

TITLE 5. Law & Order Code

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Chapter 5.1
APPLICATION, JURISDICTION

Sections:

- 5.1.01 Title.
- 5.1.02 Application.
- 5.1.03 Severability.
- 5.1.04 Jurisdiction.
- 5.1.05 Definitions.
- 5.1.06 Proof Beyond a Reasonable Doubt.
- 5.1.07 Peace Officers—Immunity.

5.1.01. Title. This title shall be known as the Hoh Tribal Criminal Code.

5.1.02. Application. The provisions of this title shall apply to any offense committed after the passage of a resolution by the Hoh Tribal Business Committee authorizing its enactment.

5.1.03. Severability. If any part of this title shall be held invalid, the remainder shall remain in effect.

5.1.04. Jurisdiction. The Hoh Tribal Courts shall have jurisdiction, pursuant to Hoh Tribal Code Title 1, Section 1.2, over all actions arising under this title.

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

- (1) “Acted” includes, where relevant, omitted to act;
- (2) “Actor” includes, where relevant, a person failing to act;
- (3) “Benefit” is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;
- (4) “Bodily injury” or “physical injury” means physical pain, illness, or an impairment of physical condition;
- (5) “Building”, in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building, or any structure over 12 feet by 12 feet in size.
- (6) “Deadly weapon” means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a “vehicle” as defined in this section, which, under the circumstances in which it could be used, is used, attempted to be used, or

threatened to be used, is readily capable of causing death or serious bodily injury;

- (7) "Dwelling" means any building or structure, permanent, movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;
- (8) "Government" includes any branch, subdivision, or agency of the Hoh Tribal Government, or the United States Government;
- (9) "Government function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;
- (10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment".
- (11) "Judge" includes every judicial officer or court officer authorized alone or with others, to hold or preside over a court;
- (12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;
- (13) "Officer" and "public officer" means a person holding office under tribal government, or the federal government, who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;
- (14) "Omission" means a failure to act;
- (15) "Peace officer" means a duly appointed or authorized tribal or federal law enforcement officer;
- (16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;
- (17) "Person," "he," "she," or "actor," include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;
- (18) "Place of work" includes but is not limited to all the lands and other real property in the case of an actor who owns, operates, or is employed to work on such real property;
- (19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;
- (20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;
- (21) "Property" means anything of value, whether tangible or intangible, real or personal;

- (22) “Public servant” means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;
- (23) “Signature” includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;
- (24) “Statute” means the Tribal Constitution or any act, ordinance, or code adopted by the Hoh Tribal Business Committee;
- (25) “Threat” means to communicate, directly or indirectly the intent:
- (a) To cause bodily injury in the future to the person threatened or to any other person; or
 - (b) To cause physical damage to the property of a person other than the actor; or
 - (c) To subject the person threatened or any other person to physical confinement or restraint; or
 - (d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or
 - (e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or
 - (f) To reveal any information sought to be concealed by the person threatened; or
 - (g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - (h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or
 - (i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or
 - (j) To do any other act which is intended to harm substantially the person threatened or another with respect to his or her health, safety, business, financial condition, or personal relationships.
- (26) “Vehicle” means a “motor vehicle” as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

5.1.06. Proof Beyond a Reasonable Doubt.

- (1) Every person charged with the commission of a crime is presumed innocent unless proven guilty. No person may be convicted of a crime unless each element of such crime is proven by competent evidence beyond a reasonable doubt.
- (2) When a crime has been proven against a person, and there exists a reasonable doubt as to which of two or more degrees he or she is guilty, he or she shall be convicted only of the lowest degree.

5.1.07 Peace Officers – Immunity. No peace officer may be held criminally or civilly liable for actions under this title, if the peace officer acts in good faith and without malice.

Chapter 5.2 LIABILITY

Sections:

- 5.2.01 Culpability—Who is Guilty.
- 5.2.02 Culpability—Who is Guilty for the Actions of Another.
- 5.2.03 Insanity.
- 5.2.04 Defenses.

5.2.01. Culpability—Who is Guilty.

(1) Kinds of Culpability Defined.

- (a) Intent. A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.
- (b) Knowledge. A person knows or acts knowingly or with knowledge when:
 - i) He or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or
 - ii) He or she has information which would lead a reasonable person in the same situation to believe that facts exist which are described by a statute defining an offense.
- (c) Recklessness. A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.
- (d) Criminal negligence. A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware

of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

- (2) Substitutes for Criminal Negligence, Recklessness, and Knowledge. When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element of an offense, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.
- (3) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly, or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.
- (4) Requirement of Willfulness Satisfied by Acting Knowingly. A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears.

5.2.02. Complicity—Who is Guilty for the Actions of Another.

- (1) A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.
- (2) A person is legally accountable for the conduct of another person when:
 - (a) Acting with the kind of culpability that is sufficient for the commission of the crime, he or she causes an innocent or irresponsible person to engage in such conduct; or
 - (b) He or she is made accountable for the conduct of such other person by this title or by the law defining the crime; or
 - (c) He or she is an accomplice of such other person in the commission of the crime.
- (3) A person is an accomplice of another person in the commission of a crime if:
 - (a) With knowledge that it will promote or facilitate the commission of the crime, he or she
 - (i) solicits, commands, encourages, or requests such other person to commit it; or
 - (ii) aids or agrees to aid such other person in planning or committing it; or
 - (b) His or her conduct is expressly declared by law to establish his or her complicity.
- (4) A person who is legally incapable of committing a particular crime himself may be guilty thereof if it is committed by the conduct of another person for which he or she is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his or her incapacity.

- (5) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:
 - (a) He or she is a victim of that crime; or
 - (b) He or she terminates his or her complicity prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.
- (6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his or her complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted.

5.2.03. Insanity. To establish the defense of insanity, it must be shown that:

- (1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:
 - (a) He or she was unable to perceive the nature and quality of the act with which he or she is charged; or
 - (b) He or she was unable to tell right from wrong with reference to the particular act charged.
- (2) The defense of insanity must be established by a preponderance of the evidence.

5.2.04. Defenses.

- (1) “Necessary” Defined. “Necessary” means that no reasonable alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.
- (2) Use of Force—When Lawful. The use, attempt, or offer to use force upon or toward the person of another shall not be unlawful in the following cases:
 - (a) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him or her and acting under his or her direction;
 - (b) Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;
 - (c) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than shall be necessary;
 - (d) Whenever used in a reasonable and moderate manner by a parent or his or her authorized agent, a guardian, master, or teacher in the

- exercise of lawful authority, to restrain or correct his or her child, ward, apprentice, or scholar;
- (e) Whenever used by a carrier of passengers of his or her authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than shall be necessary to expel the offender with reasonable regard to his or her personal safety;
 - (f) Whenever used by any person to prevent a mentally ill, mentally incompetent or mentally disabled person from committing an act dangerous to himself or another, or in enforcing necessary restraint for the protection of his or her person, or his or her restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his or her person.
- (3) Homicide—When Excusable. Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, with ordinary caution and without any lawful intent.
- (4) Justifiable Homicide by Public Officer. Homicide is justifiable when committed by a public officer, or person acting under his or her command and in his or her aid, in the following case:
- (a) When there is reasonable cause to believe that it is necessary to prevent serious bodily injury or death to himself or herself or to another.
- (5) Homicide by Other Person—When Justifiable. Homicide is also justifiable when committed either:
- (a) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a violent felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or
 - (b) In the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode, in which he or she is.
- (6) Duress.
- (a) In any prosecution for a crime, it is a defense that:
 - (i) The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or she or another would be liable to immediate death or immediate grievous injury.

- (ii) That such apprehension was reasonable upon the part of the actor; and
 - (iii) That the actor would not have participated in the crime except for the duress involved.
 - (b) The defense of duress is not available if the crime charged is murder or manslaughter.
 - (c) The defense of duress is not available if the actor intentionally or recklessly places himself in a situation in which it is probable that he or she will be subject to duress.
 - (d) That defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse.
- (7) Intoxication. No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his or her condition, but whenever the actual existence of any particular species or degree of crime, the fact of his or her intoxication may be taken into consideration in determining such mental state.

Chapter 5.3 ANTICIPATORY OFFENSES

Sections:

- 5.3.01 Criminal Attempt.
- 5.3.02 Criminal Solicitation.
- 5.3.03 Criminal Conspiracy.

5.3.01. Criminal Attempt.

- (1) A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.
- (2) If the conduct in which the person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was under the attendant circumstances, factually or legally impossible of commission.
- (3) An attempt to commit a crime is a felony if the crime attempted is a felony, gross misdemeanor if the crime is a gross misdemeanor, and misdemeanor if the crime is a misdemeanor.

5.3.02. Criminal Solicitation.

- (1) A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he or she offers to give or gives money or other things of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission if attempted or committed.

- (2) Criminal solicitation shall be punished in the same manner as criminal attempt under 5.3.01(3).

5.3.03. Criminal Conspiracy.

- (1) A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.
- (2) It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:
 - (a) Has not been prosecuted or convicted; or
 - (b) Has been convicted of a different offense; or
 - (c) Is not amenable to justice; or
 - (d) Has been acquitted; or
 - (e) Lacked the capacity to commit an offense.
- (3) Criminal conspiracy is a felony if the object of the conspiracy is a felony, a gross misdemeanor if the object is a gross misdemeanor, and a misdemeanor if it is a misdemeanor.

Chapter 5.4 HOMICIDE

Sections:

- 5.4.01 Homicide Defined.
- 5.4.02 Murder in the First Degree.
- 5.4.03 Murder in the Second Degree.
- 5.4.04 Manslaughter in the First Degree.
- 5.4.05 Manslaughter in the Second Degree.
- 5.4.06 Negligent Homicide.
- 5.4.07 Homicide by Abuse.

5.4.01. Homicide Defined. Homicide is the killing of a human being by the act, procurement or omission of another and is either:

- (1) murder,
- (2) manslaughter,
- (3) excusable homicide, or
- (4) justifiable homicide.

5.4.02. Murder in the First Degree.

- (1) A person is guilty of murder in the first degree when:
 - (a) With a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person; or

- (b) Under circumstances manifesting an extreme indifference to human life, he or she engages in conduct which creates a grave risk of death to any person, and thereby causes the death of a person; or
- (c) He or she commits or attempts to commit the crime of either:
 - (1) robbery, in the first or second degree,
 - (2) rape in the first or second degree,
 - (3) burglary in the first degree,
 - (4) arson in the first degree, or
 - (5) kidnapping, in the first or second degree, and; in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision(1)(c) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:
 - (i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and
 - (ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death; or
 - (iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and
 - (iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or physical injury.

(2) Murder in the first degree is a felony.

5.4.03. Murder in the Second Degree.

- (1) A person is guilty of murder in the second degree when:
 - (a) With intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person; or
 - (b) He or she commits or attempts to commit any felony other than those enumerated in Section 5.4.02(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants; except than in any prosecution under this participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

- (i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and
- (ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and
- (iii) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the second degree is a felony.

5.4.04. Manslaughter in the First Degree.

- (1) A person is guilty of manslaughter in the first degree when:
 - (a) He or she recklessly causes the death of another person; or
 - (b) He or she intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child.
- (2) Manslaughter in the first degree is a felony.

5.4.05. Manslaughter in the Second Degree.

- (1) A person is guilty of manslaughter in the second degree when, with criminal negligence, he or she causes the death of another person.
- (2) Manslaughter in the second degree is a felony.

5.4.06. Negligent Homicide.

- (1) What constitutes. A person is guilty of negligent homicide within the Reservation when: the death of any person shall ensue within three years as a proximate result of injury received by the driving of any vehicle by any person while under the influence of or affected by intoxicating liquor or drugs or glue, or by the operation of any vehicle in a reckless manner or with disregard for the safety of others.
- (2) Negligent Homicide is a felony.

5.4.07. Homicide by Abuse.

- (1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of said child, developmentally disabled person, or dependent adult. "Dependent adult" means a person who because of physical or mental disability or because of advanced age is dependent upon another person to provide the basic necessities of life.
- (2) Homicide by abuse is a felony.

Chapter 5.5 PHYSICAL HARM

Sections:

- 5.5.01 Assault in the First Degree.
- 5.5.02 Assault in the Second Degree.
- 5.5.03 Assault in the Third Degree.
- 5.5.04 Assault in the Fourth Degree.
- 5.5.05 Reckless Endangerment.
- 5.5.06 Attempted Suicide.
- 5.5.07 Promoting a Suicide Attempt.
- 5.5.08 Coercion.
- 5.5.09 Child Abuse or Neglect.
- 5.5.10 Malicious Harassment.

5.5.01. Assault in the First Degree

- (1) Every person, who with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another, shall be guilty of assault in the first degree when he or she:
 - (a) Shall assault another with a firearm or any deadly weapon or by any force or means likely to produce death; or
 - (b) Shall administer to or cause to be taken by another, poison or any other destructive or noxious thing so as to endanger the life of another person.
- (2) Assault in the first degree is a felony.

