

**TITLE 5**  
**LUMMI NATION CODE OF LAWS**  
**CODE OF OFFENSES**

Enacted: Resolution S-13 (10/7/74)  
Resolution 93-29 (3/9/93) (sections 5.09A and 5.09B)  
Resolution 94-103 (9/5/94) (section 5.09C)  
Resolution 97-133 (9/16/97) (section 5A) (confirmed Resolution 98-102 (8/31/98))

Amended: Resolution 82-114 (12/20/82)  
Resolution 83-014 (2/11/83)  
Resolution 94-104 (8/4/94)  
Resolution 94-105 (8/4/94)  
Resolution 94-106 (8/4/94)  
Resolution 98-102 (8/31/98)  
Resolution 2004-076 (6/7/04)  
Resolution 2004-085 (7/12/04)



**TITLE 5  
LUMMI NATION CODE OF LAWS  
CODE OF OFFENSES**

**Table of Contents**

**Chapter 5.01 Crimes Against Persons**

5.01.005 Homicide.....	1
5.01.010 Assault.....	1
5.01.020 Assault and Battery.....	1
5.01.025 Robbery.....	2
5.01.030 Abduction.....	2
5.01.050 Subjection to Maltreatment.....	2
5.01.060 Reckless and Intentional Endangerment.....	2
5.01.070 Stalking.....	2

**Chapter 5.02 Offenses Against Property**

5.02.010 Theft.....	3
5.02.015 Using a Motor Vehicle Without Permission.....	3
5.02.020 Embezzlement.....	3
5.02.040 Forgery.....	4
5.02.050 Extortion.....	4
5.02.060 Possession or Sale of Stolen Property.....	4
5.02.065 Alteration of Property Identification Marks.....	4
5.02.070 Malicious Mischief.....	4
5.02.080 Trespass.....	4
5.02.085 Burglary.....	4
5.02.090 Injury to Public Property.....	5
5.02.095 Arson.....	5
5.02.100 Beach Littering.....	5
5.02.110 Unlawful Dumping.....	5

**Chapter 5.03 Offenses Involving Animals**

5.03.020 Cruelty to Animals.....	5
----------------------------------	---

**Chapter 5.04 Offenses Involving Conduct**

5.04.010 Disorderly Conduct.....	5
5.04.020 Maintaining a Public Nuisance.....	6
5.04.030 Public Gatherings.....	6
5.04.050 Gambling.....	6
5.04.060 Giving Venereal Disease to Another.....	6
5.04.070 Discharge of Weapon.....	6
5.04.080 Carrying a Concealed Weapon.....	6
5.04.090 Carrying Firearm While Under the Influence of Intoxicants.....	6

**Chapter 5.06 Offenses Involving Children**

5.06.010 Failure to Support Dependent Persons.....	7
5.06.020 Failure to Send Children to School.....	7
5.06.030 Contributing to the Delinquency of a Minor.....	7

50.6.050 Curfew.....	7
----------------------	---

**Chapter 5.07 Offenses Involving Tribal Government**

5.07.010 Bribery .....	8
5.07.020 Perjury.....	8
5.07.025 Intimidating or Interfering with a Witness.....	8
5.07.030 False Arrest.....	8
5.07.040 Resisting Lawful Arrest.....	8
5.07.050 Refusing to Aid an Officer.....	8
5.07.055 Obstructing Public Servants or Law Enforcement Officers .....	9
5.07.060 Escape .....	9
5.07.065 Threatening a Tribal Representative.....	9
5.07.070 Disobedience of Lawful Orders of Court.....	9
5.07.075 Violation of an Exclusion Order.....	9
5.07.080 Embezzlement from Tribe .....	9
5.07.090 Hunting or Fishing While Privilege Suspended or Revoked.....	10
5.07.100 Illegal Sale or Purchase of Natural Resources.....	10

**Chapter 5.08 Other Offenses**

5.08.010 Violation of an Approved Tribal Ordinance.....	10
5.08.030 Violation of Federal or State Law.....	10

**Chapter 5.09A Drug and Alcohol Violations**

5.09A.010 Construction .....	10
5.09A.025 Unlawful Inhalation .....	11
5.09A.035 Consumption or Possession of Alcohol by a Minor .....	11
5.09A.045 Furnishing Alcohol to a Minor.....	11
5.09A.050 Substances Which are Illegal Without a Valid Prescription.....	11
5.09A.060 Proof of Chemical Composition .....	11
5.09A.070 Counterfeit Illegal Substances .....	11
5.09A.080 Method of Proof of Counterfeit Illegal Substances .....	12
5.09A.090 Drug Paraphernalia-Definitions .....	12
5.09A.100 Method of Proof of Paraphernalia Character and Purpose .....	12
5.09A.110 Prohibited Acts.....	12
5.09A.130 Sentencing Schedule .....	12
5.09A.140 Special Verdict; Enhanced Sentencing Factors .....	13

**Chapter 5.09B Civil Forfeiture of Property Used in Controlled Substances Violations**

5.09B.010 Construction .....	13
5.09B.020 Definitions.....	13
5.09B.030 Standard of Proof .....	13
5.09B.040 General Principles .....	13
5.09B.050 Forfeiture of Interest.....	14
5.09B.060 When Property Can Be Seized.....	14
5.09B.070 Proceedings for Forfeiture Shall be Deemed Commenced by the Seizure .....	14
5.09B.080 Owner’s Answer to Notice.....	14
5.09B.090 Defenses Which are Available to Respondents Asserting a Right to Possession of Property Which Has Been Seized.....	14
5.09B.100 Procedure for Hearing If No Verified Answer to the Notice Is Given Within Twenty (20) Days.....	15

5.09B.110 Procedure for Hearing If A Verified Answer to the Notice Is Given Within Twenty (20) Days.....	15
5.09B.120 Hearing—Disposition of Property .....	15

**Chapter 5.09C Sexual Offenses**

**Sub Chapter 5.09C.01 General Provisions**

5.09C.01.010 Preamble and Purpose .....	15
5.09C.01.020 Findings-Intent; Effective Date.....	16
5.09C.01.030 Statute of Limitations for Sexual Offenses .....	16

**Sub-Chapter 5.09C.02 Penalties**

5.09C.02.005 Sentencing Goals.....	16
5.09C.02.010 Sentencing Schedule for Sexual Offenses.....	16

**Sub-Chapter 5.09C.04 Definitions, Guidance and Defenses**

5.09C.04.010 Definitions.....	17
5.09C.04.020 Victim Testimony and Evidence.....	17
5.09C.04.030 Evidence of Child.....	18
5.09C.04.050 Defenses to Prosecution Under this Chapter.....	19

**Sub-Chapter 5.09C.05 Sexual Offenses**

5.09C.05.010 Rape in the First Degree.....	19
5.09C.05.020 Rape in the Second Degree .....	19
5.09C.05.030 Rape in the Third Degree .....	19
5.09C.05.040 Rape of a Child in the First Degree.....	20
5.09C.05.050 Rape of a Child in the Second Degree .....	20
5.09C.05.060 Rape of a Child in the Third Degree .....	20
5.09C.05.070 Child Molestation in the First Degree.....	20
5.09C.05.080 Child Molestation in the Second Degree.....	20
5.09C.05.090 Child Molestation in the Third Degree .....	20
5.09C.05.100 Sexual Misconduct with a Minor in the First Degree .....	20
5.09C.05.110 Sexual Misconduct with a Minor in the Second Degree.....	20
5.09C.05.120 Indecent Exposure .....	21
5.09C.05.130 Incest in the First Degree .....	21
5.09C.05.140 Incest in the Second Degree.....	21
5.09C.05.150 Indecent Liberties.....	21
5.09C.05.160 Patronizing Juvenile Prostitute.....	21
5.09C.05.170 Communicating with a Minor for Immoral Purposes .....	21
5.09C.05.180 Sexual Exploitation of a Minor .....	21
5.09C.05.190 Depiction of Minors Engaged in Sexually Explicit Conduct.....	22

**Sub-Chapter 5.09C.06 Registration of Sex Offenders**

5.09C.06.005 Findings and Intent.....	22
5.09C.06.010 Registration Requirements .....	22
5.09C.06.020 Termination of Duty to Register .....	24
5.09C.06.030 Notice to Community Members about Sexual Offenders .....	24
5.09C.06.040 Prohibited Employment of Sex Offenders .....	25

**Chapter 5.10 General Provisions**

5.10.010 Definitions.....25  
5.10.020 Standard of Proof .....26  
5.10.030 Criminal Solicitation.....26  
5.10.040 Conspiracy .....27  
5.10.050 Attempt .....27  
5.10.060 Accomplice Liability; Aid and Abet.....27  
5.10.070 Defenses .....27  
5.10.080 Lesser Included Offenses.....28  
5.10.090 Felonious Conduct .....28  
5.10.100 Severability; Savings .....28

**Chapter 5.11 Sentencing**

5.11.010 Penalty for Violations Where No Penalty Imposed.....28  
5.11.020 Sentencing Guidelines .....29  
5.11.030 Suspension of Sentence.....29  
5.11.040 Fines.....29  
5.11.050 Special Verdict; Armed with a Dangerous Weapon.....29  
5.11.060 Restitution .....29  
5.11.070 Forfeiture.....29  
5.11.080 Prior Convictions .....29  
5.11.090 Pre-Sentence Report.....30  
5.11.100 Exclusion.....30

**TITLE 5  
LUMMI NATION CODE OF LAWS  
CODE OF OFFENSES**

**Chapter 5.01 Crimes Against Persons**

**5.01.005 Homicide**

A person who recklessly, intentionally, or through gross negligence kills another human being is guilty of homicide and, upon conviction, shall be sentenced to imprisonment for 365 days and a fine of \$5,000.

**5.01.010 Assault**

(a) First Degree Assault. A person who commits assault while armed with a dangerous weapon is guilty of first degree assault and, upon conviction, shall be sentenced to imprisonment for a period not less than 60 days and not to exceed 270 days, and a fine not to exceed \$4,000.

(b) Second Degree Assault. A person who commits assault in one or more of the following aggravated circumstances is guilty of assault in the second degree and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500:

(1) the victim is a law enforcement officer, fire fighter, or emergency health care provider who was performing his official duty; or

(2) the victim is a person who by reason of age or disability is functionally, mentally, or physically unable to care for himself.

(c) Third Degree Assault. A person who commits an assault not amounting to assault in the first or second degree is guilty of third degree assault and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 90 days, and a fine not to exceed \$1,250.

(d) "Assault" occurs when a person knowingly makes threats by words or conduct to cause bodily injury to another person or to otherwise harm another person's physical or mental health or safety so that the other person is put in reasonable apprehension of an imminent harm.

