

Elwha Justice Code



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Table of Contents

9.1	Application, Jurisdiction	1
	9.1.1 Repeal and Re-enactment.....	1
	9.1.2 Title.....	1
	9.1.3 Effect of Invalidity.	1
	9.1.4 Jurisdiction.	1
	9.1.5 Authority to Amend.	1
	9.1.6 Civil Actions Not Barred.	1
	9.1.7 Exclusiveness of Offenses.	2
9.2	Mental State.....	2
9.3	Liability	2
	9.3.1 Strict Liability.	2
	9.3.2 Accomplice Liability.	2
9.4	Affirmative Defenses and Justifiable Use of Force	3
	9.4.1 Consent.....	3
	9.4.2 Compulsion.....	3
	9.4.3 Entrapment.....	3
	9.4.4 Self-defense.	3
	9.4.5 Voluntary Intoxication.	4
9.5	Inchoate Offenses.....	4
	9.5.1 Conspiracy.....	4
	9.5.2 Solicitation.	5
	9.5.3 Attempt.	5
9.6	Definitions	5
	9.6.1 “Assault”	5
	9.6.2 “Caregiver,” “Custodian,” or “Guardian”.....	6
	9.6.3 “Deadly weapon”.....	6
	9.6.4 “Destructive device”	6
	9.6.5 “Defraud”	7
	9.6.6 “Elder”	7
	9.6.7 “Explosive”	7
	9.6.8 “Firearm”	7
	9.6.9 “Knowingly”	7
	9.6.10 “Maliciously”	7

9.6.11	“Mental incapacity”	8
9.6.12	“Negligently”	8
9.6.13	“Physically helpless”	8
9.6.14	“Public places”	8
9.6.15	“Reckless”	8
9.6.16	“Threat”	8
9.6.17	“Tribal Council”	9
9.6.18	“Tribal Court”	9
9.6.19	“Tribe”	9
9.6.20	“Vulnerable adult”	9
9.7	Procedure	9
9.8	Physical Harm	9
9.8.1	Assault in the First Degree.	9
9.8.2	Assault in the Second Degree.	10
9.8.3	Assault in the Third Degree.	10
9.8.4	Aggravated Assault.	10
9.8.5	Harassment.	10
9.8.6	Stalking.	10
9.8.7	Reckless Endangerment.	11
9.8.8	Intentional Endangerment.	11
9.8.9	Homicide.	11
9.8.10	Intimidation.	11
9.8.11	Death Threat or Threat of Substantial Bodily Harm.	11
9.9	Offenses against the Family	11
9.9.1	Interference with a Report of Domestic Violence.	12
9.9.2	Prostitution.	12
9.9.3	Bigamy.....	12
9.9.4	Failure to Support or Care for a Child.	12
9.9.5	Aggravated Failure to Support or Care for a Child.	13
9.9.6	Contributing to the Delinquency of an Underage Person.	13
9.9.7	Failure to Send Child to School.	13
9.9.8	Custodial Interference.	13
9.9.9	Visitation Interference.....	14
9.9.10	Endangering a Child in the First Degree.	14
9.9.11	Endangering a Child in the Second Degree.	14
9.9.12	Child Abuse.	14
9.9.13	Child Neglect.	15
9.10	Offenses against Elders.....	15
9.10.1	Elder Abuse.	15
9.10.2	Emergency Protection Order for Vulnerable Adults.....	16

9.11	Offenses against Property	16
9.11.1	Robbery.....	16
9.11.2	Arson.	17
9.11.3	Negligent Burning.	17
9.11.4	Malicious mischief.....	17
9.11.5	Criminal Trespass in the First Degree.	18
9.11.6	Criminal Trespass in the Second Degree.	18
9.11.7	Burglary.	18
9.11.8	Theft in the First Degree.....	18
9.11.9	Unauthorized Acquisition, Transfer, or Possession of Tribal Benefits.	19
9.11.10	Fraud.....	19
9.11.11	Forgery.....	19
9.11.12	Obscuring the Identity of a Machine.....	19
9.11.13	Possessing Stolen Property in the First Degree.	20
9.11.14	Possessing Stolen Property in the Second Degree.	20
9.11.15	Embezzlement.....	20
9.11.16	Unauthorized Use of Credit Card.....	20
9.12	Drug and Alcohol Offenses.....	21
9.12.1	Definitions.....	21
9.12.2	Drug Paraphernalia – Definitions.....	24
9.12.3	Manufacture or Delivery of a Controlled Substance.	26
9.12.4	Prohibited Acts (Possession) – Penalties.	26
9.12.5	Unauthorized Use of State Medical Marijuana Database.	31
9.12.6	Possession of an Imitation Controlled Substance.....	32
9.12.7	Possession of a Legend Drug.	32
9.12.8	Possession of Listed Chemicals.	33
9.12.9	Possession of Drug Paraphernalia.	33
9.12.10	Endangerment with a Controlled Substance.....	33
9.12.11	Authorized Possession of Controlled Substances and Drug Paraphernalia. ...	33
9.12.12	Use of Inhalants – Exception.....	34
9.12.13	Possession of an Alcoholic Beverage by a Person Under 21.....	34
9.12.14	Furnishing Alcoholic Beverages to a Person Under 21.....	34
9.12.15	Public Consumption of Alcoholic Beverage – Open Container.	34
9.12.16	Possession of Powdered Alcohol.	34
9.12.17	Purchase or Use of Tobacco Products by Minors.	35
9.12.18	Medical Assistance – Drug Related Overdose – Prosecution for Possession. ...	35
9.13	Weapons Offenses	36
9.13.1	Firearms Disqualification.....	36
9.13.2	Possession of Firearm in Violation of Firearms Disqualification.	37
9.13.3	Carrying Concealed Weapon.....	37
9.13.4	Illegal Possession, Use, or Display of Explosives.	37
9.13.5	Possession of a Silencer.....	37
9.13.6	Permitting Unsupervised Use of a Firearm by a Child Under 12 years.....	38

9.14	Perjury, Bribery, and Corrupt Influence	38
9.14.1	Perjury in the First Degree.....	38
9.14.2	Perjury in the Second Degree.....	38
9.14.3	False Swearing.....	38
9.14.4	Perjury and False Statements – Inconsistent Statement – Degree of Crime.	39
9.14.5	Perjury and False Swearing – Irregularities Not a Defense.....	39
9.14.6	False Reporting.	39
9.14.7	Bribing a Witness, Juror, or Judge.	39
9.14.8	Accepting a Bribe – Witness, Juror, or Judge.....	40
9.14.9	Intimidating a Witness, Juror, Judge, or Prosecutor.	40
9.14.10	Jury Tampering/Intimidation.	40
9.14.11	Tampering with Physical Evidence.	40
9.14.12	Bribery of Public Servant.....	41
9.14.13	Requesting, Receiving, or Granting Unlawful Compensation.	41
9.14.14	Trading in Public Office.	41
9.14.15	Trading in Special Influence.	42
9.15	Obstructing Governmental Operation.....	42
9.15.1	Obstructing a Public Servant.....	42
9.15.2	Resisting Arrest.	42
9.15.3	Refusing to Summon Aid for a Peace Officer.....	42
9.15.4	Refusing to Aid an Officer.....	43
9.15.5	Rendering Criminal Assistance in the First Degree.....	43
9.15.6	Rendering Criminal Assistance in the Second Degree.....	43
9.15.7	Escape.....	43
9.15.8	Bail Jumping.....	44
9.15.9	Flight to Avoid Prosecution.....	44
9.15.10	Intimidating or Harassing a Public Servant.	44
9.15.11	Official Misconduct.....	44
9.15.12	Violation of Court Order.....	45
9.16	Public Disturbance.....	45
9.16.1	Riot in the First Degree.....	45
9.16.2	Riot in the Second Degree.....	45
9.16.3	Failure to Disperse.	45
9.16.4	Disorderly Conduct.....	46
9.16.5	False Alarm.....	46
9.16.6	Public Intoxication.	46
9.16.7	Defamation.....	46
9.16.8	Malicious Prosecution.....	47
9.17	Miscellaneous Offenses	47
9.17.1	Littering/Illegal Dumping.....	47
9.17.2	Maintaining a Public Nuisance or Hazard.....	47

9.17.3	Abandoning or Maintaining Dangerous Refrigeration Equipment.	48
9.17.4	Tampering with Fire Alarm or Firefighting Equipment – False Alarm.....	48
9.17.5	Unlawful Bus Conduct.....	48
9.17.6	Failure to Appear.....	49
9.17.7	Interference with Firefighter/Aid-Crew.....	49
9.17.8	Adulteration.....	49
9.17.9	Solicit Without Approval.....	49
9.17.10	Violation of Duty/Offense against Child or Any Violent Offense.....	50
9.17.11	Impersonating a Public Safety Officer.....	50
9.17.12	Cruelty to Animals in the First Degree.	50
9.17.13	Cruelty to Animals in the Second Degree.	50

9.1 Application, Jurisdiction

9.1.1 Repeal and Re-enactment. All provisions contained in earlier versions of Title 9, the Elwha Justice Code, are repealed and re-enacted as set forth in this title.

9.1.2 Title. This title shall be known as the Elwha Justice Code.

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

9.1.4 Jurisdiction. The Lower Elwha Tribe asserts the broadest personal, subject matter, and territorial jurisdiction permitted under federal law. Any person under custody of tribal law enforcement or for whom a Tribal Court order has been entered either restraining or compelling his conduct remains subject to tribal jurisdiction for the duration of custody or court order as necessary to enforce that order. The Tribe asserts criminal jurisdiction over any criminal offense under this title where any one element of that offense – *actus reus*, *mens rea*, attendant circumstances, or resulting harm – otherwise occurs within tribal jurisdiction.

9.1.5 Authority to Amend. The Tribal Council as defined herein is authorized to amend this title as the need may arise in the Council's determination.

