

TITLE 5
CRIMINAL CODE

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TITLE 5
CRIMINAL CODE

Chapter 5.01 Offenses Against the Person

5.01.01 Assault

a) Assault in the First Degree:

Any person who:

- 1) Intentionally causes or attempts to cause serious bodily harm to another person; or
- 2) Causes, attempts to cause, or threatens bodily harm to another person with a firearm or any deadly weapon or with any force or means likely to produce death; or
- 3) Knowingly causes, attempts to cause, or threatens bodily harm to any person carrying out a government function;

shall be guilty of a Felony 1.

b) Assault in the Second Degree:

Any person who, under circumstances not amounting to assault in the first degree:

- 1) Knowingly and purposely strikes another person or otherwise inflicts bodily harm; or
- 2) Threatens another person with, or purposely puts another person in fear of, immediate serious bodily harm;

shall be guilty of a Felony 2.

c) Assault in the Third Degree

Any person who, under circumstances not amounting to assault in the first or second degree:

- 1) Intentionally attempts or threatens to inflict bodily harm on another person through unlawful force or violence; or
- 2) Without consent, and with non-deadly means, inflicts bodily harm; or
- 3) Knowingly or purposely makes physical contact of an insulting or provoking nature with an individual; or
- 4) Threatens violence and causes another person to self-harm; or
- 5) Knowingly or purposely causes reasonable apprehension and fear of bodily harm even though the infliction of bodily harm was not actually intended;

shall be guilty of a Misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to increase maximum penalty. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. The crimes of assault and battery were combined. Amended by Resolution No. 15-A-068, passed 6/8/15, to divide assault into degrees. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalties from Class A-D to felony-misdemeanor.]

5.01.02 Coercion

Any person who threatens another person with intent to coerce the other person to act against his or her will shall be guilty of a Misdemeanor 2.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class D offense a misdemeanor 2.]

5.01.03 Robbery

Any person who unlawfully takes personal property a) from the person of another or in his presence, b) against his will, or c) by threat of injury to the person or his property, shall be guilty of a Felony 2.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class B offense to a felony 2.]

5.01.04 Criminal Homicide

Any person who intentionally and without lawful justification, or with extreme indifference to the consequences of his or her actions, or during the commission of or in flight from a felony offense, causes the death of another human being shall be guilty of a Felony 1.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. The mandatory pre-sentence evaluation was passed 6/14/88. by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class A offense to a felony 2 and changed the language in order to distinguish between criminal homicide and manslaughter.]

5.01.05 Vehicular Homicide

Any person who causes the death of another by operating a motor vehicle while under the influence of an alcoholic beverage or drug to a degree which affects his or her safe operation of a vehicle shall be guilty of a Felony 1.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class A offense to a felony 1.]

5.01.06 Manslaughter

Any person who recklessly or negligently causes the death of another human being shall be guilty of a Felony 1.

[HIST: Source - Resolution 19-A-153, passed 12/16/19, created this new section.]

5.01.07 Reckless Endangerment

Any person who recklessly engages in conduct, which creates substantial risk of death or serious physical injury to another, shall be guilty of a Misdemeanor 1.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class C offense to a misdemeanor 1.]

5.01.08 Kidnapping

a) Kidnapping in the First Degree.

Any person who intentionally detains, confines, or abducts another person with intent to:

- 1) Hold the victim for a ransom or reward;
- 2) Use the victim as a shield or hostage or to otherwise aid in the commission of a felony;
- 3) Hold or hide the victim in a place where ~~he or she~~the victim is not likely to be found;
- 4) Inflict physical injury or a sexual offense on the victim; or
- 5) Use or threaten to use deadly force;

shall be guilty of a Felony 1.

b) Kidnapping in the Second Degree.

Any person who intentionally detains, confines, or abducts another person without that person's consent or without legal justification and under circumstances not amounting to Kidnapping in the First Degree shall be guilty of a Felony 2.

[HIST: Source - Resolution 19-A-153, passed 12/16/19, created this section. Amended by Res. ~~[#]~~, passed [DATE] to remove gendered pronouns.]

Commented [JVV1]: Gendered pronouns are removed throughout Title 5. These edits are not intended to have any substantive effect on the underlying offenses

5.01.09 Unlawful Detainment

Any person who knowingly restrains another person without that person's consent or without legal justification shall be guilty of a Misdemeanor 1.

[HIST: Source - Resolution 19-A-153, passed 12/16/19, created this section.]

5.01.10 Custodial Interference

Any person who willfully takes away, detains, or conceals a child without the consent of the parent or the person who has the lawful right of custody shall be guilty of a Felony 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/88 amended this section, deleted the "under eighteen" language to include cases such as guardianship where persons over eighteen are still under legal care of another. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the heading from "Abduction" to "Custodial Interference", to add language clarifying that the victim is a child, and to change the penalty from a Class A offense to a felony 2.]

5.01.11 Endangering the Welfare of a Child

Any person who knowingly endangers the welfare of a child by violating a duty of care, protection or support, or by intentionally leaving the child without adequate or care by otherwise neglecting to care for the child in any manner which threatens serious harm to the physical or emotional well-being of the child shall be guilty of a Felony 2.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05 which added "without adequate" to allow prosecution when leaving a child with a person who cannot or will not adequately care for the child. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class B offense to a felony 2.]

5.01.12 Contributing to the Criminal Act of a Minor

Any person who, by act or omission, knowingly encourages, causes or contributes to the criminal act of a person under 18 years of age shall be guilty of a Misdemeanor 1.

[HIST: Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/88 amended this section deleting references to state and federal jurisdiction and expanding the definition. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class C offense to a misdemeanor 1.]

5.01.13 Verbal or Written Threat

Any person who, with intent to threaten, harass, or terrorize another person or to place another person in fear of imminent serious bodily injury causes

the evacuation of a building, place of assembly, or otherwise causes serious public inconvenience shall be guilty of a Misdemeanor 1.

[HIST: Source - Resolution 19-A-153, passed 12/16/19, created this section.]

5.01.14 Stalking

a) A person commits the crime of stalking if, without lawful authority:

- 1) A person intentionally and repeatedly harasses, including through the use of electronic communications, or repeatedly follows another person;
- 2) The person being harassed or followed is placed in fear that the stalker intends to harm the person, another person, or property of the person or of another person; and
- 3) The conduct would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

b) A person who stalks another person is guilty of a misdemeanor 1, except that the person is guilty of a felony 2 if any of the following applies:

- 1) The stalking violates any protective order protecting the person being stalked;
- 2) The person has previously been convicted of an offense under this section or of a misdemeanor or felony stalking offense under tribal, federal, or state law; or
- 3) The person was armed with a dangerous weapon while stalking the person.

For the purposes of this section, "follows" means intentionally maintaining visual or physical proximity to a specific person over a period of time. A finding that an alleged stalker repeatedly and intentionally 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 an alleged stalker followed the person.

A person commits the offense of stalking if he or she a) repeatedly follows another person and engages in conduct that the stalker knows or should know would cause fear in the person at whom the conduct is directed or b) engages in a course of conduct over a period of time that causes another person substantial emotional distress and the conduct serves no legitimate purpose. Stalking is a Misdemeanor 1. In addition to the penalties for a Misdemeanor 1, the Court shall order a mental health evaluation with a qualified counselor and may impose any treatment recommended as part of the sentence.

Commented [JWV2]: Currently, both Title 5 and Title 15 (15.06.06) establish a criminal offense of Stalking, with varying definitions. Title 5 language was substituted with Title 15's definition of stalking, which was more comprehensive. Also added is (1) "electronic communications" to capture offenses that take place electronically / on social media, and (2) a reasonable person standard, which is required by VAWA 2022 (25 USC 1304(a)(16)) to prosecute non-Indian offenders. Committee agreed a reasonable person standard was good to apply to all defendants, not just non-Indians.

[HIST: Source - Resolution No. 02 A 108, passed 12/17/02 adopted this section. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class C offense to a misdemeanor 1. Amended by Res. [REDACTED], passed [DATE] to provide a more comprehensive definition of stalking, to add a reasonable person standard to that definition, and to provide for enhanced sentencing in certain contexts.]

5.01.15 Interference with the Reporting of Domestic Violence

~~Any person who prevents or attempts to prevent a victim or witness to domestic violence from calling 911, obtaining medical assistance, or making a report to any law enforcement official shall be guilty of a Misdemeanor 1.~~

[HIST: Source - Resolution No. 02 A 108, passed 12/17/02 adopted this section. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class C offense to a misdemeanor 1.]

[Cross Reference: Title 15 Domestic Violence.]

5.01.156 Harassment

It is unlawful for any person, with intent to intimidate, threaten, harass, annoy or offend, or with knowledge that the person is harassing another person, to:

- a) Subject another person to intimidating, taunting, insulting, berating, humiliating, offensive, threatening, obscene or violent language and/or conduct;
- b) Make any request, suggestion or proposal which is obscene or indecent;
- c) Subject the other person to offensive physical contact or cause the other person to reasonably believe that the personhe/she intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;
- d) Follow another person in or about a public place for no legitimate purpose after being asked to desist, and/or
- e) Contact or communicate with another person by verbal, electronic, social media, mechanical, or written means, repeatedly and at extremely inconvenient hours, or after being advised by the person that the communication is unwelcome, in a manner that reasonably would be expected to cause a person substantial emotional distress.

Harassment is a Misdemeanor 1.

[HIST: Source - Resolution No. 02 A 108, passed 12/17/02 adopted this section. Amended by Resolution 05-A-054, passed 6/14/05. Amended by Resolution 10-A-063 to expand the definition of harassment. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class C offense to a misdemeanor 1. Amended by Res. [REDACTED], passed [DATE] to remove gendered pronouns.]

Commented [JVV3]: Moved this offense to be combined with 5.01.20: Interfering with the Reporting of Domestic Violence.

[Cross Reference: Title 15 Domestic Violence.]

5.01.16Z Exploitation of Vulnerable Adult

Any person who, a) obtains or uses a vulnerable adult's property, food, telephone service, utility services, residence, land assignment, vehicles, money or other resources without permission or by unreasonable imposition, or b) resides with a vulnerable adult or who is a regular caregiver of a vulnerable adult and who, by action or inaction, threatens or harms the health or well-being of the vulnerable adult, shall be guilty of a Misdemeanor 1.

Vulnerable Adult shall be defined as a person 18 years of age or older who does not have the functional, mental, emotional or physical ability to protect and care for ~~himself or herself~~ themselves.

[HIST: Source - Adopted by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class C offense to a misdemeanor 1. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.01.17 Domestic Violence

a) Any act or attempted act that is an offense listed in this Title where the offense is committed against a victim by:

- 1) A current or former spouse or intimate partner of the victim;
- 2) A person with whom the victim shares a child in common or the victim or the defendant is pregnant by the other;
- 3) A person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
- 4) A person who is or has been in a social relationship of a romantic or intimate nature with the victim as determined by the following factors:
 - A) The type and nature of the relationship;
 - B) The frequency of interaction between the persons involved in the relationship; and
 - C) The length of the relationship.

b) The minimum sentence for a domestic violence crime is a misdemeanor 1.

[HIST: Source – Adopted by Resolution [#], passed [DATE], section was moved from Title 15.]

5.01.18 Family Violence

a) The same or similar act or attempted act committed in domestic violence that is an offense defined in Title 5 of the Law and Order Code when such an Any act or attempted act that is an offense listed in this Title where the act is

Commented [JVW4]: This section was moved from Title 15. This definition was modified using language from VAWA 2022. The sentencing level is the same as was provided in Title 15.16.01.

Commented [JVW5]: This was moved from Title 15 and modified slightly. The sentence level was not modified.

directed towards a family or household member instead of an intimate partner. The dynamics of power and control may or may not be present.

b) The minimum sentence for a family violence crime is a misdemeanor 1.

5.01.19 Aggravated Domestic Violence

a) A crime will be designated as aggravated domestic violence or family violence if the person used a weapon during the commission of the domestic violence.

b) The minimum sentence for an aggravated domestic violence crime is a felony 2.

[HIST: Source – Adopted by Resolution [#], passed [DATE], section was moved from Title 15.]

5.01.20 Habitual Domestic Violence Offender

Any person with three or more separate convictions for crimes of domestic violence or family violence from any federal, state, or tribal court shall be deemed a habitual domestic violence or family violence offender, and any subsequent violation shall be a felony 2, except where inconsistent with federal laws.

[HIST: Source – Adopted by Resolution [#], passed [DATE], section was moved from Title 15.]

5.01.21 Interfering with Reporting of Domestic Violence or Family Violence

a) Any person who prevents or attempts to prevent a victim or witness of domestic violence or family violence from calling 911, the PGST Tribal Police, or other law enforcement agency, or from obtaining medical assistance or making a report to any Tribal, state or federal law enforcement official, has committed the crime of interfering with the reporting of domestic violence or family violence.

b) Interfering with the reporting of domestic violence or family violence is a misdemeanor 1.

[HIST: Source – Adopted by Resolution [#], passed [DATE], section was moved from Title 15.]

5.01.22 Strangulation or Suffocation

a) A person commits strangulation or suffocation by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of another person by either:

1) Applying pressure on the throat or neck of the other person, regardless of whether that conduct results in loss of consciousness, visible injury, or whether there is any intent to kill or injure the victim; or

Commented [JVW6]: This section was moved from Title 15.06.02. Neither the definition nor the sentence level was modified.

Commented [JVW7]: This section was moved from Title 15.06.04. Neither the definition nor the sentence level was modified.

Commented [JVW8]: This section was moved from Title 15.06.05. Neither the definition nor the sentence level was modified. It encapsulates the offense 5.01.15: Interference with the Reporting of Domestic Violence.

