for disclosure of evidence, etc. The pretrial hearing should be set, if possible, not later than thirty (30) days prior to the trial date. The parties may by agreement forgo the pretrial hearing by a written stipulation filed with the Court.

3.165. Right of Trial by Jury. (Reserved; see §3.3 of these rules; STC §§3.8.13–14.)

3.176. Joinder and Consolidation. (a) Joinder of Offenses. Two or more offenses may be joined in a single complaint when the offenses are of the same or similar character, or based on the same conduct, or parts of a single scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be joined in the same complaint in any of the following circumstances:

(1) When each defendant is charged with an offense or offenses arising from the same facts and circumstances.

(2) When all defendants are charged with the same conspiracy.

(3) Where the offenses were so closely connected in time, place, and occasion that it would be difficult to separate proof of one charge from proof of another.

(c) Consolidation for Trial. The Court ~~shall have~~ has discretion to consolidate for trial all offenses and/or defendants properly joined in a complaint pursuant to §3.11(a) and/or §3.11(b) of these rules.

(d) Severance. A party may move the Court to sever for separate trial any charge which has been consolidated pursuant to the foregoing rule. In such case, the burden ~~shall be~~ is on the movant to demonstrate that such severance is appropriate in the interest of justice. Motions for severance must be filed not later than the date of the first pretrial hearing or stipulation in lieu thereof.

~~3.17. Excluded Time Periods. In computing the time periods for arraignment and/or trial, the following periods shall be excluded:~~

~~(a) The period of pendency of any competency proceeding to determine whether the defendant is competent to stand trial.~~

~~(b) The period commencing with a defendant's failure to appear pursuant to an order of the Court and ending with his or her first actual appearance after such failure to appear.~~

~~(c) The period of any continuance by agreement of the parties or granted by the Court on motion of the defendant, including but not limited to continuance of the arraignment pursuant to §3.3(b) of these rules.~~

~~(d) The period of time wherein the defendant has removed him or herself from the jurisdiction of the Suquamish Tribal Court for purposes of avoiding such jurisdiction.~~

~~(e) The period between dismissal of a charge without prejudice and the defendant's arraignment upon a refiled charge.~~

~~(f) The period during which the defendant is incarcerated by order of any court other than the Tribal Court.~~

~~(g) The period of pendency of any appellate proceeding relating to the matter(s) charged.~~

~~(h) A period of up to forty (40) days following declaration of a mistrial.~~

~~(i) When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court may extend the time according to reason.~~

4.0. Pleas.

4.1. Types. A defendant may plead guilty or not guilty.

Commented [MD4]: This section removed, as the subject is now discussed at section 3.13. Some items moved from here to that section as noted in the comment above.

4.2. Pleading Guilty. If a defendant proposes to plead guilty to a charge, the Court ~~shall will~~ review the police report and other available evidence to determine whether, if unrefuted, the evidence would be sufficient to sustain the charge. In making such determination, the Court may consider all of the facts and circumstances, whether or not they are presented in a form which would be admissible upon trial. If the Court is satisfied beyond reasonable doubt that the evidence is sufficient to sustain the charge and that the defendant is competent and understands the charge and the consequences of the plea, it ~~shall will~~ accept the guilty plea. If the Court is not satisfied of these matters, it ~~shall will~~ refuse to accept the guilty plea and ~~shall will~~ instead enter a plea of “not guilty” on the defendant’s behalf pending further proceedings. In considering whether to accept a guilty plea from a defendant who is not represented by counsel, the Court may also consider whether the plea might be different if counsel were involved, but the mere absence of counsel will not in itself require the Court to reject a guilty plea.

4.3. Plea Bargains. Nothing in this rule ~~shall prohibits~~ or ~~inhibits~~ the Court from accepting a guilty plea based upon bona fide negotiations between a defendant and the Tribe (i.e., a so-called “plea bargain”), but the Court ~~shall is not be~~ bound by any such agreement or understanding between the defendant and the Tribe regarding the consequences of such a plea.

4.4. Statement on Plea. In every guilty plea, the defendant ~~shall will~~ be required to sign and file a written statement of defendant on plea of guilty in such form as may be authorized by the Court, confirming ~~his or her the defendant’s~~ understanding of ~~his or her the defendant’s~~ rights, the nature of the charge, and the potential consequences.