9.1.6 Civil Actions Not Barred. This title does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered. Civil injury is not merged into the criminal offense. Any non-Indian who has been found by a preponderance of the evidence to have committed an act otherwise designated as a criminal offense under this title, shall be found to have committed a Civil Violation, and shall be assessed a fine of \$150 for an act that would otherwise be designated as a misdemeanor, a fine of \$250 for an act that would otherwise be designated as a gross misdemeanor, and a fine of \$500 for an act that would otherwise be designated as a felony.

9.1.7 Exclusiveness of Offenses. No conduct constitutes an offense unless so declared by this title or by any other tribal law. The elements of any offense as contained in this title are the sole elements required for conviction in Tribal Court. Extraneous elements required by other jurisdictions shall not be considered by the judge or jury in reaching a verdict. This provision does not affect the power of the Tribal Court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

9.2 Mental State

A person is not guilty of an offense unless: the person acts intentionally, knowingly, recklessly, or negligently as this title may provide with respect to the offense; or the person's acts constitute an offense involving strict liability.

9.3 Liability

9.3.1 Strict Liability. A person is guilty of an offense without having any requisite mental state if the provision defining the offense clearly indicates the Tribe's purpose to impose strict liability for the conduct described.

9.3.2 Accomplice Liability. A person is legally accountable for the conduct of another when: a) having a mental state described by the provision defining the offense, the person causes another to perform the conduct, regardless of the legal capacity or mental state of the other person; b) the provision defining the offense makes the person accountable; or c) either before or during the commission of an offense with the purpose to promote or facilitate such commission, the person solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense.

A person is not accountable for the conduct of another if a) the person is a victim of the offense committed; or b) before the commission of the crime the person terminates his or her efforts to promote or facilitate the commission of the crime and takes steps to negate the effect or otherwise prevent the commission of the offense.

A person may not be found guilty of an offense on the testimony of one responsible or legally accountable for the same offense unless that testimony is corroborated by other evidence

that in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense.

9.4 Affirmative Defenses and Justifiable Use of Force

9.4.1 Consent. The complainant or victim's consent to the performance of the conduct constituting an offense or to the result is an affirmative defense that must be proved by the defendant by a preponderance of the evidence.

Consent is ineffective if: a) it is given by a person who is not legally authorized to approve of the conduct constituting an offense; b) it is given by a person who by reason of youth, mental impairment, or mental incapacity is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged; c) it is induced by force, duress, or deception; or d) it is against public policy to permit the conduct or the resulting harm, even though consent was given.

9.4.2 Compulsion. A person is not guilty of an offense by reason of conduct that she performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if he or she reasonably believes that death or serious bodily harm will be inflicted upon him or her if he or she does not perform such conduct. Compulsion is an affirmative defense that must be proved by the defendant by a preponderance of the evidence.

9.4.3 Entrapment. A person is not guilty of an offense if his or her conduct is incited or induced by a public servant or his agent for the purpose of obtaining evidence for the prosecution of such person. This section is inapplicable if a public servant or his agent merely affords the person the opportunity or facility for committing an offense in furtherance of criminal purpose that such person has originated. Entrapment is an affirmative defense that must be proved by the defendant by a preponderance of the evidence.

9.4.4 Self-defense. A person is justified in the use of force or threat to use force against another when and to the extent the person reasonably believes that such conduct is necessary to: a) defend himself or another against such other's imminent use of unlawful force; b) prevent or terminate such other's unlawful entry into or attack upon an occupied structure; or

c) prevent or terminate the offender's trespass on, or other tortious or criminal interference with, real or person property lawfully in the person's possession or which the person has a legal duty to protect, or in the possession of another who is a family or household member.

A person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes such force is necessary to prevent imminent death or serious bodily harm to herself or another person.

When raising self-defense as an affirmative defense, the defendant has the burden of producing sufficient evidence to raise a reasonable doubt of her culpability.

Self-defense is not available to a person who: a) is attempting to commit, committing, or escaping after the commission of an offense; b) knowingly or purposely provoking the use of force against herself; or c) is attempting to escape or escaping from law enforcement custody.

9.4.5 Voluntary Intoxication. A person who is in an intoxicated or drugged condition is criminally responsible for his conduct unless such conduct is involuntarily produced.

9.5 Inchoate Offenses.

9.5.1 Conspiracy. A person commits the offense of conspiracy when, with the purpose that an offense be committed, the person agrees with another to the commission of the offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by the person or by a co-conspirator. An act in furtherance is any course of conduct that makes it more probable than not that an act towards the commission of an offense will occur and the person's present conduct is not terminated. Proof of an act in furtherance may be drawn from the circumstances surrounding the involved parties' actions and does not require direct proof of an agreement.

It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired: a) has not been prosecuted or convicted; b) has been convicted of a different offense; c) is not amenable to justice; d) has been acquitted; or e) lacked the capacity to commit the offense.

A person convicted of conspiracy shall be punished in accordance with, and not to exceed, the maximum sentence provided for the offense that is the object of the conspiracy.

9.5.2 Solicitation. A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages or facilitates the commission of that offense.

A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

9.5.3 Attempt. A person commits the offense of attempt when, with the purpose to commit a specific offense, the person does any act toward the commission of such offense. It shall not be a defense to a charge of attempt that, because of a misapprehension of the circumstances, it would have been impossible for the accused to commit the offense attempted.

A person convicted of attempt shall be punished in accordance with, and not to exceed, the maximum sentence provided for the offense attempted.

A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of the criminal purpose, the person avoided the commission of the offense attempted by abandoning the criminal effort.

Proof of the completed offense does not bar conviction for the attempt.

9.6 Definitions

Words in this title shall have the meaning given to them in this section unless the context clearly indicates another meaning. If the meaning of a word is not clear, the court shall construe the meaning of the word in harmony with the purpose of this title. As used in this title, words in the singular also include the plural, words in the plural also include the singular, and words indicating one gender include the other gender, as the case may require.

9.6.1 “Assault” – A person commits the offense of Assault by:

- a) Knowingly or purposely causing bodily harm to another by any means;
- b) Negligently causing bodily harm to another by means of a weapon or poison or noxious substance;
- c) Knowingly or purposely making physical contact of an unwanted, insulting or provoking nature with another;

- d) Causing another to harm himself through threats or force; or
- e) Knowingly or purposely causing reasonable apprehension of bodily harm in another. “Reasonable apprehension” is a question of fact to be determined by the trier of fact, except that “reasonable apprehension” is always deemed to exist in any situation where a person knowingly points a firearm, or within a distance of six feet or less points a knife or other weapon, at another person, regardless of whether the person pointing the weapon believes the weapon to in fact be dangerous. “Reasonable apprehension” does not require an actual assault, pain, bruises, or breaking of the skin.

9.6.2 “Caregiver,” “Custodian,” or “Guardian” includes any person entrusted with the physical custody or care of a child, elder, person suffering from a mental incapacity, a physically helpless person, or a vulnerable adult, as a result of employment, a family relationship, friendship, or other position of trust.

9.6.3 “Deadly weapon” is any loaded or unloaded firearm, or any instrument, device, or thing capable of inflicting death and designed or adapted for use as a weapon, or possessed, carried, or used as a weapon.

9.6.4 “Destructive device” includes the following weapons:

- a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;
- b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;
- c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;
- d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than .60 inch or a launching device therefor and a rocket, rocket-propelled projectile or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes; or

e) a breakable container that contains a flammable liquid with a flash point of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device that is commercially manufactured primarily for the purpose of illumination.

9.6.5 “Defraud” means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

9.6.6 “Elder” is any person over the age of fifty five (55).

9.6.7 “Explosive” means any chemical compound that is commonly used or intended for the purpose of producing a destructive effect and which contains compounds or ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion, or a detonator of any part of the compound or mixture may cause a destructive effect on surrounding objects or persons.

9.6.8 “Firearm” is any weapon capable or apparently capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, including an unloaded firearm and any firearm that is not obviously inoperable.

9.6.9 “Knowingly” – a person acts knowingly with respect to conduct or to a circumstance described by a provision defining an offense when the person is aware of his own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a provision defining an offense when he is aware that it is probable that the result will be caused by the his conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as ‘knowing’ or ‘with knowledge’ have the same meaning.

9.6.10 “Maliciously” – a person acts maliciously if she acts with evil intent, or with a 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 to act betraying a willful disregard of social duty.

9.6.11 “Mental incapacity” is a certifiable condition existing at the time of the offense that prevents a person from understanding the nature or consequences of an act that is being perpetrated upon him.

9.6.12 “Negligently” – a person acts negligently with respect to an element of an offense when he should be aware of a substantial and unjustifiable risk that the element presently exists or will result from his conduct. The risk must be of such a nature and degree that the person’s failure to perceive it involves a gross deviation from the standard of care that a reasonable person would observe in the same situation, considering the nature and purpose of the person’s conduct and the circumstances known to him.

9.6.13 “Physically helpless” means a person who for any reason is physically or mentally unable to communicate unwillingness to act or to consent to actions that may result in their personal, financial, or physical detriment, examples include one who is: unconscious; of extreme age or youth; or impaired as a result of alcohol or other drug consumption.

9.6.14 “Public places” means any place to which the public, Tribal licensees or invitees, or any group of substantial size has access.

9.6.15 “Reckless” – a person acts recklessly with respect to an element of an offense when she acts in a careless and heedless manner in willful and wanton disregard of the rights, safety, or property of another.

9.6.16 “Threat” means to communicate, directly or indirectly, by word or deed, whether written, spoken, sent by electronic means, sent through the internet, or otherwise, the intent to imminently:

- a) Cause bodily injury to the person threatened or any other person or pet;
- b) Cause physical damage to the property of a person other than the person making the threat; or

c) Subject the person threatened or any other person to physical confinement or restraint, or loss of job, employment, or assets.

Any threat as defined herein is deemed to have been committed at the place from which the threat or threats were made or at the place where the threat or threats were received.