Commented [JVW9]: This section was moved from Title 15.06.03. Neither the definition nor the sentence level was modified.

2) Blocking the nose or mouth, or both, of the other person, or applying weight to the other person's chest, regardless of whether that conduct results in loss of consciousness, visible injury, or whether there is any intent to kill or injure the victim.

b) A violation of this section is a felony 1.

[HIST: Source – Adopted by Resolution [#], passed [DATE], section was moved from Title 15.]

5.01.2318 Repealed Sections

a) Battery. [HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section slightly and dropping "Assault" from the name of the crime. The mandatory pre-sentence evaluation was passed 6/14/88. Repealed by Resolution 05-A-054, passed 6/14/05.]

b) Rape. [HIST: Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to define the crime and expand the scope from "attempted rape" to "rape". The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. The definition of sexual intercourse was added. Repealed and replaced with Rape in First, Second, and Third Degree (Sections 5.07.04, 5.07.05, and 5.07.06) Resolution No. 17-A-010, passed 1/23/17.]

c) Indecent Liberties. [HIST: Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to more clearly define the crime. The mandatory pre-sentence evaluation was passed 6/14/88. Passed 1/17/86 amended this section for clarity in definition. Amended by Resolution 05-A-054, passed 6/14/05, adding the definition for sexual contact. Repealed and replaced with Public Indecency, Section 5.07.12, Resolution No. 17-A-010, passed 1/23/17.]

d) Attempted Suicide. [HIST: Source - Resolution No. 84 A 03, passed 2/14/88. This section is intended to reflect the Port Gamble S'Klallam Tribe's concern for the safety and well-being of its members and is not intended to be punitive. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Repealed by Resolution 14 A 047, passed 3/25/14. Cross Reference: Chapter 16.09 addresses Attempted Suicide.]

[HIST: Source - Resolution 19-A-153, passed 12/16/19, created this section.]

Chapter 5.02 Property Related Offenses

5.02.01 Trespass

Any person who, without lawful authority, enters, passes over, remains on, or goes upon the land assignment of another person or the leased property of

another person or the property owned by or held for the benefit of the Tribe, shall be guilty of a Misdemeanor 2.

Any person who is convicted in tribal court of Trespass and who re-offends and is convicted of Trespass under 5.02.01 within two (2) years of the previous conviction shall be guilty of a Misdemeanor 1.

[HIST: Source - Resolution No. 02 A 108, passed 12/17/02 amended this section. Port Gamble S’Klallam Law and Order Code. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class D offense to a misdemeanor 2. Resolution No. 20-A-085, passed 9/28/20, added language to increase the penalty for trespass to a misdemeanor 1 for a second violation within two years.]

[Cross Reference: Chapter 10.01 Land Assignment.]

5.02.02 Malicious Mischief

Any person who knowingly causes:

- a) Physical damage to public or private property without the express permission of the owner;
- b) A substantial risk of interruption or impairment of public services; or
- c) A substantial risk of impairment of the safety, efficiency, or operation of a motor vehicle while it is being operated or without the knowledge of the owner or operator

shall be guilty of a Misdemeanor 1.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to simplify and consolidate wording. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, created this section to usurp the previous section “Vandalism/Unauthorized Use”, and changed the penalty from a Class C offense to a misdemeanor 1.]

5.02.03 Burglary

Any person who enters or remains unlawfully in any building, structure or vehicle with intent to commit an offense there shall be guilty of a misdemeanor 1. In any prosecution for burglary, intent to commit an offense may be inferred from entering or remaining in any building, structure, or vehicle unless it can be explained by sufficient evidence to the trier of fact to have been done without criminal intent.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class C offense to a misdemeanor 1.]

5.02.04 Theft

a) Definition. "Theft" means:

- 1) To knowingly and purposely obtain or exert unauthorized control, including by threat or deception, over the property or services of another with intent to deprive the owner of such property or services; or
- 2) To appropriate lost or mis-delivered property or services of another with intent to deprive the owner of such property or services; or
- 3) To obtain control over stolen property knowing that the property was stolen.

b) Theft – First Degree. Any person who commits theft:

- 1) Of property or services that exceeds one thousand and five hundred dollars (\$1,500) in value; or
- 2) Of property of any value taken from another person;

shall be guilty of a Felony 2.

c) Theft – Second Degree. Any person who commits theft:

- 1) Of property or services that exceeds two hundred and fifty dollars (\$250) in value but does not exceed one thousand and five hundred dollars (\$1,500) in value; or
- 2) Of a credit or debit card;

shall be guilty of a Misdemeanor 1.

d) Theft – Third Degree. Any person who commits theft:

- 1) Of property or services that does not exceed two hundred and fifty dollars (\$250) in value;

shall be guilty of a Misdemeanor 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to cover theft of services. Amended by Resolution 05-A-054, passed 6/14/05. Amended by Resolution 16-A-098, passed 7/25/16, to divide Theft into degrees. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalties from Class A-D to felony-misdemeanor.]

5.02.05 Possession or Sale of Stolen Property

Any person who possesses, sells, receives, conceals, or aids in receiving or concealing property, knowing it to be obtained by any unlawful means shall be guilty of a Misdemeanor 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A -03, passed 2/14/84 amended this section for clarity. Amended by Resolution 05-A-054,

passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class C offense to a misdemeanor 2.]

5.02.06 Unlawful Dumping

Any person who leaves refuse, construction debris, garbage, or any other discards at any place other than designated garbage disposal sites on the Port Gamble S'Klallam Reservation without authorization from the Tribal Council shall be guilty of a Misdemeanor 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amended by Resolution 05-A-054, passed 6/14/05 which repealed the littering component. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class C offense to a misdemeanor 2.]

5.02.07 Maintaining a Public Nuisance

Any person whose property is in a condition which endangers the safety, health, comfort or property of his neighbor shall be guilty of a Misdemeanor 2 and the Court shall require the person to eliminate the nuisance.

In the event the defendant fails to comply with this order within a reasonable time, the Port Gamble S'Klallam Tribal Council may contract for the removal of the nuisance and the expense of the contract shall become an additional portion of the sentence.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended the sentencing portion of this section. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class C offense to a misdemeanor 2.]

5.02.08 Arson

Any person who knowingly causes a fire or explosion on his own property or that of another and thereby places the person or the property of another or the Tribe in danger of damage or destruction or causes damage or destruction to the person or property of another or the Tribe shall be guilty of a Felony 2.

Any person who recklessly causes a fire or explosion on his own property or that of another and thereby places the person or the property of another or the Tribe in danger of damage or destruction or causes damage or destruction to the person or property of another or the Tribe shall be guilty of a Misdemeanor 1.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. Amended by Resolution 05-A-054, passed 6/14/05. Amended by Resolution 12-A-057, passed 4/24/12. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from Class B and Class C offenses to felony 2 and misdemeanor 1.]

5.02.09 Forgery

Any person who signs, executes, alters or falsifies any written documents, checks, currency or written instrument with intent to defraud shall be guilty of a Felony 2.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to expand the “written instrument” language and reorganize for clarity. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class B offense to a felony 2.]

5.02.10 Fraud

Any person who obtains money or other property by deceit, willful misrepresentation or false interpretation shall be guilty of a Felony 2.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section omitting the “false weights and measures” language and reorganizing the section for clarity. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class B offense to a felony 2.]

5.02.11 Extortion

Any person who knowingly obtains or attempts to obtain property or services of another by threat or coercion shall be guilty of a Felony 2.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to simplify wording and define the crime. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 19-A-153, passed 12/16/19, amended this section to change the penalty from a Class B offense to a felony 2.]

Chapter 5.03 Controlled Substances

5.03.01 Definitions

All terms used in this chapter shall have their commonly accepted meaning. If there is a doubt as to the meaning of a term, the Court shall be guided by the definitions of the Washington State Uniform Controlled Substances Act, RCW 69.50.101. RCW 69.50.101 as it currently exists or is hereafter amended is incorporated by reference into this Chapter, to be referred to as indicated in this Chapter.

[HIST: Source - Resolution No. 17-A-064, passed 6/12/17. This new chapter Controlled Substances replaced the previous chapter Alcohol and Drug Related Offenses. This chapter covers drug offenses, and alcohol offenses are in a separate chapter. After serious deliberation, the Port Gamble S’Klallam Tribe has determined that present day circumstances, including the Washington State’s legalization of marijuana, make a complete ban of marijuana within Tribal Lands ineffective and unrealistic, and the Tribe has decriminalized its possession in very limited circumstances set out in this Chapter. Where there is a question regarding marijuana or the legality of a controlled substance in this chapter, reference may be made to the Revised Code of Washington State, with the exception

that no individual may legally grow marijuana in his or her domicile for any purpose—
medical or other.]

5.03.02 Substances Illegal Without a Valid Prescription

Any substance that contains any quantity of a chemical that falls within the following categories is illegal to possess without a valid prescription. The full list of chemicals contained within these categories can be found in sections of the RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 (Schedules I, II, III, IV, and V respectively) of the Washington State Uniform Controlled Substances Act. These sections as they currently exist or are hereafter amended are incorporated by reference into this Chapter, to be referred to as indicated in this Chapter. If there is any doubt as to whether a substance is illegal or not, the Court shall be guided by the provisions of the Washington State Uniform Controlled Substances Act, Chapter 69.50. Illegal substances include:

- (a) Opiates, including but not limited to substances commonly known as opium, heroin, morphine, methadone, and codeine;
- (b) Hallucinogenic substances, including but not limited to substances commonly known as DMA, LSD, PCP, mescaline, psilocybin, but excluding marijuana;
- (c) Cocaine in any form, including but not limited to the powder and the rock or “crack” form;
- (d) Depressants, including but not limited to methaqualone, diazepam (Valium), secobarbital, and pentobarbital; and
- (e) Stimulants, including but not limited to any form of amphetamine.

The chemical composition of a substance may be proved by any acceptable method of identification, including but not limited to identification by a trained law enforcement officer (included canine units), by field tests, or by laboratory tests.

[HIST: Source – Originally, this section was titled Possession of Narcotics or Controlled Substances and cited to the Federal 21 CFR 1308.11-15. Resolution No. 17-A-064, passed 6/12/17 created a new chapter for controlled substances and amended this section to remove the citation to the Federal law and instead cite to the Washington State Uniform Controlled Substances Act due to the Tribe’s legalization of marijuana.]

5.03.03 Offenses and Penalties for Illegal Substances

- a) Possession of Illegal Substances. Any person who possesses for personal use or grows or manufactures for personal use any of the substances listed in Section 5.03.02 of this code is guilty of a Misdemeanor 1.
- b) Manufacturing, Delivery, or Possession with Intent to Deliver and Illegal

Substance. Any person who grows, manufactures, delivers, sells, or possesses with intent to sell, deliver, or manufacture, any of the substances listed in Section 5.03.02 of this code shall be guilty of a Felony 1. The term "manufacture" shall not apply to growing marijuana for personal use.

c) Possession of Materials Used to Manufacture an Illegal Substance. Any person who knowingly possesses any materials used to manufacture any of the substances listed in Section 5.03.02 of this code is guilty of a Misdemeanor 1.

d) Counterfeit Illegal Substance Manufacturing or Delivering. Any person who creates, delivers, or possesses a counterfeit illegal drug shall be guilty of a Felony 2. A counterfeit illegal drug is a substance which, although not in fact containing any illegal drug, or not in fact containing the drug it purports to contain, was intended to be understood by others to be a substance listed in Section 5.03.02.

[HIST: Source - Resolution No. 17-A-064, passed 6/12/17. This section replaced five separate sections that previously existed in Chapter 5.03 Alcohol and Drug Related Offenses. That chapter was divided into two: one for controlled substances and one for alcohol. The five previous sections separated the crimes of delivery, possession, possession with intent to deliver, possession of precursors, and manufacturing of controlled substances. This new section combined the previous five into one section and removed the citation to the federal law due to the Tribe's legalization of marijuana. Resolution No. 19-A-059, passed 6/24/19, amended this section to add sub-section heading titles for clarity of what charge applies to a specific drug offense.]

5.03.04 Possession or Use of Drug Paraphernalia

a) A person is guilty of possession or use of drug paraphernalia if ~~he or she~~ that person possesses or uses drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, possession of which is illegal under 5.03.02 of this code.

b) RCW 69.50.102 as presented and enacted and as may be subsequently amended, shall be referred to by the Court as guidance on how to define "drug paraphernalia." Health professionals may lawfully distribute "drug paraphernalia" for public and private health purposes.

c) In determining whether an item is drug paraphernalia or if intent to use the drug paraphernalia exists, the Court may consider all reasonable information, including proximity of the paraphernalia to controlled substances, or residue of controlled substances on the paraphernalia. Possession of Drug Paraphernalia is a Misdemeanor 1.

[HIST: Source - Resolution N. 10 A 063, passed 06/08/10 adopted this section, and Resolution No 12-A-088 amended it to redefine "drugs" to mean controlled substances listed in the schedule under 21 CFR 1308.11-15. Resolution No. 17-A-064, passed 6/12/17, amended this section to cite to the Washington State code and remove the reference to the Federal law

due to the Tribe's legalization of marijuana. Also, the sentence for this offense changed from a Class B offense to a Misdemeanor 1. Resolution No. 18-A-049, passed 5/14/18, amended this section by adding "possession or" and "possesses or" in front of the words "use" and "uses" in sub-section (a) so that the text matched the title of the section. Amended by Res. [#], passed [DATE] to remove gendered pronouns.