4.5. Withdrawal of Plea. On motion of the defendant and for good cause shown, the Court may, at its discretion, allow the withdrawal of a plea of guilty and entry of a plea of not guilty.

4.6. Pleading Insanity. (Reserved)

5.0. Depositions and Discovery.

5.1. Depositions. (a) A deposition may be taken of any witness by either party on ~~the Court’s~~ order ~~of the Court~~ upon a showing of any of the following:

(1) The witness may be unable to attend at the trial.

(2) The witness refuses to discuss the case with a party or counsel, and there are reasonable grounds to believe that ~~his or her the witness’~~ testimony would be material.

(3) There might otherwise, for any reason, be a failure of justice.

(b) A witness whose deposition is to be taken ~~shall must~~ be given reasonable written notice of the time and place for the deposition. The notice ~~shall must~~ identify the

cause to which the deposition will relate and the name and address of the person to be deposed. If it is anticipated that the testimony may relate to documentary or electronic evidence of any kind which is in possession of the witness, the notice ~~shall will~~ reasonably identify such evidence and require that the witness produce it at or before the deposition. A witness receiving notice of deposition may move the Court to accelerate or delay ~~the its~~ date and time ~~for the deposition~~, to change the place at which ~~it will be~~ taken, or to clarify or modify any request for documentary or electronic evidence. The Court may determine the effect any delay requested by the deponent witness has on speedy trial rights of the defendant. If the defense is calling the witness, then speedy trial modifications ~~shall will~~ be waived until such time as the witness is available for deposition. If the prosecution is calling the witness, then speedy trial modifications ~~shall will~~ be made on a good cause basis.

(c) A deposition ~~shall must~~ be taken under oath before a qualified court reporter or at the discretion of the Court under oath by videotape recordation.

(d) Any party may use a deposition ~~may be used by any party~~ to contradict or impeach the ~~deponent's~~ testimony ~~of the deponent~~ at any prior or subsequent trial or hearing in the cause, or otherwise to the extent permitted by the Federal Rules of Evidence or by ruling of the Court. However, a deposition ~~shall may~~ not be used in any manner against the interest of a defendant who was not given a fair opportunity to be present in person or ~~represented~~ by counsel at the ~~deposition's~~ taking ~~thereof~~.

5.2. Discovery. (a) Obligations of the Prosecution. Except as otherwise ordered by the Court, the prosecution ~~shall must~~ disclose the following material to the defense not later than the date set for the first pretrial hearing, or two (2) days after the material becomes available or known to the prosecution, or the date of the trial, whichever first occurs.

(1) The names and addresses of all persons, including expert witnesses, known to the prosecution to have information about the case; the names of those persons whom the prosecution expects to testify in the case; copies of any written or recorded statements made by such persons or witnesses; and the general nature of the testimony expected to be given by such witnesses. In the case of expert witnesses, the prosecution ~~shall must~~ also disclose the subject of their testimony and any reports rendered in relation ~~thereto to their testimony~~.

(2) Any written or recorded statements of the defendant or defendants if the trial is joint or consolidated.

(3) Any expert reports or statements ~~of experts~~ made in connection with the particular case, including physical or mental examinations and scientific tests, experiments, or comparisons.

(4) Any tangible, physical, written, printed, photographic, or electronic evidence which the prosecution may use at the trial or which were obtained from the defendant or defendants.

(5) Any record of a defendant's or witness' prior convictions ~~of a defendant or witness which is~~ known to the prosecution.

(6) The existence of any electronic surveillance of any utterance or communication by the defendant or in which the defendant was a participant, and a true copy of any record of such surveillance.

(7) Any information known to the prosecution which suggests entrapment of the defendant.

(8) Any information known to the prosecution which tends to negate the defendant's guilt. As used in this subparagraph, "prosecution" means and includes the prosecuting attorney, staff, and agents.

(b) Obligations of the Defense. Except as otherwise ordered by the Court, the defense ~~shall~~ must disclose the following material to the prosecution not later than the date set for the first pretrial hearing, or two (2) days after the material becomes available or known to the defense, or the date of the trial, whichever first occurs.

(1) The names and addresses of persons whom the defense intends to call as witnesses at any hearing or trial.

(2) The written or recorded statements of any such witnesses.

