

**QUILEUTE TRIBAL CODE  
ARTICLE XIII  
CRIMES**

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## **13.1. GENERAL PROVISIONS**

### **13.1.1. Authority**

This amended and revised Title XIII of the Law and Order Code of the Quileute Tribe is adopted pursuant to the authority vested in the Quileute Tribal Council by QUILEUTE CONSTITUTION, art. III and art. VI, § 1(j), (j).

### **13.1.2. Quileute Tribal Sovereign Authority**

To the greatest extent permitted by the QUILEUTE CONSTITUTION and federal law, the Quileute Tribe asserts its sovereign authority over all criminal offenses committed within the Quileute Reservation. Any inaction or failure to act by the Tribe in any particular case, including but not limited to situations of comity or a lack of tribal financial or human resources, shall not be considered a waiver or diminishment of the full extent of the Tribe's sovereign authority over criminal offenses committed within its territorial jurisdiction.

### **13.1.3. Statute of Limitations**

No complaint, information, or citation shall be filed charging the commission of a crime as defined by this Title unless the offense shall have been committed within the time period for that offense as follows:

- (1) Felony – 5 years
- (2) Gross Misdemeanor – 3 years
- (3) Misdemeanor – 2 years
- (4) Infraction – 1 year

Provided, however, that the prosecution of the crime by a separate sovereign shall toll this statute for the duration of that proceeding, including all appeals.

### **13.1.4. No Limitation on Civil Remedies**

No provision of this Code is intended to be, nor shall be deemed to be, a limitation of the right of any victim of crimes under this Code to seek civil remedies in the Quileute Tribal Court; provided that this provision does not waive in any respect the sovereign immunity of the Quileute Tribe.

### **13.1.5. Nonliability of Police Officer**

A police officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this Title.

### **13.1.6. Other Law**

Any matters that are not covered by the traditional customs and usages of the Quileute Tribe, or the QUILEUTE CONSTITUTION, by-laws, codes, ordinances and resolutions of the Quileute Tribe, or by applicable federal laws and regulations, the court may be guided by common law as developed by state and federal courts.

### **13.1.7. Prior Inconsistent Provisions Repealed; Preservation of Domestic Violence Ordinance**

This Title 13 hereby repeals Title XIII of the Quileute Law & Order Code, as amended, originally approved June 14, 1989, and any provision of the Quileute Law & Order Code that conflicts with this Title; provided, however, that nothing in this Title shall affect the

provisions of the Quileute Domestic Violence Prevention Ordinance, enacted by Quileute Tribal Resolution No. 93-A-53 (1993).

### **13.1.8. Severability**

If any part of this Title or its application to any person or circumstance is held by a court of competent jurisdiction to be invalid, the remainder of this Title or its application to other persons or circumstances shall not be affected.

## **13.2. DEFINITIONS**

### **13.2.1. Definitions**

In this Code unless a different meaning is plainly required:

- (1) "Acted" includes, where relevant, omitted to act.
- (2) "Actor" includes, where relevant, a person failing to act;
- (3) "Aid or aiding" means helping or assisting; supplementing the efforts or another.
- (4) "Animal" means any nonhuman mammal, bird, reptile, amphibian, fish, or insect.
- (5) "Arrest" means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging him with a crime.
- (6) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;
- (7) "Bodily injury" or "physical injury" means physical pain, illness, or an impairment of physical condition;
- (8) "Building", in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;
- (9) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as used in this Title, that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious bodily injury;
- (10) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, that is used or ordinarily used by a person for lodging;
- (11) "Evidence" means something, including testimony, documents and tangible objects that tend to prove or disprove the existence of an alleged fact.
- (12) "Government" includes any branch, subdivision, or agency of the Quileute Tribe, or the United States Government;
- (13) "Government function" includes any activity that a public servant is legally authorized or permitted to undertake on behalf of a government;
- (14) "Indicted" and "indictment" include "informed against", and "information" include "indicted" and "indictment";



- (15) "Instrumentalities of Crime" means objects used in the commission of a crime;
- (16) "Judge" includes every Judicial officer or court officer authorized alone or with others, to hold or preside over a court;
- (17) "Knowing" means that one is aware that his conduct is of a particular nature or knows that his conduct will necessarily or very likely cause a particular result; deliberate;
- (18) "Lawful" means legal, warranted or authorized by law;
- (19) "Malice" and "maliciously" means intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;
- (20) "Officer" and "public officer" means a person holding office under tribal government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assignments, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;
- (21) "Omission" means a failure to act;
- (22) "Peace officer" means a duly appointed or authorized, tribal or federal law enforcement officer;
- (23) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of that is economic gain;
- (24) "Person", "he", or "actor" includes any natural person, regardless of gender, and where relevant, a corporation, joint stock association, limited liability corporation, consortium or an unincorporated association;
- (25) "Place of work" includes but is not limited to all the lands and other real and personal property, such as a fishing vessel, of an of an actor who owns, operates, or is employed to work on such lands or personal property;
- (26) "Possess" means to have bodily or physical possession or otherwise to exercise dominion or control over property;
- (27) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any elected official or employee of government, including but not limited to a Tribal Council member, legislator, judge, judicial officer, executive director, departmental director, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;
- (28) "Reckless" means careless, needless, inattentive; indifferent to consequences.
- (29) "Relative" means a person connected with another by blood or marriage, including ancestors and descendants;
- (30) "Signature" means any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;
- (31) "Statute" means the Tribal Constitution or an act of the Tribal Council or General Council;

(32) "Serious Bodily Injury" or "Serious Physical Injury" or "Serious Harm" means bodily injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ;

(33) "Threat" means to communicate directly or indirectly the intent to cause serious harm to or physical restraint against any person, or use of any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or restraint against any person, including but not limited to, the intent:

- (a) to cause bodily injury in the future to the person threatened or to any other person; or
- (b) to cause physical damage to the property of a person other than the actor;
- (c) to subject the person threatened or any other person to confinement or restraint; or
- (d) to accuse any person of a crime or cause criminal charges to be instituted against any person; or
- (e) to expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or
- (f) to reveal any information sought to be concealed by the person threatened; or
- (g) to testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (h) to take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or
- (i) to bring about or continue a strike, boycott, or other similar collective action to obtain property that is not demanded or received for the benefit of the group that the actor purports to represent; or
- (j) to do any other act that is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships.

(34) "Utter" means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument to another.

(35) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(36) "Willful" means voluntary, purposely and intentional.