**5.01.020 Assault and Battery**

(a) First Degree Assault and Battery. A person who commits assault and battery in one or more of the following aggravated circumstances is guilty of assault and battery in the first degree and, upon conviction, shall be sentenced to imprisonment for 365 days and a fine of \$5,000:

(1) use of a dangerous weapon;

(2) use of means of poison or a deadly illness; or

(3) use of means that causes such pain and agony so as to be equivalent to torture.

(b) Second Degree Assault and Battery. A person who commits assault and battery in one or more of the following aggravated circumstances is guilty of assault and battery in the second degree and, upon conviction, shall be sentenced to imprisonment for a period not less than 60 days and not to exceed 270 days, and a fine not to exceed \$4,000:

(1) willful infliction of serious bodily injury;

(2) the victim is a law enforcement officer, fire fighter, or emergency health care provider who was performing his official duty;

(3) the victim is a person who by reason of age or disability is functionally, mentally, or physically unable to care for himself

(c) Third Degree Assault and Battery. A person who commits an assault and battery not amounting to assault and battery in the first or second degree is guilty of third degree assault and battery and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days, and a fine not to exceed \$2,500.

(d) "Assault and battery" means directly or indirectly touching another with intent to harm that person or to cause offense, or by offering violence causing another to harm himself. In order to show an assault and battery, there is no requirement that the touching result in

pain, bruises, or breaking of the skin.

#### **5.01.025 Robbery**

A person who unlawfully takes or retains possession of personal property from the person of another or in his presence against his will by the knowing use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone is guilty of robbery and, upon conviction, shall be sentenced to imprisonment for a period not less than 90 days and not to exceed 365 days, and a fine not to exceed \$5,000.

#### **5.01.030 Abduction**

(a) A person who intentionally takes away or restrains another person against his will or, if such person be under the age of 18, without the consent of the person having lawful care or charge of him, is guilty of abduction and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500.

(b) Aggravated Abduction. A person who commits the crime of abduction by the use of force, or by threatening imminent bodily harm with a dangerous weapon, is guilty of aggravated abduction and, upon conviction, shall be sentenced to imprisonment for a period not less than 90 days and not to exceed 365 days, and a fine not to exceed \$5,000.

#### **5.01.050 Subjection to Maltreatment**

In the practice of the culture, traditions, or religions of the Lummi people, no person may be subjected to any of the following:

- (1) brutal treatment, including, but not limited to, hitting, clubbing, biting, striking or otherwise inflicting injury;
- (2) total fasting or fasting in a medically inappropriate way;
- (3) deprivation of medical treatment, medicine, or other care;
- (4) forcing any person to take part in any activity relating to traditional, cultural, or religious practices against their will;
- (5) accepting any person as a dancer, "baby" or initiate who has not received a written clearance from a medical doctor.

A person who knowingly violates this section shall be guilty of an offense and punished by a fine of not more than \$500 and a jail sentence of not more than 180 days. This section shall be liberally interpreted and strictly enforced to carry out its purposes.

#### **5.01.060 Reckless and Intentional Endangerment**

(a) A person who recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person is guilty of reckless endangerment and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500.

(b) A person who intentionally engages in conduct that creates a substantial risk of death or serious physical injury to another person is guilty of intentional endangerment and, upon conviction, shall be sentenced to imprisonment for a period not less than 90 days and not to exceed 365 days, and a fine not to exceed \$5,000.

(c) If the person engages in reckless or intentional endangerment under this section by propelling an object into a residential structure or other structure that is regularly occupied by another person, and the person does not know that the structure is uninhabited at the time of the conduct, it is not a defense to the charge that the structure was not inhabited at the time of the conduct.

#### **5.01.070 Stalking**

(a) A person is guilty of the crime of stalking if the person knowingly engages in a series of acts over time, however short, that are directed toward another person such as surveillance, harassment, threats, or intimidating behavior that causes the person substantial emotional distress or reasonable fear for that person's safety or the safety of that person's immediate family.

(b) A person commits the crime of aggravated stalking if:

- (1) the stalker has committed the offense within five years of a prior conviction for stalking in any jurisdiction;

(2) a court order from any jurisdiction is in place protecting that person from the stalker;

(3) the stalker makes a credible threat with the intent to place that person in reasonable fear of death, sexual assault, abduction, or serious bodily injury to that person or that person's immediate family member;

(4) the stalker has violated the federal Violence Against Women Act; or

(5) the stalker's victim is or was a law enforcement officer, court official, juror, attorney, victim advocate, council member, or probation officer, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties;

(c) It is a defense to an offense under this section if the accused person had a lawful purpose for the acts.

(d) A person who commits the crime of stalking, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500. A person who commits the crime of aggravated stalking, upon conviction, shall be sentenced to imprisonment for a period not less than 90 days and not to exceed 365 days, and a fine not to exceed \$5,000.

## **Chapter 5.02 Offenses Against Property**

### **5.02.010 Theft**

---

(a) A person who takes the property of another person, with intent to deprive the other of possession, is guilty of theft and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 90 days and a fine not to exceed \$1,250.

(b) Aggravated Theft. A person who takes the property of another person, with intent to deprive, in one or more of the following aggravated circumstances, is guilty of aggravated theft and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days and a fine not to exceed \$2,500 if:

(1) the property taken exceeds \$1,500 in

value;

(2) the property of any value taken is a firearm;

(3) the property is obtained by intentional misrepresentation or deceit or by false interpreting, or by use of false weights or measures; or

(4) the property of any value was taken from the person of another but does not constitute robbery.

(c) A person who delivers to another person a check or draft on a bank or other depository for the payment of money, knowing at the time of delivery that he has not sufficient funds in or credit with the bank or depository to pay the check or draft in full upon its presentation, or who stops payment on a check or draft on a bank or other depository for funds owed to the holder of the check without good cause or alternatively making an arrangement agreed upon by the holder of the check shall be guilty of theft under this section.

(d) Each item of property taken shall constitute a separate offense of theft.

### **5.02.015 Using a Motor Vehicle Without Permission**

---

A person is guilty of using a motor vehicle without permission if he, without the permission of the owner or person entitled to possession, intentionally takes or drives away a motor vehicle that is the property of another, or he voluntarily rides in or upon the motor vehicle with knowledge of the fact that the motor vehicle was unlawfully taken, and, upon conviction, shall be sentenced to imprisonment for a period not less than 5 days and not to exceed 30 days, and a fine not to exceed \$500.

### **5.02.020 Embezzlement**

---

A person who, having lawful custody of property not his own, appropriates the same to his own use with intent to deprive the owner is guilty of embezzlement and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500.

#### **5.02.040 Forgery**

A person who, with the intent to injure or defraud, falsely makes, signs, executes, or alters any written instrument, or who presents as true a written instrument which he knows to be forged, is guilty of forgery and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500.

#### **5.02.050 Extortion**

A person who intentionally by any means whatsoever extorts or attempts to extort by means of a wrongful threat any monies, goods, property or anything else of any value from another person, is guilty of extortion and, upon conviction, shall be sentenced to imprisonment for a period not less than 60 days and not to exceed 270 days, and a fine not to exceed \$4,000.

#### **5.02.060 Possession or Sale of Stolen Property**

(a) A person who possesses, receives, or conceals any property, knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, robbery or burglary is guilty of possessing stolen property and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 90 days and a fine not to exceed \$1,250.

(b) A person who sells any property knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, robbery or burglary is guilty of sale of stolen property and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days and a fine not to exceed \$2,500.

#### **5.02.065 Alteration of Property Identification Marks**

A person who knowingly removes, alters, or obliterates any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved, etched, or marked upon an item of another's personal property, or property believed to be stolen, embezzled, or obtained by fraud or false pretense, robbery, or burglary, is guilty of an offense and, upon conviction, shall be

sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500.

#### **5.02.070 Malicious Mischief**

(a) A person is guilty of malicious mischief if the person knowingly:

- (1) causes physical damage to the property of another;
- (2) causes a substantial risk of interruption or impairment of public services;
- (3) causes a substantial risk of impairment of the safety, efficiency, or operation of a motor vehicle;
- (4) marks on any public structure or any real or personal property owned by another person without express permission from an authorized person; or
- (5) harasses or injures a domestic animal.

(b) Upon conviction for malicious mischief, the person shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500.

#### **5.02.080 Trespass**

(a) A person who knowingly enters or remains on any premises or cultivated or enclosed lands of another person without permission of the owner or the lawful occupant, unless otherwise authorized by law, or who allows livestock to occupy or graze on such cultivated lands, is guilty of trespass and, upon conviction, shall be punished by imprisonment not to exceed 30 days and a fine not to exceed \$500.

(b) Residential Trespass. A person who trespasses in a residential structure is guilty of residential trespass and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500.

#### **5.02.085 Burglary**

(a) A person who enters or remains in a building with the intent to commit a crime against a person or property in the building is guilty of burglary and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days, and a fine not to exceed

\$2,500. If the building is a church or other structure that is used as a spiritual gathering place, the person shall be sentenced to a period not less than thirty days. Trespass is a lesser included offense.

(b) **Residential Burglary.** A person who commits the offense of burglary in a residential structure is guilty of residential burglary and, upon conviction, shall be sentenced to imprisonment for a period not less than 90 days and not to exceed 365 days, and a fine not to exceed \$5,000. Residential trespass is a lesser included offense.

(c) In a prosecution for burglary, a person who enters or remains unlawfully in a building or structure 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.

(d) A person who, in the commission of a burglary, commits any other crime, may be punished for the other crime as well as for the burglary, and may be prosecuted for each crime separately.

#### **5.02.090 Injury to Public Property**

A person who, without proper authority, recklessly uses or injures any public property of the Tribe, state, or of the United States is guilty of injury to public property and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500.

#### **5.02.095 Arson**

(a) A person who knowingly causes a fire or explosion which damages a building, structure, improvement, vehicle, crop, timber, or any property is guilty of arson, and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500.

(b) A person is guilty of aggravated arson, and, upon conviction, shall be sentenced to imprisonment for a period not less than 90 days and not to exceed 365 days, and a fine not to exceed \$5,000, if the person knowingly causes a fire or explosion:

(1) that is manifestly dangerous to any human life;

(2) that damages a dwelling;

(3) on property valued at \$10,000 or more with intent to collect insurance proceeds; or

(4) that causes damages in excess of \$10,000.

#### **5.02.100 Beach Littering**

A person who knowingly breaks or places broken glass or other dangerous objects in the lakes and streams, on the shorelines and beaches, or around picnic and camping areas is guilty of beach littering and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 30 days and a fine not to exceed \$500.

#### **5.02.110 Unlawful Dumping**

A person who dumps garbage, including animal carcasses or offal from cattle or game animals, on public property or the property of another without authorization is guilty of unlawful dumping and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 90 days and a fine not to exceed \$1,250.00.