(3) The general nature of the testimony expected to be given by each such witness. As used in this subparagraph, "defense" means the defendant and defense attorney, ~~and his or her~~ staff, and agents.

(c) Actions by Order of Court. (1) The following actions may be taken by order of the Court on motion of the prosecution:

(A) The defendant may be required to appear in a lineup for identification; speak for voice identification; be fingerprinted; try on articles of clothing; permit sampling of hair, blood, or other body fluids and/or substances upon the body; provide handwriting samples; submit to reasonable physical, medical, and/or psychiatric examination; or allow inspection of physical or documentary evidence in the defendant's possession.

(B) The defense may be required to state whether any claim of incompetency or insanity will be made at the trial; whether defendant's prior convictions will be stipulated or must be proved; whether defendant will or will not rely upon alibi and if so, furnish the names and addresses of all alibi witnesses; and the general nature of the defense.

(2) The following actions may be taken by order of the Court on motion of the defense:

(A) The prosecution may be required to disclose relevant information and material relating to specified searches and seizures.

(B) The prosecution may be required to disclose the relationship of any specified persons to the prosecution.

(C) The prosecution may be required to disclose and use best efforts to obtain any relevant material or information known or suspected to be in ~~the any third party's~~ control ~~of any third party which that~~ would be discoverable if in the ~~prosecution's~~ control ~~of the prosecution~~.

All motions made pursuant to §5.2(c) of these rules ~~shall~~must be made ~~prior to~~before the first pretrial hearing except on a showing of good cause for the delay.

(d) Discretionary Disclosure. The Court ~~shall have~~has discretionary power to require disclosure to the defense of any relevant information or materials not covered by the specific provisions of §5.2 of these rules if the interest of justice should require and the information or materials are not privileged.

(e) Conditions on Disclosure. The Court may impose reasonable conditions upon the disclosure of any material or information ~~pursuant according to~~ §5.2 of these rules to avoid or minimize substantial risk of injury, intimidation, bribery, reprisal, annoyance, or embarrassment to any person if it finds that such risk outweighs the usefulness of such disclosure to the defense. The Court may also impose conditions on the custody of materials furnished ~~pursuant to as~~ discovery and/or on the use or further disclosure of such materials, including but not limited to ~~excision removal of~~ nondiscoverable material ~~which that~~ is a part of discoverable material.

(f) Hearings on Discovery Issues. On motion of either party or on its own motion, the Court may conduct in camera hearings on any issues raised in the course of discovery ~~pursuant according to~~ these rules. The record of every such hearing ~~shall~~must be retained, either as a part of the trial record or as a separate sealed record, to become available to the appellate court in the event of appeal.

(g) Impeding Discovery Prohibited. Neither the prosecution nor the defense ~~shall~~may in any way impede the other party in the proper development of testimony and/or evidence ~~pursuant according to~~ §5 of these rules.

(h) Continuing Duty to Disclose. Both the prosecution and the defense ~~shall~~ have a continuing duty upon receiving ~~pt of~~ any and all undisclosed material or information ~~which that~~ is subject to disclosure ~~hereunder under these rules~~ to disclose such material promptly to the other party.

5.3. Sanctions. If and whenever it comes to the ~~Court's~~ attention ~~of the Court~~ that a party has failed to comply with any provision of §5.2 of these rules, the Court may impose such sanctions upon the offending party as may, at the Court's discretion, be

appropriate, including but not limited to discovery and/or disclosure of additional material and information, granting a continuance, or dismissal of the charges. ~~W~~Counsel's willful violation of any of these provisions ~~by counsel~~ may be grounds for disbarment or other appropriate discipline.

6.0. Subpoenas. (Reserved)

7.0. Material Witnesses. (Reserved)

8.0. Procedures at Trial.

8.1. Trial by Jury. (a) Juror Panel. The jury ~~shall~~ will be chosen from a panel of prospective jurors chosen by lot and summoned ~~in accordance with~~ according to the jury panel rules.

(b) Number of Jurors. A jury ~~shall~~ will consist of six (6) persons chosen by lot from the jury panel.

(c) Alternate Juror. The Court ~~shall have~~ has discretion to require ~~the seating of that~~ a seventh alternate juror be seated.