### **13.3. PRINCIPLES OF CRIMINAL LIABILITY**

#### **13.3.1. Accomplice**

- (1) A person is an accomplice of another person in the commission of a crime if:
  - (a) with knowledge that it will promote or facilitate the commission of the crime, he solicits, commands, encourages, or requests such other person to commit it; or

- (b) aids or agrees to aid such other person in planning or committing it; or
- (c) his conduct is expressly declared by law to establish his complicity.

(2) A person who is legally incapable of committing a particular crime himself may be guilty thereof if it is committed by the conduct of another person for that he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

### **13.3.2. Accountability - Who is Guilty for the Actions of Another**

(1) A person is guilty of a crime if it is committed by the conduct of another person for whom he is legally accountable.

(2) A person is legally accountable for the conduct of another person when:

- (a) acting with the kind of culpability that is sufficient for the commission of the crime, he causes an innocent or irresponsible person to engage in such conduct; or
- (b) he is made accountable for the conduct of such other person by this Title or by the law defining the crime; or
- (c) he is an accomplice of another person in the commission of a crime.

(3) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted.

(3) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:

- (a) he is a victim of that crime; or
- (b) he terminates his accountability prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.

### **13.3.3. Capacity**

#### **13.3.3.1. Age of Capacity**

Persons under the age of six (6) are presumed not to have the capacity to attain any mental condition required for conviction of a crime, including intent, negligence, willfulness, knowing, etc.

#### **13.3.3.2. Persons Older Than the Age Six**

All persons older than the age of six (6) shall be subject to the jurisdiction of this Title.

### **13.3.4. Intent**

A person acts with intent or willfully when he acts with the objective or purpose to accomplish a result that constitutes a crime.

### **13.3.5. Knowledge**

A person knows or acts knowingly or with knowledge when:

(1) he is aware of a fact, facts, or circumstances or result described by a statute defining an crime; or

(2) he has information that would lead a reasonable man in the same situation to believe that facts exist that is described by a statute defining a crime.

#### **13.3.6. Number and Gender**

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

#### **13.3.7. Recklessness**

A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation.

#### **13.3.8. Criminal Negligence**

A person is criminally negligent or acts with criminal negligence when he fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.

#### **13.3.9. Substitutes for Criminal Negligence, Recklessness, and Knowledge**

When this Code provides that criminal negligence suffices to establish an element of a crime, such element also is established if a person acts willfully, knowingly, or recklessly. When recklessness suffices to establish an element also is established if a person acts willfully or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts willfully.

#### **13.3.10. Culpability as Determinant of Grade of Crime**

When the grade or degree of an crime depends on whether the crime is committed willfully, knowingly, recklessly, or with criminal negligence, its grade or degree shall be lowest for that the determinative kind of culpability is established with respect to any material element of the crime.

#### **13.3.11. Requirement of Willfulness Satisfied by Acting Knowingly**

A requirement that a crime be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the crime, unless a purpose to impose further requirements plainly appears.

### **13.4. DEFENSES**

#### **13.4.1. Duress**

(1) In any prosecution for a crime, it is a defense that:

(a) the actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or another would be subject to immediate death or immediate bodily injury; and

(b) that such apprehension was reasonable upon the part of the actor; and

(c) that the actor would not have participated in the crime except for the duress involved.

(2) The defense of duress is not available if the crime charged is murder or manslaughter.

(3) The defense of duress is not available if the actor willfully or recklessly places himself in a situation in which it is probable that he will be subject to duress.

(4) That defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse.

#### **13.4.2. Intoxication**

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular kind or degree of crime, the fact of his intoxication may be taken into consideration in determining such mental state.

#### **13.4.3. Insanity**

To establish the defense of insanity, it must be shown that at the time of the commission of the crime, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

(1) he was unable to perceive the nature and quality of the act with that he is charged; or

(2) he was unable to tell right from wrong with reference to the particular act charged.

The defense of insanity must be established by a preponderance of the evidence.

#### **13.4.4. Homicide by Other Person - When Justifiable**

Homicide is also justifiable when committed either:

(1) in the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his presence or company, when there is reasonable grounds to apprehend a design on the part of the person slain to commit a felony or to do some imminent bodily injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or

(2) in the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or in a dwelling, or other place of abode, in which he is.

#### **13.4.5. Justifiable Homicide - When Excusable**

Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, with ordinary caution and without any unlawful intent.

#### **13.4.6. Justifiable Homicide by Peace Officer**

Homicide is justifiable when committed by a tribal peace officer, or person acting under his command and in his aid, in the following cases:

(1) in obedience to the judgment of a competent court; or

(2) when necessary to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or

(3) when necessary in retaking an escaped or rescued prisoner who has been

committed, arrested for, or convicted of a felony; or in arresting a person who has committed a felony and if fleeing from justice; or in attempting, by lawful ways or means, to apprehend a person for a felony actually committed; or in lawfully suppressing a riot or preserving the peace.

(4) "Necessary" means that no reasonable alternative to the use of force appeared to exist and that the amount of force used was reasonable to affect the lawful purpose intended.

#### **13.4.7. Use of Force - When Lawful**

The use, attempt, or offer to use force upon or toward the person of another shall not be unlawful in the following cases:

(1) whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him and acting under his direction;

(2) whenever necessarily used by a person arresting one who has committed a felony and delivering him to a public officer competent to receive him into custody;

(3) whenever used by a party about to be injured, or by another lawfully aiding him, in preventing or attempting to prevent an crime against his person, or a malicious interference with real or personal property lawfully in his possession, in case the force is not more than shall be necessary;

(4) when ever used in a reasonable and moderate manner by a parent or his authorized agent, a guardian, master, or teacher in the exercise of lawful authority, to restrain or correct his child, ward, apprentice, or scholar;

(5) whenever used by a carrier of passengers of his authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than shall be necessary to expel the offender with reasonable regard to his personal safety;

(6) whenever used by any person to prevent a mentally ill, mentally Incompetent or mentally disabled person from committing an act dangerous to himself or another, or in enforcing necessary restraint for the protection of his person, or his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

### **13.5. ANTICIPATORY CRIMES**

#### **13.5.1. Criminal Attempt**

(1) A person who willfully engages in conduct that constitutes a substantial step toward the commission of a crime is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he does any act that is a substantial step toward the commission of that crime.

(2) If the conduct in which the person engages otherwise is an attempt to commit a crime, it is no defense to a prosecution of such attempt that the attempted crime was, under the attendant circumstances, factually or legally impossible of commission.