9.6.17 “Tribal Council” means the Business Committee of the Community Council of the Tribe.

9.6.18 “Tribal Court” means the Lower Elwha Tribal Court.

9.6.19 “Tribe” means the Lower Elwha Tribal Community, also known as the Lower Elwha Klallam Tribe.

9.6.20 “Vulnerable adult” means any person who is over the age of 18, but who, because of mental incapacity or physically helplessness, is incapable of giving legal consent to an action that may result in his or her physical, medical, financial, or other detriment.

9.7 Procedure

All procedures necessary to implement this title shall be as set forth in the Judicial Code and Court Procedures Ordinance or as may be otherwise provided in this title.

9.8 Physical Harm

9.8.1 Assault in the First Degree. Any person who a) assaults another with a firearm, deadly weapon or by any force likely to produce death or serious injury, b) assaults another by causing another to take a poison or other destructive or noxious thing that may potentially endanger the other’s life or health, c) assaults another who is under the age of 14 or over the age of 55, or d) assaults a law enforcement officer employed by any jurisdiction, is guilty of Assault in the First Degree, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.8.2 Assault in the Second Degree. Any person who assaults another in the presence of a child under the age of 10 or an elder, or assaults a person with whom he was court-ordered to have no contact, or assaults another during commission or attempted commission of another criminal offense shall be guilty of Assault in the Second Degree, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.8.3 Assault in the Third Degree. Any person who commits an assault under tribal law not constituting Assault in the First Degree or Assault in the Second Degree is guilty of Assault in the Third Degree, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days imprisonment and a fine not to exceed \$1,000.

9.8.4 Aggravated Assault. Any person who knowingly commits an assault under tribal law causing serious bodily harm, bodily harm by use of a weapon, reasonable apprehension of serious bodily harm by another, or bodily harm to a law enforcement officer or a person responsible for the care and custody of a prisoner is guilty of Aggravated Assault, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.8.5 Harassment. A person who, without lawful authority, knowingly (a) threatens to cause bodily injury, confinement or property damage to the person threatened or to another immediately or in the future, or (b) makes a telephone call, mail, text message, e-mail, or other communication without legitimate purpose and with the intent to annoy, alarm, insult, intimidate, or taunt another, including racial or hate motivation, is guilty of Harassment, a gross-misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days imprisonment and a fine not to exceed \$2,500.

9.8.6 Stalking. Any person who 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, is guilty of the Stalking,

a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.8.7 Reckless Endangerment. A person who recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another is guilty of Reckless Endangerment, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.8.8 Intentional Endangerment. A person intentionally engaging in conduct that creates a substantial risk of death or serious physical injury to another is guilty of Intentional Endangerment, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.8.9 Homicide. A person who purposefully, knowingly, or negligently causes the death of another human being is guilty of Homicide, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.8.10 Intimidation. A person who attempts to have another person perform or refrain from performing a specific act by threatening to inflict bodily harm on, or physically confine or restrain, any person, or threatening to commit any gross misdemeanor or felony offense under circumstances likely to produce a reasonable fear that the threat will be carried out, is guilty of Intimidation, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.8.11 Death Threat or Threat of Substantial Bodily Harm. A person who threatens to cause the death or substantial bodily injury of another when either the threatened person or a third person is under reasonable belief that the actor has both the intention and the ability to cause the threatened death or injury is guilty of Death Threat or Threat of Substantial Bodily Harm, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.9 Offenses against the Family

9.9.1 Interference with a Report of Domestic Violence. Any person who prevents or attempts to prevent the victim of, or a witness to, an act of domestic violence, from calling a 911 emergency communication system, a domestic violence advocacy program, obtaining medical assistance, or making a report to any law enforcement official is guilty of Interference with a Report of Domestic Violence, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.9.2 Prostitution. Any person who knowingly engages in or agrees or offers to engage in sexual intercourse with another person, not his or her spouse, for compensation, whether such compensation is paid or to be paid is guilty of Prostitution, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000.

9.9.3 Bigamy. Any person who knowingly contracts or purports to contract in marriage while married to another is guilty of Bigamy, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000. It is a defense to Bigamy if the person believed on reasonable grounds that the prior spouse is dead or that he is legally eligible to marry; that the person and prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the person to be alive; or that a court entered a judgment purporting to terminate or annul a prior marriage and the person does not know the judgment to be invalid.

9.9.4 Failure to Support or Care for a Child. Any parent, guardian, or custodian of a child who fails to furnish food, shelter, or proper medical or dental care to a child in his care under the age of 18 while having the physical and financial ability to do so, or who by action or omission to act, endangers the health, welfare or emotional well-being of a child under his care is guilty of Failure to Support or Care for a Child, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000. It is not a defense to a charge of Failure to support or Care for a Child that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the child.

9.9.5 Aggravated Failure to Support or Care for a Child. Any person who has failed to support or care for a child as described in section 9.9.4, above, and who has left the Tribe's jurisdiction to avoid the duty of support or who has previously been convicted of the offense of failure to support or care for a child is guilty of Aggravated Failure to Support or Care for a Child, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.9.6 Contributing to the Delinquency of an Underage Person. Any person who knowingly sells, gives, supplies, or encourages the use of alcohol by a person under the age of 21, or who sells or gives explosives or tobacco to a person under the age of 18, or who assists or encourages a person under the age of 17 to abandon his place of residence without guardian consent, or to engage in prostitution, or to commit an offense that is a crime under tribal, state, or federal law, or to regularly attend school is guilty of Contributing to the Delinquency of an Underage Person, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.9.7 Failure to Send Child to School. Any person who has repeatedly failed or refused without good cause to send any child age five or older under the person's care to school is guilty of Failure to Send Child to School, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000. For a second or subsequent conviction of failure to send children to school, the offense is classified as a Gross Misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.9.8 Custodial Interference. Any person who takes, detains, entices, or conceals any person age 17 or under, any incompetent person, or with the intent to deprive another person or entity of any custodial rights, is guilty of Custodial Interference, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500. Expenses incurred in locating and regaining physical custody of the person taken, enticed, or kept in violation of this section are pecuniary damages for purposes of restitution.

9.9.9 Visitation Interference. Any person, having legal custody of a minor child, who knowingly or purposely frustrates the visitation rights of a person entitled to visitation under an existing valid court order from a competent jurisdiction is guilty of Visitation Interference, a gross misdemeanor and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.9.10 Endangering a Child in the First Degree. Any parent, custodian, or caregiver of a minor child, who under circumstances likely to cause great bodily harm or death, willfully causes or permits: a) any child to suffer unjustifiable physical pain or mental suffering; b) the person or health of any child to be injured; or c) any child to be placed in a situation where his person or health is endangered, is guilty of Endangering a Child in the First Degree, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days in jail and a fine not to exceed \$5,000.

9.9.11 Endangering a Child in the Second Degree. Any parent, custodian, or caregiver of a minor child, who under circumstances likely to cause bodily harm or significant emotional or mental suffering, negligently causes or permits a) any child to suffer or inflicts thereon unjustifiable physical pain or emotional or mental suffering, b) the person or health of the child to be injured, or c) any child to be placed in a situation where his person or health is endangered, is guilty of Endangering a Child in the Second Degree, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.9.12 Child Abuse. Any parent, guardian, custodian or caregiver of a minor child is guilty of Child Abuse who: a) engages in a pattern of conduct or single act that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment or an accumulation of injuries to a child; b) knowingly allows a child to be present at or reside at a premises or other location or to be in a vehicle when he knew or reasonably should have known that another person was engaged in the manufacture or attempted manufacture of methamphetamines; or c) knowingly allows a child to be present at or reside at a premises or other location or to be in a vehicle where any person is engaged in smoking marijuana, methamphetamine or any other

illegal or illicit substance, is guilty of the offense of Child Abuse, a Felony, and upon conviction, shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.9.13 Child Neglect. Any parent, guardian, or caregiver of a child who engages in a single act or a pattern of conduct of a) cruel punishment or unreasonable isolation or confinement of the child, b) threatening in the presence of the child harm or death to the child or to a significant person or pet in the child's life, c) committing acts of domestic violence in the presence of the child, d) involving substantial deprivation of hygienic or sanitary conditions in the child's daily living environment, or e) failing to protect the child from abusive acts of a caregiver, partner, or significant other knowing or under circumstances when she should have known that the child was at risk of harm is guilty of Child Neglect, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.10 Offenses against Elders

9.10.1 Elder Abuse. Any caregiver, guardian, or custodian who engages in a single act or pattern of conduct of a) of cruel punishment, unreasonable isolation, restraining or confinement of the protected person, b) threatening harm or death to the protected person or his loved one or pet, c) involving deprivation of basic hygienic or sanitary conditions in the protected person's daily living environment, d) taking without a physician directive any medication belonging or prescribed to the protected person, e) writing a check or otherwise drawing from the protected person's account in any financial institution, when the proceeds of such transaction do not solely go to the protected person's direct benefit, f) committing an assault or any other criminal offense under tribal law, of any degree, where the protected person is the victim, g) coercing the protected person into transferring ownership of any property belonging to that person, or h) coercing the protected person into taking any action to his physical, financial, or medical detriment that the protected person is not otherwise legally obligated to take, is guilty of Elder Abuse, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.10.2 Emergency Protection Order for Vulnerable Adults. Tribal Social Services, law enforcement, or prosecutor may seek from the Tribal Court an emergency order of protection for a vulnerable adult.

1) Upon the filing of a petition with a statement of facts showing probable cause to believe (a) and (b) below, the court may issue an emergency order of protection for an elder or a vulnerable adult without prior hearing.

- a) The adult is an elder or vulnerable adult as defined under this code;
- b) The elder or vulnerable adult has suffered abuse, neglect, or exploitation or is otherwise in need of protective services and the person's health, safety, or welfare will be seriously endangered if the order is not granted.