5.5.02. Assault in the Second Degree.

- (1) Every person who, under circumstances not amounting to assault in the first degree, shall be guilty of assault in the second degree when he or she:
 - (a) With intent to injure, shall unlawfully administer to or cause to be taken by another, poison or any other destructive or noxious thing, or any drug or medicine the use of which is dangerous to life or health; or
 - (b) Shall knowingly inflict grievous bodily harm upon another with or without a weapon; or
 - (c) Shall knowingly assault another with a weapon or other instrument or thing likely to produce bodily harm; or
 - (d) Shall knowingly assault another with intent to commit a felony; or
 - (e) With criminal negligence, shall cause physical injury to another person by means of a weapon or other instrument or thing likely to produce bodily harm.
- (2) Assault in the second degree is a felony.

5.5.03. Assault in the Third Degree.

- (1) Every person who, under circumstances not amounting to assault in either the first or second degree, shall assault another with intent to prevent or resist the execution of any lawful process or mandate of any court officer, or the lawful apprehension or detention of himself or another person shall be guilty of assault in the third degree.
- (2) Assault in the third degree is a felony.

5.5.04. Assault in the Fourth Degree.

- (1) Every person who shall commit an assault or an assault and battery not amounting to assault in either the first, second, or third degree shall be guilty of assault in the fourth degree.
- (2) Assault in the fourth degree is a gross misdemeanor.

5.5.05. Reckless Endangerment.

- (1) A person is guilty of reckless endangerment when he or she recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person.
- (2) Reckless endangerment is a felony if a person under the age of eighteen years or a dependent adult is endangered, in other cases reckless endangerment is a gross misdemeanor. Dependent adult is defined under Section § 5.4.07.

5.5.06 Attempted Suicide. Any person who willfully attempts to cause his or her own death, by any means, shall be guilty of an offense and upon conviction shall be sentenced to mandatory counseling for a period not to exceed one year. The nature, form and duration of the counseling shall be determined in accordance with the circumstances of each case.

5.5.07. Promoting a Suicide Attempt.

- (1) A person is guilty of promoting a suicide attempt when he or she knowingly causes or aids another person to attempt suicide.
- (2) Promoting a suicide attempt is a felony.

5.5.08. Coercion.

- (1) A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.
- (2) "Threat" as used in this section means:
 - (a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
 - (b) Threats as defined in Section 5.1.05(25)(a-j).

(3) Coercion is a gross misdemeanor.

5.5.09. Child Abuse or Neglect.

- (1) A person is guilty of child abuse or neglect if he or she commits an act of violence, abuse or neglect on a child under the age of eighteen years causing more than transient pain or injury to that child.
- (2) Child abuse or neglect is a gross misdemeanor and upon conviction thereof, the offender may be required by the court to undergo medical evaluation and treatment, in addition to or instead of any other sentence imposed by the court.

5.5.10. Malicious Harassment.

- (1) A person is guilty of malicious harassment if he or she, with intent to intimidate or harass another person because of that person's race, sexual preference, color, religion, ancestry, national origin, or mental, physical, or sensory handicap:
 - (a) Causes physical injury to another person; or
 - (b) By words or conduct threatens harm to another person or another's property or harm to the person or property of a third person; or
 - (c) Causes physical damage to or destruction of the property of another person.
- (2) Malicious harassment is a gross misdemeanor. A person who commits malicious harassment may be required by the court to compensate the victim(s) for actual and punitive damages.

5.5.11 Criminal Harassment.

A. A person commits the offense of harassment if:

1. Without lawful authority, the person knowingly threatens:
 - a. To cause bodily injury immediately or in the future to the person threatened or to any other person; or
 - b. To cause physical damage to the property of a person other than the actor; or
 - c. To subject the person threatened or any other person to physical confinement or restraint; or
 - d. Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and
2. The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

B. Harassment is misdemeanor.

Chapter 5.6 KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE

Sections:

- 5.6.01 Definitions.
- 5.6.02 Kidnapping in the First Degree.
- 5.6.03 Kidnapping in the Second Degree.
- 5.6.04 False Arrest.
- 5.6.05 Unlawful Imprisonment.
- 5.6.06 Custodial Interference.
- 5.6.07 Defense to Action for Being Detained on Mercantile Establishment Premises.

5.6.01. Definitions. The following definitions apply in this title:

- (1) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his or her liberty. Restraint is without "consent" if it is accomplished by:
 - (a) Physical force, intimidation, or deception; or
 - (b) Any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control of custody of him or her has not acquiesced.
- (2) "Abduct" means to restrain a person by either:
 - (a) Secreting or holding him or her in a place where he or she is not likely to be found, or
 - (b) Using or threatening to use deadly force;
- (3) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse.

5.6.02. Kidnapping in the First Degree.

- (1) A person is guilty of kidnapping in the first degree if he or she intentionally abducts another person with intent:
 - (a) To hold him or her for ransom or reward, or as a shield or hostage; or
 - (b) To facilitate commission of any felony or flight thereafter; or
 - (c) To inflict bodily injury on him or her; or
 - (d) To inflict extreme mental distress on him or her or a third person; or
 - (e) To interfere with the performance of any governmental function.
- (2) Kidnapping in the first degree is a felony.

5.6.03. Kidnapping in the Second Degree.

- (1) A person is guilty of kidnapping in the second degree if he or she intentionally abducts another person under circumstances not amounting to kidnapping in the first degree.

- (2) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that:
 - (a) The abduction does not include the use of or intent to use or threat to use deadly force, and
 - (b) The actor is a relative of the person abducted who has the legal right to custody or visitation with the person abducted, and
 - (c) The actor's sole intent is to assume custody of that person. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.
- (3) Kidnapping in the second degree is a felony.

5.6.04. False Arrest. Any person who shall willfully and knowingly make or cause to be made the unlawful arrest, detention, or imprisonment of another person shall be guilty of an offense and upon conviction thereof shall a misdemeanor.

5.6.05. Unlawful Imprisonment.

- (1) A person is guilty of unlawful imprisonment if he or she knowingly restrains another person without lawful authority.
- (2) Unlawful imprisonment is a felony.

5.6.06. Custodial Interference.

- (1) A person is guilty of custodial interference if, knowing that he or she has no legal right to do so, he or she takes or entices from lawful custody an incompetent person or other person entrusted by authority of law to the custody of another person or institution.
- (2) Custodial interference is a gross misdemeanor.

5.6.07. Defense to Action for Being Detained on Mercantile Establishment Premises. In any criminal action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigating or questioning as to the ownership of any merchandise, it shall be a defense to the action that:

- (1) The person was detained in a reasonable manner and for not more than a reasonable time to permit the investigation or questioning by a law enforcement officer, by the owner's authorized employee or agent; and
- (2) The person conducting the investigation or questioning had reasonable grounds to believe that the person detained committed or attempted to commit theft, or shoplifting of the merchandise on the premises.

Chapter 5.7 ARSON, RECKLESS BURNING, MALICIOUS MISCHIEF AND DAMAGE TO PROPERTY

Sections:

- 5.7.01 Definitions.
- 5.7.02 Arson in the First Degree.
- 5.7.03 Arson in the Second Degree.
- 5.7.04 Reckless Burning in the First Degree.
- 5.7.05 Reckless Burning in the Second Degree.
- 5.7.06 Reckless Burning - Defense.
- 5.7.07 Malicious Mischief in the First Degree.
- 5.7.08 Malicious Mischief in the Second Degree.
- 5.7.09 Malicious Mischief in the Third Degree.
- 5.7.10 Desecration of Religious Sites.
- 5.7.11 Cutting Timber Without a Permit.
- 5.7.12 Defacing Official Signs Landmarks or Navigation Markers.
- 5.7.13 Flag Desecration.
- 5.7.14 Failure to Control or Report a Fire.
- 5.7.15 Interference With Fishing Boats, Gear, or Fish.
- 5.7.16 Cutting Fence.
- 5.7.17 Removal of Official Landmarks, Etc.
- 5.7.18 Firing Timber.

5.7.01. Definitions.

- (1) For the purpose of this title, as now or hereinafter amended, unless the context indicates otherwise:
 - (a) “Building” has the definition in Section 5.1.05(5), and where a building consists of two or more units separately secured or occupied, each unit shall not be treated as a separate building;
 - (b) “Damages”, in addition to its ordinary meaning, includes any charring, scorching, burning, or breaking, or agricultural or industrial sabotage, and shall include any diminution in the value of any property as a consequence of an act.
- (2) To constitute arson it shall not be necessary that a person other than the actor should have had ownership in the building or structure damaged or set on fire.

5.7.02. Arson in the First Degree.

- (1) A person is guilty of arson in the first degree if he or she knowingly and maliciously:
 - (a) Causes a fire or explosion which is manifestly dangerous to any human life including firemen; or
 - (b) Causes a fire or explosion which damages a dwelling; or
 - (c) Causes a fire or explosion in any building in which there shall be at the time a human being who is not a participant in the crime.
- (2) Arson in the first degree is felony.

5.7.03. Arson in the Second Degree.

- (1) A person is guilty of arson in the second degree if he or she knowingly and maliciously causes a fire or explosion which damages a building, or any structure or erection appurtenant to or joining any building, or any wharf, dock, machine, engine, automobile, or other motor vehicle, watercraft, aircraft, bridge, or trestle, or hay, grain, crop, or timber, whether cut or standing or any range land, or pasture land, or any fence, or any lumber, shingle, or other timber products, or any property.
- (2) Arson in the second degree is a felony.

5.7.04. Reckless Burning in the First Degree.

- (1) A person is guilty of reckless burning in the first degree if he or she recklessly damages a building or other structure or any vehicle, railway car, aircraft, or watercraft or any hay, grain, crop, or timber whether cut or standing, by knowingly causing a fire or explosion.
- (2) Reckless burning in the first degree is a felony.

5.7.05. Reckless Burning in the Second Degree.

- (1) A person is guilty of reckless burning in the second degree if he or she knowingly causes a fire or explosion, whether on his or her own property or that of another, and thereby recklessly places a building or other structure, or any vehicle, railway car, aircraft, or watercraft, or any hay, grain, crop or timber, whether cut or standing, in danger of destruction or damage.
- (2) Reckless burning in the second degree is a gross misdemeanor.

5.7.06. Reckless Burning--Defense. In any prosecution for the crime of reckless burning in the first or second degrees, it shall be a defense if the defendant establishes by a preponderance of the evidence that:

- (1) No person other than the defendant had a possessory, or pecuniary interest in the damage or endangered property, or if other persons had such an interest, all of them consented to the defendant's conduct; and
- (2) The defendant's sole intent was to destroy or damage the property for a lawful purpose.

5.7.07. Malicious Mischief in the First Degree.

- (1) A person is guilty of malicious mischief in the first degree if he or she knowingly and maliciously:
 - (a) Causes physical damage to public property or to the property of another in an amount exceeding one thousand five hundred dollars (\$1500);
 - (b) Causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the Hoh Tribe, the federal government, the state, a

political subdivision thereof, or a public utility or mode of public transportation, power, or communication.

(2) Malicious mischief in the first degree is a felony.

5.7.08. Malicious Mischief in the Second Degree.

(1) A person is guilty of malicious mischief in the second degree if he or she knowingly and maliciously:

(a) Causes physical damage to public property or to the property of another in an amount exceeding two hundred and fifty dollars (\$250); or

(b) Creates a substantial risk of interruption or impairment of service rendered to the public, by physically damaging or tampering with an emergency vehicle or property of the Hoh Tribe, the federal government, the state, a political subdivision thereof, or a public utility or mode of public transportation, power or communication.

(2) Malicious mischief in the second degree is a felony.

5.7.09. Malicious Mischief in the Third Degree.

(1) A person is guilty of malicious mischief in the third degree if he or she knowingly and maliciously causes physical damage to public property or the property of another, under circumstances not amounting to malicious mischief in the first or second degree.

(2) Malicious mischief in the third degree is a gross misdemeanor if the damage to the property is in an amount exceeding fifty dollars (\$50); otherwise, it is a misdemeanor.

5.7.10. Desecration of Religious Sites.

(1) A person is guilty of desecration of religious sites if he or she removes artifacts or other items from any burial grounds or from any traditional, sacred or religious area of the Hoh Tribe, or otherwise desecrates in any fashion such grounds or areas.

(2) Desecration of religious sites is a gross misdemeanor.

5.7.11. Cutting Timber Without a Permit.

(1) A person is guilty of cutting timber without a permit if he or she cuts timber, standing or fallen, on tribal property without first obtaining a permit or written permission from the Hoh Tribal Natural Resources Department or if he or she cuts timber, standing or fallen, on the property of another person without first obtaining the owner's permission.

(2) Cutting timber without a permit is a gross misdemeanor.

5.7.12. Defacing Official Signs Landmarks or Navigation Markers.

- (1) A person is guilty of defacing official signs if he or she removes, alters or defaces any official sign, landmark or navigation marker of the Hoh Tribe, the State of Washington or the federal government.
- (2) Defacing official signs is a misdemeanor.

5.7.13. Flag Desecration.

- (1) A person is guilty of flag desecration if he or she publicly mutilates, defaces or defiles an official flag, color or design of the Hoh Tribe or of the United States.
- (2) Flag desecration is a misdemeanor.