An attempt to commit a crime is a felony if the crime attempted is a felony, gross misdemeanor if the crime attempted is a gross misdemeanor, and misdemeanor if the crime attempted is a misdemeanor.

### **13.5.2. Criminal Solicitation**

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

Criminal solicitation shall be punished in the same manner as criminal attempt.

### **13.5.3. Criminal Conspiracy**

A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he agrees, with one or more persons, to engage in or cause the performance of such conduct, and any one of those persons takes a substantial step in pursuance of such agreement.

It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:

- (1) has not been prosecuted or convicted; or
- (2) has been convicted of a different crime; or
- (3) is not amenable to Justice; or
- (4) has been acquitted; or
- (5) lacked the capacity to commit a crime.

Criminal conspiracy is a felony if the object of the conspiracy is a felony, a gross misdemeanor if the object of the conspiracy is a gross misdemeanor, and a misdemeanor if the object of the conspiracy is a misdemeanor.

## **13.6. HOMICIDE**

### **13.6.1. Homicide Defined**

Homicide is the killing of a human being by the act, procurement or omission of another and is murder, manslaughter, excusable homicide, or justifiable homicide.

### **13.6.2. Murder in the First Degree**

A person is guilty of murder in the first degree when:

- (1) with a premeditated intent to cause the death of another person, he causes the death of such person *or* of a third person; or
- (2) under circumstances manifesting an extreme indifference to human life, he engages in conduct that creates a grave risk of death to any person, and thereby causes the death of a person, or
- (3) he commits or attempts to commit the crime of either (i) robbery, in the first or second degree, (ii) rape in the first or second degree, (iii) burglary in first degree, (iv) arson in the first degree, or (v) kidnapping, in the first or second degree, and; in the course of and in furtherance of such crime or in immediate flight therefrom, he, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this Section in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

- (a) did not commit the homicidal act or in any way solicit, request,

- command, importune, cause, or aid the commission thereof; and
- (b) was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious bodily injury; and
- (c) had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and
- (d) had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious bodily injury.

Murder in the first degree is a felony.

### **13.6.3. Murder in the Second Degree**

A person is guilty of murder in the second degree when:

- (1) with intent to cause the death of another person but without premeditation, he causes the death of such person or of a third person; or
- (2) he commits or attempts to commit any felony other than those enumerated in 13.6.2(3) and, in the course of and in furtherance of such crime or in immediate flight therefrom, he, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this Section in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:
  - (a) did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof, and
  - (b) was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious bodily injury; and
  - (c) had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious bodily injury.

Murder in the second degree is a felony.

### **13.6.4. Manslaughter in the First Degree**

A person is guilty of manslaughter in the first degree when:

- (1) he recklessly causes the death of another person; or
- (2) he willfully and unlawfully kills an unborn child by inflicting any injury upon the mother of such child.

Manslaughter in the first degree is a felony.

### **13.6.5. Manslaughter in the Second Degree**

A person is guilty of manslaughter in the second degree when, with criminal negligence, he causes the death of another person.

Manslaughter in the second degree is a felony.

### **13.6.6. Negligent Homicide**

A person is guilty of negligent homicide when the death of any person shall ensue within three years as a proximate result of injury received by the driving of any vehicle by any person while under the influence of or affected by intoxicating liquor or drugs or glue, or by



the operation of any vehicle in a reckless manner or with disregard for the safety of others. Negligent homicide is a felony.

## **13.7. ASSAULT**

### **13.7.1. Definitions**

- (1) The crime of "assault" is committed if a person:
  - (a) willfully causes bodily harm to another; or
  - (b) negligently causes bodily harm to another with a weapon; or
  - (c) willfully makes bodily contact of an insulting or provoking nature with an individual; or
  - (d) willfully causes reasonable apprehension of bodily harm in another.

(2) "Reasonable apprehension" is any situation where a person willfully points a firearm at or in the direction of another person, whether or not the person pointing the firearm believes the firearm to be loaded. In all other circumstances "reasonable apprehension" is a question of fact to be determined by the trier of fact.

### **13.7.2. Assault in the First Degree**

Every person, who with intent to kill another person or to commit a felony upon the person or property of the one assaulted or of another, shall be guilty of assault in the first degree when he:

- (1) assaults another with a firearm or any deadly weapon or by any force or means likely to produce death; or
- (2) administers to or causes to be taken by another, poison or any other destructive or noxious thing so as to endanger the life of another person.

Assault in the first degree is a felony.

### **13.7.3. Assault in the Second Degree**

Every person who, under circumstances not amounting to assault in the first degree, shall be guilty of assault in the second degree when he:

- (1) with intent to injure, unlawfully administers to or causes to be taken by another, poison or any other destructive or noxious thing, or any drug or medicine the use of that is dangerous to life or health; or
- (2) knowingly inflicts serious bodily injury upon another with or without a weapon; or
- (3) knowingly assaults another with a weapon or other instrument or thing likely to produce bodily harm; or
- (4) knowingly assaults another with intent to commit a felony; or
- (5) with criminal negligence, causes bodily injury to another person by means of a weapon or other instrument or thing likely to produce bodily harm.

Assault in the second degree is a felony.

### **13.7.4. Assault in the Third Degree**

Every person who, under circumstances not amounting to assault in either the first or

second degree, assaults another person with intent to prevent or resist the execution of any lawful process or mandate of any peace officer, or the lawful apprehension or detention of himself or another person is guilty of assault in the third degree.

Assault in the third degree is a felony.

#### **13.7.5. Simple Assault**

Every person who commits an assault not amounting to assault in either the first, second, or third degree shall be guilty of simple assault.

Simple assault is a gross misdemeanor.

#### **13.7.6. Child Abuse or Neglect**

A person is guilty of child abuse or neglect if he commits an act of violence, abuse or neglect on a child under the age of eighteen (18) years, causing either bodily or mental harm or injury to that child or that otherwise threatens the health, safety and welfare of the child.

Child abuse or neglect is a gross misdemeanor.

#### **13.7.7. Coercion**

A person is guilty of coercion if by use of threat as defined in Section 13.2.1(33), he compels or induces a person to engage in conduct that the latter has a legal right to abstain from, or to abstain from conduct that he has a legal right to engage in.

Coercion is a gross misdemeanor.

#### **13.7.8. Extortion- Definition**

"Extortion" means knowingly to obtain or attempt to obtain by threat to property of services of the owner, as defined in Section 13.2.1(33)

#### **13.7.9. Extortion in the First Degree**

A person is guilty of extortion in the first degree if he commits extortion by means of a threat as defined in Section 13.2.1(33).