5.03.05 Delivery of Controlled Substances, Alcohol, or Marijuana to a Minor

A person is guilty of delivery of controlled substances, alcohol, or marijuana to a minor if ~~he or she~~that person delivers, gives, sells or trades to a minor under the age of 21 any controlled substance, alcoholic beverage, or marijuana, or if ~~he or she~~that person allows a minor under the age of twenty-one (21) to use such substance on his or her property. A person who has in ~~his/her~~their possession a license specifically authorizing that person to dispense a controlled substance to a minor shall be exempt.

Delivery of controlled substances, alcohol, or marijuana to a minor is a Felony 2.

[HIST: Source - Resolution No. 10 A 063, passed 06/08/10 adopted this section, amended by Resolution 12-A-088, to redefine "drugs" to mean controlled substances listed in the schedule found at 21 CFR 1308.11-15. Resolution No. 17-A-064, passed 6/12/17 retained this section while legalizing marijuana; however, "controlled substances" now refers to substances listed in the RCW and not in the federal code. Also, the sentence for this offense changed from a Class A offense to a Felony 2. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.03.06 Unlawful Inhalation

Any person who intentionally smells or inhales the fumes of any type of substance for the purpose of intoxication or in any manner disturbing the audio, visual, or mental processes shall be guilty of a Misdemeanor 1. This section shall not apply to the inhalation of anesthesia for medical or dental purposes.

[HIST: Source - Resolution No. 10 A 063, passed 06/08/10 adopted this section. Resolution No. 17-A-064, passed 6/12/17 changed the title of this section from "Unlawful Inhalation of Noxious Substances" to "Practice of Sniffing." Also, the sentence for this offense changed from a Class B to a Misdemeanor 1. Resolution No. 19-A-059, passed 6/24/19, amended this section to change the title of the section from "Practice of Sniffing" to "Unlawful Inhalation".]

5.03.07 Unauthorized Possession, Distribution, or Misuse of Prescription Drugs

A person shall not knowingly:

- a) Possess or use a prescription drug without a current and valid prescription from a licensed medical personnel. The above provision shall not apply to any practitioner acting within the scope of his/her license, or to any employee acting within the scope of the usual course of business.

- b) Obtain or procure the administration of a prescription drug by fraud, deceit, or misrepresentation.
- c) Unless authorized to do so, sell, transport for sale or import into the Port Gamble S'Klallam Reservation prescription drugs.
- d) Misuse or abuse a prescription drug in any way that is inconsistent with a drug's prescribed use, regardless of whether a person has a valid prescription for the drug from a licensed medical personnel.

Unauthorized Possession, Distribution, or Misuse of Prescription Drugs is a Misdemeanor 1.

[HIST: Source - Resolution No. 10 A 063, passed 06/08/10 adopted this section. Amended by Resolution No. 15-A-069, passed 6/8/15, to include misuse or abuse of prescription drugs as a crime. Resolution No. 17-A-064, passed 6/12/17 changed the sentence for this offense from a Class B to a Misdemeanor 1.]

5.03.08 Marijuana Possession and Use

- a) The possession, by a person twenty-one (21) years or older, of useable marijuana, marijuana concentrates, or marijuana infused products in amounts that do not exceed those set forth in Section 23.03.05 [Commercial Marijuana Activity, Permitted Acts] of this code and in RCW 69.50.360(3) is not a violation of this section, this title, or any other provision of Tribal law.
- b) The Tribe shall assert no violation of any lease, sublease, or similar instrument based on a tenant's actions in compliance with this chapter. The Tribe has discretion to create any lease, sublease, or similar instrument that explicitly references this chapter and states an intent to prohibit tenant conduct that is otherwise permitted by this chapter.
- c) Any person 21 years of age or older who possesses more than the limits authorized in this section or who possesses any marijuana plants shall be guilty of a Misdemeanor 1.
- d) Any person under the age of 21 years, but at least 18 years old, who possesses, purchases, consumes, obtains or sells marijuana shall be guilty of a Misdemeanor 1, unless the person is a qualifying patient with a valid recognition card and possesses only amounts consistent with his or her~~their~~ authorization and no more than the limits set forth in RCW 69.51A.210. At sentencing, the Judge shall order the defendant to complete a mandatory substance abuse assessment.
- e) Any person under 18 years old who possess, purchases, consumes, obtains, or sells marijuana shall be guilty of a Misdemeanor 2, unless the person is a qualifying patient with a valid recognition card and possesses only amounts consistent with his or her~~their~~ authorization and no more than the limits set forth in RCW 69.51A.210. At hearing, the Judge shall order the defendant to complete a mandatory substance abuse assessment, and the Judge may order

one or more of the following to take the place of the sentence requirements under a Misdemeanor 2:

- 1) Zero to thirty (30) days of confinement;
- 2) Zero to twelve (12) months of probation;
- 3) Zero to one hundred fifty (150) hours of community service;
- 4) A fine not to exceed five hundred dollars (\$500); or
- 5) A drug treatment alternative approved by the Port Gamble S'Klallam Court.

If the minor completes all the sentencing requirements, the Judge may dismiss the Misdemeanor 2 charge.

f) Notwithstanding any other provision in this chapter, or in any provision of the laws of the State of Washington, including without limitation RCW 69.51A, no person, regardless of status as a qualifying patient under RCW 69.51A, may plant, grow, produce, cultivate, or process marijuana in any form, including all forms defined in Section 5.03.01, in ~~his or her~~their domicile or anywhere within the boundaries of the Port Gamble S'Klallam Reservation or on any tribal lands. The penalty for any violation of this subsection is covered in Sub-Section 5.03.09(a) of Marijuana Production, Processing, and Sale.

g) Unless the Port Gamble S'Klallam Tribe authorizes by resolution or other tribal law, a person cannot use marijuana in any public place, or possess marijuana within public view within the jurisdiction of the Port Gamble S'Klallam Tribe. Public view includes, but is not limited to: carrying marijuana on the body of a person where it is visible to the public, in an open bag, sticking out of a shirt or pants pocket, etc. Public places include, but are not limited to: tribal government offices, tribal businesses and enterprises (except for those authorized to sell marijuana), tribal schools, tribal parking lots, tribal government vehicles, tribally-owned open spaces such as all beaches, and tribal medical clinics. Any violation of this subsection shall constitute a civil infraction punishable by a fine not to exceed fifty dollars (\$50).

[HIST: Source - Resolution No. 17-A-064, passed 6/12/17. At the Tribal Council meeting on June 12, 2017, Council heard a public comment on the issue of individual tribal members growing marijuana for medical purposes. The Council passed the resolution but also decided to deviate from Washington State law and make it illegal for any individual on the reservation to grow marijuana regardless of having a WA State medical marijuana recognition card. The code was published with this change incorporated on July 18, 2017. Resolution No. 19-A-059, passed 6/24/19, amended this chapter to move this section to the end of the chapter so that all marijuana sections are together. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.03.09 Marijuana Production, Processing, and Sale

a) No person may plant, grow, produce, cultivate, or process marijuana in any form, including all forms defined in Section 5.03.01 Definitions, within the boundaries of the Port Gamble S'Klallam Reservation or on any tribal lands. The penalty for violations of this subsection are as follows:

1) A person who plants, grows, produces, cultivates, or processes six (6) or fewer marijuana plants shall be guilty of a Misdemeanor 2.

2) A person who plants, grows, produces, cultivates, or processes between seven (7) and fifteen (15) marijuana plants shall be guilty of a Misdemeanor 1.

3) A person who plants, grows, produces, cultivates, or processes over fifteen (15) marijuana plants shall be guilty of a Felony 2.

b) No person may sell marijuana, marijuana concentrates, marijuana-infused products, or useable marijuana within the boundaries of the Port Gamble S'Klallam Reservation or on any tribal lands.

Any violation of this subsection is a Felony 2.

The prohibitions contained in this section and in Section 5.03.03 do not apply to commercial marijuana activity authorized by the Tribal Code in Chapter 23.03, provided that such commercial marijuana activity is conducted in accordance with the Tribal Code.

The prohibitions contained in this section and in Section 5.03.03 do not apply to persons or entities as employees, agents, or vendors of any entity engaged in commercial marijuana activity authorized by the Tribal Code in Chapter 23.03, provided that such person or entity acts in accordance with the Tribal Code.

[HIST: Source - Resolution No. 17-A-064, passed 6/12/17. Resolution No. 17-A-093, passed 9/11/17, added the penalties for growing marijuana within the Tribe's jurisdiction. Resolution No. 19-A-059, passed 6/24/19, amended this chapter to move this section to the end of the chapter so that all marijuana sections are together.]

5.03.10 Medical Marijuana

a) Except as otherwise set forth in this section, it is not a violation of this chapter or any other provision of Tribal Law for a qualifying patient or designated provider who has been entered into the Washington State medical marijuana authorization database and who holds a valid recognition card to possess marijuana concentrates, marijuana-infused products, or usable marijuana for the personal medical use of the qualifying patient and in a manner that does not exceed the limits set forth in RCW 69.51A.210.

b) If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described in Section 23.03.05 of this code and in RCW 69.51A.210 for the qualifying patient and designated provider, whether the marijuana concentrates, marijuana-infused products, or usable marijuana are possessed individually or in combination between the qualifying patient and ~~his or her~~their designated provider.

c) Notwithstanding any provision of the laws of the State of Washington, including, without limitation, any provision of RCW 69.50.101 and 69.51A as they currently exist or are hereafter amended, no person may plant, grow, produce, cultivate, or process marijuana in any form, including all forms defined in Section 5.03.01, within the boundaries of the Port Gamble S'Klallam Reservation or on any tribal lands. No person may form a "cooperative" as defined in RCW 69.51A.250 for the purpose of planting, growing, producing, cultivating, or processing marijuana in any form within the boundaries of the Port Gamble S'Klallam Reservation or on any tribal lands.

d) No person shall grow marijuana within the jurisdiction of the Tribe despite having a medical marijuana recognition card issued by Washington State that specifies the amount of plants a patient may grow and the amount of useable marijuana that a patient may acquire from the plants.

Any violation of subsections a) or b) is a Misdemeanor 2.

Any violation of subsections c) or d) is covered in Sub-Section 5.03.04(a) of Marijuana Production, Processing, and Sale.

[HIST: Source - Resolution No. 17-A-064, passed 6/12/17. At the Tribal Council meeting on June 12, 2017, Council heard a public comment on the issue of individual tribal members growing marijuana for medical purposes. The Council passed the resolution but also decided to deviate from Washington State law and make it illegal for any individual on the reservation to grow marijuana regardless of having a WA State medical marijuana recognition card. Resolution No. 17-A-093, passed 9/11/17, added the penalties for growing marijuana within the Tribe's jurisdiction. Resolution No. 19-A-059, passed 6/24/19, amended this chapter to move this section to the end of the chapter so that all marijuana sections are together. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.03.11 Unauthorized Use of State Medical Marijuana Database

- a) It is unlawful for a person to knowingly or intentionally access the medical marijuana authorization database for any reason not related to the following:
- 1) Adding a qualifying patient or designated provider and noting the amount of product for which the qualifying patient is authorized;
 - 2) Confirming the validity of a recognition card;

- 3) Issuing a replacement recognition card for a card that is lost or stolen;
or
 - 4) A Port Gamble S'Klallam tribal police officer engaged in a bona fide specific investigation or a suspected marijuana-related activity that may be illegal under tribal law or state law to confirm validity of a recognition card.
- b) It is unlawful for a person to knowingly or intentionally:
- 1) Disclose any information received from the medical marijuana authorization database in violation of the provisions contained in RCW 69.51A.230, including but not limited to, qualifying patient or designated provider names, addresses, or amount of marijuana for which they are authorized;
 - 2) Produce a recognition card or to tamper with a recognition card for the purpose of having it accepted by a tribal medical marijuana retailer in order to purchase marijuana as a qualifying patient or designated provider [or to grow marijuana plants in accordance with this chapter];
 - 3) If a person is a designated provider to a qualifying patient, sell, donate, or supply marijuana produced or obtained for the qualifying patient for the designated provider's own personal use or benefit; or
 - 4) If the person is a qualifying patient, sell, donate, or otherwise supply marijuana produced or obtained by the qualifying patient to another person.

A person who violates this section is guilty of a Felony 2.

[HIST: Source – Resolution No. 17-A-064, passed 6/12/17.]

Chapter 5.04 Offenses Against the Community Peace, Morals, Safety and Welfare

5.04.01 Reckless Driving—REPEALED

[HIST: Source – Port Gamble S'Klallam Law and Order Code. Amendments – Resolution No. 84 A 03, passed 2/14/84 amended this section to include acts previously included in negligent driving and reckless driving. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution No. 20-A-086, passed 9/28/20, amended this Chapter to change offenses from Class A-D to felony-misdemeanor classification. This section was repealed due to replication—see 5.09.02 Reckless Driving.]

5.04.02 Disorderly Conduct

Any person who engages in fighting in a public or private place, disturbs or annoys any public or private assembly shall be guilty of a misdemeanor 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to state "private" rather than "religious" assembly. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class D to a misdemeanor 2.]

5.04.03 Gambling

Any person who sponsors any gambling device or engages in any gambling practice outside of social games without express authorization from the Port Gamble S'Klallam Tribe shall be guilty of a misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to increase the fine and to clarify. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.04.04 Prostitution—REPEALED

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to define and expand the crime of prostitution. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Repealed and replaced by Chapter 5.07 Rape—Sex Crimes—Public Indecency—Prostitution, Resolution No. 17-A-010, passed 1/23/17.]

5.04.05 Carrying a Concealed Firearm

Any person who knowingly conceals a firearm upon his person or who carries a firearm within the passenger compartment of any vehicle, without a valid permit to carry a concealed firearm shall be guilty of a misdemeanor 1.