(d) Juror Unable to Continue. If at any stage of the trial ~~prior to commencement of before the jury begins~~ deliberations a juror is unable to continue and an alternate juror has been seated, the alternate juror ~~shall~~ will become the sixth regular juror. If more than one juror is unable to continue or if no alternate juror has been seated, the Court ~~shall~~ will declare a mistrial unless the defendant agrees on the record to continue with ~~less~~ fewer than six (6) jurors.

(e) Voir Dire. Following selection of tentative jurors and an alternate if ~~the Court so requires~~ by the Court as provided above, the selected persons ~~shall~~ will be questioned for the purpose of disclosing any basis for a challenge for cause. The Court may establish a written procedure for preliminary general questions from the bench to the entire panel, after which each party ~~shall~~ will be given fair opportunity to question the prospective jurors and alternate as the party sees fit.

(f) Challenge for Cause. The Court may excuse any prospective juror for cause following questioning. If the Court does not excuse a juror for cause, a party may nevertheless challenge the person for cause, based on such considerations as the party ~~deems~~ considers relevant. Such challenge ~~shall~~ will be heard outside the presence of the jury and jury panel. If such a ~~motion~~ challenge is denied, the movant may demand a trial of the issues of fact presented, in which case the Court ~~shall forthwith~~ will immediately try such issues and render its decision ~~thereon~~. At such trial, the ordinary rules of evidence ~~shall~~ will apply. The Court's decision following such trial ~~shall not be~~ is not appealable until conclusion of the trial upon the charges involved.

(g) Peremptory Challenge. After all jurors, including the alternate, if any, have been passed by all parties for cause, each party ~~shall~~ will have the right to challenge up

to three (3) jurors without a showing of cause, in which case the Court ~~shall will~~ excuse such juror and instruct the clerk to choose another juror by lot from the panel. Such juror ~~shall will~~ then be questioned as provided above and ~~shall will~~ be seated unless challenged for cause or through exercise of a peremptory challenge. ~~Each party will exercise peremptory challenges shall be exercised alternately by each party, commencing beginning~~ with the prosecution. This process ~~shall will~~ continue until a jury of six (6) persons and one (1) alternate, if required, has been chosen without objection by either party.

(h) Jurors' Oath and Preliminary Instructions. ~~Prior to commencement of Before~~ voir dire ~~begins~~, the Court ~~shall will~~ administer the following oath to all members of the panel:

“Do you solemnly swear ~~or affirm~~ well and truly to try the issue between the Tribe and the defendant according to the evidence and instructions from the Court?”

The Court ~~shall will~~ also caution the jurors not to discuss the case with others at any time ~~prior to before~~ their verdict or among themselves until after they have been fully instructed by the Court and have retired for their deliberations.

(i) Custody of the Jury. At all times during the trial and its deliberations, the jury ~~shall will~~ be in the custody of the bailiff or the court clerk, subject to such instructions as ~~the Court may give be given by the Court.~~ The Court ~~shall have has~~ authority to require sequestration of the jury if the interests of justice so require.

(j) Conduct of Jurors. Subject to prior Court approval ~~by the Court~~, jurors may take personal notes during the trial regarding the evidence and testimony and use these notes in their deliberations. All such notes, as well as all notes and writings made by the jury or any jury person during the course of deliberations, ~~shall will~~ be destroyed immediately following the verdict. In appropriate cases the Court may also authorize the jury to view the relevant scene or scenes in the company of a court officer.

(k) Verdict. The verdict of the jurors on each charge ~~shall will~~ be conveyed to the Court on a form provided for this purpose. If there is more than one charge and/or more than one defendant, each charge against each defendant ~~shall will~~ be reported on a separate form which ~~shall will~~ clearly identify the charge.

(l) Poll of Jurors. After the verdict has been delivered, either party may require the clerk to poll each juror regarding ~~his or her that juror's vote thereon~~, and the results of such poll ~~shall will~~ become part of the trial record of the trial.

(m) Special Verdict. The Court ~~shall have has~~ discretion, on its own motion or on a party's motion of a party, to require the jury to make special findings of fact in addition to its final verdict. In such case, the jury ~~shall will~~ be given clear instructions with respect to each such special finding. If a special finding conflicts with the general verdict, the Court may remand the jury to further deliberations.