Extortion in the first degree is a felony.

#### **13.7.10. Extortion in the Second Degree**

A person is guilty of extortion in the second degree if he commits extortion by means of a threat as defined in .

In any prosecution under this Section based on a threat to accuse any person of a crime or cause criminal charges to be instituted against any person, it is a defense that the actor reasonably believed the threatened criminal charge to be true and that his sole-purpose was to compel or induce the person threatened to take reasonable action to make good the wrong that was the subject of such threatened criminal charge.

Extortion in the second degree is a felony.

### **13.8. FRAUD AND FORGERY**

#### **13.8.1. Definitions**

The following definitions are applicable in this Section unless the context otherwise requires:

(1) "Complete written instrument" means one that is fully drawn with respect to every essential feature thereof;

(2) "Incomplete written instrument" means one that contains some matter by way of content or authentication but that requires additional matter in order to render it a complete written instrument;

(3) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument that purports to be authentic, but that is not authentic either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;

(4) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;

(5) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;

(6) "Forged instrument" means a written instrument that has been falsely made, completed or altered.

(7) "Written instrument" means:

- (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or
- (b) any credit cards, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification.

### **13.8.2. Fraud**

A person is guilty of fraud if he obtains something of value by willful misrepresentation or deceit or by false interpretation, or by the willful use of false weights or measures.

Fraud is a gross misdemeanor.

### **13.8.3. Forgery**

A person is guilty of forgery if, with intent to injure or defraud:

- (1) he falsely makes, completes, or alters a written instrument; or
- (2) he possesses, utters, offers, disposes of, or represents as true, a written instrument that he knows to be forged.

Forgery is a felony.

### **13.8.4. Obtaining a Signature by Deception or Duress**

A person is guilty of obtaining a signature by deception or duress if, by deception or duress and with intent to defraud or deprive, he causes another person to sign or execute a written instrument.

Obtaining a signature by deception or duress is a felony.

### **13.8.5. Criminal Impersonation**

A person is guilty of criminal impersonation if he:

- (1) assumes a false identity and does an act in his assumed character with intent to defraud another or for any other unlawful purpose; or
- (2) pretends to be a representative of some person or organization or a public

servant and does an act in his pretended capacity with intent to defraud another or for any other unlawful purpose.

Criminal impersonation is a gross misdemeanor.

### **13.8.6. Unauthorized Use of Tribal Identification Card**

A person is guilty of unauthorized use of tribal ID card if:

(1) he is an enrolled member of the Quileute Tribe and he permits use of his tribal ID card to another person not legally entitled to the benefits of Quileute tribal membership; or

(2) he is not legally entitled to the benefits of Quileute tribal membership and he uses the ID card of a member of the Quileute Indian Tribe.

Unauthorized use of a tribal ID card is a gross misdemeanor.

## **13.9. KIDNAPPING AND UNLAWFUL IMPRISONMENT**

### **13.9.1. Definitions**

The following definitions apply in this Section:

(1) "Restrain" means to restrict a person's movements without legal authority in a manner which interferes substantially with his liberty.

(2) "Abduct" means to willfully restrain a person by either:

(a) secreting or holding the person in a place where he is not likely to be found; or

(b) by use of threat to use deadly force.

### **13.9.2. Kidnapping in the First Degree**

A person is guilty of kidnapping in the first degree if he willfully abducts another person with intent to:

(1) hold him for ransom or reward, or as a shield or hostage; or

(2) facilitate commission of any felony or flight thereafter; or

(3) inflict bodily injury on him; or

(4) inflict extreme mental distress on him or a third person; or

(5) interfere with the performance of any governmental function; or

(6) to attempt or commit sexual abuse of a child; or

(7) to attempt or commit the crimes of rape or child rape.

Kidnapping in the first degree is a felony.

### **13.9.3. Kidnapping in the Second Degree**

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

(2) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that:

(a) the abduction does not include the use of or intent to use or threat to use deadly force, and

- (b) the actor is a relative of the person abducted, and
- (c) the actor's sole intent is to assume custody of that person.

(3) Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.

Kidnapping in the second degree is a felony.

#### **13.9.4. Unlawful Imprisonment**

A person is guilty of unlawful imprisonment if he knowingly restrains another person without lawful authority.

Unlawful imprisonment is a felony.

#### **13.9.5. Unlawful Imprisonment - Defense to Action for Being Detained on Mercantile Establishment Premises**

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

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

#### **13.9.6. Promoting a Suicide Attempt**

A person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide.

Promoting a suicide attempt is a felony.

#### **13.9.7. Reckless Endangerment**

A person is guilty of reckless endangerment when he recklessly engages in conduct that creates a substantial risk of death or serious bodily injury to another person.

Reckless endangerment is a gross misdemeanor.

#### **13.9.8. Robbery**

A person is guilty of robbery if, during the commission of a theft, or in immediate flight therefrom, he:

- (1) inflicts bodily harm upon another person; or
- (2) threatens to inflict bodily harm upon another person; or
- (3) willfully or knowingly puts other person in fear of immediate bodily harm; or threatens to commit any other crime punishable as a felony.

Robbery is a felony.

## **13.10. HARASSMENT, STALKING AND DOMESTIC VIOLENCE**

### **13.10.1. Harassment**

A person is guilty of harassment if, without lawful authority, the person knowingly threatens:

- (1) to cause bodily injury, either immediately or in the future, to the person threatened or to any other person; or
- (2) to cause physical damage to the property of a person other than the actor, or
- (3) to subject the person threatened or any other person to physical confinement or restrain; or
- (4) maliciously to do any other act that is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and
- (5) the person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

Harassment is a gross misdemeanor.

#### **13.10.1.1. Felony Harassment**

Notwithstanding § 13.10.1 above, harassment is a felony if either of the following applies:

- (1) the accused has previously been convicted in any jurisdiction of any crime of harassment of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; or
- (2) the accused is convicted of any crime within § 13.10 of this Code.

#### **13.10.1.2. Harassment-Civil Cause of Action**

In addition to the criminal penalties created by §§ 13.10.1 and 13.10.1.1, there is hereby created a civil cause of action for harassment. A person who is shown by a preponderance of the evidence to have harassed, as defined in § 13.10.1, another person may be liable to the victim of the harassment for actual damages and punitive up to \$10,000.