### **Chapter 5.03 Offenses Involving Animals**

#### **5.03.020 Cruelty to Animals**

A person who causes unnecessary pain to an animal is guilty of cruelty to animals and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 90 days and pay a fine not to exceed \$1,250.

### **Chapter 5.04 Offenses Involving Conduct**

#### **5.04.010 Disorderly Conduct**

(a) A person is guilty of disorderly conduct if the person:

(1) engages in fighting, threatening behavior, or violent behavior;

(2) makes or instigates unreasonable noise or makes offensively coarse utterances, gestures, or displays, or addresses abusive language to any person present;

(3) creates a hazardous or physically offensive condition in a public place for no legitimate purpose; or

(4) is intoxicated and does any of the following:

(A) passes out or is asleep in a public place or on the property of another without permission;

(B) bothers, disrupts or otherwise intrudes upon another person or group of persons in a public place;

(C) places himself in danger; or

(D) is in an area set aside for religious or ceremonial activities that are to be free from alcoholic beverages or the presence of intoxicated persons during the period of such religious or ceremonial activity.

(b) Upon conviction for disorderly conduct, the person shall be sentenced to imprisonment for a period not to exceed 90 days and a fine not to exceed \$1,250.

**5.04.020 Maintaining a Public Nuisance**

A person who acts in such a manner, or permits his property to fall into such condition or to be used for such a purpose, as to injure or endanger the safety, health, comfort, or property of his neighbors, is guilty of maintaining a public nuisance and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 30 days and a fine not to exceed \$500.

**5.04.030 Public Gatherings**

A person who holds any public dance, game or gathering without obtaining a valid permit from the Tribe or without notifying the Lummi Police Department at least five days in advance of such gathering and receiving approval, or who allows such gathering to become a public nuisance, is guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 30 days and a fine not to exceed \$500. The sponsor of such a public gathering is responsible for maintaining order at the gathering.

**5.04.050 Gambling**

Gambling is prohibited on the Lummi Reservation unless conducted in accordance with laws, rules, and regulations adopted by the Council. A person who violates any law, rule or regulation adopted by the Council for the control or regulation of gambling on the Reservation is guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500.

**5.04.060 Giving Venereal Disease to Another**

A person who knowingly has sexual intercourse with another person while infected with a communicable venereal disease is guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500. It is a defense to this offense if the person informs the other person of the communicable venereal disease and takes precautions against transmitting it.

**5.04.070 Discharge of Weapon**

A person who willfully discharges a firearm, air gun, or other explosive device, or throws any explosive device, in a place where any person might be placed in danger is guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days and a fine not to exceed \$2,500.

**5.04.080 Carrying Concealed Weapon**

A person who is in a public place armed with a dangerous weapon concealed upon his person, unless he has a permit signed by a Lummi, state, or federal law enforcement department, is guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days and a fine not to exceed \$2,500, and the weapons so carried may be confiscated and forfeited on order of the Tribal Court.

**5.04.090 Carrying a Firearm While Under the Influence of Intoxicants**

A person who carries a firearm or other

explosive device on his person while under the influence of alcohol or a controlled substance is guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500.

## **Chapter 5.06 Offenses Involving Children**

### **5.06.010 Failure to Support Dependent Persons**

A person is guilty of the offense of failure to support dependent persons and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 90 days and a fine not to exceed \$1,250 if

- (1) the person refuses or neglects without lawful excuse to furnish food, shelter or care to those dependent on him, including any dependent children born out of wedlock; or
- (2) being lawfully charged with the support of a child under 18 years of age, the person refuses or neglects without lawful excuse to provide support for such child.

### **5.06.020 Failure to Send Children to School**

A person who, without cause, neglects or refuses to send his children or any other children under his care to school is guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 30 days and a fine not to exceed \$500.

### **5.06.030 Contributing to the Delinquency of a Minor**

A person who negligently assists a minor in committing a delinquent act or in avoiding arrest, is guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500.

### **5.06.050 Curfew**

(a) It is unlawful for any child under the age of 16 years not under the direct supervision of his parent, guardian, or other responsible adult, to be in any public place after the hour of 10:00 PM and before the hour of 6:00 AM acting in a manner likely to create a public

disturbance, create a substantial risk of harm to himself or others through his activities, or pose a substantial threat to the security of private or public property. The tribal police shall have the authority to take into custody any child who shall be in violation of this section, and may place such child in juvenile detention or emergency shelter care if they are unable to contact the parents, guardians, or other adult person responsible for the care of such child, or if the parents, guardian, or other responsible adult is unable or unwilling to provide necessary care and supervision for the child. Nothing in this section shall prevent the prosecution of any child taken into custody under the provisions of this section for any other crime he may have committed.

(b) It is unlawful and punishable as hereafter provided for any unemancipated child between the ages of 16 years and 18 years not under the direct supervision of his parent, guardian, or other responsible adult to be in any public place between the following hours:

11:00 PM Monday to 6:00 AM Tuesday  
11:00 PM Tuesday to 6:00 AM Wednesday  
11:00 PM Wednesday to 6:00 AM Thursday  
11:00 PM Thursday to 6:00 AM Friday  
12:01 AM Saturday to 6:00 AM Saturday  
12:01 AM Sunday to 6:00 AM Sunday  
11:00 PM Sunday to 6:00 AM Monday

acting in a manner likely to: create a public disturbance, create a substantial risk of harm to himself or others through his actions, or pose a substantial threat to the security of private or public property. A child arrested for violation of this subsection may be treated in the same manner as a child taken into custody under subsection (a) above, and, in addition, may be made a delinquent ward of the Tribal Juvenile Court as provided in Title 8 of the code. If tried as an adult, a person found in violation of this subsection shall be fined not more than \$150 and sentenced to not more than 10 days in jail.

(c) The parent, guardian, or other person legally responsible for a child who has violated either subsection (a) or (b) at a time when the said parent, guardian, or legally responsible person knew or in the exercise of his parental responsibilities should have known that the child was violating those subsections and did not take appropriate steps

to prevent the violation, shall be guilty of an offense and, upon conviction, shall be fined not more than \$150 and sentenced to not more than 30 days in jail; provided that the Court shall require that the person perform at least 40 hours of community work service in payment of the fine.

## **Chapter 5.07 Offenses Involving Tribal Government**

### **5.07.010 Bribery**

A person who knowingly promises, offers, or gives, or causes to be promised, offered or given, any money, property, services or other things of value to any officer, employee, or representative of any tribal organization, or to any person, including a juror, acting for or on behalf of any tribal organization, with intent to influence his decision or action on any question, matter, cause, or proceeding which may be brought or is pending before him in his official capacity, and a person who, being such officer, employee, representative, or person so acting, accepts any money, property, services, or other thing of value, is guilty of bribery and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500, and any tribal office held by such person shall be forfeited.

### **5.07.020 Perjury**

A person who knowingly in any judicial proceeding in the Tribal Court falsely swears or affirms, falsely interprets the testimony of another, makes a sworn statement or affidavit knowing the same to be untrue, or induces or procures another person to do so, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500.

### **5.07.025 Intimidating or Interfering with a Witness**

(a) A person is guilty of the offense of intimidating or interfering with a witness if the person knowingly:

(1) threatens or offers an inducement to a current or prospective witness in an attempt to:

(A)influence the testimony of that

person;

(B)induce that person to elude legal process summoning him to testify;

(C)induce that person to absent himself from such proceedings; or

(D)induce that person not to report information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have a crime prosecuted, or not to give truthful or complete information relevant to a criminal investigation or to the abuse or neglect of a minor child;

(2) directs a threat to a former witness because of the witness's role in an official proceeding, a criminal investigation, or an investigation into the abuse or neglect of a minor child; or

(3) threatens or takes other action to delay or prevent a victim of, or witness to, an offense committed by the person from calling a 911 emergency communication system, obtaining medical assistance for the victim, or making a report to law enforcement.

(b) Upon conviction, a person who violates this section shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500.

### **5.07.030 False Arrest**

A person who intentionally makes or causes to be made, the unlawful arrest, detention or imprisonment for another person is guilty of false arrest and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500.

### **5.07.040 Resisting Lawful Arrest**

A person who knowingly by force or violence, resists or assists another person to resist a lawful arrest is guilty of resisting arrest and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 90 days and a fine not to exceed \$1,250.

### **5.07.050 Refusing to Aid an Officer**

A person who unreasonably refuses, when

called upon by any police officer, to assist in the arrest of any person charged with or convicted of any offense or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement is guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 30 days and a fine not to exceed \$500.

**5.07.055 Obstructing Public Servants or Law Enforcement Officers**

A person who knowingly makes a false report to or knowingly hinders, delays, or obstructs any public servant or Law Enforcement Officer in the discharge of his official powers or duties shall be guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500.

**5.07.060 Escape**

A person who is under arrest or otherwise in lawful custody for any offense and knowingly escapes is guilty of escape and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500.

**5.07.065 Threatening a Tribal Representative**

A person who knowingly and unlawfully threatens any officer, employee, or representative of any tribal organization, or any person, including a juror, acting for or on behalf of any tribal organization, with intent to influence his decision or action on any question, matter, cause, or proceeding which may be brought or is pending before him in his official capacity is guilty of the offense of threatening a tribal representative and, upon conviction, shall be sentenced to imprisonment for a period not less than 60 days and not to exceed 270 days and a fine not to exceed \$4,000.

**5.07.070 Disobedience of Lawful Orders of Court**

(a) A person who knowingly disobeys any order, subpoena, warrant or command duly issued, made or given by a court is guilty of an offense, and, upon conviction, shall be sentenced to imprisonment for a period not to

exceed 180 days and a fine not to exceed \$2,500.

(b) For purposes of this section, the Court shall give full faith and credit to court orders of other Indian tribes, states, or federal agencies. It is a defense to the offense of disobedience of a lawful order of a foreign court order if:

(1) the issuing court did not have personal jurisdiction over the person or subject matter jurisdiction over the matter;

(2) proper service of process under the law of the issuing jurisdiction was not made on the person or the order not issued according to the laws of that jurisdiction; or

(3) the order violates the public policy of the Lummi Nation.

**5.07.075 Violation of an Exclusion Order**

A person who recklessly violates an order excluding or expelling the person from the Lummi reservation shall be guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 365 days and a fine not to exceed \$5,000.

**5.07.080 Embezzlement from Tribe**

A person who knowingly embezzles, steals, unlawfully converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the money, funds, credits, goods, assets or any other property belonging to the Tribe, or any tribal organization, or entrusted to the custody or care of any officer, employee or agent of the Tribe or tribal organization, or any person, knowing any such money, funds, credits, goods, assets, or other property to have been embezzled, stolen, converted, misapplied or permitted to be misapplied, who receives, conceals or retains the same with intent to convert it to his use or the use of another is guilty of embezzlement, and, upon conviction, shall be sentenced to imprisonment for a period not less than 90 days and not to exceed 365 days and a fine not to exceed \$5,000.