5.7.14. Failure to Control or Report a Fire.

- (1) A person is guilty of failure to control or report a fire if he or she knows that a fire is endangering a human life or property and he or she:
 - (a) Fails to give a prompt fire alarm; or
 - (b) Fails to take a reasonable measure to control the fire without danger to himself/herself when he or she knows he or she has an official duty to combat or prevent the fire.
- (2) Failure to control or report fire is a misdemeanor.

5.7.15. Interference With Fishing Boats, Gear, or Fish.

- (1) A person is guilty of interference with fishing boats, gear, or fish if he or she uses or tampers with another's boat, fishing gear, or fish, without authorization from the Hoh Tribe including but not limited to possession of a valid fishing permit.
- (2) Interference with fishing boats, gear, or fish is a gross misdemeanor.

5.7.16. Cutting Fence. Any person who shall willfully cut the wire of a fence belonging to another person or the Hoh Tribe shall be guilty of an offense and upon conviction thereof shall be guilty of a misdemeanor.

5.7.17. Removal of Landmarks, Navigation Markers, Etc. Any person who shall willfully remove, alter, or destroy any boundary marker, navigation marker, or other water or landmark erected by the Hoh Tribe or the United States Government within the limits of the Hoh Indian Reservation shall be guilty of an offense and upon conviction thereof shall be a misdemeanor.

5.7.18. Firing Timber. Any person who shall willfully and without lawful authority set on fire any timber, woods, meadow, marsh, field, or prairie shall be guilty of an offense and upon conviction thereof shall be a gross misdemeanor.

Chapter 5.8 BURGLARY AND TRESPASS

Sections:

- 5.8.01 Definitions.
- 5.8.02 Burglary in the First Degree.
- 5.8.03 Burglary in the Second Degree.
- 5.8.04 Inference of Intent.
- 5.8.05 Other Crime in Committing Burglary Punishable.
- 5.8.06 Making or Having Burglar Tools.
- 5.8.07 Criminal Trespass in the First Degree.
- 5.8.075 Criminal Trespass in the Second Degree.
- 5.8.08 Vehicle Prowling.

5.8.01. Definitions. The following definitions apply in this title:

- (1) "Premises" includes any building, dwelling, or any real property;
- (2) "Enter." The word "enter," when constituting an element or part of a crime, shall include the entrance of the person or the insertion of any part of his or her body, or any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person or to detach or remove property;
- (3) "Enters or remains unlawfully". A person "enters or remains unlawfully" in or upon premises when he or she is not licensed, invited, or otherwise privileged to so enter or remain. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

5.8.02. Burglary in the First Degree.

- (1) A person is guilty of burglary in the first degree, if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building or dwelling and if, in entering or while in the building or dwelling or in immediate flight there from, the actor or another participant in the crime:
 - (a) Is armed with a deadly weapon, or
 - (b) Assaults any person therein.
- (2) Burglary in the first degree is a felony.

5.8.03. Burglary in the Second Degree.

- (1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building or dwelling, other than a vehicle.
- (2) Burglary in the second degree is a felony.

- 5.8.04. Inference of Intent. In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent.
- 5.8.05. Other Crime in Committing Burglary Punishable. Every person who, in the commission of a burglary shall commit any other crime, may be punished therefore as well as for the burglary, and may be prosecuted for each crime separately.
- 5.8.06. Making or Having Burglar Tools.
- (1) Every person who shall make or mend or cause to be made or mended, or have in his or her possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of making or having burglar tools.
 - (2) Making or having burglar tools is a gross misdemeanor.
- 5.8.07. Criminal Trespass in the First Degree.
- (1) A person is guilty of criminal trespass in the first degree if he or she knowingly enters or unlawfully remains in lands or buildings or dwellings of another which are posted, fenced, or otherwise enclosed in a manner designed to exclude intruders.
 - (2) A person is guilty of criminal trespass in the first degree if he or she knowingly enters or unlawfully remains in lands or buildings or dwellings of another after being put on notice by the owner, occupant, or caretaker of the property that the person's presence is not allowed.
 - (3) A person is guilty of criminal trespass in the first degree if he or she enters the Hoh Indian Reservation in violation of the terms of an exclusion order issued pursuant to Hoh Tribe Code Title 11.
 - (4) A person is guilty of criminal trespass in the first degree if he or she enters or remains unlawfully in a building or dwelling or on lands owned by the Hoh Tribe, in fee or as the holder of a beneficial interest in land held in trust by the federal government, without the express or implied permission of the Hoh Tribal Business Committee; provided that Hoh Tribal members, their spouses and their children may enter any tribal building dwelling or real property not posted, locked, fenced or otherwise enclosed in a manner designed to exclude intruders unless they are put on notice by a duly authorized agent of the Hoh Tribe that their presence is not allowed.
 - (5) Criminal trespass in the first degree is a gross misdemeanor.

5.8.075. Criminal Trespass in the Second Degree.

- (1) A person is guilty of criminal trespass in the second degree if he or she knowingly enters or unlawfully remains in or upon building, dwelling or premises of another under circumstances not constituting criminal trespass in the first degree.
- (2) Criminal trespass in the second degree is a misdemeanor.

5.8.08. Vehicle Prowling.

- (1) A person is guilty of vehicle prowling if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a vehicle.
- (2) Vehicle prowling is a gross misdemeanor.

Chapter 7.9 THEFT AND ROBBERY

Sections:

- 5.9.01 Definitions.
- 5.9.02 Theft - Definition; Defense.
- 5.9.03 Theft in the First Degree.
- 5.9.04 Theft in the Second Degree.
- 5.9.05 Theft in the Third Degree.
- 5.9.06 Unlawful Issuance of Checks or Drafts.
- 5.9.07 Taking Motor Vehicle Without Permission.
- 5.9.08 Extortion - Definition.
- 5.9.09 Extortion in the First Degree.
- 5.9.10 Extortion in the Second Degree.
- 5.9.11 Possession Stolen Property - Definition - Credit Cards,
Presumption:
- 5.9.12 Possessing Stolen Property in the First Degree.
- 5.9.13 Possessing Stolen Property in the Second Degree.
- 5.9.14 Possessing Stolen Property in the Third Degree.
- 5.9.15 Obscuring Identity of a Machine.
- 5.9.16 Robbery - Definition.
- 5.9.17 Robbery in the First Degree.
- 5.9.18 Robbery in the Second Degree.
- 5.9.19 Embezzlement First Degree.
- 5.9.20 Embezzlement Second Degree.
- 5.9.21 Disposing of Property of an Estate.

5.9.01. Definitions. The following definitions are applicable in this title unless the context otherwise requires:

- (1) "Appropriate lost or mis-delivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;
- (2) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;
- (3) "Credit card" means any instrument or device, whether incomplete, revoked, or expired, whether known as a credit card, credit plate, courtesy card, or by any other name, issued with or without fee for the use of the cardholder in obtaining money, goods, services, or anything else of value, including satisfaction of a debt or the payment of a check drawn by a cardholder, either on credit or in consideration of an undertaking or guarantee by the issuer;
- (4) "Deception" occurs when an actor knowingly:
 - (a) Creates or confirms another's false impression which the actor knows to be false; or
 - (b) Fails to correct another's impression which the actor previously has created or confirmed; or
 - (c) Prevents another from acquiring information material to the disposition of the property involved; or
 - (d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or
 - (e) Promises performance which the actor does not intend to perform or knows will not be performed.
- (5) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs, provided that the aforementioned are of a private proprietary nature;
- (6) "Obtain control over," in addition to its common meaning, means:
 - (a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or
 - (b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;
- (7) "Wrongfully obtains" or "exerts unauthorized control" means:
 - (a) To take the property or services of another; or
 - (b) Having any property or services in one's possession, custody or control as bailee, factor, pledgee, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person,

estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto;

- (8) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;
- (9) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property.
- (10) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;
- (11) "Stolen" means obtained by theft, robbery, burglary, or extortion.
- (12) Value.
 - (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.
 - (b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:
 - (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;
 - (ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;
 - (iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.
 - (c) Whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in

one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

- (d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his or her possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved.
- (e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars.

5.9.02. Theft - Definition; Defense.

(1) "Theft" means:

- (a) To wrongfully obtain or exert unauthorized control over the value or property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
- (b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
- (c) To appropriate lost or mis-delivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

- (2) In any prosecution for theft, it shall be sufficient defense that the property or service was appropriated openly and avowedly under a claim of title made in good faith, even if the claim is untenable.

5.9.03. Theft in the First Degree.

(1) A person is guilty of theft in the first degree if he or she commits theft of:

- (a) Property or services which exceed(s) one thousand five hundred dollars (\$1500) in value; or
- (b) Property of any value taken from the person of another.

- (2) Theft in the first degree is a felony.

5.9.04. Theft in the Second Degree.

(1) A person is guilty of theft in the second degree if he or she commits theft of:

- (a) Property or services which exceed(s) two hundred and fifty dollars (\$250) in value, but does not exceed one thousand five hundred dollars (\$1500) in value; or
- (b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant; or
- (c) A credit card; or

(d) A motor vehicle, of a value less than one thousand five hundred dollars (\$1500).

(2) Theft in the second degree is a gross misdemeanor.

5.9.05. Theft in the Third Degree.

(1) A person is guilty of theft in the third degree if he or she commits theft of property or services which does not exceed two hundred and fifty dollars (\$250) in value.

(2) Theft in the third degree is a misdemeanor.

5.9.06. Unlawful Issuance of Checks or Drafts.

(1) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he or she has not sufficient funds in, or credit with said bank or other depository, to meet said check or draft, in full upon its presentation, shall be guilty of unlawful issuance of bank check. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of such check or draft, and the uttering or delivering of such a check or draft to another person without such fund or credit to meet the same shall be prima facie evidence of an intent to defraud.

(2) Unlawful issuance of a bank check in an amount greater than two hundred and fifty dollars (\$250) is a felony.

(3) Unlawful issuance of a bank check in an amount of two hundred and fifty dollars (\$250) or less is a gross misdemeanor.

5.9.07. Taking Motor Vehicle Without Permission.

(1) Every person who shall without the permission of the owner or person entitled to the possession thereof intentionally take or drive away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, the property of another, shall be deemed guilty of a gross misdemeanor, and every person voluntarily riding in or upon said automobile or motor vehicle with knowledge of the fact that the same was unlawfully taken shall be equally guilty with the person taking or driving said automobile or motor vehicle and shall be deemed guilty of taking a motor vehicle without permission.

(2) Taking a motor vehicle without permission is a gross misdemeanor.

5.9.08. Extortion-- Definition. "Extortion" means to knowingly obtain or attempt to obtain by threat property or services of the owner.

5.9.09. Extortion in the First Degree.

- (1) A person is guilty of extortion in the first degree if he or she commits extortion by means of a threat as defined in Section 5.1.05(25) (a), (b), and (c).
- (2) Extortion in first degree is a felony.

5.9.10. Extortion in the Second Degree.

- (1) A person is guilty of extortion in the second degree if he or she commits extortion by means of a threat as defined in Section 5.1.05(25) (d through j).
- (2) In any prosecution under this section based on a threat to accuse any person of a crime or cause criminal charges to be instituted against any person, it is a defense that the actor reasonably believed the threatened criminal charge to be true and that his or her sole purpose was to compel or induce the person threatened to take reasonable action to make good the wrong which was the subject of such threatened criminal charge.
- (3) Extortion in the second degree is a gross misdemeanor.

5.9.11. Possession Stolen Property-- Definition-- Credit Cards, Presumption.

- (1) "To possess stolen property" means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.
- (2) The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of possessing stolen property.
- (3) When a person not an issuer or agent thereof has in his or her possession or under his or her control stolen credit cards issued in the names of two or more persons, he or she shall be presumed to know that they are stolen. This presumption may be rebutted by evidence raising a reasonable inference that the possession of such stolen credit cards was without knowledge that they were stolen.

5.9.12. Possessing Stolen Property in the First Degree.

- (1) A person is guilty of possessing stolen property in the first degree if he or she possesses stolen property which exceeds one thousand five hundred dollars (\$1500) in value.
- (2) Possessing stolen property in the first degree is a felony.

5.9.13. Possessing Stolen Property in the Second Degree.

- (1) A person is guilty of possessing stolen property in the second degree if:

- (a) He or she possesses stolen property which exceeds two hundred fifty dollars (\$250) in value but does not exceed one thousand five hundred dollars (\$1500) in value;
 - (b) He or she possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or
 - (c) He or she possesses a stolen credit card; or
 - (d) He or she possesses a stolen motor vehicle of a value less than one thousand five hundred dollars (\$1500); or
 - (e) He or she possesses a stolen firearm.
- (2) Possessing stolen property in the second degree is a gross misdemeanor.

5.9.14. Possessing Stolen Property in the Third Degree.

- (1) A person is guilty of possessing stolen property in the third degree if he or she possesses stolen property which does not exceed two hundred fifty dollars (\$250) in value.
- (2) Possessing stolen property in the third degree is a misdemeanor.