It shall be a complete defense to this offense that the firearm located within the passenger compartment of a vehicle is, a) unloaded and b) is a hunting rifle, meaning a firearm that is not prohibited from use in hunting, under Title 18 of this code.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section deleting the element of "public places". The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.04.06 Firearm Violations

Any person who discharges any firearm which propels a missile capable of causing injury in any manner: a) within 1/4 mile of any dwelling without permission of the residents of the dwelling, b) creating a nuisance or hazard,

c) from or across any public highway, or d) near any gathering of people except in a firing range; or who knowingly allows any person whose behavior ~~he or she~~they ~~is~~are responsible for to violate any portion of this section, shall be guilty of a misdemeanor 1.

Any person found to be in violation of this section while the person is under the influence of an intoxicant shall be guilty of a felony 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section for clarity. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 17-A-064, passed 6/12/17 legalized marijuana and separated the Alcohol and Drug Related Offenses chapter into two different chapters. The second paragraph of this section was originally Section 5.03.17 Firearm Violation While Under the Influence of Intoxicants, but now it is combined with the Firearms Violations section. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalties from a Class C and B to a misdemeanor 1 and felony 2. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.04.07 Unlawful Possession of Firearms

a) It shall be unlawful for any person to possess a firearm who:

1) Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking, threatening, having contact with, or assaulting an intimate partner or family member as defined in this title 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 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; and

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

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

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, as defined by the laws of the Port Gamble S'Klallam Tribe, 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

Commented [JVW10]: This section was moved from Title 15.07.11. The definition was modified slightly to add clarity. Sentence levels were not modified.

family member as defined by this chapter.

b) Violation of this section is a felony 2 and may result in exclusion or banishment from the Port Gamble S'Klallam Tribal jurisdiction. 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.

c) Any person who is prohibited from possessing or purchasing a firearm under this section and who also claims tribal hunting rights under Title 18 must use a crossbow or other legal, non-firearm weapon for hunting purposes.

[HIST: Source – Adopted by Resolution [#], passed [DATE] section was moved from Title 15.]

5.04.078 Cruelty to Animals, Dog Fighting Prohibited

Any person who abandons, neglects, tortures, needlessly annoys or cruelly mistreats any animal, or causes or allows an animal to engage in fighting, or engage in any activity for the purpose of training a dog to engage in fighting, shall be guilty of a misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution No. 04 A 033, passed 3/09/04 which added the prohibitions regarding fighting and added subsection (4). Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.04.089 Failure to Send Children to School

Any person who, without good cause, fails to send his or hertheir children or any children under theirhis care to school, who have not reached their eighteenth (18th) birthday, shall be guilty of a misdemeanor 1.

It shall be a complete defense to this offense if the minor has graduated from high school or otherwise met educational requirements, is homeschooled, is emancipated, is incarcerated, is physically or mentally unable to attend, or is legally and regularly employed.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class D to a misdemeanor 1. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.04.0910 Failure to Control Animals

a) Any person who commits any of the following acts or omissions is guilty of a misdemeanor 1:

- 1) Any person who keeps, or has care or custody, of any animal known to be vicious or liable to attack or harass human beings or other animals, or known to possess any vicious or dangerous tendencies, unless such animal is securely kept to prevent injury to any person;
- 2) Any person who keeps or has care or custody of any animal that injures another person;
- 3) Any person who allows any pit bull dog to be present within the jurisdiction of the Port Gamble S'Klallam Tribe, unless ~~he or she~~that person meets every requirement of section 13.03.03 which provides a narrow exception to the ban on pit bulls;
- 4) Any person who keeps or has care or custody of any of a female dog who fails to keep the dog in confinement during any time period in which the dog is in heat. Confinement shall mean keeping the female dog indoors or in an enclosure, which prevents access by other dogs by any means including digging.
- 5) Any person who keeps or has care or custody of any dog that:
 - i) Causes physical damage to the property of another person;
 - ii) Roams, strays, runs in packs, or runs at large within any area under the jurisdiction of the Port Gamble S'Klallam Tribe;
 - iii) Chases any person, bicycle or motor vehicle;
 - iv) Harasses livestock;
 - v) Scatters garbage;
 - vi) Is allowed access to other dogs while the dog is in heat;
 - vii) Hampers traffic; or
 - viii) Digs holes in land not leased or assigned to the dog's owner.
- b) Any animal kept in violation of this section shall be subject to seizure, and impoundment as provided in chapter 13.03 of this code.
- c) No part of this section precludes any person bitten or wounded by any animal from bringing a civil cause of action for damages in the Port Gamble S'Klallam Community Court.

[HIST: Source - Resolution No. 87 A 13, passed 5/12/87. Amended by Resolution No. 04 A 033, passed 3/09/04 which substantially expanded this section and changed the title from Vicious Animals to Failure to Control Animals. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty

from a Class C to a misdemeanor 1. Amended by Res. [#], passed [DATE] to remove gendered pronouns.

5.04.110 Violating Provisions of a Restraining Order or Protection Order

- a) An act that violates a provision of any Protection Order that:
 - i) Was issued against the defendant; and
 - ii) Is enforceable by the Tribe.
- b) For the purposes of this section, "Protection Order" means
 - i) Any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
 - ii) Includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.
- c) Consent is not a defense to a charge of violation of a protection order.
- d) Violation of a protection order is a misdemeanor 1. A second or subsequent offense by the offender, whether in the same case or a separate case, is a felony 2.
- a) ~~Any person who violates the restraint provisions of a domestic violence protection order under Title 16 of this Code, knowing that the order has been issued against him or her, shall be guilty of a Class C offense.~~
- b) ~~Any person who violates the restraint provisions of a civil restraining or protection order under Title 3 of this Code, knowing that the order has been issued against him or her, shall be guilty of a Class C offense.~~
- c)e) Violation of a restraining or a protection order shall also constitute contempt of court and may be dealt with under Chapter 1.06 of this code.

[HIST: Source - Resolution No. 02 A 108, passed 12/17/02 adopted this section. Amended by Resolution 05-A-054, passed 6/14/05. Amended by Resolution 14-A-045, passed 3/25/14 to re-organize for clarity. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to misdemeanor 1. Amended by Res. [#], passed [DATE] to change the penalty to misdemeanor 1-felony 2, to add clarity regarding what constitutes a violation, to add a definition of protection order, and to provide that consent is not a defense.]

Commented [JVW11]: Both Title 5 and Title 15 currently provide a criminal offense for violating protection orders. This section was modified to combine the two with some additions from VAWA 2022.

Subsections (c) and (d) come from Title 15.07.10.

Subsection (e) comes from the current Title 5.04.10.

The subsection (a) and (b) language comes from VAWA 2022.

"Protection Order" definition is broad enough to capture restraining orders and more.

5.04.121 Harboring a Person Who Is Excluded or Banished

Any person who harbors, conceals or gives assistance to a person who is excluded or banished from the jurisdiction of the Port Gamble S'Klallam Tribe or who shall allow such excluded or banished person in his or hertheir dwelling, shall be guilty of a misdemeanor 1.

It shall be a complete defense to this offense that the defendant reported the presence of the excluded person to law enforcement within 24 hours of contact.

[HIST: Source = Amended by Resolution 05-A-054, passed 6/14/05. Amended by Resolution No. 15-A-029, passed 4/13/15, to include banishment language. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.04.132 Fireworks Offenses – Definitions

Fireworks are defined and regulated under Title 13 (Health and Safety), Chapter 13.01 of the Port Gamble S'Klallam Tribal Law and Order Code. The use of the terms “fireworks” and “discharge” and other terms relevant to fireworks use in this chapter shall have the same meaning as in Title 13 unless the context clearly requires another meaning.

[HIST: Source - Resolution 12-A-057, passed 4/24/12.]

5.04.143 Reckless Discharge of Fireworks

Any person who discharges fireworks in a reckless manner that creates substantial risk of property damage or death or serious physical injury to another, or who discharges fireworks while under the influence of intoxicants, or who discharges fireworks while a PGST burn ban is in effect shall be guilty of a misdemeanor 1.

Examples of reckless discharge of fireworks include, but are not limited to, discharge of fireworks within 300 feet of a fireworks stand or the edge of the Gliding Eagle Marketplace property, or discharge of fireworks from a moving vehicle.

[HIST: Source - Resolution 12-A-057, passed 4/24/12. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.04.154 Disruptive Discharge of Fireworks

Any person whose discharge of fireworks results in two or more reports within a two-hour period to Tribal Police regarding noise or other disturbance caused by fireworks, or who discharges fireworks after a law enforcement officer provides verbal notice to the person of a report of noise or other disturbance shall be guilty of a misdemeanor 2.

[HIST: Source - Resolution 12-A-057, passed 4/24/12. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class D to a misdemeanor 2.]

5.04.165 Violation of Fireworks Curfew

Any person who discharges fireworks on weekends between 2:00 a.m. and 10:00 a.m., or on weekdays from two hours after sunset until 10:00 a.m., shall be guilty of a misdemeanor 2. The weekday curfew begins two hours after sunset on Sunday or Monday at 12:01 a.m., whichever is earlier. The following are curfew exceptions:

- a. The Tribal Council or the Tribal Administrator may publish a modification or suspension of the fireworks curfew.
- b. This curfew shall not be in effect on the Fourth of July and New Year's Eve.

[HIST: Source - Resolution 12-A-057, passed 4/24/12. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class D to a misdemeanor 2.]

5.04.176 Allowing a Minor Child to Discharge Fireworks

Any person who allows a minor child to discharge fireworks shall be guilty of an offense if:

- a. The minor is eleven (11) years old or younger, and the discharge of fireworks causes injury to any person, including the minor, or property damage; or
- b. The minor is between the ages of twelve (12) and seventeen (17), and the discharge of fireworks causes injury to any person, including the minor, or property damage, and there is no adult supervision present at the time and location of the injury or damage.

If the minor's discharge of fireworks causes injury that requires emergency medical transport or hospitalization or causes property damage in excess of \$100.00, the charge shall be a misdemeanor 1.

If the minor's discharge of fireworks causes injury that does not require emergency medical transport or hospitalization, or the property damage is valued at \$100.00 or less, the charge shall be a misdemeanor 2.

A minor child who discharges fireworks and causes injury or property damage may be charged with any applicable offense.

[HIST: Source - Resolution 12-A-057, passed 4/24/12. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalties from a Class C and D to a misdemeanor 1 and 2.]

5.04.18Z Separate and Additional Offenses Related to Fireworks

The following offenses can be charged separately and additionally to other criminal offenses and the fireworks offenses specified above.

- a) Disorderly Conduct – Fireworks use may be charged as Disorderly Conduct.
- b) Arson – Fireworks use that causes actual injury or damage to property may be charged separately and additionally as Arson.

[HIST: Source - Resolution 12-A-057, passed 4/24/12.]

5.04.198 Delivery of Tobacco to Minor

Any person who gives, sells, or trades any product containing tobacco to a person under the age of eighteen shall be guilty of a misdemeanor 1.

It is a defense to prosecution of a commercial seller of tobacco products, including S’Klallam retail employees, that the person making the sale reasonably relied on governmentally issued identification that shows the purchaser’s age and bears his or hertheir photograph.

[HIST: Source - Resolution No. 96 A 035, passed 2/22/96. Amended by Resolution 05-A-054, passed 6/14/05. Resolution No. 17-A-064 legalized marijuana and split the drug and alcohol chapter into two different chapters. This section was originally Section 5.03.18 under Drug and Alcohol Offenses, and it is now part of Chapter 5.04 Offenses Against the Community Peace, Morals, Safety and Welfare. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1. Amended by Res. [DATE], passed [DATE] to remove gendered pronouns.]

Chapter 5.05 Offenses Related to Administration of Tribal Government

5.05.01 Resisting Arrest

Any person who willfully resists arrest by use of force shall be guilty of a misdemeanor 1.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section deleting “violence” from former “force or violence” language. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.02 Obstructing a Public Officer

Any person who willfully interferes in any way with the lawful process of a police officer, fireman, ambulance attendant, or emergency medical technician shall be guilty of a misdemeanor 1.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section adding “emergency medical technician”.

Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.03 Refusing to Aid Officer

Any person who fails to respond to a reasonable request for assistance by any law enforcement officer, ambulance attendant, fireman, or emergency medical technician shall be guilty of a misdemeanor 1.

[HIST: Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section adding "emergency medical technician". Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.04 Intimidation of a Public Officer-REPEALED

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84 Repealed by Resolution 05-A-054, passed 6/14/05.]

5.05.05 Escape

Any person in lawful custody for any offense who escapes, attempts escape or assists another to escape from lawful custody shall be guilty of a misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section for clarity. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.06 Perjury

Any person who knowingly makes a false statement under oath in any proceeding in the Community Court or who induces another person to do so shall be guilty of a misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section for clarification. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.07 Intimidating a Juror

Any person who, by use of a threat, attempts a) to influence the opinion, decision or vote of a juror in the Community Court or b) induces the juror to be absent from the proceeding shall be guilty of a misdemeanor 1.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84 Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.08 Intimidating a Witness

Any person who, by use of a threat, attempts a) to influence the testimony of a witness in any official proceeding or b) to induce the witness to be absent from the proceeding shall be guilty of a misdemeanor 1.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.09 Tampering with a Witness

Any person who attempts to induce a witness, or any person ~~he or she~~ they believes has been or may be called as a witness in any proceeding, to do any of the following shall be guilty of a misdemeanor 1:

- a) Testify or inform falsely;
- b) Avoid service of process;
- c) Absent ~~himself or herself~~ themselves from any proceeding or investigation;
or
- d) Withhold information from law enforcement or the Court.