**5.07.090 Hunting or Fishing While Privilege Suspended or Revoked**

Notwithstanding 10.02.390 and 10.22.010 of this code, a person who knowingly engages in hunting or fishing, or who operates a business associated with fishing, in violation of a suspension or revocation under Title 10, is guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not less than 30 days and not to exceed 180 days, and a fine not to exceed \$2,500. The Court shall also impose a suspension of privileges that is at least twice the period of the suspension of hunting or fishing privileges that the person violated. The penalties under this section shall be in addition to any penalties imposed under Title 10.

**5.07.100 Illegal Sale or Purchase of Natural Resources**

(a) Notwithstanding 10.02.390 and 10.22.010 of this code, a person is guilty of the offense of illegal sale of natural resources and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500, if the person sells natural resources harvested from natural resources reserved to the Tribe, and the person:

- (1) does not have a permit from the Tribe to harvest those resources; or
- (2) was only permitted to harvest the resources for subsistence use.

(b) Notwithstanding 10.02.390 and 10.22.010 of this code, a person who purchases natural resources from a person, knowing that the person is selling the natural resources in violation of (a) of this section, is guilty of the offense of illegal purchase of natural resources, and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500. If the buyer is licensed by the Lummi Nation pursuant to Chapter 10.08, the period of imprisonment shall be not less than 30 days.

(c) The penalties under this section shall be in addition to any penalties imposed under Title 10.

**Chapter 5.08 Other Offenses**

**5.08.010 Violation of an Approved Tribal Ordinance**

A person who knowingly violates an ordinance or other enactment designed to preserve the health, safety, and welfare of the Tribe, which was promulgated by the Council, is guilty of an offense and, upon conviction, shall be sentenced as provided in that ordinance or enactment or under 5.11.010 of this Title.

**5.08.030 Violation of Federal or State Law**

A person who knowingly violates the criminal law of the United States or State of Washington is guilty of an offense under this paragraph. A person found guilty of violating this section shall be sentenced to imprisonment for a period comparable to the sentence imposed under that jurisdiction, but not to exceed 365 days and a fine not to exceed \$5,000. It is a defense under this section that the person has been convicted by the other jurisdiction or that the criminal law of the other jurisdiction violates the public policy of the Lummi Nation.

**Chapter 5.09A Drug And Alcohol Violations**

**5.09A.010 Construction**

The individual and collective sections within this chapter shall be construed liberally in accordance with the legislative objective of addressing and deterring the distribution and/or use of illegal substances, except that nothing in this chapter shall be construed to make illegal an act that is otherwise legal.

A common sense interpretation of this chapter should be made to fulfill the legislative purpose of deterring illegal alcohol use, drug use and drug transactions. The term “except that” in this section means that the liberal construction shall be limited only to the extent that it is necessary to prevent overreaching by making an act illegal, when that act is commonly recognized to be legal. For example, the government-regulated manufacture and sale of prescription narcotics by a licensed manufacturer or licensed seller,

does not become illegal under this act, since these acts are recognized to be legal.

#### **5.09A.025 Unlawful Inhalation**

A person who knowingly smells or inhales the fumes of any type of substance containing a solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors or fumes, or who induces any other person to do so, for the purpose of causing symptoms of intoxication or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes is guilty of the offense of unlawful inhalation and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 30 days and a fine not to exceed \$500 or both. This section does not apply to the inhalation of any anesthesia or other substance for legitimate medical or dental treatment.

#### **5.09A.035 Consumption or Possession of Alcohol by a Minor**

No person under the age of 21 may knowingly consume, acquire, or have in his possession, including alcohol in the human body, any alcoholic beverage. A person found guilty of violating this section shall be guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 30 days and a fine of not more than \$500.

#### **5.09A.045 Furnishing Alcohol to a Minor**

(a) No person may knowingly furnish alcoholic beverages to a person under the age of 21 years nor permit a person under the age of 21 to consume liquor on his premises or in any area under his control.

(b) A person violating this section shall be guilty of an offense and, upon conviction, shall be sentenced to:

- (1) imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500, if the person is 21 years or older; or
- (2) imprisonment for a period not to exceed 30 days and a fine of not more than \$500, if the person is under 21 years of age.

#### **5.09A.050 Substances Which are Illegal Without a Valid Prescription**

(a) For the purposes of this chapter, a substance is not deemed a controlled substance if it has been dispensed or prescribed to the person by a person authorized by law to dispense or prescribe the substance or the substance is legally sold without a prescription. For the purposes of this chapter, a "controlled substance" is:

- (1) any quantity of a substance that is named in the schedules listed in the federal Comprehensive Drug Abuse Prevention and Control Act; or
- (2) any prescription drug or over-the-counter substance that has been altered in form since it was dispensed or sold so as to cause greater intoxication, euphoria, dependency, or hallucinations than the substance would cause in its original form.

(b) Any substances otherwise described as a controlled substance under this chapter shall not be considered a controlled substance while it is used in accordance with the teachings of the Native American Church or other traditional Native American religious ceremonies.

#### **5.09A.060 Proof of Chemical Composition**

The chemical composition of a substance may be proved by any commonly acceptable method of identification, including, but not limited to, identification by a trained officer, by field tests, or by laboratory tests.

#### **5.09A.070 Counterfeit Illegal Substances**

A counterfeit illegal drug is a substance that, although not in fact containing any illegal drug, was intended to be understood by others to be an illegal substance. Such intent is indicated by design or appearance of the substance, and/or any representation made by a person in control of the substance that purport mind altering characteristics. Appearance includes but is not limited to color, shape and size. Representation includes but is not limited to representations or factors of the following nature:

- (1) statements made by an owner or anyone

else in control of the substance, concerning the nature of the substance or its use or effect; or

(2) a substance is or has been packaged in a manner normally used for illicit substances.

#### **5.09A.080 Method of Proof of Counterfeit Illegal Substances**

Proof of the usage or purposeful design for usage of a substance which does not in fact contain an illegal drug, but which is presented as or appears to be an illegal substance, may be established by any commonly acceptable method of identification, including, but not limited to, identification by a trained officer, by field tests, or by laboratory tests.

#### **5.09A.090 Drug Paraphernalia – Definitions**

Drug paraphernalia are any objects created or used specifically for producing, analyzing, preparing, storing, or administering any illegal or counterfeit illegal substance. In determining whether an object is drug paraphernalia, consideration should be given to all logically relevant factors, including, but not limited to, the following:

- (1) statements made by an owner or anyone in control of the object concerning its use;
- (2) the proximity of the object in time and space to a direct violation of this chapter;
- (3) prior convictions, if any, of an owner, or of anyone in control of the object, under the laws of any jurisdiction relating to any illegal or counterfeit illegal substance;
- (4) the existence and scope of legitimate uses for the object in the community; and
- (5) expert testimony concerning its use.

#### **5.09A.100 Method of Proof of Paraphernalia Character and Purpose**

Proof of usage or purposeful design for usage of an object as drug paraphernalia may be established by any commonly acceptable method of identification, including, but not limited to, identification by a trained officer, by field tests, or by laboratory tests.

#### **5.09A.110 Prohibited Acts**

(a) Manufacture of an Illegal Substance. A person who knowingly manufactures or possesses with intent to manufacture any of the substances listed in 5.09A.050 or 5.09A.070 shall be found guilty of and sentenced for a Class A offense.

(b) Delivery of an Illegal Substance. A person who knowingly delivers or possesses with intent to deliver any of the substances listed in 5.09A.050 or 5.09A.070 shall be found guilty of and sentenced for a Class B offense.

(c) Possession of an Illegal Substance. A person who knowingly administers to a human body, or who otherwise possesses any amount of a substance listed in 5.09A.050 or 5.09A.070, shall be found guilty of and sentenced for a Class C offense.

(d) Possession of Paraphernalia. A person who knowingly possesses, sells, or delivers any drug paraphernalia shall be found guilty of and sentenced for a Class D offense.

(e) Controlled Substance Outside of Original Container. A person who knowingly possesses any amount of a controlled substance which is not in the original container in which it was delivered to him by the person validly selling or dispensing the controlled substance shall be found guilty of and sentenced for a Class D offense.

#### **5.09A.130 Sentencing Schedule**

(a) The sentence for a Class A offense shall be imprisonment for 365 days and a fine of \$5,000.

(b) The sentence for a Class B offense shall be imprisonment for not less than 90 days and not more than 365 days in jail; and a minimum fine of \$500 and a maximum fine of \$5,000;

(c) The sentence for a Class C offense shall be imprisonment for not less than 30 days and not more than 90 days in jail; and a minimum fine of \$250 and a maximum fine of \$1,250;

(d) The sentence for a Class D offense shall be imprisonment for not more than 30 days in jail; and a fine not to exceed \$500.

(e) Cross-Reference. Criminal prosecution under Chapter 5.09A is neither precluded by,

nor required for, civil forfeiture under Chapter 5.09B.

### **5.09A.140 Special Verdict; Enhanced Sentencing Factors**

(a) Distribution to Persons Under Age Eighteen. A person who is found guilty of delivery of an illegal substance shall be sentenced for a Class A offense if the person was 18 years of age or over at the time of the offense and distributed the illegal substance to a person under the age of 18.

(b) Sale of Illegal Substances for Profit. A person who is found guilty of delivery of an illegal substance shall be sentenced for a Class A offense if the person obtained anything for value in exchange for the illegal substance.

(c) Second or Subsequent Offenses. A person convicted of any offense under this chapter who has a prior conviction under the laws of any jurisdiction for the sale, manufacture, delivery, or possession with intent to manufacture or deliver any substances listed in 5.09A.050 or 5.09A.070, shall be sentenced to both the maximum term of imprisonment and the maximum fine provided for the offense in this chapter.

## **Chapter 5.09B Civil Forfeiture of Property Used in Controlled Substances Violations**

### **5.09B.010 Construction**

The individual and collective sections within this chapter shall be construed liberally in accordance with the legislative objective of preventing and deterring persons from using their property, or allowing their property to be used, in such a manner that facilitates the transportation or concealment of illegal substances to sell for profit.

### **5.09B.020 Definitions**

(a) When a term is not defined in this chapter, it shall be given its commonly accepted meaning. If there is any doubt as to the meaning of a term the court shall refer to definitions utilized in other jurisdictions, including but not limited to the Uniform Controlled Substances Act. Any reference to “he”, “she”, or other gender pronouns include both male and female persons.

(b) Definitions relating to state of mind.

(1) Intent: a person acts with intent, or acts intentionally, when he acts with the objective, or purpose, to accomplish a result which constitutes a civil offense under this chapter.