5.9.15. Obscuring Identity of a Machine.

- (1) A person is guilty of obscuring the identity of a machine if he or she knowingly:
 - (a) Obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any vehicle, machine, engine, apparatus, appliance, or other device with intent to render it unidentifiable; or
 - (b) Possesses a vehicle, machine, engine, apparatus, appliance, or other device held for sale knowing that the serial number or other identification number or mark has been obscured.
- (2) "Obscure" means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable.
- (3) Obscuring the identity of a machine is a gross misdemeanor.

5.9.16. Robbery--Definition. A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

5.9.17. Robbery in the First Degree.

- (1) A person is guilty of robbery in the first degree if in the commission of a robbery or of immediate flight there from, he or she:
 - (a) Is armed with a deadly weapon; or
 - (b) Displays what appears to be a firearm or other deadly weapon; or
 - (c) Inflicts bodily injury.
- (2) Robbery in the first degree is a felony.

5.9.18. Robbery in the Second Degree.

- (1) A person is guilty of robbery in the second degree if he or she commits robbery.
- (2) Robbery in the second degree is a gross misdemeanor.

5.9.19. Embezzlement First Degree.

- (1) A person is guilty of embezzlement in the first degree if he or she has lawful custody of property valued over fifteen hundred dollars (\$1500), not his or her own, and he or she appropriates that property to his or her own use or for the use of another person not the owner with intent to deprive the owner thereof.
- (2) Embezzlement in the First Degree is a Felony.

5.9.20 Embezzlement Second Degree.

- (1) A person is guilty of embezzlement in the second degree if he or she has lawful custody of property valued over two hundred fifty dollars (\$250) but under fifteen hundred dollars (\$1500), not his or her own, and he or she appropriates that property to his or her own use or for the use of another person not the owner with intent to deprive the owner thereof.
- (2) Embezzlement in the Second Degree is a gross misdemeanor.

5.9.21. Disposing of Property of an Estate. Any person who, without proper authority, sells, trades, or otherwise disposes of any property of any estate before the determination of the heirs shall be guilty of an offense and upon conviction thereof shall be a gross misdemeanor.

Chapter 5.10 FRAUD

Sections:

- 5.10.01 Definitions.
- 5.10.02 Fraud.
- 5.10.03 Forgery.
- 5.10.04 Obtaining a Signature by Deception or Duress.
- 5.10.05 Criminal Impersonation.

5.10.06 Unauthorized Use of Tribal Identification Card.

5.10.01. Definitions. The following definitions and the definitions of this section are applicable in this title unless the context otherwise requires:

- (1) "Written instrument" means:
 - (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or
 - (b) Any credit cards, as defined in Section 5.9.01(3), token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification;
- (2) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;
- (3) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
- (4) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he or she did not authorize the making or drawing thereof;
- (5) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;
- (6) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;
- (7) "Forged instrument" means a written instrument which has been falsely made, completed or altered.

5.10.02. Fraud.

- (1) A person is guilty of fraud if he or she obtains something of value by willful misrepresentation or deceit or by the intentional use of false weights or measures.
- (2) Fraud is a gross misdemeanor.

5.10.03. Forgery.

- (1) A person is guilty of forgery if, with intent to injure or defraud:
 - (a) He or she falsely makes, completes, or alters a written instrument; or
 - (b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.
- (2) Forgery is a felony.

5.10.04. Obtaining a Signature by Deception or Duress.

- (1) A person is guilty of obtaining a signature by deception or duress if by deception or duress and with intent to defraud or deprive he or she causes another person to sign or execute a written instrument.
- (2) Obtaining a signature by deception or duress is a gross misdemeanor.

5.10.05. Criminal Impersonation.

- (1) A person is guilty of criminal impersonation if he or she:
 - (a) Assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any other unlawful purpose; or
 - (b) Pretends to be a representative of some person or organization or a public servant and does an act in his or her pretended capacity with intent to defraud another or for any other unlawful purpose.
- (2) Criminal impersonation is a gross misdemeanor.

5.10.06. Unauthorized Use of Tribal Identification Card.

- (1) A person is guilty of unauthorized use of tribal ID card if:
 - (a) He or she is an enrolled member of the Hoh Tribe and he or she loans his or her tribal ID card to another person not legally entitled to the benefits of Hoh tribal membership; or
 - (b) He or she is not legally entitled to the benefits of Hoh Tribal membership and he or she uses the ID card of a member of the Hoh Tribe.
- (2) Unauthorized use of tribal ID card is a gross misdemeanor.

Chapter 5.11 FAMILY OFFENSES

Sections:

- 5.11.01 Bigamy.
- 5.11.02 Incest.
- 5.11.03 Desertion and Non-Support of Children.
- 5.11.04 Failure to Support Dependent Persons.
- 5.11.05 Failure to Send Children to School.

5.11.01. Bigamy.

- (1) A person is guilty of bigamy if he or she intentionally marries or purports to marry another person when either person has a living spouse.
- (2) In any prosecution under this section, it is a defense that at the time of the subsequent marriage or purported marriage:
 - (a) The actor reasonably believed that the prior spouse was dead; or

- (b) A court had entered a judgment purporting to terminate or annul any prior disqualifying marriage and the actor did not know that such judgment was invalid; or
 - (c) The actor reasonably believed that he or she was legally eligible to marry.
- (3) Bigamy is a felony.

5.11.02. Incest.

- (1) A person is guilty of incest if he or she engages in sexual intercourse with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.
- (2) As used in this section, “descendant” includes stepchildren and adopted children under eighteen years of age.
- (3) Incest is a felony and upon conviction thereof, the offender may be required by the court to undergo medical evaluation and treatment in addition to or instead of any other sentence imposed by the court.

5.11.03. Desertion and Non-Support of Children.

- (1) A person is guilty of desertion and non-support of children if he or she deserts or willfully neglects or refuses to provide for the support or maintenance of his or her child, or of a child in his or her custody, when he or she is financially able to provide therefore.
- (2) Desertion and non-support of children is a gross misdemeanor and upon conviction thereof, the offender may be required by the court to provide for support and maintenance in addition to or instead of any other sentence imposed by the court.

5.11.04. Failure to Support Dependent Persons.

- (1) A person is guilty of failure to support dependent persons if he or she, without reasonable excuse, refuses or neglects to furnish food, shelter or care to those dependent upon him or her under the laws or customs and usages of the Hoh Tribe, or if he or she fails to make proper use of funds or property of a dependent person for the benefit of the dependent.
- (2) Failure to support dependent persons is a misdemeanor and upon conviction thereof, the offender may be required by the court to provide adequate and proper support, in addition to or instead of any other sentence imposed by the court.

5.11.05. Failure to Send Children to School. Any person who shall, without good cause, neglect or refuse to send his or her children or any children under his or her care to school, who have not reached their sixteenth birthday or have not completed their eighth grade, whichever is first, shall be guilty of an offense and upon conviction thereof, in the Hoh Tribal Court, shall be a misdemeanor.

Chapter 5.12 BRIBERY AND CORRUPT INFLUENCE

Sections:

- 5.12.01 Bribery.
- 5.12.02 Requesting Unlawful Compensation.
- 5.12.03 Receiving or Granting Unlawful Compensation.
- 5.12.04 Trading in Public Office.
- 5.12.05 Trading in Special Influence.

5.12.01. Bribery.

- (1) A person is guilty of bribery if:
 - (a) With the intent to secure a particular result in a particular matter involving the exercise of the public servant's vote, opinion, judgment, exercise of discretion, or other action in his or her official capacity, he or she offers, confers, or agrees to confer any pecuniary benefit upon such public servant; or
 - (b) Being a public servant, he or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that his or her vote, opinion, judgment, exercise of discretion, or other action as a public servant will be used to secure or attempt to secure a particular result in a particular matter.
- (2) It is no defense to a prosecution under this section that the public servant sought to be influenced was not qualified to act in the desired way, whether because he or she had not yet assumed office, lacked jurisdiction, or for any other reason.
- (3) Bribery is a felony.

5.12.02. Requesting Unlawful Compensation.

- (1) A public servant or employee is guilty of requesting unlawful compensation if he or she requests a pecuniary benefit for the performance of an official action knowing that he or she is required to perform that action without compensation or at a level of compensation lower than that requested.
- (2) Requesting unlawful compensation is a gross misdemeanor.

5.12.03. Receiving or Granting Unlawful Compensation.

- (1) A person is guilty of receiving or granting unlawful compensation if:
 - (a) Being a public servant, he or she requests, accepts, or agrees to accept compensation for advice or other assistance in preparing a bill, contract, claim, or transaction regarding which he or she knows he or she is likely to have an official discretion to exercise; or

- (b) He or she knowingly offers, pays, or agrees to pay compensation to a public servant for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction regarding which the public servant is likely to have an official discretion to exercise.
- (2) Receiving or granting unlawful compensation is a felony.

5.12.04. Trading in Public Office.

- (1) A person is guilty of trading in public office if:
 - (a) He or she offers, confers, or agrees to confer any pecuniary benefit upon a public servant pursuant to an agreement or understanding that such actor will or may be appointed or elected to a public office; or
 - (b) Being a public servant, he or she requests, accepts, or agrees to accept any pecuniary benefit from another person pursuant to an agreement or understanding that such person will or may be appointed or elected to a public office.
- (2) Trading in public office is a felony.

5.12.05. Trading in Special Influence.

- (1) A person is guilty of trading in special influence if:
 - (a) He or she offers, confers, or agrees to confer any pecuniary benefit upon another person pursuant to an agreement or understanding that such other person will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter; or
 - (b) He or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he or she will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter.
- (2) Trading in special influence is a felony.

Chapter 5.13 PERJURY

Sections:

- 5.13.01 Definitions.
- 5.13.02 Perjury in the First Degree.
- 5.13.03 Perjury in the Second Degree.
- 5.13.04 False Swearing.
- 5.13.05 Perjury and False Swearing - Inconsistent Statements - Degree of Crime.
- 5.13.06 Perjury and False Swearing - Retraction.
- 5.13.07 Perjury and False Swearing - Irregularities no Defense.
- 5.13.08 Statement of What One Does Not Know to be True.

- 5.13.09 Bribing a Witness.
- 5.13.10 Bribe Received by a Witness.
- 5.13.11 Intimidating a Witness.
- 5.13.12 Tampering With a Witness.
- 5.13.13 Intimidating a Juror.
- 5.13.14 Jury Tampering.
- 5.13.15 Tampering With Physical Evidence.

5.13.01. Definitions. The following definitions are applicable in this section unless the context otherwise requires:

- (1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;
- (2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this code, written statements shall be treated as if made under oath if:
 - (a) The statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable; or
 - (b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he or she made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto;
- (3) "Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;
- (4) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this Tribe or by any public servant authorized by law to impanel a jury; the term juror also includes any person who has been drawn or summoned to attend as a prospective juror;
- (5) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

5.13.02. Perjury in the First Degree.

- (1) A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.
- (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his or her statement was not material is not a defense to a prosecution under this section.

(3) Perjury in the first degree is a felony.

5.13.03. Perjury in the Second Degree.

- (1) A person is guilty of perjury in the second degree if, with intent to mislead a public servant in the performance of his or her duty, he or she makes a materially false statement, which he or she knows to be false under an oath required or authorized by law.
- (2) Perjury in the second degree is a felony.

5.13.04. False Swearing.

- (1) A person is guilty of false swearing if he or she makes a false statement, which he or she knows to be false, under an oath required or authorized by law.
- (2) False swearing is a gross misdemeanor.

5.13.05. Perjury and False Swearing - Inconsistent Statements - Degree of Crime.

- (1) Where, in the course of one or more official proceedings, a person makes inconsistent material statements under oath, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and known by the defendant to be false. In such case it shall not be necessary for the prosecution to prove which material statement was false but only that one or the other was false and known by the defendant to be false.
- (2) The highest offense of which a person may be convicted in such an instance as set forth in subsection (1) of this section shall be determined by hypothetically assuming each statement to be false. If perjury of different degrees would be established by the making of the two statements, the person may only be convicted of the lesser degree. If perjury or false swearing would be established by the making of the two statements, the person may only be convicted of false swearing. For purposes of this section, no corroboration shall be required of either inconsistent statement.

5.13.06. Perjury and False Swearing--Retraction. No person shall be convicted of perjury or false swearing if he or she retracts his or her false statement in the course of the same proceeding in which it was made, if in fact he or she does so before it becomes manifest that the falsification is or will be exposed and before the falsification substantially affects the proceeding. Statements made in separate hearings at separate stages of the same trial, administrative, or other official proceeding shall be treated as if made in the course of the same proceeding.

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

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

- (2) That the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law.

5.13.08. Statement of What One Does Not Know to be True. Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false.

5.13.09. Bribing a Witness.

- (1) A person is guilty of bribing a witness if he or she offers, confers, or agrees to confer any benefit upon a witness or a person he or she has reason to believe is about to be called as a witness in any official proceeding with intent to:
 - (a) Influence the testimony of that person; or
 - (b) Induce that person on to avoid legal process summoning him or her to testify; or
 - (c) Induce that person to absent himself from an official proceeding to which he or she has been legally summoned.
- (2) Bribing a witness is a felony.