2) The emergency order of protection of an elder or vulnerable adult shall be signed and authorized by the Tribal Court judge, and may:

- a) Restrain any person from committing acts of abuse, neglect, or exploitation against the named person;
- b) Exclude any person from the elder's or vulnerable adult's residence for a specified period;
- c) Prohibit contact with the elder or vulnerable adult by any person for a specified period;
- d) Require an accounting of the disposition of the elder or vulnerable adult's income or other resources; and
- e) Restrain the transfer of property for a specified period.

3) Relief granted by an order of protection of an elder or vulnerable adult shall be for a period fixed by the Tribal Court.

9.11 Offenses against Property

9.11.1 Robbery. a person who, in the course of committing a theft a) inflicts bodily harm upon another, b) threatens to inflict bodily harm upon any person, c) purposely or knowingly puts any person in fear of immediate bodily harm, or d) commits or threatens to commit any gross misdemeanor or felony offense other than theft, is guilty of Robbery, a felony,

and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.11.2 Arson. Any person who knowingly or purposely uses fire or causes an explosion to a) damage or destroy a vehicle, building, structure, or natural resources of another without consent or for the purpose of defrauding an insurance company, or b) in a manner which places another person in danger of death or bodily harm, including a firefighter or other person responding to, or at the scene of the fire or explosion is guilty of Arson, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.11.3 Negligent Burning. Any person who negligently starts a fire or causes an explosion, whether on his own property or property of another, and thereby a) places another person in danger of death or bodily injury, including a firefighter or another person responding to or at the scene, or b) places property of another in danger of damage or destruction is guilty of Negligent Burning, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.11.4 Malicious mischief. Any person who knowingly or maliciously a) injures, damages, or destroys any property of another without his consent, b) tampers with the property of another or tribal property without consent, so as to endanger the life or health of another or interfere with the use of the property or interrupt or impair tribal services, or c) damages or destroys property in an attempt to defraud an insurer is guilty of Malicious Mischief.

If the verified damage amount is greater than \$250 or if the normal possessor of the property is a family member as defined in the Domestic Violence Code, a person who has committed Malicious Mischief is guilty of a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000. If the verified damage amount is less than \$250, a person who has committed Malicious Mischief is guilty of a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.11.5 Criminal Trespass in the First Degree. Any person who knowingly and purposely and without privilege a) enters or remains in a structure belonging to another, b) enters or remains in any vehicle or any part thereof, or c) enters into the jurisdiction of the Tribe after having been excluded from tribal jurisdiction, is guilty of Criminal Trespass in the First Degree, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.11.6 Criminal Trespass in the Second Degree. Any person who knowingly or purposely and without privilege to be there a) enters or remains on the land of another, b) uses land of another without right of way, c) or allows livestock to occupy or graze on the cultivated or enclosed land of another, is guilty of Criminal Trespass in the Second Degree, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.11.7 Burglary. Any person who knowingly enters or remains in an occupied structure without privilege to be there with the purpose of committing an offense therein is guilty of Burglary, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.11.8 Theft in the First Degree. Any person who knowingly and purposely obtains or exerts unauthorized control, including by threat or deception, over the property of the owner or by obtaining control over stolen property knowing the property to have been stolen by another, and a) has the intent of depriving the owner of the property, or b) uses, conceals, or abandons the property in such a manner as to deprive the owner of the property or knowing such use, concealment, or abandonment is likely to deprive the owner of the property, is guilty of Theft in the First Degree. If the value of the property does not exceed \$250, Theft in the First Degree is a gross misdemeanor, and upon conviction the offender shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500. If the value of the property is greater than \$250, Theft in the First Degree is a felony, and upon conviction the offender shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.11.9 Unauthorized Acquisition, Transfer, or Possession of Tribal Benefits. Any person who knowingly a) acquires, purchases, or uses any food stamp, coupon, tribal commodity, tribal TANF benefit, or other tribal benefit that he is not entitled to, b) transfers, sells, trades, gives, or otherwise disposes of any food stamp, coupon, tribal commodity, tribal TANF benefit, or other tribal benefit in a manner not authorized by the benefit program, or c) possesses any food stamp, coupon, tribal commodity, tribal TANF benefit, or other tribal benefit except as authorized by the benefit program, is guilty of Unauthorized Acquisition, Transfer, or Possession of Tribal Benefits, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500. Conviction for a second or additional offense of Unauthorized Acquisition, Transfer, or Possession of Tribal Benefits is a felony, and upon conviction an offender shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.11.10 Fraud. Any person who obtains something of value by willful misrepresentation or deceit or by intentional use of false weights or measures is guilty of Fraud, a gross misdemeanor, and, upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.11.11 Forgery. Any person who knowingly falsely makes, signs, executes, or alters any written instrument with the purpose to defraud is guilty of Forgery. When the action is part of a conspiracy, or if the value of the property, labor, or services obtained or attempted to be obtained exceeds \$250, Forgery is a felony, and upon conviction the offender shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000. Otherwise, Forgery is a felony, and upon conviction the offender shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.11.12 Obscuring the Identity of a Machine. Any person who a) removes, defaces, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm, or b) possesses with the purpose to conceal, misrepresent, or

transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured, is guilty of Obscuring the identity of a machine, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000. The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

9.11.13 Possessing Stolen Property in the First Degree. Any person who knowingly possesses stolen property with a value greater than \$250, or knowingly possesses a stolen firearm of any value is guilty of Possessing Stolen Property in the First Degree, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000. Possession of stolen property that has had any identification number or mark removed or otherwise obscured or property whose appearance has been significantly altered creates a presumption that the person knew that the property was stolen.

9.11.14 Possessing Stolen Property in the Second Degree. Any person who knowingly possesses stolen property with a value less than \$250 is guilty of Possessing Stolen Property in the Second Degree, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500. Possession of stolen property that has had any identification number or mark removed or otherwise obscured or property whose appearance has been significantly altered creates a presumption that the person knew that the property was stolen.

9.11.15 Embezzlement. Any person who, having lawful custody or control of property not his or her own, and appropriates the same to his own use with intent to deprive the owner thereof, is guilty of Embezzlement, a felony, and upon conviction shall be s sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.11.16 Unauthorized Use of Credit Card. Any person who uses a credit card for the purpose of obtaining property or services with the knowledge that a) the card is stolen or

forged, b) the card has been revoked or canceled, or c) his use is unauthorized for any other reason, is guilty of Unauthorized Use of Credit Card, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.12 Drug and Alcohol Offenses

9.12.1 Definitions. As used in this chapter 9.12 of the Elwha Justice Code:

- (1) “Commercial Marijuana Activity Ordinance” shall mean the Ordinance of the Lower Elwha Klallam Tribe to Authorize and Regulate Commercial Marijuana Activity.
- (2) “Compact” shall mean the Marijuana Compact Between the Lower Elwha Klallam Tribe and the State of Washington, as also defined in Section 2.7 of the Commercial Marijuana Activity Ordinance, unless the context clearly indicates a reference to any compact between an Indian Tribe and the State of Washington.
- (3) “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body.
- (4) “Minor” means a person who is less than 18 years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.
- (5) “Controlled substance” means a drug or other substance, or immediate precursor, included in the Title 21 of the Code of Federal Regulations, Food and Drugs (21 C.F.R.), Sections 1308.11 through 1308.15, as presently constituted or hereafter amended. All amendments, additions, deletions or recodifications of 21 C.F.R. §§ 1308.11 through 1308.15, occurring after the enactment of the ordinance codified in this section shall be deemed incorporated into this section for all purposes unless the Tribe’s Business Committee by ordinance or resolution specifically provides otherwise.
- (6) “Imitation controlled substance” means any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of representations made; its similarity in shape, size and color to a controlled substance; its markings, labeling, packaging, or method of distribution; the price for which it is sold or offered for sale; and any other relevant factors.

(7) “Deliver” or “delivery” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(8) “Dependent adult” means a person who, because of physical or mental disability, or because of advanced age, is unable to protect the person’s own interests or is dependent upon another person to provide the basic necessities of life. For the purposes of this chapter, “dependent adult” shall include:

- (a) A protected party in an elder or vulnerable adult protection order issued pursuant to Chapter 9.10 of this Justice Code, or any similar Tribal or State law;
- (b) A person subject to limited or full guardianship pursuant to Tribal or State law; or
- (c) A vulnerable adult as defined in Chapter 9.10 of this Justice Code, or any similar Tribal or State law.

(9) “Distribute” means to deliver other than by administering or dispensing a controlled substance.

(10) “Drug” means (a) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement of any of them; (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (c) substances (other than food) intended to affect the structure of any function of the body of man or animals; (d) substances intended for use as a component of any article specified in clause (a), (b), and (c) of this section. It does not include devices or their components, parts, or accessories.

(11) “Listed chemical” means a chemical designated in 21 C.F.R. §§ 1310.02(a) and 1310.02(b).

(12) “Legend drug” means any drug which is required by Washington State law or regulation of the State Board of Pharmacy to be dispensed on prescription only or is restricted to use by licensed physicians, dentists, pharmacists, veterinarians or other health care professionals.

(13) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by:

- (a) A practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
- (b) A practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
- (14) “Marijuana” means all parts of the plant of the genus *Cannabis* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- (15) “Powdered alcohol” means any powder or crystalline substance containing alcohol that is produced for direct use or reconstitution.
- (16) “Practitioner” means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance or legend drug in the course of professional practice or research.
- (17) “Production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.
- (18) “Public place” means any place or area to which the public is invited or upon which the public is permitted, including but not limited to any sidewalk, street or any other right-of-way, park, playground and any other property owned by the Tribe, any commercial area or shopping center, and any school property.
- (19) “Recognition card” shall have the same meaning as in Section 2.12 of the Commercial Marijuana Activity Ordinance and as in the Revised Code of Washington (RCW) 69.51A.010.
- (20) “Tobacco products” means any product made from the tobacco plant for the purpose of smoking, chewing, inhaling or other personal use, including but not limited to cigars, chewing

tobacco, pipe tobacco, snuff and cigarettes in any form, including vapor products and electronic nicotine delivery systems.