(2) Knowledge: a person knows, or acts knowingly, when he is aware of a fact, or facts; or he has information which would lead a reasonable person in the same situation to believe the facts exist, when such facts are described within a section under this chapter defining an offense.

### **5.09B.030 Standard of Proof**

No liability for a civil offense under this chapter shall be found unless each element of the offense is proved by a preponderance of the evidence.

### **5.09B.040 General Principles**

(a) “Property” subject to seizure/forfeiture includes, but is not limited to aircraft, vehicles, vessels, monies, negotiable instruments, illegal or counterfeit illegal substances, and their raw materials, products or byproducts. Trust property is exempt from forfeiture under this chapter.

(b) No illegal substances or counterfeit illegal substances, or their products or byproducts, may be the subject of proceedings for return to any owner or claimant under this chapter.

(c) Claimant - A claimant is a person or entity with a legal interest in the subject property. A claimant does not have actual ownership of the subject property but does have an interest in it due to a prior financial arrangement with the property owner, a prior court judgment against the property owner, or due to other commonly recognized principles of law. Examples of claimants are:

- (1) Secured interest creditors,
- (2) Non-secured creditors,
- (3) Mortgagors,
- (4) Lienholders,
- (5) Trust Companies,
- (6) Licensed Pawnbrokers,
- (7) A person or entity who/which has given

the property owner partial or full payment for the property.

(d) Owner - one who is recognized and held responsible by the law as the owner of the property.

#### **5.09B.050 Forfeiture of Interest**

The interest of the legal owner or owners of record of any property used to unlawfully store or transport a controlled substance to sell the controlled substance for profit, shall be forfeited to the Lummi Nation.

#### **5.09B.060 When Property Can Be Seized**

Property subject to forfeiture under this chapter may be seized by any law enforcement officer of the Lummi Nation upon process by the Lummi court having jurisdiction over the property. Seizure may be conducted pursuant to a search warrant, or an administrative search warrant, or if the property subject to seizure has been the subject of a prior judgment in favor of the Lummi Nation, in a civil injunction or forfeiture proceeding based upon this chapter. Search without process may be made if:

- (a) the seizure is incident to an arrest; or
- (b) a law enforcement officer has probable cause to believe that the property was used, or is intended to be used, in violation of this chapter.

#### **5.09B.070 Proceedings for Forfeiture Shall be Deemed Commenced by the Seizure**

A peace officer who seizes property under the provisions of this section shall file notice of seizure and intention to institute forfeiture proceedings with the clerk of the Lummi Court. The Clerk shall serve notice thereof on all owners of the property within fifteen (15) days by registered mail. The notice shall contain: 1) description of property; 2) owner of property; 3) address where property was seized; 4) brief explanation of legal basis for confiscation of property, and; 5) instructions for responding to forfeiture/confiscation notice.

#### **5.09B.080 Owner's Answer To Notice**

Within twenty (20) days after the mailing or publication of a notice of seizure, the owner of the seized property may file a verified answer to the allegation of the use of the property contained in the notice of seizure and of the intended forfeiture proceedings. The answer shall contain either a general denial, or a brief description of the defense(s) asserted by the Respondent.

#### **5.09B.090 Defenses Which are Available to Respondents Asserting a Right to Possession of Property Which Has Been Seized**

Defenses available under this chapter are:

(a) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used as a vehicle, depository or place of concealment for a controlled substance.

(b) An owner/claimant of any right, title, or interest in the property may prove his lien, mortgage or conditional sales contract to be bona fide, and that his right, title or interest was created after he undertook a reasonable investigation of the moral responsibility, character and reputation of the purchaser, and without knowledge that the property was being or was to be used for the purpose charged.

(c) The defense of entrapment may be established by a showing that the design for violation of this chapter originated in the mind of law enforcement officials or any person acting under their direction; and, that the actor was lured or induced to commit a violation under this chapter which the actor had not otherwise intended to commit. The defense of entrapment is not established by a showing that law enforcement officials merely afforded the actor an opportunity to commit a violation under this chapter.

(d) Where the claimant before the court

(1) has a lien on the property, and he is entitled to having the lien because he has performed labor upon the property, made repairs upon it, or has incurred costs for the

storage, repairs, or safekeeping of any property; or

(2) does business under any law of the tribe, state, or the United States relating to banks, trust companies, credit unions, licensed pawnbrokers or money lenders; or

(3) sells property, such as the kind of property confiscated, in the claimant's ordinary course of business then the claimant is not required to prove, as a defense to forfeiture, that right, title or interest in the property was created after a reasonable investigation of the moral responsibility, character and reputation of the owner, purchaser, or person in possession of the property.

**5.09B.100 Procedure For Hearing If No Verified Answer To The Notice Is Given Within Twenty (20) Days**

If a verified answer to the notice given as prescribed by this section is not filed within twenty (20) days after the mailing or publication thereof; the court shall hear evidence upon the charge of unlawful use of the property, and upon motion shall order the property forfeited to the Lummi Nation.

**5.09B.110 Procedure For Hearing If A Verified Answer To The Notice Is Given Within Twenty (20) Days**

If a verified answer is filed within twenty (20) days, the forfeiture proceedings shall be set for a hearing within thirty (30) days after the answer is filed, and the proceedings shall have priority over other civil cases. Notice of the hearing shall be by regular or by registered mail.

**5.09B.120 Hearing—Disposition of Property**

If it is established by a preponderance of the evidence that the subject property was used by the property's owner or that the property owner knowingly permitted such use in violation of this chapter, and the Respondent thereafter fails to rebut or disprove this, the court shall determine whether any claimants are entitled to the property or any proceeds therefrom. This determination shall be made by examining evidence which indicates how

and to what extent the claimant acquired an interest in the property. The court shall further determine whether it has been established by a preponderance of the evidence that the claimant acted in such a manner as to require forfeiture of her interest under this chapter.

(a) If proof by a preponderance of the evidence does not establish that the property was knowingly used or permitted to be used by the property owner/claimant, the court shall order the property released to the bona fide owner, lienholder, mortgagee or vendor, if the amount which the owner/claimant is entitled to (through the transaction from which she acquired an interest in the property) is equal to, or more than, the value of the property as of the date of seizure.

(b) If the monetary amount owed to a claimant or claimants is less than the value of the property, the property may be sold at a public auction by the tribal police chief after due and proper notice has been given, and the amount owing the claimant shall be paid from proceeds of the sale. Any remaining proceeds shall be forwarded to the Lummi Indian Business Council.

(c) If no such claimant exists, and the confiscating agency wishes to retain the property for its official use, it may do so if so authorized by the Lummi Indian Business Council. If such property is not to be retained, it shall be disposed of by sale, with proceeds tendered to the Lummi Indian Business Council, except that illegal substances or counterfeit illegal substances shall be destroyed unless needed for evidentiary purposes, and thereafter shall be destroyed.

**Chapter 5.09C Sexual Offenses**

**Sub Chapter 5.09C.01 General Provisions**

**5.09C.01.010 Preamble and Purpose**

Only the informed Lummi Community and its families can stop sexual abuse among its people. The laws and legal system are tools assisting the community in this effort. The purposes of the chapter shall be as follows:

(a) to assist in protecting the community from sexual assault and abuse, especially our

precious children and other vulnerable individuals;

(b) to provide offenders and their families with a resource for accountability, penance and restitution for their harmful actions; and

(c) to promote healing for individuals, families and the community who have been impacted by these offenses. This includes rehabilitative treatment for offenders.

**5.09C.01.020 Findings-Intent; Effective Date**

This act is necessary for the immediate preservation of the tribal family, public peace, health and safety, and to support tribal sovereignty, and shall take effect on August 4, 1994. It is the legislature's deliberate intent that the act be applied retroactively in cases where an offense has occurred prior to August 4, 1994. The legislature's intent is based upon unique tribal needs and cultural considerations. Testimonials at the tribal legislative proceedings further affirmed the necessity of this act. It is recognized that the incidence of sexual exploitation ordinarily fosters trauma in other aspects of the lives of sexual abuse victims, thereby disabling and delaying victims from reporting sexual offenses. Cultural factors involving the sense of privacy exacerbate the ability of many native victims to disclose intimate matters, particularly those of aggravated character. Given the inter-generational prevalence of sexual offense, there is a unique tribal need to allow effective reporting of sexual offenses within Lummi territory.

**5.09C.01.030 Statute of Limitations for Sexual Offenses**

(a) Prosecutions for sexual offenses shall not be commenced after the periods prescribed in this section:

- (1) fifteen years after the victim's 30th birthday;
- (2) ten years after commission of the offense; or
- (3) ten years after the recovery of repressed memories of childhood sexual abuse, whichever time period is greater.

(b) The periods of limitation prescribed in

subsections (a) of this section do not run during any time when the person charged is not usually and publicly resident within the territory of the Lummi Nation.

**Sub-Chapter 5.09C.02 Penalties**

**5.09C.02.005 Sentencing Goals**

Sentencing delivered under this chapter is specifically intended to promote public safety and facilitate healing within our families and communities. The following goals shall be considered in sentencing:

(a) providing safety for the victims and for other potential victims shall be the highest priority considered in sentencing;

(b) sex offender evaluation and treatment (when indicated) shall be the second priority in sentencing;

(c) restitution to the victim or his family, fines and/or time in jail imposed in sentencing provide the offender an opportunity to take public responsibility for his offenses. They also make a statement to the community as to the seriousness of the crime; and

(d) significant suspended sentences can provide an incentive for the offender to complete Court ordered rehabilitative treatment and restitution.

**5.09C.02.010 Sentencing Schedule for Sexual Offenses**

(a) The sentence for a Class A offense shall be imprisonment for 365 days in jail; and a minimum fine of \$2,500 and a maximum fine of \$5,000; Completion of a Sexual Deviancy Evaluation and any treatment, if recommended, is mandatory.

(b) The sentence for a Class B offense shall be imprisonment for not less than 210 days and not more than 300 days in jail; and a minimum fine of \$1,000 and a maximum fine of \$4,000.

(c) The sentence for a Class C offense shall be imprisonment for not less than 60 days but not more than 210 days in jail; and a minimum fine of \$500 and a maximum fine of \$3,000.

## **Sub-Chapter 5.09C.04 Definitions, Guidance and Defenses**

### **5.09C.04.010 Definitions**

---

As used in this chapter,

(a) “Sexual intercourse” has its ordinary meaning and occurs upon any penetration, however slight; and

(1) 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 solely for medically recognized treatment or diagnostic purposes; and

(2) 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.

(b) “Sexual contact” means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party.

(c) “Married” means one who is legally married to another, but does not include a person who is living separate and apart from his spouse and who has filed in an appropriate court for legal separation or for dissolution of his marriage.

(d) “Mental incapacity” is that certifiable condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse.