5.13.10. Bribe Receiving by a Witness.

- (1) A witness or a person who has reason to believe he or she is about to be called as a witness in any official proceeding is guilty of bribe receiving by a witness if he or she requests, accepts, or agrees to accept any benefit pursuant to an agreement or understanding that:
 - (a) His or her testimony will thereby be influenced; or
 - (b) He or she will attempt to avoid legal process summoning him or her to testify; or
 - (c) He or she will attempt to absent himself from an official proceeding to which he or she has been legally summoned.
- (2) Bribe receiving by a witness is a felony.

5.13.11. Intimidating a Witness.

- (1) A person is guilty of intimidating a witness if, by use of a threat directed to a witness or a person he or she has reason to believe is about to be called as a witness in any official proceeding, he or she attempts to:
 - (a) Influence the testimony of that person; or
 - (b) Induce that person to elude legal process summoning him or her to testify; or
 - (c) Induce that person to absent himself from such proceeding.
- (2) "Threat" as used in this section means:
 - (a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
 - (b) Threats as defined in STC §5.1.05(25).
- (3) Intimidating a witness is a felony.

5.13.12. Tampering With a Witness.

- (1) A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding to:
 - (a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or
 - (b) Absent himself from such proceedings.
- (2) Tampering with a witness is a felony.

5.13.13. Intimidating a Juror.

- (1) A person is guilty of intimidating a juror if, by use of a threat, he or she attempts to influence a juror's vote, opinion, decision, or other official action as a juror.
- (2) "Threat" as used in this section means:
 - (a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
 - (b) Threats as defined in Section 5.1.05(25).
- (3) Intimidating a juror is a felony.

5.13.14. Jury Tampering.

- (1) A person is guilty of jury tampering if with intent to influence a juror's vote, opinion, decision, or other official action in a case, he or she attempts to communicate directly or indirectly with a juror other than as part of the proceedings in the trial of the case.
- (2) Jury tampering is a gross misdemeanor.

5.13.15. Tampering With Physical Evidence.

- (1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:
 - (a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or
 - (b) Knowingly presents or offers any false physical evidence.
- (2) "Physical evidence" as used in this section includes any article, object, document, record, or other thing of physical substance.
- (3) Tampering with physical evidence is a gross misdemeanor.

Chapter 5.14 OBSTRUCTING GOVERNMENT OPERATION

Sections:

- 5.14.01 Definitions.
- 5.14.02 Obstructing.
- 5.14.03 Refusing to Summon Aid for a Peace Officer.
- 5.14.04 Refusing to Aid an Officer.
- 5.14.05 Resisting Arrest.
- 5.14.06 Rendering Criminal Assistance: Definition of Term.
- 5.14.07 Relative Defined.
- 5.14.08 Rendering Criminal Assistance in the First Degree.
- 5.14.09 Rendering Criminal Assistance in the Second Degree.
- 5.14.10 Rendering Criminal Assistance in the Third Degree.
- 5.14.11 Compounding.
- 5.14.12 Escape in the First Degree.
- 5.14.13 Escape in the Second Degree.
- 5.14.14 Escape in the Third Degree.
- 5.14.15 Bail Jumping.
- 5.14.16 Flight to Avoid Prosecution.
- 5.14.17 Intimidation.
- 5.14.18 Disobedience of Lawful Order of the Court.

5.14.01. Definitions. The following definitions are applicable in this title unless the context otherwise requires:

- (1) "Custody" means restraint pursuant to a lawful arrest or an order of a court;
- (2) "Detention facility" means any place used for the confinement, of a person
 - (a) Arrested for, charged with or convicted of an offense, or
 - (b) Charged with being or adjudicated to be a dependent or delinquent child as now or hereafter amended, or
 - (c) Held for extradition or as a material witness, or
 - (d) Otherwise confined pursuant to an order of a court, or
 - (e) In any work release, furlough, or other such facility or program;
- (3) "Contraband" means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation, or order of a court.

5.14.02. Obstructing. Every person who:

- (1) Without lawful excuse shall refuse or knowingly fail to make or furnish any statement, report, or information lawfully required of him or her by a law enforcement officer or public servant, or
- (2) In any such statement or report shall make any knowingly untrue statement or report to a public servant or law enforcement officer, or
- (3) Shall knowingly hinder, delay, obstruct or interfere in any way with a public servant or law enforcement officer in the discharge of his or her official powers or duties; shall be guilty of a misdemeanor.

5.14.03. Refusing to Summon Aid for a Peace Officer.

- (1) A person is guilty of refusing to summon aid for a peace officer if, upon request by a person he or she knows to be a peace officer, he or she unreasonably refuses or fails to summon aid for such peace officer.
- (2) Refusing to summon aid for a peace officer is a misdemeanor.

5.14.04. Refusing to Aid an Officer.

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

5.14.05. Resisting Arrest.

- (1) A person is guilty of resisting arrest if he or she intentionally prevents or attempts to prevent a peace officer from lawfully arresting him or her.
- (2) Resisting arrest is a misdemeanor.

5.14.06. Rendering Criminal Assistance: Definition of Term. A person “renders criminal assistance” if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime or is being sought by law enforcement officials for the commission of a crime or has escaped from a detention facility, he or she:

- (1) Harbors or conceals such person; or
- (2) Warns such person of impending discovery or apprehension; or
- (3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or
- (4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or
- (5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or
- (6) Provides such person with a weapon.

5.14.07. Relative Defined. As used in Sections 5.14.08 and 5.14.09, “relative” means a person:

- (1) Who is related as husband or wife, brother or sister, parent or grandparent, child or grandchild, step-child or step-parent to the person to whom criminal assistance is rendered; and
- (2) Who does not render criminal assistance to another person in one or more of the means defined in subsection (4), (5), or (6) of Section 5.14.06.

- 5.14.08. Rendering Criminal Assistance in the First Degree.
- (1) A person is guilty of rendering criminal assistance in the first degree if he or she renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any felony.
 - (2) Rendering criminal assistance in the first degree is a felony.
- 5.14.09. Rendering Criminal Assistance in the Second Degree.
- (1) A person is guilty of rendering criminal assistance in the second degree if he or she renders criminal assistance to a person who has committed or is being sought for a gross misdemeanor.
 - (2) Rendering criminal assistance in the second degree is a gross misdemeanor.
- 5.14.10. Rendering Criminal Assistance in the Third Degree.
- (1) A person is guilty of rendering criminal assistance in the third degree if he or she renders criminal assistance to a person who has committed a misdemeanor.
 - (2) Rendering criminal assistance in the third degree is a misdemeanor.
- 5.14.11. Compounding.
- (1) A person is guilty of compounding if:
 - (a) He or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he or she will refrain from initiating a prosecution for a crime; or
 - (b) He or she confers, or offers or agrees to confer, any pecuniary benefit upon another pursuant to an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.
 - (2) In any prosecution under this section, it is a defense if established by a preponderance of the evidence that the pecuniary benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.
 - (3) Compounding is a gross misdemeanor.
- 5.14.12. Escape in the First Degree.
- (1) A person is guilty of escape in the first degree if, being detained pursuant to a conviction of a felony, he or she escapes from custody or a detention facility.
 - (2) Escape in the first degree is a felony.
- 5.14.13. Escape in the Second Degree.
- (1) A person is guilty of escape in the second degree if:
 - (a) He or she escapes from a detention facility; or
 - (b) Having been charged with a felony, he or she escapes from custody.
 - (2) Escape in the second degree is a gross misdemeanor.

5.14.14. Escape in the Third Degree.

- (1) A person is guilty of escape in the third degree if he or she escapes from custody.
- (2) Escape in the third degree is a misdemeanor.

5.14.15. Bail Jumping.

- (1) Any person having been released by court order or admitted to bail with the requirement of a subsequent personal appearance before the Hoh Tribal Court, and knowingly fails without lawful excuse to appear as required is guilty of bail jumping. Unless otherwise established, the failure to appear when required shall be inferred to have been without lawful excuse.
- (2) Bail jumping is a felony if the person was held for, charged with, or convicted of a felony, a gross misdemeanor if a gross misdemeanor, and a misdemeanor if a misdemeanor.

5.14.16. Flight to Avoid Prosecution.

- (1) A person is guilty of flight to avoid prosecution if he or she willfully and knowingly flees from the jurisdiction of the Hoh Tribe or the Hoh Tribal Court to avoid prosecution in any case pending before the Tribal Court.
- (2) Flight to avoid prosecution is a gross misdemeanor.

5.14.17. Intimidation.

- (1) A person is guilty of intimidating a public servant or a law enforcement officer if, by use of a threat, he or she attempts to influence the vote, opinion, decision, or other official action of a public servant or a law enforcement officer.
- (2) For purposes of this section “public servant” shall not include jurors.
- (3) “Threat” as used in this section means
 - (a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
 - (b) Threats as defined in Section 5.1.05(25).
- (4) Intimidation is a felony.

5.14.18. Disobedience of Lawful Order of the Court. Any person who shall willfully disobey any order, subpoena, warrant, or command duly issued, made, or given by any court of the Hoh Tribe of the Hoh Indian Reservation or any judge thereof shall be guilty of an offense and upon conviction thereof shall be guilty of a misdemeanor.

Chapter 5.15 ABUSE OF OFFICE

Sections:

5.15.01 Official Misconduct.

5.15.01. Official Misconduct.

- (1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:
 - (a) He or she intentionally commits an unauthorized act under color of law; or
 - (b) He or she intentionally refrains from performing a duty imposed upon him or her by law.
- (2) Official misconduct is a gross misdemeanor.

Chapter 5.16 PUBLIC DISTURBANCE

Sections:

- 5.16.01 Failure to Disperse.
- 5.16.02 Disorderly Conduct.
- 5.16.03 False Reporting.
- 5.16.04 Disturbing the Peace.
- 5.16.05 Public Drunkenness, Drug Incapacitation.

5.16.01. Failure to Disperse.

- (1) A person is guilty of failure to disperse if:
 - (a) He or she congregates with a group of three or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person, or substantial harm to property; and
 - (b) He or she refuses or fails to disperse when ordered to do so by a peace officer, law enforcement, or other public servant engaged in enforcing or executing the law.
- (2) Failure to disperse is a misdemeanor.

5.16.02. Disorderly Conduct.

- (1) A person is guilty of disorderly conduct if he or she:
 - (a) Uses abusive language and thereby intentionally creates a risk of assault; or
 - (b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority; or
 - (c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority.
- (2) Disorderly conduct is a misdemeanor.

5.16.03. False Reporting.

- (1) A person is guilty of false reporting if with knowledge that the information reported, conveyed or circulated is false, he or she initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, or emergency knowing that such false report is likely to cause evacuation of a building, place of assembly or transportation facility, or to cause public inconvenience or alarm.
- (2) A person is guilty of false reporting if he or she knowingly makes any false report to a law enforcement officer, peace officer or other authorized officer (including any mandatory reporter).
- (3) False reporting is a gross misdemeanor.

5.16.04. Disturbing the Peace.

- (1) A person is guilty of disturbing the peace if he or she, by means of a loud noise or disruptive act, endangers or disrupts the peace, tranquility, health, or welfare of any person or natural wildlife community.
- (2) Disturbing the peace is a misdemeanor.

5.16.05. Public Drunkenness; Drug Incapacitation. Any person who shall appear in any public place under the influence of alcohol or any other drug or narcotic to the degree that he may endanger himself or another human or property or annoy any persons in his vicinity shall be guilty of a misdemeanor. The court may in its judgment order the person upon conviction to participate in any available alcoholic or drug abuse program in lieu of the foregoing penalties, which may be imposed upon failure of the person to follow the orders of the court. Drunkenness in the absence of the other elements of this section shall not be an offense.

Chapter 5.17 RAPE — PUBLIC INDECENCY — PROSTITUTION —
SEX CRIMES

Sections:

- 5.17.01 Definitions.
- 5.17.02 Testimony — Evidence — Written Motion — Admissibility.
- 5.17.03 Defense to Prosecution under this Title.
- 5.17.04 Rape in the First Degree.
- 5.17.05 Rape in the Second Degree.
- 5.17.06 Rape in the Third Degree.
- 5.17.07 Statutory Rape in the First Degree.
- 5.17.08 Statutory Rape in the Second Degree.
- 5.17.09 Statutory Rape in the Third Degree.
- 5.17.10 (Reserved)
- 5.17.11 Public Indecency.
- 5.17.12 Child Molestation.
- 5.17.13 Prostitution.
- 5.17.14 Prostitution — Sex of Parties Immaterial — No Defense.
- 5.17.15 Promoting Prostitution — Definitions.
- 5.17.16 Promoting Prostitution in the First Degree.
- 5.17.17 Promoting Prostitution in the Second Degree.
- 5.17.18 Permitting Prostitution.
- 5.17.19 Abusive Sexual Touching.