The fact that a witness was not actually influenced or prevented from testifying shall not be a defense to a charge under this section.

[HIST: Source - Resolution No. 14-A-109, passed 8/11/14. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.05.10 Tampering with a Physical Evidence

Any person who, without legal right or authority, attempts any of the following shall be guilty of a misdemeanor 1:

- a) Destroying, mutilating, concealing, removing, or altering evidence with intent to impair its use, truthfulness, or availability in a current, a pending, or a prospective case; or
- b) Knowingly creating, presenting, or offering any false evidence with intent that it be introduced in a current, a pending, or a prospective case.

[HIST: Source - Resolution No. 14-A-109, passed 8/11/14. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.11 Misuse of Funds

Any person having lawful custody of property or funds not his own, including tribal funds, who appropriates such property or funds for his own

use or otherwise handles same in a manner not authorized by law shall be guilty of a misdemeanor 1.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84 Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.12 Official Misconduct

Any tribal official who intentionally commits an unauthorized act related to, or intentionally refrains from performing, a duty imposed upon ~~him or her~~ them by law shall be guilty of a misdemeanor 1.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1. Amended by Res. [§], passed [DATE] to remove gendered pronouns.]

5.05.13 Bribery

Any person who offers or gives anything of monetary value to any person acting on behalf of the Port Gamble S'Klallam Tribe with intent to influence his decision on any official matter is guilty of bribery. Any person acting on behalf of the Tribe who accepts anything of monetary value upon an understanding that a decision on an official matter shall be influenced thereby is guilty of a misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section for clarification. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.14 Unlawful Arrest/False Charges

Any person who knowingly makes or causes to be made any unlawful arrest or false charge against another person shall be guilty of a misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section for clarification. Amended by Resolution 05-A-054, passed 6/14/05 to modify the name of the offense. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class C to a misdemeanor 1.]

5.05.15 Assault of Police Dog

Any person who threatens to harm; attempts to harm; or who intentionally injures, disables, shoots or kills; by any means, any dog that the person knows or should have reasonably known to be a police dog, whether or not the dog in actually engaged in police work at the time, shall be guilty of a felony 2.

[HIST: Source – Adopted on an interim basis by Resolution No. 02 A 19, passed 2/12/02. Final adoption by Resolution No. 02A 41, passed 3/11/02 following a public hearing.

Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class B to a felony 2.]

5.05.16 Failure to Appear/Bail Jumping.

Any person having been released by court order or admitted to bail with the requirement of a subsequent personal appearance before the Court, and knowingly fails without lawful excuse to appear as required is guilty of a misdemeanor 1. Unless otherwise established, the failure to appear when required shall be inferred to have been without lawful excuse.

[HIST: Source – Adopted by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalty from a Class B to a misdemeanor 1.]

Chapter 5.06 Other Offenses

5.06.01 Violation of Tribal Ordinance—REPEALED

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended to delete reference to the Secretary of Interior and to permit sentencing for violation of ordinances that don't provide other sanctions. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, repealed this section because there is no current criminal penalty in this code that does not have a specific designated penalty.]

5.06.02 Criminal Attempt

Any person who, with intent to commit a specific crime, does any act which is a substantial step toward committing that crime shall be guilty of an offense and punishable as follows:

Criminal attempt of a felony 1 shall be punished as a felony 2;

Criminal attempt of a felony 2 shall be punished as a misdemeanor 1;

Criminal attempt of a misdemeanor 1 shall be punished as a misdemeanor 2;

Criminal attempt of a misdemeanor 2 shall be punished by a sentence that is less than the maximum provided for the misdemeanor 2 range.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. Amended by Resolution 05-A-054, passed 6/14/05. Resolution 20-A-086, passed 9/28/20, amended this section to change the penalties from Class A-D to felony misdemeanor.]

5.06.03 Aiding and Abetting

Any person who knowingly aids and abets another person to commit an act or engage in conduct which is unlawful under the laws of the Port Gamble S'Klallam Tribe shall be guilty of the offense aiding and abetting and upon conviction thereof shall be sentenced in the same manner and to the same degree as if he or she that person had committed the primary offense.

[HIST: Source - Port Gamble S'Klallam Law and Order Code, 9/13/79 Amended by Resolution 05-A-054, passed 6/14/05. Amended by Res. [REDACTED], passed [DATE] to remove gendered pronouns.]

Chapter 5.07 Rape—Sex Crimes—Public Indecency—Prostitution

5.07.01 Definitions

When the words listed in this section appear in this chapter, they shall have the following meaning unless a different meaning is clearly intended.

- a) "Accessory" means a person who aids, abets, commands, or counsels another in the commission of a crime.
- b) "Consent" means that at the time of the act of sexual intercourse there are actual words or conduct indicating freely given agreement to have sexual intercourse.
- c) "Forcible compulsion" means physical force that overcomes resistance, or a threat, expressed or implied, that places a person in fear of death or physical injury to ~~herself or himself~~ ~~themselves~~ or another person, or in fear that ~~he or she~~ ~~they~~ or another person will be harmed.
- d) "Married" means one who is legally married to another.
- e) "Mental incapacity" is the condition existing at the time of the offense that prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance, or from some other cause.
- f) "Minor" means a person under eighteen years of age.
- g) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate an unwillingness to an act.
- h) "Position of trust or authority" means, but is not limited to, the special authoritative or confidential relationships relating to the provision of education, health care, any kind of counseling, coaching, religious advice, public safety services, or other professional services.
- i) "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.

j) "Sexual Motivation" means that one of the purposes for which the defendant committed the crime was for ~~his or her~~their sexual gratification.

k) "Sexual touching" or "sexual act" means any touching of the sexual or other intimate parts of a person done for the purpose of arousing or gratifying the sexual desire of any person, or for the purpose of abusing, humiliating, harassing, or degrading another person.

l) "Sexually Explicit Conduct" means any actual or simulated sexual act.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17 created this new chapter on sex crimes. Previously, the crimes of rape and indecent liberties existed as Sections 5.01.08 and 5.01.09 under Chapter 5.01 Offenses Against the Person. This new chapter expanded the crime of rape into degrees and added several other sex-related crimes that were previously not listed in the PGST Criminal Code. Resolution No. 20-A-019, passed 2/10/20 added definitions for minor, position of trust or authority, sexual motivation, sexual touching, and sexually explicit conduct. Amended by Res. [], passed [DATE] to remove gendered pronouns.]

Commented [JWV12]: Add electronic/social media component in these definitions?

5.07.02 Testimony—Evidence—Written Motion—Admissibility

a) In order to convict a person of any rape, sex crime, public indecency, or prostitution offenses, it shall not be necessary that the testimony of the alleged victim be corroborated.

b) Evidence of the victim's past sexual behavior, including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, non-chastity, or sexual conduct contrary to community standards is inadmissible on the issue of credibility, and it is inadmissible to prove the victim's consent except as provided in subsection C of this section. However, when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when past behavior is material to the issue of consent, then evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

c) In any prosecution for the crime of rape, or for an attempt to commit rape, or for an assault with an intent to commit rape, evidence of the victim's past sexual behavior, including but not limited to the victim's marital behavior, divorce history, or general reputation for promiscuity, non-chastity, or sexual conduct contrary to community standards is not admissible if offered to attack the credibility of the victim, but it is admissible on the issue of consent only under the following procedure:

1. A written pretrial motion shall be made by the defendant to the Court and prosecutor stating that the defense has an offer of proof of the evidence of

the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim;

2. The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated;
3. If the Court finds that the offer of proof is sufficient, the Court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the Court.
4. At the conclusion of the hearing, if the Court finds that the evidence the defendant is offering regarding the past sexual behavior of the victim is:
 - i) Relevant to the issue of the victim's consent;
 - ii) Not inadmissible because its probative value is subsequently outweighed by the probability that its admission will create a substantial danger of undue prejudice; and
 - iii) Imperative to the defendant's right to a fair trial in that exclusion of the evidence would result in denial of substantial justice to the defendant, thenthe Court shall make an order stating what evidence may be introduced by the defendant and the nature of the questions to be permitted. The defendant may then offer evidence under the order of the Court.
5. Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior, but the Court may require a hearing under subsection C of this section concerning such evidence.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17.]

5.07.03 Defense to Prosecution Under This Chapter

In any prosecution under this chapter in which lack of consent is based solely upon the victim's mental incapacity or upon the victim being physically helpless, it is a defense that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless. The defendant has the burden of proof by a preponderance of the evidence.

In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older. It is a defense that at the time of the offense the defendant reasonably believed the alleged victim to be older based upon declaration as to age by

the alleged victim. The defendant has the burden of proof by a preponderance of the evidence.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17.]

5.07.04 Rape in the First Degree

A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

- a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or
- b) Kidnaps the victim; or
- c) Inflicts serious physical injury; or
- d) Unlawfully enters into the building or vehicle where the victim is situated.

Rape in the first degree is a felony 1. The Court shall not grant a deferred sentence to any person convicted of rape in the first degree, except for the purpose of commitment to an inpatient treatment facility.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17.]

5.07.05 Rape in the Second Degree

A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

- a) By forcible compulsion; or
- b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated.

Rape in the second degree is a felony 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17.]

5.07.06 Rape in the Third Degree

A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degree, such person engages in sexual intercourse with another person:

- a) Where the victim did not consent to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct; or
- b) Where there is a threat of substantial unlawful harm to property rights of the victim.

Rape in the third degree is a felony 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17.]

5.07.07 Rape of a Child in the First Degree

A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve (12) years old and the perpetrator is at least twenty-four (24) months older than the victim.

Rape of a Child in the first degree is a felony 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17. Resolution No. 20-A-019, passed 2/10/20 changed the name of this violation from Statutory Rape to Rape of a Child.]

5.07.08 Rape of a Child in the Second Degree

A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve (12) years old but less than fourteen (14) years old and the perpetrator is at least thirty-six (36) months older than the victim.

Rape of a Child in the second degree is a felony 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17. Resolution No. 20-A-019, passed 2/10/20 changed the name of this violation from Statutory Rape to Rape of a Child.]

5.07.09 Rape of a Child in the Third Degree

A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen (14) years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight (48) months older than the victim.

Rape of a Child in the third degree is a felony 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17. Resolution No. 20-A-019, passed 2/10/20 changed the name of this violation from Statutory Rape to Rape of a Child.]

5.07.10 Child Molestation

A person is guilty of child molestation if he or shethat person knowingly engages in a sexual act with a minor who is under the age of sixteen (16) and the person engaging is at least four (4) years older than the minor.

Child Molestation is a felony 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 20-A-019, passed 2/10/20 created new language for the violation of child molestation. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.07.11 Luring

A person is guilty of luring if he or shethat person:

- a) Entices, orders, lures, or persuades a child under the age of sixteen (16) or a person with a developmental disability into any area, structure, vehicle, boat, or other place that is obscured from or inaccessible to the public with a sexual motivation.

Luring is a misdemeanor 1, unless the offender has previously been convicted of a felony sexual offense or has previously been convicted under this section or a similar law in any jurisdiction, in which case luring is a felony 2. Upon conviction of luring, the offender may be required by the Court to undergo medical evaluation and treatment. The Court may order this in addition to or instead of any other sentence imposed by the Court.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17. Resolution No. 20-A-019, passed 2/10/20 added language to this section and changed the title from Child Molestation to Luring. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.07.12 Abusive Sexual Touching

Any person who knowingly engages in or causes or attempts sexual touching, as defined in this section, with or by another person in any one of the following circumstances commits the crime of abusive sexual touching:

- a) By using force against the other person;
- b) By in any way threatening or causing fear in the other person;
- c) When the other person is a child under the age of thirteen (13);
- d) When the other person is unconscious or physically or mentally incapable of declining participation or communicating unwillingness to engage in sexual activity for any reason including, but not limited to, physical handicap, mental disability, alcohol, or drug intoxication;

- e) When the defendant is in a position of trust or authority with respect to the other person, and takes advantage of that position to cause sexual touching; or
- f) When the defendant is related to the victim as an ancestor, descendant, or sibling, aunt, uncle, niece, nephew, or first cousin.

Abusive sexual touching is a felony 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17.]

5.07.13 Indecent Exposure

A person is guilty of indecent exposure if ~~he or she~~that person, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person, expose's ~~his or her~~their genitals under circumstances in which the person knows the conduct is unwanted and likely to cause reasonable affront or alarm.

Indecent exposure is a misdemeanor 2 unless such person exposes ~~himself or herself~~themselves to a person under the age of fourteen (14) years, in which case indecent exposure is a misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17. Resolution No. 20-A-019, passed 2/10/20 created new language for this section and changes the title from Public Indecency to Indecent Exposure. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.07.14 Voyeurism

A person is guilty of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, ~~he or she~~that person knowingly views, photographs, or films 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~~they would have a reasonable expectation of privacy, whether in a public or private place.

Voyeurism is a Misdemeanor 1. If a person is convicted of a violation of this section, the Court may order the destruction of any photograph, film, digital image, videotape, or any other recording of an image that was made by the person in violation of this section.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 20-A-019, passed 2/10/20 created this new section. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.07.15 Sexually Explicit Communication with a Minor

A person is guilty of Sexually Explicit Communication with a Minor if, for the purpose of arousing or gratifying the sexual desire of any person, ~~he or~~

shethat person communicates about sexually explicit conduct with a minor or with someone he or shethat person believes to be a minor.

Sexually Explicit Communication with a Minor is a misdemeanor 1.