### **13.10.2. Malicious Harassment**

A person is guilty of malicious harassment if the person maliciously and with the intent to intimidate or harass another person because of, or in a way that is reasonably related to, associated with, or directed toward that person's race, color, religion, ancestry, national origin, or mental, physical, or sensory handicap:

- (1) causes physical injury to another person; or
- (2) by words or conduct places another person in reasonable fear of harm to his person or property or harm to the person or property of a third person. Such words or conduct include, but are not limited to:
  - (i) cross burning;
  - (ii) painting, drawing, or depicting symbols or words on the property of the victim when the symbols or words historically or traditionally connote hatred or threats towards the victim, or
  - (iii) written or oral communication designed to intimidate or harass because of, or in a way that is reasonably related to, associated with, or directed toward, that person's race, color, religion, ancestry, national origin, or

mental, physical, or sensory handicap; provided however, that it shall not constitute malicious harassment for a person to speak to or act in a critical, insulting, or deprecatory way unless the context or circumstances surrounding the words or conduct places another person in reasonable fear of harm to his or her person or property or harm to the person or property of a third person; or

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

Malicious harassment is a felony.

### **13.10.2.1. Malicious Harassment-Civil Cause of Action**

In addition to the criminal penalty created by § 13.10.2, there is hereby created a civil cause of action for malicious harassment. A person who is shown by a preponderance of the evidence to have maliciously harassed, as defined in § 13.10.2, another person may be liable to the victim of the malicious harassment for actual damages and punitive damages up to \$10,000.

### **13.10.3. Stalking**

A person is guilty of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

- (1) he intentionally and repeatedly follows another person to that person's home, school, place of employment, business, or any other location, or follows the person while the person is in transit between locations; and

- (2) the person being followed is intimidated, harassed, or placed in fear that the stalker intends to injure the person or property of the person being followed or of another person. The feeling of fear, intimidation, or harassment must be one that a reasonable person in the same situation would experience under all the circumstances; and

- (3) the stalker either

- (i) intends to frighten, intimidate, or harass the person being followed; or

- (ii) knows or reasonably should know that the person being followed is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

Stalking is a gross misdemeanor.

### **13.10.3.1. Stalking- No Defense**

It is not a defense to the crime of stalking under § 13.10.3 that:

- (1) the stalker was not given actual notice that the person being followed did not want the stalker to contact or follow the person; or

- (2) the stalker did not intend to frighten, intimidate, or harass the person being followed.

### **13.10.4. Electronic Harassment**

A person is guilty of electronic harassment if he or she, with intent to harass, intimidate, torment or embarrass another person, uses any electronic device and/or method, including but not limited to telephones (handheld and land line), social networking sites, internet fora, SMS (texting) or MMS (media) protocols, or email:

- (1) using any lewd, lascivious, profane, indecent, or obscene words, language or

images, or suggesting the commission of any lewd or lascivious act; or

(2) anonymously or repeatedly or at an extremely inconvenient hour, whether or not communication ensues; or

(3) threatening to inflict injury on the person or property of the person to whom the communication is directed or any member of his or her family or household.

Electronic harassment is a gross misdemeanor.

#### **13.10.4.1. Felony Electronic Harassment**

Notwithstanding § 13.10.4 above, electronic harassment is a felony if either of the following applies:

(1) the accused has previously been convicted in any jurisdiction of any crime of harassment of the same victim or members of the same victim's family or household or any person specifically named in a no-contact or no-harassment order; or

(2) the accused has been convicted of any offense under § 13.10 of this Code against any other person.

#### **13.10.5. Providing Electronic Device or Access for Harassment**

A person is guilty of providing an electronic device for harassment if he or she knowingly permits any electronic device, including but not limited to telephones (handheld and land line) and computers, or provides access to social networking sites, internet fora, or email for any purpose prohibited by § 13.10.4.

#### **13.10.6. Place Where Offense Committed**

Any offense under § 13.10 of this Code may be deemed to have been committed either:

(1) where the conduct occurred

(2) at the place from which the harassment or threats were made, or

(3) at the place where the harassment or threats were received.

### **13.11. ARSON AND RECKLESS BURNING**

#### **13.11.1. Definitions**

For the purpose of this Section, unless the context indicates otherwise:

(1) "Building" has the definition in § 13.2.1(8) and if such building consists of two or more units separately secured or occupied, each unit shall not be treated as a separate building;

(2) "Damages" in addition to its ordinary meaning, includes any charring, scorching, burning, or breaking, or agricultural or industrial sabotage, and shall include any diminution in the value of any property as a consequence of an act.

#### **13.11.2. Arson in the First Degree**

A person is guilty of arson in the first degree if he knowingly and maliciously causes a fire or explosion that:

(1) is manifestly dangerous to any human life including firemen; or

(2) damages a dwelling; or



(3) in any building where a person is present and who is not a participant in the arson.

Arson in the first degree is a felony.

### **13.11.3. Arson in the Second Degree**

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

Arson in the second degree is a felony.

It shall not be necessary that a person other than the actor should have had ownership in the building or structure damaged or set on fire.

### **13.11.4. Reckless Burning in the First Degree**

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

Reckless burning in the first degree is a felony.

### **13.11.5. Reckless Burning In the Second Degree**

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

Reckless burning in the second degree is a gross misdemeanor.

### **13.11.6. Reckless Burning - Defenses**

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

(1) no person other than the defendant had a possessory or pecuniary interest in the damage or endangered property, or if other persons had such an interest, all of them consented to the defendant's conduct; and

(2) the defendant's sole interest was to destroy or damage the property for a lawful purpose.

## **13.12. BURGLARY AND CRIMINAL TRESPASS**

### **13.12.1. Definitions**

The following definitions apply in this Section:

(1) "Premises" includes any building, dwelling, or any real property;

(2) "Enter", when constituting an element or part of a crime, includes the entrance of the person, or the insertion of any part of his body, or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person or to detach or remove property;

(3) "Enters or remains unlawfully", a person "enters or remains unlawfully" in or

upon premises when he is not licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building that is only partly open to the public is not a license or privilege to enter or remain in the part of a building that is not open to the public. A person who enters or remains upon unimproved and apparently unused land that is neither fenced nor otherwise enclosed in a manner designed to exclude intruders does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

### **13.12.2. Burglary in the First Degree**

A person is guilty of burglary in the first degree, if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling and if, in entering or while in the dwelling or in immediate flight therefrom, the actor or another participant in the crime:

- (1) is armed with a deadly weapon; or
- (2) assaults any person therein.

Burglary in the first degree is a felony.

### **13.12.3. Burglary in the Second Degree**

A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building other than a vehicle.

Burglary in the second degree is a felony.