(e) “Physically helpless” means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(f) “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, animal, or damage to significant personal property, or in fear that he or another person or an animal will be kidnapped.

(g) “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.

(h) “Significant relationship” means a situation in which the perpetrator is:

(1) a person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors; or

(2) a person who in the course of his employment supervises minors.

(i) “Abuse of a supervisory position” means a direct or indirect threat or promise to use authority to the detriment or benefit of a minor.

(j) “Person with supervisory authority” for purposes of 5.09C.05.020(a)(3) and 5.09C.05.150(b)(3), means any proprietor or employee of any public or private or treatment facility who directly supervises disabled persons.

### **5.09C.04.020 Victim Testimony and Evidence**

---

(a) In order to convict a person of any crime defined in this chapter it shall not be necessary that the testimony of the alleged victim be corroborated.

(b) Evidence of the victim’s past sexual behavior including, but not limited to, the victim’s marital history, divorce history, or general reputation for promiscuity, non-chastity, or sexual 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 (c) 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.

(c) In any prosecution for the crime of rape or for an attempt to commit, or an assault with an intent to commit, any such crime, 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 is admissible on the issue of consent to the offense only pursuant to the following procedure:

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

(2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(3) If the Court finds that the offer of proof is sufficient, the Court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the Court.

(4) At the conclusion of the hearing, if the Court finds that the evidence 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.

(d) 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 (c) of this section concerning such evidence.

#### **5.09C.04.030 Evidence of Child**

(a) With the legislative purpose in mind to find the truth while allowing a child protection from trauma to the extent that is constitutionally permitted, the Lummi Tribal Court may adopt state or federal rules of procedure regarding the admissibility of evidence, including, but not limited to, hearsay, video-taped depositions, or testimony by closed-circuit television. The Lummi Indian Business Council declares that protection of child witnesses in sexual assault and physical abuse cases is a substantial and compelling interest of the Lummi Nation. Sexual and physical abuse cases are some of the most difficult cases to prosecute, in part because frequently no witnesses exist except the child victim. When abuse is prosecuted, a child victim may suffer serious emotional and mental trauma from exposure to the abuser or from testifying in open court. In rare cases, the child is so traumatized that the child is unable to testify at trial and is unavailable as a witness or the child's ability to communicate in front of the jury or defendant is so reduced that the truth-seeking function of trial is impaired. In other rare cases, the child is able to proceed to trial but suffers long-lasting trauma as a result of testifying in court or in front of the defendant. The creation of procedural devices designed to enhance the truth-seeking process and to shield child victims from the trauma of exposure to the abuser and the courtroom is a compelling tribal interest.

(b) A statement made by a child when under the age of 10 describing any act of sexual contact performed with or on the child by another or describing any attempted act of sexual contact with or on the child by another, not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings and criminal proceedings, including juvenile offense adjudications, in the courts of the Lummi Nation when:

(1) the Court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

(2) the child either:

- (A) testifies at the proceedings; or
- (B) is unavailable as a witness; provided, that when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

(c) A statement may not be admitted under (b) of this section unless the proponent of the statement makes known to the adverse party his intention to offer the statement and particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

**5.09C.04.050 Defenses to Prosecution Under this Chapter**

(a) The general defense afforded by 5.10.070(g) requires that for the following defendants, the reasonable belief be as indicated:

- (1) for a defendant charged with rape of a child in the first degree, that the victim was at least 12, or was less than 24 months younger than the defendant.
- (2) for a defendant charged with rape of a child in the second degree, that the victim was at least 14, or was less than 36 months younger than the defendant.
- (3) for a defendant charged with rape of a child in the third degree, that the victim was at least 16, or was less than 48 months younger than the defendant.
- (4) for a defendant charged with child molestation in the first degree, that the victim was at least 12, or was less than 36 months younger than the defendant.
- (5) for a defendant charged with child molestation in the second degree, that the victim was at least 14, or was less than 36 months younger than the defendant.
- (6) for a defendant charged with child molestation in the third degree, that the victim was at least 16, or was less than 36 months younger than the defendant.
- (7) for a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least 18, or was less than 60 months younger than the

defendant.

(b) Voluntary intoxication is not a defense available under this Chapter.

**Sub-Chapter 5.09C.05 Sexual Offenses**

**5.09C.05.010 Rape in the First Degree**

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

- (1) uses or threatens to use a deadly weapon or what appears to be a deadly weapon;
- (2) kidnaps the victim;
- (3) inflicts serious physical injury; or
- (4) unlawfully enters into the building or vehicle where the victim is situated.

(b) Rape in the first degree is a Class A offense.

**5.09C.05.020 Rape in the Second Degree**

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

- (1) by forcible compulsion;
- (2) when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated; or
- (3) when the victim is developmentally disabled and the perpetrator is a person who has supervisory authority over the victim.

(b) Rape in the second degree is a Class A offense.

**5.09C.05.030 Rape in the Third Degree**

(a) 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, not married to the perpetrator:

- (1) where the victim did not consent as

defined in 5.9C.04.010(g), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct; or

(2) where there is threat of substantial unlawful harm to property rights of the victim.

(b) Rape in the third degree is a Class B offense.

#### **5.09C.05.040 Rape of a Child In the First Degree**

(a) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than 12 years old and not married to the perpetrator and the perpetrator is at least 24 months older than the victim.

(b) Rape of a child in the first degree is a Class A offense.

#### **5.09C.05.050 Rape of a Child In the Second Degree**

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

(b) Rape of a child in the second degree is a Class A offense.

#### **5.09C.05.060 Rape of a Child in the Third Degree**

(a) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least 14 years old but less than 16 years old and not married to the perpetrator and the perpetrator is at least 48 months older than the victim.

(b) Rape of a child in the third degree is a Class B offense.

#### **5.09C.05.070 Child Molestation in the First Degree**

(a) A person is guilty of child molestation in the first degree when the person has sexual contact with another who is less than 12 years old and the perpetrator is at least 36 months older than the victim.

(b) Child Molestation in the first degree is a Class A offense.

#### **5.09C.05.080 Child Molestation In the Second Degree**

(a) A person is guilty of child molestation in the second degree when the person has sexual contact with another who is at least 12 years old but less than 14 years old and the perpetrator is at least 36 months older than the victim.

(b) Child molestation in the second degree is a Class B offense.

#### **5.09C.05.090 Child Molestation in the Third Degree**

(a) A person is guilty of child molestation in the third degree when the person has sexual contact with another who is at least 14 years old but less than 16 years old and not married to the perpetrator and the perpetrator is at least 48 months older than the victim.

(b) Child molestation in the third degree is a Class B offense.

#### **5.09C.05.100 Sexual Misconduct with a Minor in the First Degree**

(a) A person is guilty of sexual misconduct with a minor in the first degree when the person has sexual intercourse with another person who is at least 16 years old but less than 18 years old and not married to the perpetrator, if the perpetrator is at least 60 months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in sexual intercourse with the victim.

(b) Sexual misconduct with a minor in the first degree is a Class B offense.

#### **5.09C.05.110 Sexual Misconduct with a Minor in the Second Degree**

(a) A person is guilty of sexual misconduct with a minor in the second degree when the person has sexual contact with another person who is at least 16 years old but less than 18 years old and not married to the perpetrator, if the perpetrator is at least 60 months older than the victim, is in a significant relationship to the victim and abuses a supervisory position

within that relationship in order to engage in sexual contact with the victim.

(b) Sexual misconduct with a minor in the second degree is a Class C offense.

#### **5.09C.05.120 Indecent Exposure**

(a) A person is guilty of indecent exposure when a person:

(1) makes any open or obscene exposure of genitals, buttocks or female breasts knowing that such exposure is likely to cause reasonable affront or alarm; or

(2) masturbates, even though covered, while observed by a child less than sixteen years old or while observed by any person knowing that such conduct is likely to cause reasonable affront or alarm.

(b) Indecent exposure is a Class B offense.

#### **5.09C.05.130 Incest in the First Degree**

(a) A person is guilty of incest in the first degree when he engages in sexual intercourse with a person he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of either whole or half, nephew, or niece. This includes stepchildren and adopted children under 18 years of age.

(b) Incest in the first degree is a Class A offense.

#### **5.09C.05.140 Incest In the Second Degree**

(a) person is guilty of incest in the second degree when he engages in sexual contact with a person he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendent, brother or sister of either whole or half. This includes stepchildren and adopted children under age 18.

(b) Incest in the second degree is a Class B offense.

#### **5.09C.05.150 Indecent Liberties**

(a) A person is guilty of indecent liberties when he knowingly has sexual contact with another person who is not his spouse without that person's consent.

(b) A person is guilty of aggravated indecent liberties when he knowingly causes another

person who is not his spouse to have sexual contact with him or another:

(1) by forcible compulsion;

(2) when the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless; or

(3) when the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim.

(c) Indecent Liberties is a Class C Offense. Aggravated Indecent Liberties is a Class B offense.

#### **5.09C.05.160 Patronizing Juvenile Prostitute**

(a) A person is guilty of patronizing a juvenile prostitute when he engages in or agrees or offers to engage in sexual conduct with a minor under 18 years old in return for money or other compensation.

(b) Patronizing a Juvenile Prostitute is a Class A offense when the juvenile prostitute is under 16 years of age. Patronizing a Juvenile Prostitute is a Class B offense when the juvenile prostitute is 16 years of age or older.

#### **5.09C.05.170 Communicating with a Minor for Immoral Purposes**

(a) A person is guilty of communicating with a minor for immoral purposes when he directs communication with a person under 18 years old expressing sexual intent for the purpose of sexual gratification, a type of sexual exploitation.

(b) Communicating with a minor for immoral purposes is a Class C offense unless that person has been previously convicted of a felony sexual offense, or any other felony in this jurisdiction. If convicted previously for one of the latter offenses, the offense shall be a Class B offense.

#### **5.09C.05.180 Sexual Exploitation of a Minor**

(a) A person is guilty of sexual exploitation of a minor if the person:

(1) compels a minor by threat or force to

engage in sexually explicit conduct, knowing the conduct will be photographed or part of a live performance;

(2) aids or causes the minor to engage in sexually explicit conduct, knowing the conduct will be photographed or part of a live performance; or

(3) being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing the conduct will be photographed or part of a live performance.

(b) Sexual exploitation of a minor shall be a Class A offense if the victim is less than 16 years old; and shall be a Class B offense if the victim is 16 years of age or older, but less than 18 years old.

#### **5.09C.05.190 Depiction of Minor Engaged in Sexually Explicit Conduct**

(a) It is unlawful to possess, import, or deal in a depictions of a minor engaged in sexually explicit conduct.