9.12.2 Drug Paraphernalia – Definitions.

(1) “Drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

- (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (d) Testing equipment used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

- (j) Containers and other objects used, intended for use, or designed for use in storing and concealing controlled substances;
- (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, or hashish oil into the human body, such as:
 - (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (ii) Water pipes;
 - (iii) Carburetion tubes and devices;
 - (iv) Smoking and carburetion masks;
 - (v) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - (vi) Miniature cocaine spoons, and cocaine vials;
 - (vii) Chamber pipes;
 - (viii) Carburetor pipes;
 - (ix) Electric pipes;
 - (x) Air-driven pipes;
 - (xi) Chillums;
 - (xii) Bongs; and
 - (xiii) Ice pipes, or chillers.

- (2) In determining whether an object is drug paraphernalia under this section, a Court or other authority should consider, in addition to all other logically relevant facts, the following:
 - (a) Statements by an owner or by anyone in control of the object concerning its use;
 - (b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any State, Federal or Tribal law relating to any controlled substance;
 - (c) The proximity of the object, in time and space, to a direct violation of this section;
 - (d) The proximity of the object to controlled substances;
 - (e) The existence of any residue of controlled substances on the object;

- (f) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this section; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
- (g) Instructions, oral or written, provided with the object concerning its use;
- (h) Descriptive materials accompanying the object that explain or depict its use;
- (i) National and local advertising concerning its use;
- (j) The manner in which the object is displayed for sale;
- (k) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (l) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (m) The existence and scope of legitimate uses for the object in the community; and
- (n) Expert testimony concerning its use.

9.12.3 Manufacture or Delivery of a Controlled Substance.

- (1) A person commits the crime of manufacture or delivery of a controlled substance by:
 - (a) Except as authorized by this chapter, manufacturing, cultivating, delivering, distributing, or dispensing a controlled substance; or
 - (b) Except as authorized by this chapter, possessing with the intent to manufacture, deliver, distribute, or dispense a controlled substance.
- (2) Manufacture or delivery of a controlled substance is a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.00.

9.12.4 Prohibited Acts (Possession) – Penalties.

- (1) Except as authorized by this section, it is unlawful for any person to possess a controlled substance. Any person who violates this section with respect to any controlled substance other than marijuana is guilty of a felony. A first offense of possession of marijuana in excess of

amounts stated in subsection (2) of this section is a gross misdemeanor. A second and subsequent offense of possession of marijuana in excess of amounts stated in subsection (2) of this section is a felony. The foregoing marijuana offenses in this subsection shall not impose civil or criminal penalties under Lower Elwha Tribal law for possession of usable marijuana or marijuana-infused solids or liquids consistent with subsection (2) of this section.

(2) Possession of marijuana (cannabis) in accordance with the following restrictions and prohibitions shall not constitute a violation of this section, this chapter 9.12, or any other provision of Lower Elwha Tribal law:

(a) Any person 21 years of age or older cannot possess more than 1 ounce of usable marijuana, 16 ounces of marijuana-infused products in solid form, 72 ounces of marijuana-infused products in liquid form, or 7 grams of marijuana concentrate. Any marijuana, marijuana-infused solids, or marijuana-infused liquids must be acquired legally through a source licensed by Washington State or authorized by an Indian tribe in accordance with a Compact between that Tribe and the State of Washington. Any person who possesses marijuana or marijuana-infused products or concentrates in excess of the foregoing limits, and is 21 years of age or older may be prosecuted for marijuana offenses as defined in subsection (1) of this section.

(b) The delivery by a person 21 years of age or older to one or more persons 21 years of age or older, during a single twenty-four hour period, for noncommercial purposes and not conditioned upon or done in connection with the provision or receipt of financial consideration, of any of the marijuana products in the amounts listed in subsection (2)(a) and originally acquired legally through a source licensed by Washington State or authorized by an Indian tribe in accordance with a Compact between that Tribe and the State of Washington, is not a violation of this section, this chapter, or any other provision of Lower Elwha Tribal law, provided, that the act of delivering marijuana or a marijuana product as authorized under this subsection (b) must meet one of the following requirements: (i) the delivery must be done in a location outside of the view of general public and in a nonpublic place; or (ii) the marijuana or marijuana product must be in the original packaging as purchased from the marijuana retailer.

(c) Any person under the age of 21 years, but at least 18 years old, who possesses, purchases, consumes, obtains or sells marijuana shall be guilty of a misdemeanor, except that such person may, if he or she is a qualifying patient with a valid recognition card, purchase, possess, or obtain amounts consistent with his or her authorization and no more than the limits set forth in RCW 69.51A.210. At sentencing, the Judge shall order the defendant to complete a mandatory substance abuse assessment.

(d) A minor 17 years of age or younger who possesses, purchases, consumes, obtains, or sells marijuana shall be guilty of a misdemeanor, except that such person may, if he or she is a qualifying patient with a valid recognition card, purchase, possess, or obtain amounts consistent with his or her authorization and no more than the limits set forth in RCW 69.51A.210. At hearing, the Judge shall order the defendant to complete a mandatory substance abuse assessment, and the Judge may order one or more of the following to take the place of the sentence requirements under a misdemeanor:

- (i) Zero to thirty (30) days of confinement;
- (ii) Zero to twelve (12) months of probation;
- (iii) Zero to seventy-five (75) hours of community service;
- (iv) A fine not to exceed five hundred dollars (\$250); or
- (v) A drug treatment alternative approved by the Court.

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

(e) Production, Distribution and Sales Prohibited. Except as authorized in the Commercial Marijuana Activity Ordinance, it shall be unlawful for any person to plant, cultivate, produce, process, distribute or sell marijuana or marijuana-infused liquids or solids or concentrates in his or her residence or anywhere on Elwha Tribal lands, whether or not such person is a qualifying patient or designated provider as defined in Washington State law. It shall not be a defense to prosecution under this subsection for a person to hold a Washington State license to be a “marijuana processor” (a person who processes marijuana into usable marijuana products, including packaging, labeling and distributing); to be a “marijuana producer” (person who grows, creates marijuana-infused

products or sells marijuana wholesale to marijuana processors); or to be a “marijuana retailer” (person who sells usable marijuana or marijuana-infused products in a retail outlet). No person may form a “cooperative” as defined in RCW 69.51A.250 for the purpose of planting, growing, producing, cultivating, or processing marijuana in any form within the jurisdiction of the Tribe. Any person who manufactures, cultivates, delivers, or possesses with intent to manufacture or deliver marijuana, marijuana-infused products, or marijuana concentrates is guilty of a felony.

(f) No person shall use marijuana in any public place or possess marijuana within public view on the Lower Elwha Reservation. Public view includes, but is not limited to, carrying marijuana in an open shirt pocket, an open purse, on the body of a person in a manner that is visible to the public, etc. Public places include, but are not limited to: tribal government offices, tribal businesses and enterprises (except for those authorized to sell marijuana), tribal schools and child care facilities, tribal parking lots, tribal government vehicles, tribally-owned open spaces such as all beaches, and tribal medical clinics. A first violation of this subsection shall constitute a civil infraction punishable by a fine not to exceed fifty dollars (\$50). A second or subsequent violation of this subsection shall constitute a civil infraction punishable by a mandatory minimum fine of \$250.00 and not to exceed \$500.00.

(g) The prohibitions on marijuana (cannabis) contained in this section do not apply to commercial marijuana activity authorized by the Commercial Marijuana Activity Ordinance, or to persons or entities and employees, agents, or vendors of any entity engaged in commercial marijuana activity authorized by the Commercial Marijuana Activity Ordinance, provided that such commercial activities and conduct by such persons or entities are in accordance with the Commercial Marijuana Activity Ordinance.

(h) Subsections (2)(a) through 2(d) of this chapter shall be construed narrowly to preclude criminal and civil penalties under Lower Elwha Tribal law only with respect to the specified amounts of marijuana or marijuana-infused products acquired from a State-licensed or Tribally authorized source, and shall not preclude arrest or conviction for any other crimes, offenses or infractions. For any charge arising from driving or physical

control of a vehicle while under the influence of marijuana, liability may be established by showing that the defendant was under the influence of or affected by marijuana (alone or in combination with other drugs or alcohol) at the time of the offense, or that the defendant had, within two hours after driving or physical control of a vehicle, a THC concentration of 5.00 nanograms per milliliter of whole blood.

(i) No person shall use marijuana in any vehicle, or keep marijuana in any vehicle unless it is in the trunk of the vehicle or other area of the vehicle not normally occupied or directly accessible by the driver or passengers, or in a package, container, or receptacle that has not been opened or the seal broken or the contents partially removed. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

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

(k) If a person is both a qualifying patient and a designated provider for another qualifying patient, such person may possess no more than twice the amounts described in Section 5.4 of the Commercial Marijuana Activity Ordinance and in RCW 69.51A.210 for the qualifying patient and designated provider, whether the marijuana concentrates, marijuana-infused products, or usable marijuana are possessed individually or in combination between the qualifying patient and his or her designated provider.

(l) The Tribe and its departments, agencies, and subordinate entities, including but not limited to the Lower Elwha Housing Authority, shall assert no violation of any lease, sublease, or similar instrument based on a tenant's actions in compliance with this chapter, provided that the Business Committee may by Resolution authorize the establishment of a lease, sublease, or similar instrument that expressly references this

chapter and states an intent to prohibit tenant conduct that is otherwise permitted by this chapter.

(m) Nothing in this chapter shall modify or supersede the criminal laws of the United States government pertaining to controlled substances.