### **13.12.4. Inference of Intent**

In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the Trier of fact to have been made without such criminal intent.

### **13.12.5. Other Crime in Committing Burglary Punishable**

Every person who, in the commission of a burglary shall commit any other crime, may be punished therefore as well as for the burglary and may be prosecuted for each crime separately.

### **13.12.6. Making or Having Burglary Tools**

Every person who shall make or mend or cause to be made or mended, or have in his possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of making or having burglary tools.

Making or having burglary tools is a gross misdemeanor.

### **13.12.7. Criminal Trespass in the First Degree**

A person is guilty of criminal trespass in the first degree if he:

- (1) knowingly enters or remains unlawfully in a building or on real property

adjacent thereto, or upon real property that is fenced or otherwise enclosed in a manner designed to exclude intruders; or

(2) enters or remains unlawfully in a building or on real property owned by the Quileute Tribe, without the permission of the Quileute Tribal Council; provided, that all enrolled Quileute tribal members and their children may enter, and remain in, any tribal building or real property not locked, fenced, or otherwise secured in a manner designed to exclude intruders, unless they are reasonably requested to leave by a Quileute tribal peace officer.

Criminal trespass in the first degree is a gross misdemeanor.

### **13.12.8. Criminal Trespass in the Second Degree**

A person is guilty of criminal trespass in the second degree if he:

(1) knowingly enters lands or buildings of another that are posted against such entrance in a manner adequate to provide reasonable notice; or

(2) remains on lands or in a building after discovering that the owner wishes to preclude his presence, by receiving actual notice of such preclusion, or under circumstances wherein a reasonable person would be sufficiently notified of such preclusion.

Criminal trespass in the second degree is a misdemeanor.

### **13.12.9. Criminal Trespass - Defenses**

In any prosecution for burglary, it is a defense that:

(1) a building involved in a crime under § 13.12.7 was abandoned; or

(2) the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) the actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

### **13.12.10. Vehicle Prowling**

A person is guilty of vehicle prowling if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a vehicle.

Vehicle prowling is a gross misdemeanor.

### **13.12.11. Cutting Timber Without a Permit**

A person is guilty of cutting timber without a permit if he cuts timber, standing or fallen, on tribal property without first obtaining a permit from the Quileute Tribal Council or if he cuts timber, standing or fallen, on the property of another person without first obtaining the owner's permission.

Cutting timber without a permit is a gross misdemeanor.

### **13.12.12. Defacing Official Signs, Landmarks or Navigation Markers**

A person is guilty of defacing official signs if he removes, alters or defaces any official sign, landmark or navigation marker of the Quileute Tribe, the State of Washington, or the federal government.

Defacing official signs, landmarks or navigation markers is a misdemeanor.

### **13.12.13. Desecration of Religious Sites**

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

Desecration of religious sites is a gross misdemeanor.

### **13.12.14. Embezzlement**

A person is guilty of embezzlement if he has lawful custody of property not his own and he appropriates that property to his own use or for the use of another person not the owner with intent to deprive the owner thereof.

Embezzlement is a gross misdemeanor.

### **13.12.15. Failure to Control or Report a Fire**

A person is guilty of failure to control or report a fire if he knows that a fire is endangering a human life of property and he:

- (1) fails to give prompt fire alarm; or
- (2) fails to take a reasonable measure to control the fire without danger to himself when he knows he has an official duty to combat or prevent the fire.

Failure to control or report fire is a misdemeanor.

### **13.12.16. Flag Desecration**

A person is guilty of flag desecration if he publicly mutilates, defaces or defiles an official flag, color or design of the Quileute Tribe or of the United States.

Flag desecration is a misdemeanor.

### **13.12.17. Malicious Mischief in the First Degree**

A person is guilty of malicious mischief in the first degree if he knowingly and maliciously:

- (1) causes physical damage to public property or to the property of another in an amount exceeding \$5,000; or
- (2) causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the Quileute Tribe, the federal government, the state, a political subdivision thereof, or a public utility or mode of public transportation, power or communication.

Malicious mischief in the first degree is a felony.

### **13.12.18. Malicious Mischief in the Second Degree**

A person is guilty of malicious mischief in the second degree if he knowingly and maliciously:

- (1) causes physical damage to public property or to the property of another in an amount exceeding \$750 but less than \$5,000; or
- (2) creates a substantial risk of interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the Quileute Tribe, the federal government, the state, a political subdivision thereof, or a public utility or mode of public transportation, power or communication.

Malicious mischief in the second degree is a felony.

### **13.12.19. Malicious Mischief in the Third Degree**

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

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

### **13.12.20. Possessing Stolen Property**

(1) "Possessing stolen property" means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

(2) The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of possessing stolen property,

(3) When a person has in his possession or under his control stolen credit cards issued in the names of two or more persons, and is not an issuer of the cards or agent thereof, he shall be presumed to know that they are stolen. This presumption may be rebutted by evidence raising a reasonable inference that the possession of such stolen credit cards was without knowledge that they were stolen.

### **13.12.21. Possessing Stolen Property in the First Degree**

A person is guilty of possessing stolen property in the first degree if he possesses stolen property that exceeds \$5,000 in value.

Possessing stolen property in the first degree is a felony.

### **13.12.22. Possessing Stolen Property in the Second Degree**

A person is guilty of possessing stolen property in the second degree if:

(1) he possesses stolen property that exceeds \$750 in value but does not exceed \$5,000 in value, or is an access device (e.g., a card, code, or other security device giving someone access to bank account or other private information);

(2) he possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or

(3) he possesses a stolen credit card; or

(4) he possesses a stolen motor vehicle of a value less than \$1,500; or

(5) he possesses a stolen firearm.

Possessing stolen property in the second degree is a felony.

### **13.12.23. Possessing Stolen Property in the Third Degree**

A person is guilty of possessing stolen property in the third degree if he possesses stolen property that does not exceed \$750 in value.

Possessing stolen property in the third degree is a gross misdemeanor.

### **13.12.24. Obscuring Identity of a Machine**

(1) A person is guilty of obscuring the identity of a machine if he knowingly:

(a) obscures the manufacturer's serial number or any other distinguishing

identification number or mark upon any vehicle, machine, engine, apparatus, appliance, or other device with intent to render it unidentifiable; or

- (b) possesses a vehicle, machine, engine, apparatus, appliance, or other device held for sale knowing the serial number or other identification number or mark has been obscured.

(2) "Obscure" means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable.

Obscuring the identity of a machine is a gross misdemeanor.