5.17.01. Definitions. As used in this title:

- (1) "Sexual intercourse"
 - (a) Has its ordinary meaning and occurs upon any penetration, however slight, and
 - (b) 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
 - (c) 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.
- (2) "Married" means one who is legally married to another.
- (3) "Mental incapacity" is that condition existing at the time of the offense which 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;
- (4) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act;
- (5) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped;
- (6) "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.

5.17.02. Testimony — Evidence — Written Motion — Admissibility.

- (1) In order to convict a person of any crime defined in this code it shall not be necessary that the testimony of the alleged victim be corroborated.
- (2) 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 mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3) of this section, but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.
- (3) In any prosecution for the crime of rape or for an attempt to commit rape, or 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 mores contrary to community standards is not admissible if offered to

attack the credibility of the victim and admissible on the issue of consent only pursuant to the following procedure:

- (a) 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 relevancy of 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.
 - (b) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.
 - (c) 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.
 - (d) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent; is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant; the court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.
- (4) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing pursuant to subsection (3) of this section concerning such evidence.

5.17.03. Defense to Prosecution under this Title.

- (1) In any prosecution under this title in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.
- (2) In any prosecution under this title 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, as the case may be; provided, that it is a defense which the defendant must prove by a preponderance of the evidence 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.

5.17.04. Rape in the First Degree.

- (1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person, where the perpetrator or an accessory:
 - (a) Uses forcible compulsion;
 - (b) Uses or threatens to use a deadly weapon; or
 - (c) Kidnaps the victim; or
 - (d) Inflicts serious physical injury; or
 - (e) Feloniously enters into the building or vehicle where the victim is situated.
- (2) Rape in the first degree is a felony. No person convicted of rape in the first degree shall be granted a deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility.

5.17.05. Rape in the Second Degree.

- (1) 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 not married to the perpetrator when the victim is incapable of consent by reason of being physically helpless or mentally impaired.
- (2) Rape in the second degree is a felony.

5.17.06. Rape in the Third Degree.

- (1) A person is guilty of rape in the third degree when under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person:
 - (a) Where the victim did not consent as defined in Section 5.17.01(6) 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 threat of substantial unlawful harm to property rights of the victim.
- (2) Rape in the third degree is a felony.

5.17.07. Statutory Rape in the First Degree.

- (1) A person over thirteen years of age is guilty of statutory rape in the first degree when the person engages in sexual intercourse with another person who is less than eleven years old.
- (2) Statutory rape in the first degree is a felony.

5.17.08. Statutory Rape in the Second Degree.

- (1) A person over sixteen years of age is guilty of statutory rape in the second degree when such person engages in sexual intercourse with another person, not married to the perpetrator, who is eleven years of age or older but less than fourteen years old.
- (2) Statutory rape in the second degree is a felony.

5.17.09. Statutory Rape in the Third Degree.

- (1) A person over eighteen years of age is guilty of statutory rape in the third degree when such person engages in sexual intercourse with another person, not married to the perpetrator, who is fourteen years of age or older but less than sixteen years old.
- (2) Statutory rape in the third degree is a felony.

5.17.10. (Reserved)

5.17.11. Public Indecency.

- (1) A person is guilty of public indecency if he or she makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm.
- (2) Public indecency is a misdemeanor unless such person exposes himself to a person under the age of fourteen years in which case indecency is a gross misdemeanor.

5.17.12. Child Molestation.

- (1) A person is guilty of child molestation if he or she:
 - (a) Entices or persuades a child under the age of 18 years to enter a building, vehicle, room, boat, or any other place with intent to commit sexual intercourse, as defined in Section 5.17.01(1) or sexual touching as defined in Section 5.15.19(3); or
 - (b) Has possession of a child under the age of 18 years in any such place with intent to commit sexual intercourse or sexual contact.
- (2) Child molestation is a felony.

5.17.13. Prostitution.

- (1) 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.
- (2) Prostitution is a misdemeanor.

5.17.14. Prostitution — Sex of Parties Immaterial — No Defense. In any prosecution for prostitution, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is not a defense that:

- (1) Such persons were of the same sex; or
- (2) 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.

5.17.15. Promoting Prostitution — Definitions. The following definitions are applicable in Sections 5.15.15 through 5.15.18:

- (1) “Advances prostitution.” A person “advances prostitution” if, acting other than as a prostitute or as a customer thereof, he or she 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 of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.
- (2) “Profits from prostitution.” A person “profits from prostitution” if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.

5.17.16. Promoting Prostitution in the First Degree.

- (1) A person is guilty of promoting prostitution in the first degree if he or she knowingly:
 - (a) Advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or
 - (b) Advances or profits from prostitution of a person less than eighteen years old.
- (2) Promoting prostitution in the first degree is a felony.

5.17.17. Promoting Prostitution in the Second Degree.

- (1) A person is guilty of promoting prostitution in the second degree if he or she knowingly:
 - (a) Profits from prostitution; or
 - (b) Advances prostitution.
- (2) Promoting prostitution in the second degree is a felony.

5.17.18. Permitting Prostitution.

- (1) A person is guilty of permitting prostitution if, having possession or control of premises which he or she knows are being used for prostitution purposes,

he or she fails without lawful excuse to make reasonable effort to halt or abate such use.

(2) Permitting prostitution is a misdemeanor.

5.17.19. Abusive Sexual Touching.

- (1) 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 placing the other person in fear;
 - (c) When the other person is a child under the age of 14;
 - (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 physical handicap, mental disease, 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.
- (2) Abusive sexual touching is a felony.
- (3) "Sexual touching" 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.
- (4) "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.

Chapter 5.18 ANIMALS

Sections:

- 5.18.01 Allowing Vicious Animals at Large.
- 5.18.02 Domestic Animals--Taking, Concealing, Injuring, Killing, etc.
- 5.18.03 Cruelty to Animals.
- 5.18.04 Neglecting Dogs and Other Animals.

5.18.01. Allowing Vicious Animals at Large. Every person having the care or custody of any animal known to possess any vicious or dangerous tendencies, who shall allow the same to escape or run at large in any place or manner liable to

endanger the safety of any person, shall be guilty of a misdemeanor; and any person may lawfully kill such animal when reasonably necessary to protect his or her own or the public safety. The court may order the animal surrendered to the appropriate animal control agency.

5.18.02. Domestic Animals--Taking, Concealing, Injuring, Killing, etc. Any person who, with intent to deprive or defraud the owner thereof:

- (1) Takes, leads away or confines any domestic animals; or
- (2) Conceals the identity of any domestic animal or its owner by obscuring or removing from the animal any collar, tag, license, tattoo or other identifying device or mark; or
- (3) Willfully kills or injures any domestic animal, unless excused by law, custom or usage of the Hoh Tribe, shall be guilty of a gross misdemeanor.

5.18.03. Cruelty to Animals.

- (1) A person is guilty of cruelty to animals if he or she tortures, mistreats, mutilates, abandons, or unreasonably deprives of food, drink and care an animal which he or she owns or which is in his or her custody or if he or she causes or procures the same.
- (2) Cruelty to animals is a gross misdemeanor.

5.18.04. Neglecting Dogs and Other Animals. Any person who shall allow a dog or other animal owned by such person or in his lawful custody to roam at large or wander through populated areas shall be guilty of an offense and upon conviction thereof shall be guilty of a misdemeanor. Such dogs or animals not claimed by anyone may be disposed of by order of the court. Where such an animal causes injury to person or property, the person shall be guilty of a gross misdemeanor.

Chapter 5.19 FIREARMS/WEAPONS

Sections:

- 5.19.01 Definitions.
- 5.19.02 Committing Crime When Armed—Penalties.
- 5.19.03 Being Armed Prima Facie Evidence of Intent.
- 5.19.04 Certain Persons Forbidden to Possess Firearms.
- 5.19.05 Sale, Possession or Use of Certain Weapons.
- 5.19.06 Sale or Possession of Machine Guns, Other Guns.
- 5.19.07 Aiming or Discharging Firearms.
- 5.19.08 Intimidation by Use of Certain Weapons.
- 5.19.09 Exceptions to Sections 5.19.07(2), 5.19.08 and 5.19.13.
- 5.19.10 Possession of Firearms by a Minor.
- 5.19.11 Delivery of Pistol to Certain Persons.

5.19.12 Alteration of Identifying Marks.

5.19.13 Forfeiture of Weapons by the Court.

5.19.01. Definitions:

- (1) "Dangerous weapon" means any nunchucks, sand club, metal knuckles, karate stars, spring blade knife, or any knife the blade of which is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity or by an outward, downward or centrifugal movement.
- (2) "Machine gun" shall be defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired there from at the rate of five or more shots per second.
- (3) "Firearm" shall be defined as a weapon or device from which a projectile may be fired by an explosive such as gunpowder. Air guns and other guns fired by the release of compressed gas are firearms. Firearm shall also include any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) similar device.
- (4) "Short firearm or pistol" as used in this chapter means any firearm with a barrel less than twelve inches in length.

5.19.02. Committing Crime When Armed—Penalties. Any person who shall commit or attempt to commit any offense under this title, while armed with, or in the possession of any firearm, shall upon conviction, in addition to the penalty provided by statute for the crime committed without use or possession of a firearm shall be guilty of a felony. This section shall not apply to offenses committed while in possession of an unloaded hunting rifle secured in a vehicle if the rifle is in no way connected to the commission of the offense.

5.19.03. Being Armed- Prima Facie Evidence of Intent. In the trial of a person for committing or attempting to commit a crime of violence, the fact that he or she was armed with a pistol and had no license to carry the same shall be prima facie evidence of his or her intention to commit said crime of violence.

5.19.04. Certain Persons Forbidden to Possess Firearms. No person who has been convicted under this code or elsewhere of a crime of violence or of a felony, shall own any firearm or have one in his or her possession or under his or her

control. Such person upon being convicted of a violation of this section shall be guilty of a felony.

5.19.05. Sale, Possession or Use of Certain Weapons.

- (1) No person shall:
 - (a) Sell, dispose of, manufacture, or have in possession a dangerous weapon;
 - (b) Use a device for suppressing the noise of any firearm;
 - (c) Carry with intent to conceal a dagger or dangerous weapon, or;
 - (d) Carry a concealed pistol without a license from the Hoh Tribe, if required, or the State of Washington.
- (2) Any violation of this section shall be a gross misdemeanor.

5.19.06. Sale or Possession of Machine Guns, Other Guns.

- (1) No person shall sell, furnish, manufacture, or have in possession any:
 - (a) Machine gun or any part thereof capable of use or assembling or repairing any machine gun;
 - (b) Shotgun having a barrel(s) of less than 18 inches in length;
 - (c) A weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel(s) of less than 18 inches in length;
 - (d) A rifle having a barrel(s) of less than 16 inches in length; or
 - (e) A weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel(s) of less than 16 inches in length.
- (2) No person shall set a spring gun.
- (3) Any violation of this section shall be a felony.

5.19.07. Aiming or Discharging Firearms.

- (1) No person shall willfully discharge any firearm or airgun or throw any destructive device within a settled community or any other place where any person might be endangered by it, although no injury results.
- (2) No person shall aim a firearm, whether loaded or not, at or toward any person.
- (3) Any violation of this section shall be a misdemeanor.

5.19.08. Intimidation by Use of Certain Weapons.

- (1) No person shall carry, exhibit, display or draw any firearm, dagger, sword, knife, or club, or any other weapon apparently capable of producing bodily harm in a manner, under circumstances and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of another.
- (2) Violation of this section shall be a gross misdemeanor.

- 5.19.09. Exceptions to Sections 5.19.07(2), 5.19.08 and 5.19.13. Sections 5.19.07(2) and 5.19.08 and 5.19.13 shall not apply to the following:
- (1) Any person vested by law with a duty to preserve public safety, maintain public order, or make arrests for offenses, while performing such duty;
 - (2) Any person acting to protect himself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;
 - (3) Any person making or assisting in making a lawful arrest of a felony; or
 - (4) Any person engaged in military activities sponsored by the federal government.
- 5.19.10. Possession of Firearms by a Minor.
- (1) No minor under fourteen years shall have in possession any firearm for target practice or any other purpose except:
 - (a) While accompanied by or under the immediate charge of his or her parent or guardian or other adult approved for the purpose of this section by the parent or guardian; or
 - (b) While under the supervision of a certified safety instructor at an established gun range or firearm training class.
 - (2) Violation of this section shall be a misdemeanor.
- 5.19.11. Delivery of Pistol to Certain Persons.
- (1) No person shall deliver a pistol to any person under the age of 21 years, or to one who he or she has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.
 - (2) Any violation of this section is a misdemeanor.
- 5.19.12. Alteration of Identifying Marks.
- (1) No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol. Possession of any pistol upon which any such mark has been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor changed, altered, removed, or obliterated the same.
 - (2) Any violation of this section is a misdemeanor.
- 5.19.13. Forfeiture of Weapons by the Court. The court may order forfeiture of any weapon possessed or used in violation of this chapter. The court in its discretion may order the weapon to be sold, used or otherwise disposed of for the benefit of the Hoh Indian Tribe or may order the weapon be destroyed.