9.12.5 Unauthorized Use of State Medical Marijuana Database.

(1) It is unlawful for a person to knowingly or intentionally access the medical marijuana authorization database for any reason except when an authorized person does so:

- (a) To add a qualifying patient or designated provider and noting the amount of product for which the qualifying patient is authorized;
- (b) To confirm the validity of a recognition card;
- (c) To issue a replacement recognition card for a card that is lost or stolen;
- (d) To conduct a bona fide specific law enforcement investigation of a suspected marijuana-related activity that may be illegal under tribal law or state law to confirm validity of a recognition card; or
- (e) For any other reason permitted by, and by a person authorized by, the Commercial Marijuana Activity Ordinance.

(2) It is unlawful for a person to knowingly or intentionally:

- (a) Access the medical marijuana authorization database for any reason not authorized under RCW 69.51A.230;
- (b) Disclose any information received from the medical marijuana authorization database in violation of RCW 69.51A.230, including, but not limited to, qualifying patient or designated provider names, addresses, or amount of marijuana for which they are authorized;
- (c) Produce a recognition card or to tamper with a recognition card for the purpose of having it accepted by a marijuana retailer holding a medical marijuana endorsement in order to purchase marijuana as a qualifying patient or designated provider or to grow marijuana plants in accordance with this chapter;
- (d) If a person is a designated provider to a qualifying patient, sell, donate, or supply marijuana produced or obtained for the qualifying patient to another person, or use the

marijuana produced or obtained for the qualifying patient for the designated provider's own personal use or benefit; or

(e) If the person is a qualifying patient, sell, donate, or otherwise supply marijuana produced or obtained by the qualifying patient to another person.

A person who violates this section is guilty of a felony.

9.12.6 Possession of an Imitation Controlled Substance.

(1) A person commits the crime of possession of an imitation controlled substance by knowingly or intentionally:

(a) Creating, manufacturing, delivering, distributing, or dispensing an imitation controlled substance;

(b) Possessing with intent to deliver, distribute, or dispense an imitation controlled substance; or

(c) Possessing an imitation controlled substance.

(2) It is not a defense that the accused believed the imitation controlled substance to be a controlled substance.

(3) Possession of an imitation controlled substance is a felony.

9.12.7 Possession of a Legend Drug.

(1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a licensed physician, dentist, veterinarian or other health care professional legally authorized to prescribe such legend drug; provided, that the above provision shall not apply to the sale, delivery or possession of a legend drug by drug wholesalers or drug manufacturers or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment; and provided further, that nothing in this section shall prohibit a family planning clinic from selling, delivering, possessing, and dispensing oral contraceptives prescribed by authorized, licensed health care practitioners.

(2) Possession of legend drugs is a felony.

9.12.8 Possession of Listed Chemicals.

- (1) It shall be unlawful for any person to knowingly or intentionally:
 - (a) Possess a listed chemical with the intent to unlawfully manufacture a controlled substance; or
 - (b) Possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.
- (2) Unlawful possession of listed chemicals is a felony.

9.12.9 Possession of Drug Paraphernalia.

- (1) Except as authorized by this chapter, it is unlawful for any person to possess any drug paraphernalia.
- (2) A first offense of possession of drug paraphernalia is a misdemeanor. A second and subsequent offense of possession of drug paraphernalia is a gross misdemeanor.

9.12.10 Endangerment with a Controlled Substance.

- (1) A person commits the crime of endangerment with a controlled substance by knowingly, intentionally, or negligently permitting a minor or dependent adult to be exposed to, possess, ingest, inhale, or have contact with a controlled substance.
- (2) It is a defense to endangerment with a controlled substance that the minor or dependent adult has a valid prescription for the controlled substance or listed chemical to which they were exposed.
- (3) Endangerment with a controlled substance is a felony.

9.12.11 Authorized Possession of Controlled Substances and Drug Paraphernalia.

Any person authorized to possess, distribute, manufacture or deliver a controlled substance other than marijuana pursuant to State or Federal law shall be similarly authorized within the jurisdiction of the Lower Elwha Klallam Tribe. A person authorized to possess, distribute, manufacture or deliver a controlled substance other than marijuana may lawfully possess drug paraphernalia used or intended for lawful use.

9.12.12 Use of Inhalants – Exception.

It is unlawful for any person to intentionally smell or inhale the fumes of any type of substance or to induce any other person to do so, for the purpose of causing a condition of, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses of the nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes. A violation of this section is a misdemeanor. This section does not apply to the inhalation of any anesthesia for medical or dental purposes.

9.12.13 Possession of an Alcoholic Beverage by a Person Under 21.

(1) Any person who, being under the age of 21 years old, possesses, consumes, obtains, or distributes an alcoholic beverage, or misrepresents his or her age for the purpose of buying or otherwise obtaining an alcoholic beverage, shall be guilty of possession of an alcoholic beverage by a person under 21.

(2) Possession of an alcoholic beverage by a person under 21 is a misdemeanor.

9.12.14 Furnishing Alcoholic Beverages to a Person Under 21.

(1) Any person who gives, sells, trades or otherwise supplies any alcoholic beverage to any person under the age of 21 years or permits any person under that age to consume any alcoholic beverage on his or her premises or on any premises under his or her control shall be guilty of furnishing alcoholic beverages to a person under 21.

(2) Furnishing alcoholic beverages to a person under 21 is a gross misdemeanor.

9.12.15 Public Consumption of Alcoholic Beverage – Open Container.

(1) No person shall open a package containing an alcoholic beverage or consume an alcoholic beverage in a public place, unless consumption of alcoholic beverages in such public place is specifically permitted or licensed by the Tribe.

(2) Violation of this section is a civil infraction, punishable by a fine of \$100.00.

9.12.16 Possession of Powdered Alcohol.

- (1) It is unlawful for a person to use, offer for use, purchase, offer to purchase, sell, offer to sell, or possess powdered alcohol.
- (2) Possession of powdered alcohol is a misdemeanor.

9.12.17 Purchase or Use of Tobacco Products by Minors.

- (1) No person under the age of 18 shall purchase or, within or upon any public place or area, use cigarettes or other tobacco products within the jurisdiction of the Lower Elwha Klallam Tribe.
- (2) Violation of this section is a civil infraction, punishable by a fine of \$100.00.

9.12.18 Medical Assistance – Drug Related Overdose – Prosecution for Possession.

- (1) Person seeking medical assistance; immunity from prosecution. A person acting in good faith who seeks medical assistance for another person who is experiencing a drug-related overdose may not be charged or prosecuted for the possession of a controlled substance under Sections 9.12.4, 9.12.7, or 9.12.12. A person qualifies for the immunities provided in this section only if:
 - (a) the evidence for the charge or prosecution was obtained as a result of the person seeking medical assistance for another person; and
 - (b) the person seeking medical assistance for another person who is in need of medical assistance provides a name and contact information, remains on the scene until assistance arrives or is provided, and cooperates with authorities.

Good faith does not include seeking medical assistance during the course of an execution of an arrest warrant or search warrant or lawful search.

- (2) Person experiencing a drug-related overdose; immunity from prosecution. A person who experiences a drug-related overdose and is in need of medical assistance may not be charged or prosecuted for possession of a controlled substance under Sections 9.12.4, 9.12.7, or 9.12.12. A person qualifies for the immunities provided in this section only if the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.
- (3) Effect on other criminal prosecutions.

(a) The act of providing first aid or other medical assistance to someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided.

(b) Nothing in this section shall:

(i) be construed to bar the admissibility of any evidence obtained in connection with an investigation and prosecution of other crimes or violations committed by a person who otherwise qualifies for limited immunity under this section;

(ii) preclude prosecution of a person on the basis of evidence obtained from an independent source;

(iii) be construed to limit, modify, or remove any immunity from liability currently available to Tribal entities, Tribal employees, including but not limited to, Tribal law enforcement and prosecutors; or

(iv) prevent Tribal probation officers, or their designees, from conducting drug testing or persons on pretrial release or active probation.

(4) Drug-related overdose defined. As used in this section, “drug-related” overdose means an acute condition, including mania, hysteria, extreme physical illness, or coma, resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires immediate medical assistance.

NOTE: This Chapter 9.12 – Drug and Alcohol Offenses enacted by Resolution No. 130-20, October 13, 2020.

9.13 Weapons Offenses

9.13.1 Firearms Disqualification. Any person who has been convicted of any felony, or any other criminal offense under tribal law where the offense involved the possession, use, or display of any firearm, is thereafter prohibited from possessing a firearm for the remainder of his life. This provision shall not be interpreted to conflict, supersede, or otherwise affect any provision of the Tribe’s Domestic Violence Code.

Any person who is restrained from possession of a firearm by order of a court of any competent jurisdiction is prohibited from possessing a firearm within tribal jurisdiction.

9.13.2 Possession of Firearm in Violation of Firearms Disqualification. Any person possessing a firearm in violation of section 9.13.1 above shall be guilty of Possession of Firearm in Violation of Firearms Disqualification, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.13.3 Carrying Concealed Weapon. Any person who carries or bears a dirk, dagger, pistol, revolver, sword cane, billy club, knuckles made of metal or other hard substance, knife having a blade at least four inches long, straight razor or other non-safety type razor, or any other deadly weapon that is wholly or partially covered by the person carrying the weapon, or is carried any place within the occupant compartment of a motor vehicle, shall be guilty of Carrying a Concealed Weapon, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000. This provision does not apply to: any law enforcement officer; a person authorized by a judge of the Tribal Court to carry a concealed weapon; a person permitted under state or tribal law to carry a concealed weapon; the carrying of arms on one's own premises or at one's home or place of business; or the carrying of a knife while engaged in exercising treaty hunting or fishing rights so long as the person does not claim to be exercising hunting rights with a firearm while otherwise legally disqualified from firearms possession.

9.13.4 Illegal Possession, Use, or Display of Explosives. Any person who possesses, uses, handles, or displays any explosive substance that may endanger any human being, property, wildlife, or natural resource shall be guilty of Illegal Possession, Use, or Display of Explosives, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000. It shall be a defense to this provision, that the offender was possessing, using, or displaying fireworks in a manner consistent with tribal custom and that such possession, use, or display presented no realistic danger, and could not realistically be interpreted by community members as presenting danger, to human life, property, wildlife, or natural resources.