This section does not apply to a minor who communicates about sexually explicit conduct with another consenting minor who is fourteen years of age or older.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 20-A-019, passed 2/10/20 created this new section. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.07.16 Possession or Viewing of Child Pornography

A person is guilty of Possession or Viewing of Child Pornography if he or shethat person possesses or intentionally views digital or printed matter depicting a minor engaged in sexually explicit conduct.

Possession or Viewing of Child Pornography is a felony 2.

For the purposes of determining whether a person intentionally viewed digital or printed matter depicting a minor engaged in sexually explicit conduct, the Court shall consider the title, text, and content of the matter. For digital images, the Court may consider the internet history, search terms, thumbnail images, downloading activity, expert computer forensic testimony, the number of images, the defendant's access to and control over the electronic device and its contents, or any other relevant evidence. The Tribe must prove beyond a reasonable doubt that the viewing was initiated by the user of the device where the viewing occurred.

This section does not apply to a minor who intentionally views digital or printed matter depicting himself or herselfthemselves or depicting a minor fourteen years of age or older who knowingly and willingly engaged in

sexually explicit conduct and consented to the creation of the depiction without coercion.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 20-A-019, passed 2/10/20 created this new section. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.07.17 Prostitution

A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee. Fees include money, property, goods, or services, or other things of value.

Prostitution is a misdemeanor 2.

It is a complete defense to the charge of prostitution if the person who engages in sexual conduct in return for a fee is under eighteen (18) years old.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to define and expand the crime of prostitution. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. This was Section 5.04.04 under Chapter 5.04 Offenses Against the Community Peace, Morals, Safety, and Welfare until 1/23/17. Resolution No. 17-A-010, passed 1/23/17, moved this section to become a part of new Chapter 5.07 on Sex Crimes.]

5.07.18 Prostitution—Sex of Parties Immaterial

In any prosecution for prostitution, the sex of the parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is not a defense that:

- a) Such persons were the same sex; or
- b) The person who received, agreed to receive, or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was female.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17.]

5.07.19 Promoting Prostitution—Definitions

For the purposes of Sections 5.07.14, 5.07.15, and 5.07.16, the following definitions apply:

- a) "Advances prostitution." A person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he or she that person causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house, room, vehicle, or other space for an act of prostitution or as a prostitution enterprise, or

engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

- b) "Profits from prostitution." A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or shethat person accepts or receives money or other property under an agreement or understanding with any person whereby he or shethey participates or plans to participate in the proceeds of prostitution activity.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17. Amended by Res. #1, passed [DATE] to remove gendered pronouns.]

5.07.20 Promoting Prostitution in the First Degree

A person is guilty of promoting prostitution in the first degree if he or shethat person knowingly:

- a) Advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution that results from such threat or force; or
- b) Advances or profits from prostitution of a person less than eighteen (18) years old.

Promoting prostitution in the first degree is a felony 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17. Amended by Res. #1, passed [DATE] to remove gendered pronouns.]

5.07.21 Promoting Prostitution in the Second Degree

A person is guilty of promoting prostitution in the second degree if he or shethat person knowingly:

- a) Profits from prostitution; or
- b) Advances prostitution.

Promoting prostitution in the second degree is a felony 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17. Amended by Res. #1, passed [DATE] to remove gendered pronouns.]

5.07.22 Permitting Prostitution

A person is guilty of permitting prostitution if, having possession or control of premises, vehicle, or other space that he or shethey knows is being used for

prostitution purposes, ~~he or she~~that person fails without lawful excuse to make reasonable effort to halt or abate such use.

Permitting prostitution is a misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17. Amended by Res. #1, passed [DATE] to remove gendered pronouns.]

5.07.23 Sex Trafficking

A person is guilty of sex trafficking if, that person knowingly:

- a) recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or
- b) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of section (a) above,

knowing, or, except where the act constituting the violation of section (a) above is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion defined in section (c) below, or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act.

c) The term "coercion" for the purposes of this section means:

- 1) Threats of serious harm to or physical restraint against any person;
- 2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- 3) The abuse or threatened abuse of law or the legal process.

d) The term "participation in a venture" for the purposes of this section means knowingly assisting, supporting, or facilitating a violation of subsection (a).

e) The term "commercial sex act" for the purposes of this section means any sex act, on account of which anything of value is given to or received by any person.

A person is guilty of sex trafficking when he or she is knowingly involved in the recruitment, harboring, transportation, provision, or obtaining of a person for

Commented [JWV13]: This section has been modified to use the federal statutory definition of Sex Trafficking, required by VAWA 2022 for STCJ and recited in 18 USC 1591(a). The sentence level remains the same as the current provision.

Unlike other covered crimes, VAWA 2022 imposes a this definition of "Sex Trafficking" for non-Indian offenders. This definition is more specific than current Tribal offense, but also captures a broader range of conduct.

Commented [JWV14]: Do we want to include definitions of "participation in a venture" and "commercial sex act"?

Commented [JWV15R14]: Yes, include those definitions

~~the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion.~~

f) _____ Sex trafficking is a felony 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-010, passed 1/23/17. Amended by Res. [#] passed [DATE] to change the definition of the offense of Sex Trafficking to mirror the federal statutory language in 18 U.S.C. § 1591(a) for purposes of implementing VAWA 2022.]

Chapter 5.08 Liquor

5.08.01 Reference

In addition to the offenses set forth in this section, activities related to liquor within the jurisdiction of the Port Gamble S'Klallam Tribe shall be controlled by Title 14 the Liquor Code of the Port Gamble S'Klallam Tribe's Law and Order Code.

[HIST: Source - Resolution No. 17-A-064, passed 6/12/17. After serious deliberation, the Port Gamble S'Klallam Tribe has determined that present day circumstances, including the Washington State's legalization of marijuana, make a complete ban of marijuana within Tribal Lands ineffective and unrealistic, and the Tribe has decriminalized its possession in very limited circumstances. In order to incorporate this change into the criminal code, the previous chapter on drugs and alcohol was divided into two chapters, and this new chapter on liquor is a result of that change.]

5.08.02 Illegal Sale, Purchase, Possession of Liquor; Illegal Transfer or Use of I.D.

No person shall:

- a) Sell or offer for sale by the drink, bottle, or container or keep or possess with intent to sell any liquor, except as authorized by the Port Gamble S'Klallam Liquor Code;
- b) Manufacture any liquor with intent to sell within the Tribe's jurisdiction;
- c) Purchase liquor from any other person other than at a duly authorized tribal liquor store or other business authorized to sell liquor within the Tribe's jurisdiction;
- d) Transfer an identification of age to a minor for the purpose of permitting such minor to obtain liquor; however, corroborative testimony of a witness other than a minor shall be a requirement of conviction; or
- e) Attempt to purchase liquor through the use of false or altered identification, which falsely shows the individual to be over the age of twenty-one (21) years.

Any violation of this section is a Misdemeanor 1.

[HIST: Source - Resolution No. 17-A-064, passed 6/12/17. This section was expanded from the previously existing section entitled "Liquor Violations" that prohibited selling, trading, transporting, or manufacturing alcohol on the reservation without Tribal authorization. Original L.H. for Liquor Violations: Resolution No. 84 A 03, passed 2/14/84 amended this section for clarity. Amended by Resolution 05-A-054, passed 6/14/05.]

5.08.03 Minor in Possession of Liquor

No person under twenty-one (21) years of age shall purchase, possess, obtain, or sell any liquor.

Any violation of this section is a Misdemeanor 2.

[HIST: Source - Resolution No. 02 A 108, passed 12/17/02 adopted this section, and repealed the civil infraction of Minor in Possession of Alcohol. Resolution No. 89-A-51, passed 4/27/89. Amended by Resolution 05-A-054, passed 6/14/05. Resolution No. 17-A-064, passed 6/12/17, amended this section number to fit into new Chapter 5.08 Liquor.]]

[Cross Reference - Section 8.01.02 of the Port Gamble S'Klallam Law and Order Code requires notice of all proceedings involving a person under the age of eighteen to be given to the parent, guardian, or custodian as well as the minor. Amended by Resolution 05-A-054, passed 6/14/05.]

5.08.04 Minor Consuming Liquor

No person under twenty-one (21) years of age shall consume any liquor.

"Consume" means the act of consuming liquor, the condition of having consumed liquor, and the condition of being under the influence of liquor.

Any violation of this section is a Misdemeanor 2.

[HIST: Source - Resolution No. 02 A 108, passed 12/17/02 adopted this section, and repealed the civil infraction of Minor Under the Influence of Alcohol. Resolution No. 89-A-51, passed 4/27/89. Amended by Resolution 05-A-054, passed 6/14/05. Resolution No. 17-A-064, passed 6/12/17, amended this section number to fit into new Chapter 5.08 Liquor.]

[Cross Reference - Section 8.01.02 of the Port Gamble S'Klallam Law and Order Code requires notice of all proceedings involving a person under the age of eighteen to be given to the parent, guardian, or custodian as well as the minor and Section 8.01.06 requires the parent, guardian, or custodian to attend all proceedings for minors under the age of 18.]

5.08.05 Delivery of Liquor to Minor

Any person who gives, sells, or trades any alcoholic beverage to a person under the age of twenty-one shall be guilty of a Felony 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section increasing the maximum fine. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution No. 17-A-064, passed 6/12/17, amended this section number to fit into new Chapter 5.08 Liquor and to change the sentence for this offense from a Class A to a Felony 2.]

5.08.06 Social Host Liability

Any person who permits or fails to take action to prevent one or more persons under the age of twenty-one (21) years of age to possess, consume, ingest, or otherwise use alcohol in or on any property including a residence, building, land assignment or outdoor property, including a shed, garage, or other structure, motor vehicles or water crafts, site owned, leased or otherwise controlled by the social host, shall be guilty of a Felony 2.

The person shall be guilty of social host liability when the person knew that the conduct took place on ~~his or her~~their property and the person permitted such conduct or failed to take action to prevent such conduct. In addition, hosts who allow underage drinking and or supply the alcohol that is consumed or possessed by the minors may be in violation of delivery of alcohol to a minor, aiding or abetting minor in possession of alcohol or minor under the influence of alcohol, contributing to the criminal act of a minor, or endangering the welfare of a child.

[HIST: Source - Resolution No. 10 A 063, passed 06/08/10 adopted this section. Resolution No. 17-A-064, passed 6/12/17, amended this section number to fit into new Chapter 5.08 Liquor and to change the sentence for this offense from a Class A to a Felony 2. Amended by Res. [#], passed [DATE] to remove gendered pronouns.]

5.08.07 Opening or Consuming Liquor in a Public Place

No person shall open a package containing liquor or marijuana or consume liquor or marijuana in a public place.

However, the Tribe may permit the consumption of liquor in public places that it specifically identifies for that purpose.

Any violation of this section is a Misdemeanor 2.

[HIST: Source - Resolution No. 17-A-064, passed 6/12/17.]

5.08.08 Intoxication in a Public Place—Nuisance

No person shall be under the influence of intoxicating liquor or drugs or glue in any public place who acts in a manner causing a public nuisance.

Intoxication in a Public Place—Nuisance is a Misdemeanor 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section slightly for clarity. Amended by Resolution 05-A-054, passed 6/14/05. Resolution No. 17-A-064, passed 6/12/17, amended this section number to fit into new Chapter 5.08 Liquor.]

Chapter 5.09 Driving a Motor Vehicle

5.09.01 Driving While Under the Influence of Intoxicating Liquor or Drugs or Glue

A person is guilty of driving while under the influence of intoxicating liquor or any drug or glue if ~~he or she~~that person drives a vehicle within the jurisdiction of the Port Gamble S'Klallam Tribe while:

- a) ~~He or she h~~Having a 0.08 grams or more of alcohol per two hundred ten (210) liters of breath as shown by analysis of the person's breath;
- b) ~~He or she has~~Having 0.08 percent of more weight of alcohol in the person's blood as shown by analysis of the person's blood;
- c) ~~He or she has~~Having a THC concentration of 5.00 ~~nanograms per milliliter of a person's whole blood~~or more; or
- d) ~~He or she is u~~Under the influence of or affected by intoxicating liquor or any drug or glue or other mind-altering substance.

Commented [JVW16]: The current offense is missing a unit of THC concentration. This is likely was likely a typo, but prevents the Tribe from enforcing this offense.

The fact that any person charged with a violation of this section is or has been entitled to the use of such drug under the laws of the Tribe or of any other Tribe or state shall not constitute a defense against any charge of violating this section.

Driving while under the influence is a Misdemeanor 1. If a person has 2 previous convictions in the Tribal Court under this section within ten (10) years of each other, the third charge shall be a Felony 1.

[HIST: Source - Resolution No. 17-A-064, passed 6/12/17. After serious deliberation, the Port Gamble S'Klallam Tribe has determined that present day circumstances, including the Washington State's legalization of marijuana, make a complete ban of marijuana within Tribal Lands ineffective and unrealistic, and the Tribe has decriminalized its possession in very limited circumstances. In order to incorporate this change into the criminal code, the previous chapter on drugs and alcohol was divided into two separate chapters—Liquor and Controlled Substances. This new Chapter on Driving a Motor Vehicle incorporates driving while under the influence of marijuana into the PGST criminal code and turns some offenses that were previously only civil offenses under Title 9 into criminal offenses under Title 5. Amended by Res. [§], passed [DATE] to remove gendered pronouns and to add unit of THC concentration.]

5.09.02 Reckless Driving

A person is guilty of reckless driving when ~~he or she~~that person operates any motor vehicle within the jurisdiction of the Port Gamble S'Klallam Tribe in a manner that endangers or is likely to endanger any person or property.