## **13.13. THEFT**

### **13.13.1. Definitions**

The following definitions are applicable in this Section unless the context otherwise requires:

(1) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another that the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(2) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(3) "Credit card" means any instrument or device, whether incomplete, revoked, or expired, whether known as a credit card, credit plate, courtesy card, or by any other name, issued with or without fee for the use of the cardholder in obtaining money, goods, services, or anything else of value, including satisfaction of a debt or the payment of a check drawn by a cardholder, either on credit or in consideration of an undertaking or guarantee by the issuer;

(4) "Deception" occurs when an actor knowingly:

- (a) creates or confirms another's false impression that the actor knows to be false; or
- (b) fails to correct another's impression that the actor previously has created or confirmed; or
- (c) prevents another from acquiring information material to the disposition of the property involved; or
- (d) transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or
- (e) promises performance that the actor does not intend to perform or knows will not be performed.

(5) "Deprive" in addition to its common meaning, means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs, provided that the aforementioned are of a private proprietary nature.

(6) "Obtain control over" in addition to its common meaning, means:

- (a) in relation to property - to bring about a transfer or purported transfer to the obtainer or another, of a legally recognized interest in the property; or
  - (b) in relation to labor or service - to secure performance thereof for the benefit of the obtainer or another.
- (7) "Wrongfully obtains" or "exerts unauthorized control" means:
- (a) to take the property or services of another; or
  - (b) having any property or services in one's possession, custody or control as bailee, factor, pledgee, servant, attorney, agent, employees, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control; to secrete, withhold, or appropriate the same to his own use or to the use of any person other than the true owner or person entitled thereto.
- (8) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;
- (9) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property.
- (10) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water, telephone services;
- (11) "Stolen" means obtained by theft, robbery, or extortion;
- (12) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

### **13.13.1.1. Evaluation of Written Instruments**

Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

- (1) the value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof that has been satisfied;
- (2) the value of a ticket or equivalent instrument that evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any, and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument that the issuer charged the general public;
- (3) the value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

### **13.13.2. Aggregation of Value**

(1) Whenever any series of transactions that constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sums of the value of all said transactions shall be the value considered in determining the degree of theft involved.

(2) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved.

### **13.13.3. Property of Indeterminate Value**

Property or services having value that cannot be determined under the standards set forth above shall be deemed to be of value not more than \$750.

### **13.13.4. Theft – Definition and Good Faith Defense**

(1) "Theft" means:

- (a) to wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him of such property or services; or
- (b) by color or aide of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him of such property or services; or
- (c) to appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him of such property or services.

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

### **13.13.5. Theft in the First Degree**

A person is guilty of theft in the first degree if he commits theft of property or services that exceed:

- (1) \$5,000 in value; or
- (2) theft of a firearm, regardless of value; or
- (3) theft of a rescue, service, or law enforcement animal while that animal is on active duty; or
- (4) property of any value taken from the person of another.

Theft in the first degree is a felony.

### **13.13.6. Theft in the Second Degree**

A person is guilty of theft in the second degree if he commits theft of:

- (1) property or services that exceed \$750 in value, but does not exceed \$5,000 in value; or



- (2) a public record, writing, or instrument kept, file, or deposited according to law with or in the keeping of any public office or public servant; or
- (3) a credit card; or
- (4) a motor vehicle of a value less than \$1,500.

Theft in the second degree is a felony.

### **13.13.7. Theft in the Third Degree**

A person is guilty of theft in the third degree if he commits theft of property or services that does not exceed \$750 in value.

Theft in the third degree is a gross misdemeanor.

### **13.13.8. Unlawful Issuance of Checks or Drafts**

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

(2) Unlawful issuance of a bank check in an amount greater than \$750 is a felony.

(3) Unlawful issuance of a bank check in an amount of \$750 or less is a gross misdemeanor.

### **13.13.9. Taking Motor-Propelled Vehicle Without Permission**

Every person who, without the permission of the owner or person entitled to the possession thereof, willfully takes or drives away any motor-propelled vehicle, that is the property of another, and every person voluntarily riding in or upon said motor vehicle with knowledge of the fact that the same was unlawfully taken is equally guilty with the person taking or driving said motor-propelled vehicle.

Taking a motor-propelled vehicle without permission is a felony.

### **13.13.10. Unauthorized Use of Property Including Motor Vehicles**

(1) Any person who, without proper authority, uses or injures any property not belonging to him, or who operates another's motor-propelled vehicle without the consent of the owner is guilty of the crime of unauthorized use of property.

(2) Unauthorized use of property is a gross misdemeanor. In addition to standard sentencing, the court shall require the defendant to pay restitution to the legal owner of any property damaged by defendant's unlawful use.

## **13.14. CRIMES AGAINST THE FAMILY**

### **13.14.1. Bigamy**

A person is guilty of bigamy if he willfully marries or purports to marry another person when

either person has a living spouse.

In any prosecution under this Section, it is a defense that at the time of the subsequent marriage or purported marriage:

- (1) the actor reasonably believed that the prior spouse was dead; or
- (2) a court had entered a judgment purporting to terminate or annul any prior disqualifying marriage and the actor did not know that such judgment was invalid; or
- (3) the actor reasonably believed that he was legally eligible to marry.

Bigamy is a felony.

### **13.14.2. Contributing to the Delinquency of a Minor**

In a case where a child is a minor-in-need-of-care or a juvenile offender under Quileute law, or dependant or delinquent under the law of any other tribal or state jurisdiction, the parent or legal guardian, or person having the custody of the child, or any other person who, by an act or omission, encourages, causes, or contributes to the child's dependency or delinquency shall be guilty of a gross misdemeanor.

Subject to Section 13.25.2, the court may suspend sentence for a violation of the provisions of this Section and impose conditions as to conduct in the premises of any person so convicted and make suspension depend upon fulfillment by that person of the conditions. In case of a breach of any of the conditions the court may impose sentence as though there had been no suspension.

### **13.14.3. Custodial Interference**

A person is guilty of custodial interference if, knowing that he has no legal right to do so, he takes or entices from lawful custody, a person under the age of eighteen (18), or a mentally incompetent person or other person entrusted by authority of law to the custody of another person or institution.

Custodial interference is a gross misdemeanor.

### **13.14.4. Desertion and Non-Support of Children**

(1) A person is guilty of desertion and non-support of children if he deserts, or willfully neglects, or refuses to provide for the support or maintenance of his child, or of a child in his custody, when he is financially able to provide therefore.