8.2. Witnesses. (a) General. All competent persons may be witnesses in any action under these rules, subject, however, to the rules of evidence. No witness ~~shall~~may be disqualified on the ground of personal interest, but evidence of such interest is relevant and may be considered in evaluating the witness's testimony. A person is incompetent to be a witness if of unsound mind or intoxicated at the time the testimony would be given or if lacking in the capacity to perceive and relate the facts truthfully.

(b) Incriminating Testimony. A witness who refuses to testify on the ground that ~~his or her the witness'~~ testimony might tend to incriminate ~~him or her the witness~~ under the laws of the State of Washington or the United States ~~shall~~will be excused from giving such testimony unless the tribal prosecutor ~~shall~~obtains from the United States Attorney for the Western District of Washington and the Kitsap County Prosecutor a binding commitment that no subsequent criminal action will be taken against such witness arising from matters first disclosed in such testimony or matters first discovered as a result of such testimony. A witness who refuses to testify on the ground that ~~his or her the witness'~~ testimony might tend to incriminate ~~him or her the witness~~ under the laws of the Suquamish Indian Tribe ~~shall~~will be excused from such testimony upon stipulation by the tribal prosecutor that no subsequent criminal action will be taken against such witness arising from matters first disclosed in such testimony or matters first discovered as a result of such testimony.

9.0. Rules of Evidence and Criminal Procedure.

9.1. Federal Rules of Evidence Apply. The Federal Criminal Rules of Evidence ~~shall be~~are applicable to all criminal trials in the Tribal Court. (See STC §3.8.12.)

9.2. Exception for Defendants Pro Se. If a defendant is acting on ~~his or her the~~defendant's own behalf without the benefit of counsel, the Court may in its discretion:

(a) Allow testimony or evidence by both parties which might otherwise be forbidden by the Federal Criminal Rules of Evidence; and/or

(b) Allow reasonable deviation by both parties from the Federal Rules of Criminal Procedure and the Tribal Rules of Criminal Procedure if it determines that a miscarriage of justice might otherwise result. In exercising this discretion, the Court may consider, among other things, the degree of sophistication and education of the defendant, the extent to which the defendant has studied or become knowledgeable in the applicable law, and the extent to which an otherwise plausible defense might or might not be seriously prejudiced if the rules of evidence were not relaxed. All motions directed to the exercise or nonexercise of discretion under this rule ~~shall~~will be made and heard outside the presence of the jury.

10.0. Post-conviction Procedures.

10.1. Sentencing. The Court may sentence a convicted defendant ~~forthwith~~immediately, or may defer sentencing pending a probation report or other relevant

information. If sentencing is deferred, the Court may remand the defendant to custody pending sentencing or release the defendant on such conditions, including bail, as the Court ~~deems~~ determines appropriate. All time spent in custody pending trial and/or sentencing ~~shall will~~ be credited against any jail time imposed at sentence, but this ~~shall~~ does not apply to time spent in custody on an offense which was not a subject of the trial.

10.2. Right of Appeal. At the time of sentencing, the Court ~~shall will~~ shall advise the defendant of ~~his or her the defendant's~~ right of appeal from the conviction, and if the defendant is not represented by counsel, supply a form for this purpose. The Court ~~shall will~~ shall also advise the defendant of ~~his or her the defendant's~~ right to counsel on appeal. If the defendant can demonstrate indigency as defined by the Tribal Code, ~~the Court may appoint~~ the Court may appoint appeal counsel ~~may be appointed by the Court.~~

10.3. Notice of Appeal. An appeal from conviction must be filed with the court clerk within ten (10) days following entry of judgment. The court clerk ~~shall will~~ shall promptly advise the Suquamish Tribal Court of Appeals of the appeal and provide it with all documentation required under the applicable rules of appeal. Pending appeal, the defendant ~~shall will~~ shall be released on such conditions, including bail, as the Court may ~~deem determine~~ deem appropriate, but ~~bail shall~~ will in no case ~~will bail~~ bail exceed the total of all fines levied against the defendant in the judgment. (See STC §3.8.26.)

11.0. Arrest of Judgment. (Reserved)

12.0. New Trial. ~~AThe Court may grant a new trial may be granted by the Court~~ upon its own motion or ~~the defendant's motion of the defendant,~~ with or without a hearing, if it finds that any substantial right of the defendant was materially infringed by any of the following causes:

(a) Receipt or use by the jury of any evidence, paper, document, or book not entered in evidence or contained in testimony at the trial.