Reckless driving is a Misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to include acts previously included in negligent driving and reckless driving. The mandatory pre-sentence evaluation was passed 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05. Resolution No. 17-A-064, passed 6/12/17, amended this section number to fit into new Chapter 5.09 Driving a Motor Vehicle. Amended by Res. [§], passed [DATE] to remove gendered pronouns.]

5.09.03 Hit and Run of Unattended Car or Other Property

A person is guilty of hit and run of an unattended car or other property when, as operator of any vehicle that collides with any other vehicle or other property that is unattended, ~~he or she~~that person fails to immediately stop and either locate and notify the owner or operator of the hit vehicle or other property or to leave written notice in a conspicuous place in or on the vehicle or other property. Notice shall consist of the name, address, and phone number of the person who was operating the vehicle that struck another vehicle or other property.

Hit and run of an unattended car other property is a Misdemeanor 1.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-064, passed 6/12/17. This section previously existed only in Title 9 as a civil offense. This code amendment made this section a criminal offense under new Chapter 5.09 Driving a Motor Vehicle. Amended by Res. [§], passed [DATE] to remove gendered pronouns.]

5.09.04 Hit and Run of an Attended Vehicle or Other Property

A driver of any vehicle involved in an accident resulting in the injury or death of any person or damage to any attended vehicle is guilty of hit and run of an attended vehicle or other property if ~~he or she~~that driver fails to do any of the following:

- a) Immediately stop at the scene of the accident or as close to it as possible without obstructing traffic more than necessary, and to remain at the scene of the accident until ~~he or she~~that person has fulfilled the requirements of this section;
- b) Give ~~his or her~~their name, address, vehicle license number and driver's license number to any occupant or driver involved in the accident;
- c) Render reasonable assistance to any person injured in such accident. Compliance with this requirement shall not be evidence of the liability of any driver for such accident; and
- d) Notify the Port Gamble S'Klallam Tribal Police as soon as possible following the accident.

Hit and run of an attended vehicle or other property is a Felony 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-064, passed 6/12/17. This section previously existed only in Title 9 as a civil offense. This code

amendment made this section a criminal offense under new Chapter 5.09 Driving a Motor Vehicle. Amended by Res. [§], passed [DATE] to remove gendered pronouns.

5.09.05 Operating a Motor Vehicle While Privilege is Suspended or Revoked--
REPEALED

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-064, passed 6/12/17. This section previously existed only in Title 9 as a civil offense. This code amendment made this section a criminal offense under new Chapter 5.09 Driving a Motor Vehicle.]

5.09.06 Eluding a Law Enforcement Officer

A person is guilty of eluding a law enforcement officer who, while driving any motor vehicle, fails or refuses to immediately bring his or her their own vehicle to a stop after being given a visible or audible signal by a law enforcement officer.

Eluding a law enforcement officer is a Felony 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-064, passed 6/12/17. This section previously existed only in Title 9 as a civil offense. This code amendment made this section a criminal offense under new Chapter 5.09 Driving a Motor Vehicle. Resolution No. 18-A-047, passed 5/14/18, repealed this section and removed it from the criminal code. Driving without a license remains in Title 9 as a civil offense. Amended by Res. [§], passed [DATE] to remove gendered pronouns.]

5.09.07 Prohibited Use of Alcoholic Beverages in Vehicle

A person is guilty of prohibited use of alcoholic beverages in a vehicle if that person:

- a) He or she drinks any alcoholic beverages in a motor vehicle when the vehicle is upon a roadway;
- b) He or she has an open or unsealed receptacle containing an alcoholic beverage in his or her their possession while in a motor vehicle or while the vehicle is upon a roadway; or
- c) He or she is the driver of a motor vehicle that is on a roadway and in which an open or unsealed receptacle containing an alcoholic beverage is present, unless the receptacle is kept in the trunk or other area of the vehicle that is not normally accessible to the occupants.

Prohibited use of alcoholic beverages in a vehicle is a Misdemeanor 2.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Resolution No. 17-A-064, passed 6/12/17. This section previously existed only in Title 9 as a civil offense. This code

amendment made this section a criminal offense under new Chapter 5.09 Driving a Motor Vehicle. Amended by Res. [§], passed [DATE] to remove gendered pronouns.]

Chapter 5.10 Special Tribal Criminal Jurisdiction

5.10.01 Assertion of Special Tribal Criminal Jurisdiction

- a) The Tribe exercises Special Tribal Criminal Jurisdiction over non-Indians for acts occurring on Tribal lands pursuant to 25 U.S.C. § 1304 for the criminal conduct included in this Chapter.
- b) The Tribe will only exercise Special Tribal Criminal Jurisdiction in a criminal proceeding if the alleged offense occurred in the Tribe's Indian Country.

For the purposes of this chapter, the term Indian Country shall mean:

- 1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
 - 2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state;
 - 3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and
 - 4) The Tribe's historical land base known as the Port Gamble S'Klallam Reservation and all lands now held or hereafter acquired by or for the Tribe that are held in trust for the Tribe by the United States, or as may otherwise be provided under federal law.
- c) If neither the defendant nor the alleged victim is an Indian, the Tribe will not exercise Special Tribal Criminal Jurisdiction in a criminal proceeding of an alleged offense, other than Assaults of Tribal Justice Personnel or Obstruction of Justice.

5.10.02 Domestic Violence

The Tribe asserts Special Tribal Criminal Jurisdiction over offenses of Domestic Violence offenses as defined in section 5.01.17 of this Title.

5.10.03 Child Violence

Commented [JVW17]: Recites the requirements of VAWA 2022, moved and modified from Title 15.02.03.

Commented [JVW18]: Assertion of Special Tribal Criminal Jurisdiction

Commented [JVW19]: Recites VAWA's Indian Country requirement. Definition was modified slightly to make it clear that the Tribe's trust lands are "Indian Country" under federal law (*Oklahoma Tax Comm'n v. Potawatomi*, 498 U.S. 505 (1991)).

- a) The Tribe asserts Special Tribal Criminal Jurisdiction over any offense listed in this Title that involved the use, threatened use, or attempted use of violence against a child.
- b) The term “child” for the purposes of this section means a person who has not attained the age of 18.
- c) The term “violence” for the purposes of this section means an act which results or is likely to result in death, serious physical or emotional harm, or sexual abuse or exploitation of the child victim.

Commented [JVW20]: Added a broad definition of “violence” to capture the largest range of non-Indian conduct under this covered crime

5.10.04 Sexual Violence

The Tribe asserts Special Tribal Criminal Jurisdiction over any offense listed in this Title that involved a nonconsensual sexual act or contact, including situations where the victim lacks the capacity to consent to the act.

5.10.05 Sex Trafficking

The Tribe asserts Special Tribal Criminal Jurisdiction over any Sex Trafficking offense as described in section 5.07.23 of this Title.

5.10.06 Violation of a Protection Order

The Tribe asserts Special Tribal Criminal Jurisdiction over any Violation of a Protection Order offense as described in section 5.04.11 of this Title, when the following additional conditions are met:

- a) The alleged act violates the portion of the protection order that prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
- b) The Protection Order is consistent with 18 U.S.C. § 2265(b).

Commented [JVW21]: Additional requirements from VAWA 2022, 25 USC §1304(a)(17)(B)(i) & (iv)

For purposes of this section, “victim” means a person specifically protected by a protection order that the defendant allegedly violated.

5.10.07 Stalking

The Tribe asserts Special Tribal Criminal Jurisdiction over any offense of Stalking as described in section 5.01.14.

5.10.08 Assault of Tribal Justice Personnel

The Tribe asserts Special Tribal Criminal Jurisdiction over any offense listed in this Title that involved the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the

Tribe or serving the Tribe during, or because of, the performance or duties of that individual in:

- a) Preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a crime included in Chapter 5.10;
- b) Adjudicating, participating in the adjudication of, or supporting the adjudication of a crime included in Chapter 5.10;
- c) Detaining, providing supervision for, or providing services for persons charged with a crime included in Chapter 5.10; or
- d) Incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted for a crime included in Chapter 5.10.

5.10.09 Obstruction of Justice

The Tribe asserts Special Tribal Criminal Jurisdiction over any violation that involves interfering with the administration or due process of the laws of the Tribe, including any Tribal criminal proceeding or investigation of a crime.

5.10.10 Jurisdictional Questions of Law

The requirements of Chapter 5.10 are jurisdiction questions of law to be decided by the Court.

Commented [JWV22]: Makes it explicit that whether certain conduct falls within a covered crime category is a jurisdictional question, and therefore the Tribe does not have to present that issue to a jury. Facts related to the Title 5 offense charged will be decided by the trier of fact.

Chapter 5.10 Sentencing

5.101.01 Mandatory Alcohol and Drug Assessments

In any case where a person is found guilty of or pleads no contest to a criminal offense in the Port Gamble S'Klallam Community Court where the court determines alcohol and/or drugs may be a contributing factor to the commission of the crime, the court shall order a Pre-Sentence Drug and Alcohol Evaluation with a qualified Mental Health Counselor or Drug and/or Alcohol Counselor. The court shall require the person so convicted to return to court at the earliest possible date with the alcohol and drug evaluation and any alcohol and drug treatment plan that the counselor or mental health professional recommends. The Court shall order the person to follow a chemical dependency treatment plan. The Court may order a plan that is more extensive than the recommended plan. The Court may also order mental health treatment if recommended by an evaluation conducted by a Mental Health counselor.

[HIST: Source -Resolution No. 02 A 108, passed 12/17/02 amended this section. Port Gamble Business Committee Minutes, 6/14/88 Amended by Resolution 05-A-054, passed 6/14/05.]

5.110.02 Mandatory Sentencing for Driving While Under the Influence of Alcohol or Drugs

- a) In any case where a person is found guilty or pleads No Contest to a charge of Driving While Under the Influence of Alcohol or Drugs in violation of section 5.09.01, shall be sentenced to the following minimum penalties:
 - 1) Upon a first offense: Thirty (30) days in jail, of which at least twenty-four (24) consecutive hours are to be served, and a fine of \$250.
 - 2) Upon a second offense: Sixty (60) days in jail, of which at least four (4) consecutive days are to be served and a fine of \$500.
 - 3) Upon a third or subsequent offense: Six (6) months in jail, of which at least ten (10) consecutive days are to be served, and a fine of \$ 750. Upon conviction of a third or subsequent offense, the driving privileges of the person so convicted shall be revoked on the Port Gamble Reservation for a period not less than two years.
- b) The judge of the court may suspend jail time only on condition that the person complete any recommendations outlined in the Alcohol and /or Drug Treatment Plan described in section 5.07.01 of this code.
- c) No portion of any of these minimum fines shall be suspended or otherwise not levied, except as provided in section 2.07.03 No portion of the minimum jail time required in paragraph (a) of this section shall be suspended or otherwise not served.

[HIST: Source - Port Gamble S'Klallam Business Committee Minutes, 6/14/88. Amended by Resolution 05-A-054, passed 6/14/05.]

5.110.03 Determining the Sentence Within the Range

When considering the propriety of the ordering a particular sentence, the Court shall specifically consider the following factors and should increase the sentence above the minimum, within an offense classification range:

- a) The number of times the person has previously violated the Law and Order Code and the number of times the person has previously committed the particular violation before the court;
- b) Whether the offense was committed with a weapon or the use of a weapon was threatened;
- c) Whether a victim suffered bodily harm and the degree of harm and expected duration of disability, if any;
- d) Whether a victim experienced substantial emotional harm;

- e) The monetary value of any property damage; and
- f) Whether the harm caused by the defendant's conduct was especially offensive or sensitive to the tribal community such as harm to an elder, the church, Longhouse, cemetery, Tribal buildings and facilities, or someone's home.

Juvenile Fines. The court shall have the discretion to impose a monetary fine lower than the specified range for a particular offense, for a juvenile defendant only, if necessary to ensure that the juvenile has the ability to pay the fine, so that the burden of paying the fine falls on the juvenile.

[HIST: Source – Cross section 2.07.04 Restitution. Adopted by Resolution 05-A-054, passed 6/14/05.]

5.110.04 Classification of Offenses for Sentencing

The following are the ranges of fines for each class of offense:

Misdemeanor 2	Misdemeanor 1	Felony 2	Felony 1
\$ 50 – 250 fine;	\$ 250 – 1,000 fine;	\$ 1,000 – 5,000 fine;	\$ 5,000 – 15,000 fine;
or	or	or	or
Jail up to 30 days;	Jail up to one year;	Jail up to one year;	Jail up to three years;
<u>or both.</u>	<u>or both.</u>	<u>or both.</u>	<u>or both.</u>

[HIST: Adopted by Resolution 05-A-054, passed 6/14/05. Amended by Resolution No. 17-A-010, passed 1/23/17 to create a Felony-Misdemeanor Sentencing chart that would match the new Chapter 5.07 on Sex Crimes. Resolution No. 17-A-064, passed 6/12/17, added chapters on Controlled Substances, Liquor, and Driving a Motor Vehicle to this sentencing chart. All other crimes still refer to the Sentencing Chart for Crimes Classes A-D. The Class A-D chart will be retired once all of the crimes in Title 5 are updated to

reflect felony or misdemeanor crimes. Amended by Resolution No. 18-A-100, passed 8/27/18 to change the maximum possible jail sentence of a Misdemeanor 1 from six months to one year so that the Court may sentence persons who are convicted of a Misdemeanor 1 to an amount of time that would allow them to complete Court-ordered treatment. Resolution 20-A-086, passed 9/28/20, updated the remaining three chapters in Title 5 to the felony-misdemeanor sentencing chart and retired the Class A-D sentencing chart.]