(b) A person is guilty of a the offense of dealing in depictions of a minor engaged in sexually explicit conduct if the person possesses with the intent to, or knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, or attempts to finance, any visual or printed matter that depicts a minor engaged in sexually explicit conduct. Dealing in a depiction of a minor under 16 years of age engaged in sexually explicit conduct is a Class B offense. Dealing in a depiction of a minor 16 years of age or older, but less than 18 years of age, is a Class C offense.

(c) A person is guilty of the offense of importing depictions of minors engaged in sexually explicit conduct occurs when the person knowingly sends or causes to be sent, or brings or causes to be brought, into this jurisdiction for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct. Sending or bringing into the Lummi jurisdiction a depiction of a minor under sixteen years of age engaged in sexually explicit conduct is a Class B offense. Sending or bringing into the Lummi jurisdiction a depiction of a minor 16

years of age or older, but less than 18 years of age, engaged in sexually explicit conduct is a Class C offense.

(d) A person is guilty of a Class C offense of possession of a depiction of a minor engaged in sexually explicit conduct occurs when the person knowingly possesses visual or printed matter depicting a minor under 16 years old engaged in sexually explicit conduct.

### **Sub-Chapter 5.09C.06 Registration of Sex Offenders**

#### **5.09C.06.005 Findings and Intent**

The Lummi Nation finds that sex offender registration has assisted law enforcement agencies in protecting their communities. The Lummi Nation finds that sex offenders often pose a high risk of re-offense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, the Lummi Nation's policy is to assist local law enforcement agencies' efforts to protect all communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in this chapter.

#### **5.09C.06.010 Registration Requirements**

(a) A person who is a Lummi tribal member or who resides in or is employed in Lummi territory and who has been found to have committed, or has been convicted of any sex offense in any jurisdiction shall register with the Lummi Police Department, with the county of the person's residence, and, when applicable, with local, state, and federal law enforcement agencies. For the purposes of this subchapter, "sex offense" means any offense which is included in Chapter 5.09C or is defined as a sex offense by the laws of the jurisdiction in which the person was convicted or received a deferred prosecution or suspended sentence. For the purposes of this subsection, a "Class A," "Class B," or "Class C" sex offense includes an offense committed in another jurisdiction that would constitute

respectively a Class A, Class B, or Class C sex offense under the laws of this jurisdiction.

(b) The person shall provide the law enforcement agencies with the following information when registering:

- (1) name;
- (2) current address and residences within past two years;
- (3) date and place of birth;
- (4) place of employment and job description;
- (5) crime(s) for which convicted;
- (6) conditions of probation or parole;
- (7) names and last known addresses of victims;
- (8) sexual deviance evaluations, treatment reports, and discharge reports;
- (9) chemical dependency evaluation, if any;
- (10) date and place of conviction;
- (11) aliases used;
- (12) social security number;
- (13) a current photograph; and
- (14) a fingerprint sample.

(c) Sex offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses:

- (1) Sex Offenders in Custody. Sex offenders who committed a sex offense in any jurisdiction on, before, or after August 4, 1994 and who, on or after July 15, 1994, are in custody as a result of that offense of any jurisdiction's department of corrections, department of social and health services, local division of youth services, or local jail or juvenile detention facility, must register within 24 hours from the time of release. The agency that has jurisdiction over the offender shall provide notice to the sex offender of the duty to register.
- (2) Sex Offenders Not In Custody But Under Tribal, Federal, State, Or Local Jurisdiction. Sex offenders, who, on

August 4, 1994, are not in custody but are under the jurisdiction of the Lummi Nation, or of any jurisdiction's indeterminate sentence review board or under the active supervision of any jurisdiction's department of corrections, department of social and health services, or local division of youth services, for sex offenses committed before, on, or after August 4, 1994, must register within 24 hours of August 4, 1994.

(3) Sex Offenders Who Are Convicted But Not Confined. Sex offenders who are convicted of a sex offense on or after August 4, 1994, for a sex offense that was committed on or after August 4, 1994, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to register immediately upon completion of being sentenced.

(4) Sex Offenders Who Are New To or Returning To Lummi. Sex offenders must register within 24 hours of establishing or re-establishing a place of residence or place of work within the external boundaries of the Lummi Reservation. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender establishes a place of residence or place of work in the Lummi Nation territory, which for all purposes of this chapter shall be construed in its broadest sense. The duty to notify the sex offender of the requirements of this paragraph does not excuse the sex offender's failure to comply with this paragraph.

(d) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (g) of this section. The Lummi Police Department is not required to determine whether the person is living within the Lummi Nation boundaries.

(e) An arrest on charges of failure to register, service of information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. A person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to

register shall register immediately. Failure to register, as required under this subsection, constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from civil or criminal liability for failure to register prior to the filing of the original charge.

(f) If a person required to register pursuant to this section changes his residence address within the same tribal jurisdiction, the person must provide written notice in person of the change of address to the Lummi Police Department within 24 hours of establishing the new residence. If a person required to register pursuant to this section moves outside the Lummi Reservation, the person must register with the law enforcement authorities as required by that jurisdiction and must also send written notice within 24 hours of the change of address to the law enforcement agencies with whom the person is already registered.

(g) A person who fails to register as required by this section is guilty of:

(1) a Class B offense if the crime for which the individual was adjudicated was a Class A or would be a Class A offense if committed in this jurisdiction; or

(2) a Class C offense if the crime for which the individual was adjudicated was a Class B offense, a Class C offense, or is a sex offense in another jurisdiction but is not described in Chapter 5.09C.

#### **5.09C.06.020 Termination of Duty to Register**

(a) The duty to register under 5.09C.06.010 only ends upon the petition by the sex offender and approval of the Court upon a showing by the sex offender by clear and convincing evidence that the person has successfully complied with all recommendations for sex offender treatment and that there are not any new charges for sex offenses pending. An offender is only qualified to file a petition:

(1) after 25 consecutive years living unconfined and outside of a residential treatment facility from the time of the person's most recent conviction, for a

person convicted of a Class A offense;

(2) after 15 consecutive years living unconfined and outside of a residential treatment facility from the time of the person's most recent conviction, for a person convicted of a Class B offense, but not a Class A offense;

(3) after 15 consecutive years living unconfined and outside of a residential treatment facility from the time of the person's most recent conviction, for a person convicted of a Class C, but not a Class A or Class B offense; and

(4) after two consecutive years living unconfined and outside of a residential treatment facility, for a person who has committed no sex offenses while 15 years of age or older and was adjudicated responsible for a Class B or Class C offense, but not a Class A offense, that was committed while the person was under the age of 15.

(b) Unless relieved of the duty to register pursuant to this section, a violation of 5.09C.06.010 is an ongoing offense for purposes of the statute of limitations.

(c) Nothing in the totality of Title 5 of the Lummi Code of Laws relating to discharge of an offender shall be construed as operating to relieve the offender of his duty to register pursuant to 5.09C.06.010.

#### **5.09C.06.030 Notice to Community Members about Sexual Offenders**

(a) The degree of publication to the Lummi community concerning sexual offenders who visit, work and/ or reside in the community shall be proportionate to the potential level of harm and or degree of risk of re-offending that person represents to members of the Lummi Community.

(b) A Committee composed of a Lummi Police Department Detective; a Lummi Adult Probation Officer; a Lummi Victims of Crime Coordinator, a Lummi Health Director, and the director of Lummi Children's Services shall determine the level of risk which an offender presents to children or others in the community. A member may not participate in a determination if that member cannot be

impartial or has the appearance that the member cannot be impartial due to be related to the offender. Factors in the determination shall be: the nature of the offense, the seriousness of the offense committed by that person; progress made by that person in rehabilitative treatment, including diagnostic evaluations by a professional sexual deviancy evaluator/therapist; the situation of that person in his family and employment concerning the likelihood of and degree of unsupervised exposure to potential victims; and any other factors which reasonably relate to the likelihood of recidivism if the level of publication is not increased.

(1) Level One represents the lowest level of risk, wherein it is determined that notice need be given only to those in the home of the offender and, in the discretion of the committee to those within a two block radius of the offender's location, due to a clear likelihood that the person will not re-offend.

(2) Level Two is the intermediate level of risk, wherein it is determined that notice should be given to those in the home of the offender; and to those belonging to the class of people to be protected who will likely make contact with the offender in a setting which is potentially unsupervised. Such contact may be in the form of flyers to school officials or other individuals who will monitor the level of publication to that which is reasonably necessary to ensure the protection of those in the class of potential victims.

(3) Level Three is the most serious level of risk, wherein it is reasonably determined that notice should be given to those in the offender's home, the offender's community, nearby schools, recreation centers, and other areas where the offender may seek potential victims. The method of publication may be by newspaper; flyer in areas populated with members of the class of potential victims; by telephone or any other medium which would reasonably benefit the community's awareness of the risk posed by the offender. Information contained in the publication may include: the name and any aliases of the offender; pictures of and physical description of the

offender; former modus operandi, if known, of the offender; description of the charges which the offender was convicted of; information as to how to contact the proper authority if this person is suspected of stalking or having re-offended; and any other information reasonably necessary to protect potential victims, providing such information is not designed with the intent of harassing the offender.

(c) In any level of publication, notice shall be given to inform whether the offender is receiving treatment for his sexual deviancy and whether the individual has been cooperative and compliant with other court orders, particularly those requiring him to refrain from unsupervised contact with those of the victim class or from areas where unsupervised contact with those of the victim class may be readily attainable.

#### **5.09C.06.040 Prohibited Employment of Sex Offenders**

(a) No person may employ a registered sex offender to work at a school or program serving children under 18 years of age, a child care facility; or a youth facility. A person who knowingly violates this subsection shall be guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period no to exceed 30 days and a fine not to exceed \$500.

(b) No registered sex offender may work at a school serving children under 18 years of age, a child care facility; or a youth facility. A person who knowingly violates this subsection shall be guilty of an offense and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 180 days and a fine not to exceed \$2,500.

### **Chapter 5.10 General Provisions**

#### **5.10.010 Definitions**

(a) When a term is not defined in any provision of the code establishing a criminal offense, it shall be given its commonly accepted meaning. If there is any doubt as to the meaning of a term, the Court may refer to definitions utilized in other jurisdictions. Any reference to "he", "she" or other gender pronouns include both male and female

persons.

(b) State of Mind. In determining the state of mind of a person as required under this code, the following definitions apply. It is not necessary to establish that the defendant knew that his act was a violation of the law. When this code 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, 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.

(1) A person acts with “intent” or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime.

(2) A person acts with “knowledge” or acts knowingly when he is aware of a fact, circumstances, or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance, or result is a crime. The finder of fact may find that the person acted with knowledge if the person has information that would lead a reasonable person in the same situation to believe that the fact, circumstance, or result exists. A requirement that an offense be committed “willfully” is satisfied if the person acts knowingly.