(b) Misconduct by the prosecution or the jury.

(c) Disobedience of any order or instruction given by the Court to the jury or any juror.

(d) Newly discovered evidence ~~which that~~ the defendant could not have discovered by reasonable diligence in time for introduction at the trial.

(e) Accident or surprise.

(f) Procedural irregularity or abuse of discretion.

(g) Verdict contrary to law or evidence.

If the motion is based on matters outside the record, such matters ~~shall~~must be shown by affidavit. (See STC §3.8.25.)

13.0. Probation. (Reserved; STC §3.8.27)

14.0. Motion Practice.

14.1. Oral Motions. Oral motions made in open court during a hearing or trial may be heard ~~forthwith~~immediately or at a later date at the ~~Court's discretion of the Court~~. The Court may require such motions to be reduced to writing as a condition of hearing.

14.2. Written Motions. (a) Filing. A party may file written motions at any time, subject to time and delivery limitations imposed by these rules or by previous court order. Except as otherwise ordered by the Court, a written motion ~~shall will~~ not be ~~deemed~~considered timely unless filed and delivered in time to allow timely response ~~pursuant~~according to §14.2(b) of these rules.

(b) Response. Unless otherwise ordered, a party receiving a written motion ~~shall~~must file a written response with the Court and deliver a copy ~~thereof of that response~~ to all other parties within ten (10) days of ~~such receipt-receiving the motion, or~~ within three (3) days ~~prior to-before~~ the pretrial hearing for pretrial motions, or within three (3) days ~~prior to-before~~ the trial date for trial motions, whichever time is shorter. A motion may include a request for a shorter time for response. In such case, any such request ~~shall~~must be prominently noted at the beginning of the motion and ~~shall must~~ specify with particularity the reasons for such request. The responding party ~~shall must~~ respond to any such request within two (2) days ~~following receipt of-after receiving~~ the motion.

(c) Affidavits. A party may support or oppose a motion by one or more affidavits, which ~~shall must~~ accompany the motion or response.

(d) Hearing on Motion. On its own motion or on ~~any party's motion of any party~~, the Court may set a hearing on any motion and may order production of further evidence and/or memoranda of law in anticipation of the hearing. A motion may be accompanied by a request for hearing, but no hearing ~~shall will~~ be set until the Court has agreed to hear the motion.

15.0. Jury Panel Selection.

15.1. Persons Eligible for Service. Each jury panel ~~shall will~~ be selected by lot from a current list of enrolled members of the Suquamish Indian Tribe residing in the counties of Kitsap, King, Pierce, Jefferson, and Snohomish. For purposes of jury selection, the address of a tribal member ~~shall will~~ be the address contained on the tribal membership roll unless the Court has actual notice of a different address.

15.2. Notice to Serve. Not less than twenty-one (21) days ~~prior to-before~~ the trial date, the court clerk ~~shall will~~ mail to each selected panel member a summons advising that ~~he or she that panel member~~ has been called for possible jury service on a date and at

a time specified in the notice. The notice ~~shall~~must be mailed in duplicate by ordinary first class mail and by first class mail, return receipt requested.

15.3. Proof of Receipt. It ~~shall~~will be presumed, subject to rebuttal by clear and convincing evidence, that a panel member received such notice three (3) days after mailing if the return receipt so indicates and/or the letter sent by ordinary mail is not returned undeliverable. The court clerk ~~shall~~will maintain a record of all such mailings and, when requested, ~~shall~~will certify under oath to the fact and date of such mailings.

15.4. Requests to be Excused from Service. All requests for excuses from jury service must be in writing, verified under penalty of perjury, and returned to the court clerk within seven (7) days after receipt on the form accompanying the notice. Requests not timely filed may nevertheless be considered at the Court's discretion ~~of the Court~~, but the Court ~~shall not be~~is not required to consider a late request or any request ~~which~~that is not supported by a verified writing setting forth in detail the reasons for the requested excuse. If the original explanation is inadequate, the Court may require further detail as a condition of considering the request.

15.5. Grounds for Excuse from Service. The Court ~~shall have~~has absolute discretion to grant or deny a requested excuse from service. In exercising such discretion, the following factors ~~shall~~will be considered but ~~shall~~will not be controlling:

- (a) Attendance at traditional tribal or Native American events;
- (b) Physical disability or infirmity;
- (c) Unavoidable responsibility for the care of a dependent person;
- (d) Inability to obtain private or public transportation;
- (e) Refusal of employer to allow time off;
- (f) Substantial loss of wages or earnings; and
- (g) Loss of open-season fishing or clamming opportunity.