Chapter 5.112 Drug Overdose Immunity

5.121.01 Drug Overdose Immunity

- a) Any person or group of people who act in good faith and seek medical assistance, or who assist another in seeking medical assistance, for any person who is experiencing a drug-related overdose or other life-threatening medical emergency, and who reports all relevant information that is available as to the cause and circumstances of the drug-related overdose or life-threatening medical emergency, shall not be arrested or convicted for the following:
 - 1) Contributing to the delinquency of an underage person;
 - 2) Possession of narcotics or controlled substances;
 - 3) Possession of drug paraphernalia;
 - 4) A minor in possession of alcohol or a minor under the influence of alcohol;
 - 5) Misdemeanor warrants for nonviolent crimes.
- b) A person who experiences drug overdose or other life-threatening emergency shall not be arrested or convicted for the above crimes if the evidence for the above crimes was obtained as a result of the overdose or other need for medical assistance.
- c) The protections in subsection (a) of this section may be raised as an affirmative defense, or as grounds to suppress evidence obtained as a result of a report of a drug-related overdose or life-threatening medical emergency.
- d) Evidence obtained as a result of a report of a drug-related overdose or life-threatening medical emergency under the circumstances stated in subsection (a) of this section shall not serve as the sole basis for revoking or modifying a person's probation or supervision status, or as the basis for any probable cause finding to search the premises where such overdose or medical emergency occurs or to arrest any person who reports such overdose or medical emergency under the circumstances stated in subsection (a) of this section.
- e) For the purposes of this section, "drug-related" means an acute medical condition that is the result of the ingestion or use by an individual of one

of more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury.

- f) The protections in this section shall not be grounds for suppression of evidence in other criminal charges arising from circumstances related to a drug-related overdose or other life-threatening medical emergency.
- g) Nothing in this section shall prohibit arrest, prosecution, or conviction for any crime not listed herein. Additionally, nothing in this section shall prevent the seizure of any drugs or paraphernalia found at the scene of a drug-related overdose or other life-threatening emergency.

[HIST: The Port Gamble S’Klallam Tribe recognizes that fear of contact with the authorities is a main reason that drug overdose victims may not reach help and services in time during an overdose. The chance of surviving an overdose depends greatly on how fast one receives medical assistance, and The Tribe created this law in order to encourage persons to seek help during a drug overdose or other life-threatening emergency. This Chapter was adopted by Resolution 16-A-084, passed 6/27/16.]

Chapter 5.123 Enforcement

5.132.01 Tribal Police – Appointment

The Port Gamble S’Klallam Tribal Council shall appoint the Chief of Police by resolution. The Chief of Police shall manage and supervise the Port Gamble S’Klallam Tribal Police Department.

5.132.02 Tribal Police – Authority

The Port Gamble S’Klallam Tribal Police Officers shall regularly patrol all land within the exterior boundaries of the Port Gamble S’Klallam Reservation and all parcels of land held in trust for the Tribe by the United States regardless of location. The Port Gamble S’Klallam Tribal Police Officers shall have the authority to enforce the Tribe’s Law and Order Code and all other ordinances and resolutions of the Tribe.

5.132.03 Qualifications

A Port Gamble S’Klallam police officer must meet the following qualifications:

- (a) Must be twenty-one (21) years of age or older, in sound physical condition, and of sufficient size and strength to perform the duties required; and
- (b) Must be possessed of courage, self-reliance, intelligence, and high sense of loyalty and duty; and
- (c) Must never have been convicted of a felony or of any domestic violence offense, nor have been convicted of any misdemeanor for a period of three (3) years (dependent on review of incident) prior to appointment, and

(d) Must have successfully completed at least one of the following four requirements during the first six months of employment. Tribal Council may extend the time for the basic training requirement on a case-by-case basis. Successful completion of basic training is a requisite to the continuation of employment.

- 1) The Basic Law Enforcement Academy provided by the Washington State Criminal Justice Training Commission; or
- 2) Both the Federal Law Enforcement Training Academy and the Basic Law Enforcement Equivalency Academy provided by the Washington State Criminal Justice Training Commission; or
- 3) The Washington State Criminal Justice Training Commission Reserve Academy; or
- 4) Another law enforcement training academy that the Washington State Criminal Justice Training Commission or the Federal Law Enforcement Training Commission accepts and verifies in writing to the Tribe as an equivalent academy while the officer waits for the opportunity to attend the Washington State Basic Equivalency Academy.

[HIST: Adopted by Resolution 19-A-061, passed 6/24/19. The Tribe created this chapter in order to codify the specific qualifications that tribal police officers must have in order to become active tribal law enforcement officers and to enforce the Tribe's laws. New subsection 17.09.01 (c) in Title 17 is a part of Resolution 19-A-061 and codifies the specific qualifications that tribal natural resource enforcement officers must have. The required qualifications for officers under both Title 5 and Title 17 are the same.]

CRIMINAL CODE – CLASSIFICATION OF OFFENSES SUMMARIZED

Chapter 5.01 Offenses Against the Person

5.01.01	Assault	Felony 1 and 2, Misdemeanor 1
5.01.02	Intimidation/Coercion	Misdemeanor 2
5.01.03	Robbery	Felony 2
5.01.04	Criminal Homicide	Felony 1
5.01.05	Vehicular Homicide	Felony 1
5.01.06	Manslaughter	Felony 1
5.01.07	Reckless Endangerment	Misdemeanor 1
5.01.08	Kidnapping	Felony 1 and 2
5.01.09	Unlawful Detainment	Misdemeanor 1
5.01.10	Custodial Interference	Felony 2
5.01.11	Endangering the Welfare of a Child	Felony 2
5.01.12	Contributing to the Criminal Act of a Minor	Misdemeanor 1
5.01.13	Verbal or Written Threat	Misdemeanor 1
5.01.14	Stalking	Misdemeanor 1, Felony 2
5.01.15	Harassment	Misdemeanor 1
5.01.16	Exploitation of Vulnerable Adult.....	Misdemeanor 1

5.01.17	Domestic Violence.....	Min. Misdemeanor 1
5.01.18	Family Violence	Min. Misdemeanor 1
5.01.19	Aggravated Domestic Violence.....	Min. Felony 2
5.01.20	Habitual Domestic Violence Offender	Felony 2
5.01.21	Interfering with Reporting of DV or FV	Misdemeanor 1
5.01.22	Strangulation or Suffocation.....	Felony 1

Chapter 5.02 Property Related Offenses

5.02.01	Trespass	Misdemeanor 2, Misdemeanor 1
5.02.02	Malicious Mischief	Misdemeanor 1
5.02.03	Burglary	Misdemeanor 1
5.02.04	Theft.....	Felony 2, Misdemeanor 1 and 2
5.02.05	Possession or Sale of Stolen Property	Misdemeanor 2
5.02.06	Unlawful Dumping.....	Misdemeanor 2
5.02.07	Maintaining a Public Nuisance	Misdemeanor 2
5.02.08	Arson.....	Misdemeanor 1, Felony 2
5.02.09	Forgery	Felony 2
5.02.10	Fraud	Felony 2
5.02.11	Extortion	Felony 2

Chapter 5.03 Controlled Substances

5.03.01	Definitions	None
5.03.02	Substances Illegal Without a Valid Prescription.....	None
5.03.03	Offenses and Penalties for Illegal Substances	Mis 1 – Fel 1
5.03.04	Possession or Use of Drug Paraphernalia	Misdemeanor 1
5.03.05	Delivery of Controlled Substances, Alcohol, or Marijuana to a Minor	Felony 2
5.03.06	Unlawful Inhalation.....	Misdemeanor 1
5.03.07	Unauthorized Possession or Distribution of Prescription Drugs.....	Misdemeanor 1
5.03.08	Marijuana Possession and Use	Misdemeanor 1 and 2
5.03.09	Marijuana Production, Processing, and Sale	Mis. 2, Felony 2
5.03.10	Medical Marijuana	Misdemeanor 2
5.03.11	Unauthorized Use of State Medical Marijuana Database.....	Felony 2

Chapter 5.04 Offenses Against the Community Peace, Morals, Safety and Welfare

5.04.01	Reckless Driving.....	REPEALED (See Chapter 5.09)
5.04.02	Disorderly Conduct.....	Misdemeanor 2
5.04.03	Gambling	Misdemeanor 1
5.04.04	Prostitution REPEALED (See Chapter 5.07)	
5.04.05	Carrying a Concealed Firearm	Misdemeanor 1
5.04.06	Firearm Violations.....	Misdemeanor 1—Felony 1
5.04.07	Unlawful Possession of Firearms	Felony 2
5.04.08	Cruelty to Animals, Dog Fighting Prohibited.....	Misdemeanor 1
5.04.09	Failure to Send Children to School	Misdemeanor 1

- 5.04.10 Failure to Control AnimalsMisdemeanor 1
- 5.04.11 Violating Provisions of a Protection Order
.....Misdemeanor 1 and Felony 2
- 5.04.12 Harboring a Person Who is ExcludedMisdemeanor 1
- 5.04.14 Reckless Discharge of Fireworks.....Misdemeanor 1
- 5.04.15 Disruptive Discharge of Fireworks.....Misdemeanor 2
- 5.04.16 Violation of Fireworks CurfewMisdemeanor 2
- 5.04.17 Allowing a Minor Child to Discharge Fireworks.....
.....Misdemeanor 1 and 2
- 5.04.18 Delivery of Tobacco to MinorMisdemeanor 1

Chapter 5.05 Offenses Related to Administration of Tribal Government

- 5.05.01 Resisting Arrest.....Misdemeanor 1
- 5.05.02 Obstructing a Public OfficerMisdemeanor 1
- 5.05.03 Refusing to Aid Officer.....Misdemeanor 1
- 5.05.04 Intimidation of a Public Officer REPEALED
- 5.05.05 Escape.....Misdemeanor 1
- 5.05.06 PerjuryMisdemeanor 1
- 5.05.07 Intimidating a JurorMisdemeanor 1
- 5.05.08 Intimidating a WitnessMisdemeanor 1
- 5.05.09 Tampering with a WitnessMisdemeanor 1
- 5.05.10 Tampering with Physical EvidenceMisdemeanor 1
- 5.05.11 Misuse of Funds.....Misdemeanor 1
- 5.05.12 Official Misconduct Misdemeanor 1
- 5.05.13 Bribery.....Misdemeanor 1
- 5.05.14 Unlawful Arrest/False Charges.....Misdemeanor 1
- 5.05.15 Assault of Police Dog..... Felony 2
- 5.05.16 Failure to Appear/Bail JumpingMisdemeanor 1

Chapter 5.06 Other Offenses

- 5.06.01 Violation of Tribal Ordinance..... REPEALED
- 5.06.02 Criminal AttemptOne degree below primary offense
- 5.06.03 Aiding and AbettingSame degree as primary offense

Chapter 5.07 Rape—Sex Crimes—Public Indecency—Prostitution

- 5.07.01 Definitions
- 5.07.02 Testimony—Evidence—Written Motion—Admissibility
- 5.07.03 Defenses to Prosecution Under This Chapter
- 5.07.04 Rape in the First Degree Felony 1
- 5.07.05 Rape in the Second Degree Felony 1
- 5.07.06 Rape in the Third Degree Felony 2
- 5.07.07 Statutory Rape in the First Degree..... Felony 1
- 5.07.08 Statutory Rape in the Second Degree Felony 2
- 5.07.09 Statutory Rape in the Third Degree..... Felony 2
- 5.07.10 Child Molestation..... Felony 2
- 5.07.11 Luring.....Misdemeanor 1, Felony 2

5.07.12	Abusive Sexual Touching.....	Felony 1
5.07.13	Indecent Exposure.....	Misdemeanor 2 and 1
5.07.14	Voyeurism	Misdemeanor 1
5.07.15	Sexually Explicit Communication with Minor	Misdemeanor 1
5.07.16	Possession or Viewing Child Pornography.....	Felony 2
5.07.17	Prostitution.....	Misdemeanor 5.07.18
	Prostitution—Sex of Parties Immaterial	
5.07.19	Promoting Prostitution--Definitions	
5.07.20	Promoting Prostitution in the First Degree	Felony 1
5.07.21	Promoting Prostitution in the Second Degree	Felony 2
5.07.22	Permitting Prostitution.....	Misdemeanor 1
5.07.23	Sex Trafficking	Felony 1

Chapter 5.08 Liquor

5.08.01	Reference.....	None
5.08.02	Illegal Sale, Purchase, Possession of Liquor; Illegal Transfer or Use of I.D.	Misdemeanor 1
5.08.03	Minor in Possession of Liquor	Misdemeanor 2
5.08.04	Minor Consuming Liquor.	Misdemeanor 2
5.08.05	Delivery of Liquor to a Minor	Felony 2
5.08.06	Social Host Liability.	Felony 2
5.08.07	Opening or Consuming Liquor in a Public Place.....	Misdemeanor 2
5.08.08	Intoxication in a Public Place—Nuisance	Misdemeanor 2

Chapter 5.09 Driving a Motor Vehicle

5.09.01	Driving While Under the Influence of Intoxicating Liquor or Drugs or Glue	Misdemeanor 1 – Felony 1
5.09.02	Reckless Driving.....	Misdemeanor 1
5.09.03	Hit and Run of Unattended Car or Other Property ...	Misdemeanor 1
5.09.04	Hit and Run of an Attended Vehicle or Other Property.	Felony 2
5.09.05	Operating a Motor Vehicle While Privilege is Suspended or Revoked	REPEALED
5.09.06	Eluding a Law Enforcement Officer.	Felony 2
5.09.07	Prohibited Use of Alcoholic Beverages in Vehicle.	Misdemeanor 2