9.13.5 Possession of a Silencer. Any person who possesses, manufactures, transports, buys, or sells a silencer to a firearm shall be guilty of Possession of a silencer, a felony, and upon

conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.13.6 Permitting Unsupervised Use of a Firearm by a Child Under 12 years. Any parent, guardian, custodian, or caregiver of a child under the age of 12 who permits that child to carry, possess, or use any firearm without her supervision or the supervision of a qualified firearms safety instructor authorized by her, shall be guilty of Permitting Unsupervised Use of a Firearm by a Child under 12, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.14 Perjury, Bribery, and Corrupt Influence

9.14.1 Perjury in the First Degree. Any person who knowingly makes a false statement under oath in an official proceeding shall be guilty of Perjury in the First Degree, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000. The materiality or belief of materiality of an individual statement is not an element of this offense or a defense to prosecution.

9.14.2 Perjury in the Second Degree. Any person who knowingly makes a false statement in Tribal Court in an attempt to influence the Court's decision, regardless of whether the false statement is under oath, shall be guilty of Perjury in the Second Degree, a Gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500. The materiality or knowledge of materiality of an individual statement is not an element of this offense or a defense to prosecution.

9.14.3 False Swearing. Any person who knowingly makes a false written or oral statement to the Court, including witness statements provided to the police and written declarations and other writings filed in court, shall be guilty of False Swearing, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500. The materiality or knowledge of materiality of an individual statement is not an element of this offense or a defense to prosecution.

9.14.4 Perjury and False Statements – Inconsistent Statement – Degree of Crime.

Where, in the course of one or more official proceedings, a person makes inconsistent statements to the Court or police, the totality of which bear on material matters, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and known by the offender to be false. In such case, it is not necessary for the prosecution to prove which material statement was false, only that one or the other was false and known by the offender to be false.

The highest offense of which an offender may be convicted in such an instance as set forth in this provision shall be determined by hypothetically assuming each statement to be false. If offenses of two different degrees would be established by the making of the two statements, the person may be convicted only of the lesser degree. For purpose of this provision, no corroboration shall be required of either inconsistent statement.

9.14.5 Perjury and False Swearing – Irregularities Not a Defense. It is no defense to a prosecution for perjury or false swearing that the oath was administered or taken in an irregular manner or that the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law, or that a person filed a declaration with the Court that did not have an oath section.

9.14.6 False Reporting. Any person who knowingly initiates or circulates a false report or warning of an alleged occurrence or pending occurrence of a fire, explosion, crime, catastrophe, or emergency, knowing that the false report is likely to cause evacuation of a building, place of assembly, or transportation facility, or to cause public inconvenience or alarm is guilty of False Reporting, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.14.7 Bribing a Witness, Juror, or Judge. Any person with the intent to influence a witness, juror, or judge to act or fail to act in a manner that would affect the result of an official proceeding who offers, confers, or agrees to confer any benefit to a witness, juror, or judge is guilty of Bribing a Witness, Juror, or Judge, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.14.8 Accepting a Bribe – Witness, Juror, or Judge. Any witness, juror, or Judge who requests, accepts, or agrees to accept any benefit of an agreement or understanding that 1) his testimony or decision will thereby be influenced, 2) he will attempt to avoid legal process summoning him to testify, or 3) he will attempt to absent himself from an official proceeding to which he has been summoned or otherwise has an obligation to attend, shall be guilty of Accepting a Bribe – Witness, Juror, or Judge, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.14.9 Intimidating a Witness, Juror, Judge, or Prosecutor. Any person who, by use of threat directed at a juror, judge, or prosecutor serving in that official proceeding or capacity, a witness in an official proceeding, or a person he has reason to believe is, or is about to be called as a witness, 1) attempts to influence testimony of a witness; 2) attempts to ensure the absence of a witness, juror, judge, or prosecutor at an official proceeding; or 3) attempts to influence the decision or official actions of a juror, judge, or prosecutor, is guilty of Intimidating a Witness, Juror, Judge, or Prosecutor, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.14.10 Jury Tampering/Intimidation. Any person who, with the intent to influence a juror's vote, opinion, decision, or other official action in a case, or to punish or intimidate a juror who has already rendered her verdict, attempts to communicate directly or indirectly with a juror other than as part of the proceeding in a trial of the case or to communicate with a juror subsequent to the verdict, is guilty of Jury Tampering/Intimidation, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.14.11 Tampering with Physical Evidence. Any person who, having reason to believe that an official proceeding is pending or about to be instituted a) destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceedings, or b) knowingly presents or offers any false physical evidence, is guilty of Tampering with Physical Evidence, a gross

misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.14.12 Bribery of Public Servant. Any person who a) with the intent to secure a particular result in a matter involving the exercise of a public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity, offers confers or agrees to confer any pecuniary benefit upon the public servant, or b) being a public servant, requests, accepts or agrees to accept any pecuniary benefit with an agreement or understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will be used to secure or attempt to secure a particular result in a matter, is guilty of Bribery of a Public Servant, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000. It is no defense to prosecution under this section that the public servant is not qualified to act in a desired way, whether because he has not yet assumed office, lacks jurisdiction, or for any other reason.

9.14.13 Requesting, Receiving, or Granting Unlawful Compensation. Any person who a) knowingly offers, pays, or agrees to pay compensation to a public servant for advice or other assistance in preparing or promoting a bill, contract claim, or other matter involving discretion of the public servant, or b) being a public servant, requests, receives, or agrees to accept compensation for advice or other assistance in preparing a bill, contract, claim, or transaction regarding which he knows he is likely to have an official discretion to exercise, is guilty of Requesting, Receiving, or Granting Unlawful Compensation, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.14.14 Trading in Public Office. Any person who a) offers, confers, or agrees to confer any pecuniary benefit upon a public servant with an agreement or understanding that such public servant has been or may be appointed or elected to a public office, or b) being a public servant, requests, accepts or agrees to accept any pecuniary benefit from another person with an agreement or understanding that the public servant has been or may be appointed or elected to a

public office, is guilty of Trading in Public Office, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days or a fine not to exceed \$5,000.

9.14.15 Trading in Special Influence. Any person who a) offers, confers, or agrees to confer any pecuniary benefit upon another person with an agreement or understanding that such other person will offer or confer a benefit upon a public servant or procure another to do so with intent to secure or attempt to secure a particular result in a matter, or b) requests, accepts, or agrees to accept any pecuniary benefit with an agreement or understanding that he will offer or confer a benefit upon a public servant or procure another to do so with intent to secure or attempt to secure a particular result in a matter, is guilty of Trading in Special Influence, a felony, and upon conviction shall be sentenced to imprisonment for a period not to exceed 365 days and imposed a fine not to exceed \$5,000.

9.15 Obstructing Governmental Operation

9.15.1 Obstructing a Public Servant. Any person who, without lawful excuse a) refuses or fails to make or furnish any statement, report, or information lawfully required of him by a public servant, b) knowingly makes an untrue statement or report in any statement or report to a public servant, or c) knowingly hinders, delays, or obstructs any public servant in the discharge of his official powers or duties, shall be guilty of Obstructing a Public Servant, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and imposed a fine not to exceed \$1,000.

9.15.2 Resisting Arrest. Any person who intentionally prevents or attempts to prevent a peace officer from lawfully arresting him is guilty of Resisting Arrest, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and imposed a fine not to exceed \$1,000.

9.15.3 Refusing to Summon Aid for a Peace Officer. Any person who, upon request of a person known to be a peace officer, unreasonably refuses or fails to summon aid for such peace officer, is guilty of Refusing to Summon Aid for a Peace Officer, a misdemeanor and upon

conviction shall be sentenced to imprisonment not to exceed 180 days and imposed a fine not to exceed \$1,000.

9.15.4 Refusing to Aid an Officer. Any person who neglects or refuses, when called upon by a law enforcement officer of the Lower Elwha Tribe, to assist that officer or any other law enforcement officer in the lawful arrest of any person charged or convicted of any offense, or to assist in conveying the offender to the nearest place of confinement, is guilty of Refusing to Aid an Officer, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500. It shall be a defense to this offense that the person refused to aid an officer because he had a reasonable belief that he would be physically endangered by assisting the officer.

9.15.5 Rendering Criminal Assistance in the First Degree. Any person who renders criminal assistance to a person who has committed or is being sought for murder or any felony is guilty of Rendering Criminal Assistance in the First Degree, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000. If the offender establishes by a preponderance of the evidence that the person assisted is related as husband or wife, brother or sister, parent or grandparent, child or grandchild, step-child or step-parent, a person committing this offense shall be guilty of a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.15.6 Rendering Criminal Assistance in the Second Degree. Any person who renders criminal assistance to a person who has committed a gross misdemeanor or misdemeanor is guilty of Rendering Criminal Assistance in the Second Degree, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000.

9.15.7 Escape. Any person who is being detained in tribal custody or has been furloughed for treatment or any other purpose under a lawful Tribal Court order of furlough, who escapes from custody or violates any of his court-ordered conditions of furlough from custody is

guilty of Escape, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.15.8 Bail Jumping. Any person who has been released from custody by Tribal Court order, on his own recognizance or admitted to bail with the requirement of a subsequent personal appearance in Tribal Court, and knowingly fails without lawful excuse to appear as required is guilty of Bail Jumping. If the person is being held for, charged with, or convicted of a felony, Bail Jumping is a felony and upon conviction the offender shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000. If the person is being held for, charged with, or convicted of a gross misdemeanor, Bail Jumping is a gross misdemeanor and upon conviction the offender shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500. If the person is being held for, charged with, or convicted of a misdemeanor, Bail Jumping is a misdemeanor and upon conviction, the offender shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000.