In exercising such discretion, the Court ~~shall~~will attempt to be as fair as possible to each applicant but ~~shall not be~~is not required to treat all similar requests in a similar manner.

15.6. Conditional Excuse from Service. Persons who are excused from jury service on a particular date may, as a condition of such excuse, be required to appear for jury service on a ~~subsequent~~later date or dates and ~~shall~~will be added to the pool of potential jurors summoned for such dates.

15.7. Permanent Excuse from Service. The Court ~~shall have~~has authority and discretion to grant a permanent excuse from jury service to any person above the age of

seventy (70) years or whom the Court finds to be incompetent or disabled. Persons granted permanent excuse ~~shall~~will be removed from the computerized roll of eligible jurors.

15.8. Penalties for Failure to Appear. Any prospective juror who fails to appear for jury service at the time and on the date for which summoned may be required to show cause why charges for contempt of the Tribal Court ~~charges~~ should not be filed ~~pursuant~~according to STC §3.8.21. The form and content of the summons ~~shall~~will be as set forth in §2.2(e) of these rules. If the Court finds no acceptable excuse for the failure to appear, the Court may impose a civil penalty of not more than two hundred dollars (\$200) or may refer the matter to the tribal prosecutor for prosecution as a criminal violation of STC §3.8.21.

16.0. Notices; Facsimile Documents.

16.1. A notice required by these rules to be given ~~herein~~ may be transmitted by first-class United States mail; ~~or~~ by any recognized private commercial carrier; ~~or~~ by direct personal service on the addressee; or by electronic facsimile transmitted to the facsimile telephone number, if any, of the addressee.

16.2. A notice sent by United States mail ~~shall~~will be presumed to be received on the third mail delivery day following mailing.

16.3. A notice sent by private carrier or direct personal service ~~shall~~will be evidenced by a dated, written delivery receipt ~~which~~that is to be filed with the Court. If no such receipt is filed, such a notice ~~shall~~will be presumed to be delivered as though sent by United States mail.

16.4. A notice transmitted by electronic facsimile ~~prior to~~before 3:00 ~~p.m.~~PM (addressee's time) on any business day ~~shall~~will be presumed to be delivered on such day. If transmitted after 3:00 ~~p.m.~~PM (addressee's time), it ~~shall~~will be presumed to be delivered on the following day.

16.5. The foregoing presumptions regarding delivery ~~shall be~~are conclusive unless a different actual delivery can be confirmed by clear and convincing evidence or unless the parties agree in writing to other presumptions.

16.6. As used in this Rule 16, "notice" ~~shall~~includes notices, pleadings, motions, and any other documents to be filed or delivered in accordance with these rules. Nothing ~~herein shall be construed in these rules will be considered~~ to alter the rules of evidence with regard to the verification or admissibility of evidentiary documents.

17. Procedures Not Specified Herein.

17.1. Any procedural issue ~~which~~that may arise at any stage of proceedings ~~which~~that is not addressed by these rules, including issues within areas designated ~~herein in these rules~~ as "reserved," ~~shall~~will be resolved in a manner which, in the Court's

reasonable discretion ~~of the Court~~, is most likely to be consistent with substantial justice. In exercising such discretion, the Court ~~shall~~ will consider any relevant ~~provisions of the~~ Suquamish Tribal Code provisions, may consider other tribal code procedural rules and both the federal and the Washington State procedural rules, and ~~shall~~ will hear and consider arguments on the parties' behalf ~~of the parties~~, but ~~shall~~ is not ~~be~~ obligated to decide on the basis of any such rules or in ~~consonance~~ accord with the arguments of a party.

Note: Paragraphs renumbered for consistency as follows. (Res. 2016-090, Jun. 20, 2016)

5.2(c)(1)(i)-(ii) changed to 5.2(c)(1)(A)-(B); 5.2(c)(2)(i)-(iii) changed to 5.2(c)(2)(A)-(C)

12.0(1)-(7) changed to 12.0(a)-(g)

15.5(1)-(7) changed to 15.5(a)-(g)