(3) A person acts “recklessly” if that persons acts carelessly and heedlessly in a willful and wanton disregard of the rights, safety, or property of another.

(4) A person acts “maliciously” if that person acts with 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.

(c) For the purposes of this title,

(1) “Public” means affecting or likely to affect persons in a place to which the public or a substantial group of the public has

access and includes, but is not limited to, public buildings, streets, highways, the common areas of schools, hospitals, apartment houses, trailer parks, and office buildings, transport facilities, businesses open to the public, and places of entertainment or amusement;

(2) “Deadly weapon” means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a vehicle, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(3) “Residential structure” is a structure in which another person customarily resides or in which the person committing the offense should reasonably expect another person to reside;

(4) “Developmentally disabled,” means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age 18, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

#### **5.10.020 Standard of Proof**

No person may be convicted of a criminal offense unless each element of the offense is proved by competent evidence beyond a reasonable doubt.

#### **5.10.030 Criminal Solicitation**

A person who, with intention to promote or facilitate the commission of an offense, urges or requests another to engage in specific conduct that constitutes a criminal offense under this code shall be guilty of criminal solicitation. For purposes of sentencing, criminal solicitation is classified at the same level of offense as the offense that is the subject of the solicitation and carries the same sentence.

#### **5.10.040 Conspiracy**

(a) A person who intentionally agrees with another to commit a criminal offense under this code is guilty of conspiracy to commit that offense. For purposes of sentencing, conspiracy is classified at the same level of offense as the offense that is the subject of the agreement and carries the same sentence.

(b) It shall not be a defense to conspiracy that the person(s) with whom the accused is alleged to have conspired has not been prosecuted or convicted; is not amenable to justice; has been convicted of a different offense; or has been acquitted or lacks legal capacity to commit the offense.

(c) A person may be found guilty of a unilateral conspiracy when the other participant is an undercover law enforcement officer or agent.

#### **5.10.050 Attempt**

(a) A person who intends to commit a specific offense and performs any act that is a substantial step toward the commission of that offense, shall be found guilty of attempt to commit that offense. A "substantial step" is conduct of the defendant which strongly indicates a criminal purpose. For purposes of sentencing, attempt is classified at the same level of offense as the offense that was attempted and carries the same sentence.

(b) If the conduct in which a 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 for commission.

#### **5.10.060 Accomplice Liability; Aid and Abet**

A person who intentionally assists in or encourages the commission of an offense is guilty of commission of that offense. Any adult who intentionally assists in or encourages the commission of an offense by a minor or a person who is developmentally disabled as the latter is defined in Section 5.10.010(c)(4), commits a separate offense

under this code, in addition to being liable for the commission of all offenses committed by the adult's accomplice. A person shall not be found guilty as an accomplice to an offense committed by another person if he terminates his 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.

#### **5.10.070 Defenses**

(a) Capacity. Children under the age of eight years of age are incapable of committing a criminal offense under this title. Persons who are mentally disabled to the extent that the required state of mind for a particular offense could not have been present at the time of the alleged offense, are not capable of committing a criminal offense under this title.

(b) Duress. To establish this defense, it must be shown that the person charged had participated in the criminal offense under compulsion by another who, by threat or use of force, created a reasonable apprehension in the mind of the person that if he were to refuse to participate, he or an immediate family member would be subject to immediate death or grievous bodily injury.

(c) Entrapment. To establish this defense, it must be shown that the criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and that the person charged was lured or induced to commit a crime which he had not otherwise intended to commit. The defense of entrapment is not established by a showing that law enforcement officials merely afforded the charged person an opportunity to commit a criminal offense.

(d) Self Defense. To establish this defense, it must be shown that the person charged reasonably believed that he or another was about to be injured and that the person acted to prevent or attempt to prevent the injury. The person charged may only use the force and means than a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of the incident.

(e) Voluntary Intoxication is Not a Defense. No act committed by a person while in a state of voluntary intoxication will be deemed less criminal by reason of his condition; but whenever the actual existence of any particular mental state (i.e., knowledge or intent) is a necessary element to constitute a particular offense, the fact of his intoxication may be taken into consideration in determining whether the requisite mental state existed at the time of the alleged offense.

(f) Mental Incapacity of Victim. In any prosecution under this code 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 that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

(g) Age of Victim. In any prosecution under this code 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 than the age specified in the offense or degree of the offense based upon the alleged victim's declarations as to age.

#### **5.10.080 Lesser Included Offenses**

A person may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged.

#### **5.10.090 Felonious Conduct**

(a) Based on the gravity of the offense and the harm to the fabric of the community, the Lummi Nation designates the following offenses under this code to be felonies:

- (1) Class A and B offenses under Chapter 5.09C, Sexual Offenses;
- (2) Class A and B offenses under Chapter 5.09A, Drug and Alcohol Violations;
- (3) Homicide (5.01.005)

- (4) Class A offenses under Title 6A, Criminal Traffic Code;
- (5) Reckless or Intentional Endangerment (5.01.060);
- (6) Residential Burglary (5.02.085);
- (7) Robbery (5.01.025);
- (8) Aggravated Abduction (5.01.030);
- (9) Aggravated Arson (5.02.095);
- (10) First and Second Degree Assault and Battery (5.01.020);
- (11) Aggravated Stalking (5.01.070);
- (12) Extortion (5.02.050);
- (13) Embezzlement from the Tribe (5.07.080);
- (14) Threatening a Tribal Representative (5.07.065); and
- (15) Violation of Federal or State Law (5.08.030) if the offense is a felony in the other jurisdiction.

(b) Upon amendment to the Indian Civil Rights Act, Title II of Public Law 90-284 to authorize increased sentences, the maximum sentence for a felony offense as defined in this section shall be the maximum allowed under the amendment.

#### **5.10.100 Severability; Savings**

If any provision of this title or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances, is not affected.

### **Chapter 5.11 Sentencing**

#### **5.11.010 Penalty for Violations Where No Penalty Impose**

Whenever by this code, or by other ordinances or enactments of the Council, an act or omission is made or deemed an offense but no specific penalty is imposed, upon conviction, the person guilty of such offense shall be sentenced to imprisonment for a period not to exceed 180 days and to pay a fine not to exceed \$2,500.

### **5.11.020 Sentencing Guidelines**

(a) This code shall be construed to the end that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities. The Court is directed to consider the defendant's amenability to corrective treatment, the gravity of the conduct constituting the crime, the defendant's past record of criminal conduct, protection of the public, upholding community standards, deterrence of future violations, and the welfare of the individual and the Tribe.

(b) The Court shall give primary weight to corrective sentencing whenever practicable so that the defendant may become a productive and law-abiding member of the community, except that the Court shall give primary weight to protection of the community when sentencing for the following offenses:

- (1) sale for profit or manufacture of a controlled substance;
- (2) a Class A or B sexual offense;
- (3) a crime of violence in which the victim receives a substantial injury;
- (4) a crime of violence involving use of a firearm; or
- (5) a crime involving conduct that presents a serious threat to the health, safety, and welfare of the community.

### **5.11.030 Suspension of Sentence**

(a) The Court has discretion to suspend all or part of a sentence under this code for a set term under the terms and conditions that the Court determines and shall place the person on probation under the charge and supervision of the probation office.

(b) If a set or minimum sentence is established under this code, the Court has discretion to suspend part of such sentence in accordance with this section.

(c) A period of suspension may not exceed five years for each count on which the defendant is sentenced. The Court may order that the period of suspension run from the time the person completes any period of incarceration.

### **5.11.040 Fines**

(a) The Court may require that all or part of a fine it imposes under this code be paid through hours of community work service.

(b) The Court has discretion to credit against a fine imposed some or all of the amount paid by the defendant in obtaining court-ordered evaluations and treatment.

### **5.11.050 Special Verdict; Armed with a Dangerous Weapon**

A person who is found guilty of any criminal offense under this code that is committed by a person while armed with a dangerous weapon shall receive an increased sentence unless the definition of the crime already includes use of a weapon. The maximum sentence for the criminal offense shall be increased by imprisonment for a period not to exceed 90 days and a, \$1,250 fine. The total period of imprisonment imposed on a person receiving a sentence that contains a sentence enhancement under this section may not be less than 90 days.

### **5.11.060 Restitution**

In addition to any other penalties permitted under this code, the Court may order the defendant to pay restitution to the persons who incur costs as a result of the crime in order to, in whole or in part, reimburse those persons for those costs that may include medical or mental health care and replacement or repair of property.

### **5.11.070 Forfeiture**

In addition to penalties set out in this code, the Court may order the defendant to forfeit property obtained through an act constituting a crime or property subsequently acquired from proceeds of an act constituting a crime. The Court shall use the standards and procedures set out for forfeiture in Chapter 5A.09B.

### **5.11.080 Prior Convictions**

When proof of a prior conviction is required under this code, adequate proof of prior conviction may be established by a court or law enforcement record, unless the person convicted asserts that such report is incorrect. In that instance, a copy of the conviction from the jurisdiction originating the prior

conviction shall be obtained and produced to the Lummi Court.

#### **5.11.090 Pre-Sentence Report**

(a) The Court may order the probation office to conduct a pre-sentence investigation prepare a report to assist the Court in imposing sentence. The report shall be provided at least seven days before sentencing to the Court, the prosecutor, and the defense.

(b) The pre-sentence report shall contain the defendant's criminal history; information about the defendant's characteristics, financial condition, any history of substance abuse and treatment, education and training, and other circumstances affecting the defendant's behavior as may be relevant in imposing sentence; information about the impact on the victim; and such other information as may be required by the Court. The person preparing the report shall, at a minimum, contact the defendant, victim or victim's representative, and the Lummi Police Department to provide each with an opportunity to present information.

(c) If either the defendant or the prosecutor contest any factual portion of the report and wish to produce evidence to contest the report, they must notify opposing counsel and the Court at least three days before the sentencing hearing.

(d) The defendant, victim or a representative of the victim, and the prosecutor may submit a separate report and may make an argument at the sentencing as to the appropriate sentence to be imposed.

(e) The report prepared under this section shall be sealed from the general public, except that the Court may order the report to be released upon good cause shown.

#### **5.11.100 Exclusion**

(a) The Lummi Nation retains its inherent authority, whether or not prosecution occurs in a given case, to exclude persons in accordance with Title 12.

(b) The Court has the discretion to exclude from the Lummi reservation a person from whom the community needs to be protected under 5.11.020(b) of this code and who is:

(1) a sexual offender who fails or refuses to comply with rehabilitative treatment or any restraining orders prohibiting unsupervised contact with minor children, for such time as is required for the individual to ensure his future compliance; or

(2) a person convicted of a felony as defined under 5.10.090 of this code; the Court shall set a time period after which the defendant may show that he has complied with conditions for readmission as established by the Court.

Title5pub08