9.15.9 Flight to Avoid Prosecution. Any person who willfully and knowingly flees from the jurisdiction of the Lower Elwha Klallam Tribe or the Lower Elwha Klallam Tribal Court to avoid prosecution or arrest in any case pending before the Tribal Court is guilty of Flight to Avoid Prosecution, a gross misdemeanor, and upon conviction, shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.15.10 Intimidating or Harassing a Public Servant. Any person who, by use of a threat, attempts to influence a public servant's vote, opinion, decision, or other official action is guilty of Intimidating or Harassing a Public Servant, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$2,500. It shall be no defense under this provision that the offender did not appear to have an immediate ability to carry out the threat. It shall likewise be no defense under this provision that the public servant was actually placed in fear or intimidated, only that the subject intended that reaction.

9.15.11 Official Misconduct. Any public servant who, with intent to obtain a benefit, commits an unauthorized act under color of law or refrains from performing a duty

imposed upon him by law, is guilty of Official Misconduct, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.15.12 Violation of Court Order. Any person who knowingly fails to comply with any provision of any civil or criminal Tribal Court order that restricts, restrains, or directs his conduct, or violates any civil or criminal Court Order from any jurisdiction that restrains his contact with another person, is guilty of Violation of a Court Order, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.16 Public Disturbance

9.16.1 Riot in the First Degree. Any person who, acting with three or more persons, knowingly and unlawfully uses or threatens to use force while armed with a deadly weapon, or in any way participates in the use of such force, against any other person or against property, is guilty of Riot in the First Degree, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.16.2 Riot in the Second Degree. Any person who, acting with two or more persons, knowingly and unlawfully uses or threatens to use force, or in any way participates in the use of such force, against any other person or against property, is guilty of Riot in the Second Degree, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.16.3 Failure to Disperse. Any person who congregates with a group of two or more other persons and there are acts of conduct or threats within that group that create a substantial risk of causing injury to any person, or substantial harm to property, and who refuses or fails to disperse when ordered to by a peace officer or other public servant engaged in enforcing or executing the law, is guilty of Failure to Disperse, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000.

9.16.4 Disorderly Conduct. Any person who recklessly or intentionally a) uses abusive language to another or in the presence of another and thereby creates a risk of assault, b) disrupts any lawful assembly or meeting of persons without lawful authority, c) obstructs vehicular or pedestrian traffic without lawful authority, d) uses abusive or threatening language in the presence of a child aged 10 or younger or an elder aged 55 or older and thereby reasonably causes emotional distress, or e) appears in a state of public and voluntary drunkenness in the presence of a child aged 16 or younger or an elder aged 55 or older and thereby reasonably causes emotional distress, is guilty of Disorderly Conduct, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000.

9.16.5 False Alarm. Any person who initiates or circulates information, report, or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, or emergency knowing that such information, report, or warning is false and likely to cause evacuation of a building, place of assembly, or transportation facilities or otherwise cause public inconvenience or alarm is guilty of False Alarm, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.16.6 Public Intoxication. Any person who is in a public location, or in a motor vehicle parked in a public location, and is in a state of apparent intoxication or under the influence of any drug, such that they appear to be at risk to themselves or others, or such that their behavior is reasonably causing distress to others, is guilty of Public Intoxication, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000.

9.16.7 Defamation. Any person who, without justification or excuse, maliciously exposes any living person, or the memory of one deceased, to hatred, contempt, ridicule, or obloquy or who injures any person, corporation, or association in his or their business or occupation is guilty of Defamation, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000. If the offender's ill intent was of such magnitude to so justify, the Court may impose punitive damages as well as

compensatory damages upon conviction for Defamation. Every publication having the tendency or effect to expose a living person, or the memory of one deceased, or any person, corporation, or association in his or their business or occupation, to hatred, contempt, ridicule, or obloquy shall be deemed malicious unless justified or excused. Such publication is justified whenever the matter charged as defamatory invokes the commission of a crime, is a true and fair statement, and was published with good motives and for justifiable ends. It is excused when honestly made in belief of its truth and fairness and upon reasonable grounds for such belief, and consists of fair comments upon the conduct of any person regarding public affairs, made after a fair and impartial investigation.

9.16.8 Malicious Prosecution. Any person who, 1) maliciously and without reasonable belief of probable cause therefor, causes or attempts to cause a person to be arrested or proceeded against for any crime, of which he or she is innocent, or 2) files a complaint against any tribal employee or officer, which would have resulted in disciplinary if found to be truthful, of which complaint the person knew or should have known to be false or malicious in nature, shall be guilty of Malicious Prosecution, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.17 Miscellaneous Offenses

9.17.1 Littering/Illegal Dumping. Any person who throws, dumps, places or deposits upon the lands or within the property of another, or upon any public road, highway, street, or any other area accessible to the public, any garbage, debris, junk, hulk or inoperable vehicle, carcass, trash, refuse, or any other substance, shall be guilty of Littering/Illegal Dumping, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000.

9.17.2 Maintaining a Public Nuisance or Hazard. Any person who maintains or allows personal or real property to be in a state that poses a substantial threat to the health, safety, or welfare of the tribal community shall be guilty of Maintaining a Public Nuisance or Hazard, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed

180 days and a fine not to exceed \$1,000. Examples of maintaining a public nuisance or hazard include: a) failure to remove trash, garbage, yard waste, or debris from the property; b) failure to remove a dead animal, fish, shellfish, or other similar matter or debris, or failure to remove or clean up pet feces or debris; c) failure to remove junk, hulk, or inoperable vehicles from the property, or from a public street or in an area visible by others; d) or substantial failure to comply with environmental, health, or safety standards. In providing for compliance with this provision, the Tribal Court judge may issue an order of abatement to the person who has committed the offense, which may include authorization for the police department to remove or have removed the offending material or items at the offender's expense.

9.17.3 Abandoning or Maintaining Dangerous Refrigeration Equipment. Any person who discards, abandons, or leaves in any place accessible to children any refrigerator, icebox, or deep-freeze locker having a capacity of one and one-half (1.5) cubic feet or more, which is no longer in use and which has not had the door removed or secured to prevent opening or a portion of the latch mechanism removed to prevent latching or locking of the door is guilty of Abandoning Refrigeration Equipment, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.17.4 Tampering with Fire Alarm or Firefighting Equipment – False Alarm. Any person who willfully and without cause tampers with, molests, injures, or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any firefighting equipment, or who willfully and without having reasonable grounds for believing a fire exists, sends, gives, transmits, or sounds any false alarm of fire, by shouting in a public place or by means of any public or private fire alarm system or signal, or by telephone, is guilty of Tampering with Fire Alarm or Firefighting Equipment – False Alarm, a felony, and upon conviction shall be shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.17.5 Unlawful Bus Conduct. Any person who, while on a tribal, municipal, or county transit vehicle, a) carries a lighted or smoldering pipe, cigar, or cigarette, b) discards litter other than in designated receptacles, c) spits or expectorates, d) intentionally urinates or voids his

bowels, e) carries any flammable liquid, explosive, acid, or other article or material likely to cause harm to others, f) intentionally obstructs or impedes the flow of transit vehicles or passenger flow, g) intentionally disturbs others by engaging in loud, raucous, unruly, harmful, or harassing behavior, or h) destroys, defaces, or otherwise damages property belonging to the bus operator, is guilty of Unlawful Bus Conduct, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000.

9.17.6 Failure to Appear. Any person who fails to respond to a lawfully issued infraction, subpoena, or jury summons shall be guilty of Failure to Appear, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000. Non-Indians who accumulate two or more failures to appear or respond notices shall be subject to exclusion and expulsion from the Tribal Community.

9.17.7 Interference with Firefighter/Aid-Crew. Any driver of a vehicle, other than one on official business of the Lower Elwha Klallam Tribe, who follows closer than 500 feet behind any fire apparatus, ambulance, or aid vehicle traveling in response to a fire alarm or medical emergency or who drives into or parks her vehicle within the area where the emergency vehicle has stopped is guilty of Interference with Firefighter/Aid-Crew, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000.

9.17.8 Adulteration. Any person who manufactures, knowingly sells, or offers for sale, or intentionally keeps any food, drug, or drink that is adulterated with a harmful substance, or which, because of a defect in its manufacturing process, is harmful when ingested is guilty of Adulteration, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.17.9 Solicit Without Approval. Any person who sells or attempts to sell any items by going ‘door to door’ or making similar contacts within the Tribal Community, or shall sell or attempt to sell any item(s) from a vehicle parked on Tribal Land, without first obtaining an

authorized permit to do so shall be guilty of an infraction, punishable by a fine of \$100 and shall be immediately removed from tribal territorial jurisdiction.

9.17.10 Violation of Duty/Offense against Child or Any Violent Offense. Any person who witnesses the actual commission of any violent offense or any offense against a child under this title, and fails to notify Tribal Police shall be guilty of Violation of Duty/Offense against Child or Any Violent Offense, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500. A person is not required to report under this provision where that person has a reasonable belief that making such a report would place that person or another family or household member in danger of immediate physical harm.

9.17.11 Impersonating a Public Safety Officer. Any person not authorized and sworn as a public safety officer employed, retained, recognized or cross-deputized by the Lower Elwha Klallam Tribe, who identifies themselves to any other person as a police, deputy, community corrections officer, firefighter, or any other public safety official is guilty of Impersonating a Public Safety Officer, a gross misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 270 days and a fine not to exceed \$2,500.

9.17.12 Cruelty to Animals in the First Degree. Any person who causes unnecessary pain or physical discomfort to an animal involving torture or death of the animal is guilty of Cruelty to Animals in the First Degree, a felony, and upon conviction shall be sentenced to imprisonment not to exceed 365 days and a fine not to exceed \$5,000.

9.17.13 Cruelty to Animals in the Second Degree. Any person who causes unnecessary pain or physical discomfort to an animal is guilty of Cruelty to Animals in the Second Degree, a misdemeanor, and upon conviction shall be sentenced to imprisonment not to exceed 180 days and a fine not to exceed \$1,000.