Chapter 5.20 GAMBLING

Sections:

5.20.01 Gambling Prohibited Unless Authorized.

5.20.01 Gambling Prohibited Unless Authorized. Any organized gambling (i.e. casino gambling) on the Hoh Reservation is and shall be controlled pursuant to the Hoh Gaming Ordinance, if and when one exists.

Chapter 5.21 LIQUOR

Sections:

5.21.01 Reference.

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

5.21.03 Minor in Possession of Liquor.

5.21.04 Minor Consuming Liquor.

5.21.01. Reference. In addition to the offenses set forth in this section, activities related to liquor within the jurisdiction of the Hoh Tribe shall be controlled pursuant to the Hoh Liquor Ordinance, should one exist.

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

(1) No person shall:

- (a) Sell or offer for sale by the drink or bottle, or keep or possess with intent to sell any liquor, except as authorized by the Hoh Liquor Ordinance;
- (b) Transfer an identification of age to a minor for the purpose of permitting such minor to obtain liquor; provided that corroborative testimony of a witness other than a minor shall be a requirement of conviction; or
- (c) Attempt to purchase liquor through the use of a false or altered identification which falsely purports to show the individual to be over the age of 21 years.

(2) Any violation of this section shall be a gross misdemeanor.

5.21.03. Minor in Possession of Liquor.

- (1) No person under twenty-one years of age shall purchase, possess, obtain, or sell any liquor.
- (2) Any violation of this section is a misdemeanor.

5.21.04. Minor Consuming Liquor.

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

- (2) "Consume" means the act of consuming liquor, the condition of having consumed liquor, and the condition of being under the influence of liquor.
- (3) Any violation of this section is a misdemeanor.

5.21.05 Social Host Liability. Gross misdemeanor unless death or serious bodily injury then felony.

5.21.06 Furnishing alcohol to a Minor. Gross misdemeanor.

Chapter 5.22 FISHING AND HUNTING

Sections:

5.22.01 Reference.

5.22.01 Reference. In addition to the offenses set forth in this title, activities related to fishing or hunting within the jurisdiction of the Hoh Tribe shall be controlled pursuant to the Hoh Fishing and Hunting Ordinance, Title 7.

Chapter 5.23 LIBEL AND SLANDER

Sections:

5.23.01 Libel, What Constitutes; Penalty.

5.23.02 How Justified or Excused.

5.23.03 Publication Defined.

5.23.01. Libel, What Constitutes; Penalty.

- (1) Every malicious publication by writing, printing, picture, effigy, sign, radio broadcasting or which shall in any other manner transmit the human voice or reproduce the same from records or the appliances or means, which shall tend:
 - (a) To expose any living person to hatred, contempt, ridicule or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse;
or
 - (b) To expose the memory of one deceased to hatred, contempt, ridicule or obloquy; or
 - (c) To injure any person, corporation or association of persons in his or her or their business or occupation, shall be libel.
- (2) A person who commits libel shall be guilty of a gross misdemeanor.

5.23.02. How Justified or Excused. Every publication having the tendency or effect mentioned shall be deemed malicious unless justified or excused. Such publication is justified whenever the matter charged as libelous charges the

commission of a crime, is a true and fair statement, and was published with good motives and for justifiable ends. It is excused when honestly made in belief of its truth and fairness and upon reasonable grounds for such belief, and consists of fair comments upon the conduct of any person in respect of public affairs, made after a fair and impartial investigation.

5.23.03. Publication Defined. Any method by which matter charged as libelous may be communicated to another shall be deemed a publication thereof.

5.23.04 Slander

Chapter 5.24 MISCELLANEOUS OFFENSES

Sections:

5.24.01 Littering.

5.24.02 Maintaining a Public Nuisance.

5.24.03 Abandoning Refrigeration Equipment.

5.24.04 Telephone Abuse.

5.24.05 Adulteration.

5.24.06 Purchasing, Possessing, or Obtaining Cigarettes or Tobacco by or for Persons Under the Age of Eighteen.

5.24.01. Littering.

- (1) What constitutes. Any person who throws, dumps, places or deposits upon the lands of another or upon any public road, highway, street, or any other area within the reservation, without the consent of the owner, any garbage, debris, junk, carcasses, trash, refuse, or any other substance of nature whatsoever shall be deemed guilty of an offense of littering.
- (2) Littering is a misdemeanor

5.24.02. Maintaining a Public Nuisance.

- (1) A person is guilty of maintaining a public nuisance if he or she maintains or allows his or her personal or real property to be in a state which poses a substantial threat to the health or safety of others.
- (2) Maintaining a public nuisance is a misdemeanor.

5.24.03. Abandoning Refrigeration Equipment.

- (1) A person is guilty of abandoning refrigeration equipment if he or she discards, abandons or leaves in any place accessible to children any refrigerator, icebox, or deep-freeze locker having a capacity of one and one-half cubic feet or more, which is no longer in use and which has not had the door removed or secured to prevent opening or a portion of the latch mechanism removed to prevent latching or locking of the door.

(2) Abandoning refrigeration equipment is a gross misdemeanor.

5.24.04. Telephone Abuse.

- (1) A person is guilty of telephone abuse if he or she makes a telephone call with intent to harass, annoy, alarm, insult, intimidate, torment, embarrass, or taunt another person:
 - (a) Without purpose of legitimate communication;
 - (b) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act;
 - (c) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues;
 - (d) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household; or
 - (e) If he or she refuses to surrender the use of a party line when the telephone is needed for an emergency.
- (2) Telephone abuse is a gross misdemeanor.

5.24.05. Adulteration.

- (1) A person is guilty of adulteration if he or she manufactures, knowingly sells, or offers for sale, or intentionally keeps any food, drug, or drink which is adulterated with a harmful substance, or which, because of a defect in its manufacturing process, is harmful when ingested.
- (2) Adulteration is a gross misdemeanor.

5.24.06 Purchasing, Possessing, or Obtaining Cigarettes or Tobacco by or for Persons Under the Age of Eighteen.

- (a) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products, commits a civil infraction punishable by a fine not to exceed fifty dollars (\$50), or performance of up to four hours of community service, or both. The court may also require participation in a smoking cessation program.
- (b) It shall be a complete defense to a charge under this subsection if the tobacco has been acquired or used for tribal ceremonial purposes.

Chapter 5.25 DRIVING A MOTOR VEHICLE

Sections:

5.25.01 Driving While Under the Influence of Intoxicating Liquor or Drugs or Glue or other Intoxicating Inhalants.

5.25.02 Reckless Driving.

5.25.03 Hit and Run of Unattended Car or Other Property.

5.25.04 Hit and Run of an Attended Vehicle or Other Property.

- 5.25.05 Operating a Motor Vehicle While Privilege is Suspended or Revoked.
- 5.25.06 Eluding a Law Enforcement Officer.
- 5.25.07 Prohibited Use of Alcoholic Beverages in Vehicle.

5.25.01. Driving While Under the Influence of Intoxicating Liquor or Drugs or Glue or other intoxicating inhalants.

- (1) What Constitutes. A person is guilty of driving while under the influence of intoxicating liquor or any drug or glue if he or she drives a vehicle within the reservation while:
 - (a) He or she has 0.08 grams or more of alcohol per two hundred ten liters of breath as shown by analysis of the person's breath;
 - (b) He or she has 0.08 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood;
 - (c) He or she is under the influence of or affected by intoxicating liquor or any drug or glue or other mind-altering substance; or
 - (d) He or she is under the combined influence of or affected by intoxicating liquor and any drug or glue or other mind-altering substance; or
 - (e) He or she refuses to submit to a portable breath test upon reasonable suspicion by law enforcement.
- (2) The fact that any person charged with a violation of this section is or has been entitled to use of such drug under the laws of this tribe shall not constitute a defense against any charge of violating this section.
- (3) Driving while under the influence is a gross misdemeanor for the first two convictions, and is a felony upon the third conviction.

5.25.02. Reckless Driving.

- (1) What constitutes. Any person who shall drive or operate any motor vehicle in any manner dangerous to the public safety or properties of the people of the Hoh Indian Reservation shall be deemed guilty of reckless driving.
- (2) Reckless driving is a gross misdemeanor.

5.25.03. Hit and Run of Unattended Car or Other Property.

- (1) What Constitutes. A person is guilty of hit and run of unattended car or other property within the reservation when as operator of any vehicle which collides with any other vehicle or other property, which is unattended, he or she fails to immediately stop and either locate and notify the owner or operator of said vehicle or other property, of his or her name and address or leave in a conspicuous place in or on the vehicle or other property, a written notice, giving the name and address of the operator and owner of the vehicle striking such vehicle or other property.
- (2) Hit and run of unattended car or other property is a gross misdemeanor.

5.25.04. Hit and Run of an Attended Vehicle or Other Property.

- (1) What Constitutes. A person is guilty of hit and run of an attended vehicle or other property within the reservation when:
 - (a) As driver of any vehicle involved in an accident resulting in the injury to or death of any person, he or she fails to immediately stop such vehicle at the scene of such accident or as close thereto as possible, without obstructing traffic more than necessary, forthwith return to, and in every event remain at the scene of such accident until he or she has fulfilled requirements of this section.
 - (b) As driver of any vehicle involved in an accident resulting only in damage to a vehicle which driven or attended by any person or damage to other property, who fails to immediately stop such vehicle at the scene of such accident or as close thereto as possible, without obstructing traffic more than necessary, and forthwith return to and in any event remain at the scene of such accident until he or she has fulfilled the requirements of this section.
- (2) Duty: The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person or damage to other property shall give his or her name, address and vehicle license number and shall exhibit his or her vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his or her behalf. In the event that none of the persons specified are in a condition to receive the information to which they otherwise would be entitled under this section, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of this section insofar as possible on his or her part to be performed, shall forthwith report such accident to the police authority and submit thereto the information specified in this section.
- (3) Hit and run of an attended vehicle or other property is a gross misdemeanor.

5.25.05. Operating a Motor Vehicle While Privilege is Suspended or Revoked.

- (1) A person is guilty of operating a motor vehicle while privilege suspended or revoked if he or she operates a motor vehicle within the Hoh Indian Reservation while the privilege to do so has been suspended or revoked by any jurisdiction as part of a penalty imposed for any civil or criminal traffic violation or because the person failed to respond to a notice of civil traffic violation.
- (2) Operating a motor vehicle while privilege suspended is a misdemeanor.

5.25.06. Eluding a Law Enforcement Officer.

- (a) Eluding in the first degree.

- (1) Any driver of a motor vehicle who willfully fails or refused to immediately bring his or her vehicle to a stop once the driver knows that a law enforcement officer has given him or her a visible or audible signal to bring his or her vehicle to a stop, and who drives his or her vehicle in a manner indicating a wanton or willful disregard for the lives and property of others while attempting to elude a pursuing police vehicle, is guilty of eluding a law enforcement officer in the first degree.
 - (2) “Immediately,” as used in this section, shall mean stopping as soon as it is reasonably possible.
 - (3) Eluding a law enforcement officer in the first degree shall be guilty of a gross misdemeanor.
- (b) Eluding in the second degree.
- (1) Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop once the driver knows that a law enforcement officer has given him or her a visible or audible signal to bring his or her vehicle to a stop is guilty of eluding a law enforcement officer in the second degree.
 - (2) “Immediately” as used in this section, shall mean stopping as soon as it is reasonably possible.
 - (3) Eluding a law enforcement officer in the second degree shall be guilty of a gross misdemeanor.

5.25.07. Prohibited Use of Alcoholic Beverages in Vehicle.

- (1) A driver is guilty of prohibited use of alcoholic beverages in a vehicle if:
 - (a) He or she drinks any alcoholic beverage 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 possession while in a motor vehicle or while the vehicle is upon a roadway; or
 - (c) He or she is on a roadway in a motor vehicle in which an open or unsealed receptacle containing an alcoholic beverage is present, unless the receptacle is kept in the trunk or other area of the vehicle which is not normally accessible to the occupants.
- (2) Prohibited use of alcoholic beverages in a vehicle is a misdemeanor.

5.25.08 Negligent Driving see RCW 46.61.5249&50

Chapter 5.26 CONTROLLED SUBSTANCES

Sections:

5.26.01 Definitions.

- 5.26.02 Substances Which Are Illegal Without a Valid Prescription.
- 5.26.03 Illegal Drugs.
- 5.26.04 Marijuana.
- 5.26.05 Minor in Possession of Marijuana.
- 5.26.06 Practice of Sniffing.
- 5.26.07 Distribution of Alcohol, Marijuana or Drugs to Children.
- 5.26.08 Possession of Drug Paraphernalia.

5.26.01. Definitions. All terms used in this chapter shall be given their commonly accepted meaning. If there is doubt as to the meaning of a term, the court shall be guided by Article I, Definitions, found in the Washington Uniform Controlled Substances Act, RCW 69.50.101 and 102, or most recent amendments thereto. The attached version of the Washington Uniform Controlled Substances Act is hereby incorporated by reference as are all future amendments to said Act, to be referred to as indicated in this chapter.

5.26.02. Substances Which Are 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 Article II of the Washington Uniform Controlled Substances Act, RCW 69.50.201 et seq, or most recent amendments thereto. If there is any doubt as to whether a substance is illegal or not, the court shall be guided by Article II of the Washington Uniform Controlled Substances Act, RCW 69.50 et seq., or most recent amendments theretoe. Illegal Substances:

- (1) Opiates including but not limited to substances commonly known as opium, heroin, morphine, methadone, and codeine;
- (2) Hallucinogenic substances including but not limited to substances commonly known as DMA, LSD, PCP, mescaline, peyote, and psilocybin;
- (3) Cocaine in any form including but not limited to the powder and the rock or “crack” form;
- (4) Depressants including but not limited to methaqualone, diazepam (Valium), secobarbital, and pentobarbital; and
- (5) Stimulants including but not limited to any form of amphetamine. The chemical composition of a substance may be proved by any acceptable method of identification, including but not limited to identification by a trained law enforcement officer, by field tests, or by laboratory tests.

5.26.03. Illegal Drugs.

- (a) Any person who possesses for personal use or grows for personal use any of the substances listed in Section 5.26.02 is guilty of a gross misdemeanor, except as provided in Section 5.26.035.

- (b) Any person who grows, manufactures, delivers, or possesses with intent to sell, deliver, or manufacture, any of the substances listed in Section 5.26.02 shall be guilty of a felony, except as provided in Section 5.26.035. The term “manufacture” shall not apply to growing for personal use.
- (c) Any person who creates, delivers, or possesses a counterfeit illegal drug shall be guilty of a felony. 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 5.26.02.
- (d) Any person who offers, arranges, or negotiates for the delivery of an illegal drug listed in Section 5.26.02 and then delivers any other substance in lieu of an illegal drug listed in Section 5.26.02 shall be guilty of a felony.

5.26.04. Marijuana.

- (a) Simple possession of no more than one ounce of marijuana, two grams of hashish, or three growing marijuana plants, or delivery without remuneration to a person eighteen or more years of age of less than one-fourth ounce of marijuana, one marijuana plant, or one gram of hashish, shall be a civil infraction, punishable by a fine not to exceed one hundred dollars.
- (b) Possession of Moderate Amounts of Marijuana. Any person convicted of simple possession of more than one but no more than four ounces of marijuana, more than three but no more than ten growing marijuana plants, or more than two but no more than seven grams of hashish, shall be sentenced to no more than thirty days in jail, a fine of no more than three hundred dollars, or both, with costs.
- (c) Possession of Marijuana. Any person convicted of simple possession of any quantity of marijuana, hashish or marijuana plants greater than those quantities in subsections (a) and (b) of this section, shall be guilty of a gross misdemeanor.
- (d) Sale of Small Quantities of Marijuana. Except as otherwise provided in this section, any person convicted of planting, growing, cultivating, manufacturing, delivery, keeping for sale, or barter of no more than one-quarter ounce of marijuana, one gram of hashish, or two growing marijuana plants, shall be misdemeanor.
- (e) Sale and Cultivation of Marijuana. Except as otherwise provided in this section, any person convicted of planting, growing, cultivating, manufacturing, keeping for sale, delivery or barter of a quantity of marijuana, hashish, or marijuana plants greater than those quantities in subsection (d), shall be gross misdemeanor.
- (f) Distribution to Minors. Any person convicted of the sale, distribution, gift, delivery or barter of marijuana to a person under the age of eighteen shall be guilty of a gross misdemeanor.

- (g) Rehabilitation and Community Service. In addition to any other penalty provided for in this section or other law, a person convicted of a criminal offense under this section may be ordered to obtain a professional evaluation for controlled substance addiction or abuse potential, to comply for a period of two years or less with any reasonable program of controlled substance abuse or addiction rehabilitation or treatment, to perform reasonable community service not to exceed seven hundred fifty hours, or any combination of such evaluation, treatment, or community service.

5.26.05 Minor in Possession of Marijuana. No person under the age of eighteen shall possess marijuana in any amount. A violation of this section is punishable by incarceration in a juvenile detention facility for up to one month or a \$250 fine, or both.

5.26.06. Practice of Sniffing.

- (1) A person is guilty of the practice of sniffing if he or she sniffs or inhales gasoline, glue or other like substance determined by the Court to be harmful to the physical and mental health of a user.
- (2) Practice of sniffing is a misdemeanor.

5.26.05. Distribution of Alcohol or Drugs to Children.

- (1) A person is guilty of distribution of alcohol or drugs to children if he or she sells, barter or gives to a child under the age of twenty-one years any alcoholic beverage, narcotic drugs, or any controlled substance, or if he or she allows a child under the age of twenty-one years to use such substance on his or her property.
- (2) Distribution of alcohol or drugs to children is a gross misdemeanor.

5.26.06 Possession of Drug Paraphernalia.

- (a) "Possession of drug paraphernalia" means to knowingly receive, retain, possess, conceal, or dispose of drug paraphernalia.
- (b) Possession of drug paraphernalia shall be a misdemeanor.
 - (1) As used in this title, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:
 - (A) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

- (B) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (C) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (D) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;
- (E) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (F) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (G) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (H) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (I) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (J) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (K) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (L) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls,
 - (b) Water pipes,
 - (c) Carburetion tubes and devices,
 - (d) Smoking and carburetion masks,
 - (e) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand,
 - (f) Miniature cocaine spoons, and cocaine vials,
 - (g) Chamber pipes,
 - (h) Carburetor pipes,
 - (i) Electric pipes,

- (j) Air-driven pipes,
 - (k) Chillums,
 - (l) Bongs, and
 - (m) Ice pipes or chillers.
- (2) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:
- (A) Statements by an owner or by anyone in control of the object concerning its use;
 - (B) Prior convictions, if any, of an owner, or of anyone in control of the object, under any tribal, state or federal law related to any controlled substance;
 - (C) The proximity of the object, in time and space, to a direct violation of this chapter;
 - (D) The proximity of the object to controlled substances;
 - (E) The existence of any residue of controlled substances on the object;
 - (F) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of the owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
 - (G) Instructions, oral or written, provided with the object concerning its use;
 - (H) Descriptive materials accompanying the object which explain or depict its use;
 - (I) National and local advertising concerning its use;
 - (J) The manner in which the object is displayed for sale;
 - (K) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
 - (L) Direct or circumstantial evidence of the ratio of sales of the objects(s) to the total sales of the business enterprise;
 - (M) The existence and scope of legitimate uses for the object in the community; and
 - (N) Expert testimony concerning its use.

Chapter 5.27 CONTRIBUTING TO THE CRIMINAL ACT OF A MINOR

Sections:

5.27.01 Contributing to the Criminal Act of a Minor.

5.27.02 Contributing to the Delinquency of a Child.

5.27.01. Contributing to the Criminal Act of a Minor.

- (1) Any person, who by act or omission, knowingly encourages, causes, or contributes to the criminal act of a person under eighteen years of age shall be guilty of contributing to the criminal act of a minor.
- (2) Contributing to the criminal act of a minor is a gross misdemeanor.

5.27.02. Contributing to the Delinquency of a Child. Any person who shall, by an action or omission, willfully encourage or contribute to the delinquency of any child under eighteen years of age shall be guilty of an offense and upon conviction thereof shall guilty of a gross misdemeanor.

Chapter 5.28 DOMESTIC VIOLENCE PROTECTION
SEE TITLE 9

Chapter 5.31 DEFERRED PROSECUTION

Sections:

5.31.01 Deferred Prosecution: Certain First Offenses.

5.31.02 Deferred Prosecution: Offenses Caused by Alcohol or Drug Abuse.

5.31.01. Deferred Prosecution: Certain First Offenses.

- (1) The tribal prosecutor may enter a deferred prosecution agreement with a person charged for the first time with a misdemeanor, gross misdemeanor or fishing violation where no violence occurred in connection with the offense.
- (2) The agreement shall be signed by the tribal court judge and it shall set forth the following conditions:
 - (a) The defendant shall refrain from engaging in any unlawful activity for a specified period of time up to one year;
 - (b) Delay in bringing the case to trial shall not be grounds for dismissal;
 - (c) The prosecutor shall defer prosecution of the defendant during the specified period of time if the defendant is not charged with any criminal or fisheries offenses during that time; and
 - (d) The court shall dismiss with prejudice the charges against the defendant at the end of the specified period of time if the defendant has not been charged with any criminal or fisheries offense during that time.

- (3) If the defendant is charged with any criminal or fisheries offense during the specified period of time, the prosecutor may terminate the deferred prosecution agreement and the defendant shall be arraigned on the original charges.

5.31.02. Deferred Prosecution: Offenses Caused by Alcohol or Drug Abuse.

- (1) A person charged with a misdemeanor or gross misdemeanor may request the tribal court to be considered for a deferred prosecution program under this subsection. The request shall be made at arraignment or before trial.
- (2) The person's request must state the following:
 - (a) The offense charged is the result of or caused by alcohol problems or drug problems for which the person is in need of treatment;
 - (b) Without treatment, there is a great probability of future reoccurrence of similar misconduct; and
 - (c) A case history of the person's alcohol or drug problems.
- (3) Upon consideration of the request, the court may continue the arraignment and refer the person to the tribe's alcoholism or drug abuse counselor for a diagnostic investigation and evaluation. The counselor shall conduct an investigation and examination and shall make a written report to the court with a copy to the defendant including the following findings:
 - (a) Whether the person suffers from the problem alleged;
 - (b) Whether there is a probability that similar misconduct will reoccur in the future if the problem is not treated;
 - (c) Whether extensive treatment is required;
 - (d) Whether effective treatment for the person's problem is available; and
 - (e) If treatment is recommended, a treatment plan specifying the location, nature, length, treatment time schedule and cost of the plan.
- (4) If the report recommends treatment, the court shall examine the plan. If it approves the plan and the defendant agrees to comply with the terms and conditions of the plan and agrees to pay the cost thereof or arrange for the treatment, the court shall order that the defendant be accepted for deferred prosecution. If treatment is not recommended or not approved or the defendant declines to accept the treatment plan, the defendant shall be arraigned on the charges.
- (5) Evidence pertaining to or resulting from the defendant's request and/or the investigation or report is inadmissible in any trial on the charges but may be used after conviction in determining a sentence.
- (6) If a defendant in a deferred prosecution program fails or neglects to fulfill any term or condition of the treatment plan, the facility or agency administering the treatment shall immediately report the breach to the court. Upon receiving such a report, the court shall hold a hearing to determine whether the defendant should be removed from the deferred prosecution program. If removed from deferred prosecution, the defendant shall be arraigned on the original charge.

- (7) If a defendant is convicted in any court of an offense similar to and committed after the one for which he or she is in a deferred prosecution program, the tribal court shall remove the defendant from deferred prosecution and he or she shall be arraigned on the original charge.
- (8) Two years from the date of the court's approval of deferred prosecution or an individual defendant, the charges against the defendant shall be dismissed with prejudice and the records relating to the defendant shall be destroyed.
- (9) Delay in bringing a case to trial caused by a defendant requesting deferred prosecution shall not be grounds for dismissal.

Chapter 5.32 SENTENCING

Sections:

5.32.01 Authorized Sentences of Offenders.

5.32.02 Restitution.

5.32.01. Authorized Sentences of Offenders. Unless otherwise provided in specific sections of this Title, offenses under the Law & Order Code shall be subject to the following penalties:

- (1) **FELONY:** Every person convicted of a felony shall be punished by imprisonment for a maximum term fixed by the court of not more than 180 days (6 months), or by a fine in an amount fixed by the court of not more than five hundred dollars (\$500), or by both such imprisonment and fine.
- (2) **GROSS MISDEMEANOR:** Every person convicted of a gross misdemeanor shall be punished by imprisonment for a maximum term fixed by the court of not more than 120 days (four months), or by a fine in an amount fixed by the court of not more than four hundred dollars (\$400), or by both such imprisonment and fine.
- (3) **MISDEMEANOR:** Every person convicted of a misdemeanor shall be punished by imprisonment for a maximum term fixed by the court of not more than 90 days (three months), or by a fine in an amount fixed by the court of not more than three hundred dollars (\$300), or by both such imprisonment and fine.

5.32.02. Restitution. If a person has gained money, or property, or caused a victim to lose money or property through the commission of a crime, upon conviction thereof the court may, in addition to imposing the fine authorized for the offense, order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss to provide restitution to the victim. In the event that restitution is ordered, a separate hearing must be held to determine the amount of the defendant's gain or victim's loss.

Chapter 5.33 CONSTRUCTION, EFFECTIVE DATE, AMENDMENTS

Sections:

- 5.33.01 Construction.
- 5.33.02 Effective Date.
- 5.33.03 Amendments.

5.33.01. Construction. In interpreting the provisions of this title, the court shall first look for guidance to the written laws of the Hoh Tribe, the decisions of the tribal court, and the customs and traditions of the Hoh people. The court may then consider the laws and customs of other jurisdictions but shall not be bound by them.

5.33.02. Effective Date. The effective date of this code shall be _____, 2010. This code shall continue in effect until the Tribal Business Committee of the Hoh Tribe supersedes it.

5.33.03. Amendments. Amendments to this title may be made by resolution of the Hoh Tribal Business Committee.