(2) Desertion and non-support of children is a gross misdemeanor and upon conviction thereof, the offender may be required by the court to provide for support and maintenance in addition to, or instead of, any other sentence imposed by the court.

### **13.14.5. Failure to Send Children to School**

A person is guilty of failure to send children to school if that person, without cause, neglects or refuses to send his children, or any children under his care or custody, to school.

Failure to send children to school is a misdemeanor.

### **13.14.6. Failure to Support Dependent Persons**

(1) A person is guilty of failure to support dependent persons if he, without reasonable excuse, refuses or neglects to furnish food, shelter or care to those dependent upon him under the laws or customs and usages of the Quileute Tribe, or if he fails to make proper use of funds or property of a dependent person for the benefit of the dependent.

(2) Failure to support dependent persons is a misdemeanor and upon conviction thereof, the offender may be required by the court to provide adequate and proper support, in addition to, or instead of, any other sentence imposed by the court.

### **13.14.7. Incest**

(1) A person is guilty of incest if he engages in sexual intercourse with a person whom he knows to be related to him either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(2) As used in this Section, "descendant" includes stepchildren and adopted children under the age of eighteen (18) years.

(3) Incest is a gross misdemeanor and upon conviction thereof, the offender may be required by the court to undergo medical evaluation and treatment in addition to, or instead of, any other sentence imposed by the court.

## **13.15. SEX CRIMES**

### **13.15.1. Definitions**

As used in this Section, or where by reference:

(1) "Consent" means that at the time of the act of sexual intercourse there are actual words or conduct indicating freely given agreement to have sexual intercourse.

(2) "Forcible compulsion" means physical force that overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be subject to a crime.

(3) "Married" means one who is legally married to another.

(4) "Mentally incapacitated" is a condition existing at the time of the crime that prevents a person from understanding the nature or consequences of the act of sexual intercourse or contact, whether that condition is produced by illness, defect, the influence of an intoxicating substance, with or without the mentally incapacitated person's consent, or from some other cause occurring with or without the mentally incapacitated person's consent.

(5) "Physically or bodily helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Sexual conduct" means actual or simulated:

- (a) sexual intercourse, whether between persons of the same or opposite sex;
- (b) penetration of the vagina or rectum by any object, except when done as part of a recognized
- (c) medical procedure;
- (d) bestiality;
- (e) masturbation;
- (f) sadomasochistic abuse;
- (g) lewd exhibition of the genitals, breasts, pubic or rectal area of any person; or

(h) defecation or urination for the purpose of the sexual stimulation of the viewer.

(7) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(8) "Visual medium" means:

(a) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(b) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite, transmission, or other method.

(9) "Sexual contact" means any touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with intent to abuse, humiliate, harass, degrade, or arouse or gratify either party or a third party.

(10) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight, of the vagina or anus by an object, or any part of the body, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

### **13.15.2. Testimony-Evidence - Written Notion -Admissibility**

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

(2) Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, non-chastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3); provided, however, when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the crime.

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

(a) A written pretrial motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim;

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

- (c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court;
- (d) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent; is not inadmissible because its corroborative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant; the court shall issue an order stating what evidence may be introduced by the defendant, that order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(4) Nothing in this Section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court shall require a hearing pursuant to subsection (3) concerning presentation and admission of such evidence.

(5) A statement made by a child under the age of ten (10) describing any act of sexual contact performed with or on the child by another, not otherwise admissible by statute or court rule, is admissible in evidence under this Section, if the court finds, in a hearing conducted outside the presence of a jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability, and the child either (i) testifies at the proceedings, or (ii) is unavailable as a witness, provided, that when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

### **13.15.3. Defense to Prosecution Under This Chapter**

(1) In any prosecution under this Section in which lack of consent is based solely upon the victim's being bodily helpless, it is a defense that the defendant must prove by a preponderance of the evidence that at the time of the crime, the defendant reasonably believed that the victim was not mentally incapacitated and/or bodily helpless.

(2) In any prosecution under this Section in which the crime, or degree of the crime depends on the victim's age, it is no defense that the perpetrator believed the victim to be older, as the case may be, provided however, that it is a defense that the defendant must prove by a preponderance of the evidence that at the time of the crime, the defendant reasonably believed the alleged victim to be older based upon declaration as to age by the alleged victim.

### **13.15.4. Child Rape in the First Degree**

A person is guilty of child rape in the first degree when the person engages in sexual abuse of a child with another person who is less than twelve (12) years old.

Forcible compulsion or the ability to consent are not necessary elements to child rape in the first degree.

Child rape in the first degree is a felony.

### **13.15.5. Child Rape in the Second Degree**

A person is guilty of child rape in the second degree when such person engages in sexual abuse of a child with another person, not married to the perpetrator, who is twelve (12) years of age or older but less than sixteen (16) years old.

Child rape in the second degree is a felony.

### **13.15.6. Sexual Abuse of Children**

A person is guilty of sexual abuse of children if he knowingly:

(1) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(2) photographs, films, videotapes, or records a child engaging in sexual conduct, actual or simulated;

(3) persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated;

(4) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises material consisting of or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual conduct, actual or simulated; or

(5) finances any of the activities described in this Section, knowing that the activity is of the nature described in this Section.

(6) For purposes of this Section, "child" means any person less than 16 years old.

Sexual abuse of children is a felony.

### **13.15.7. Indecent Liberties**

A person is guilty of indecent liberties when he knowingly causes another person who is not his spouse to have sexual contact with him or another:

(1) by forcible compulsion; or

(2) when the other person is less than 16 years of age; or

(3) when the other person is incapable of consent by reason of being mentally incapacitated, or physically helpless.

Indecent liberties is a felony.

### **13.15.8. Prostitution**

A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

Prostitution is a misdemeanor.

### **13.15.9. Prostitution-Sex of Parties Immaterial – No Defense**

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

(1) such persons were of the same sex; or

(2) the person who received, agreed to receive, or solicited a fee was a male and

the person who paid or agreed or offered to pay such fee was female.

### **13.15.10. Promoting Prostitution - Definitions**

The following definitions are applicable in § 13.15.11 through § 13.15.13:

(1) "Advances prostitution". A person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

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

### **13.15.11. Promoting Prostitution in the First Degree**

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

(1) advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution or profits from prostitution that results from such threat or force; or

(2) advances or profits from prostitution of a person less than 18 years old.

Promoting prostitution in the first degree is a felony.

### **13.15.12. Promoting Prostitution in the Second Degree**

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

(1) profits from prostitution; or

(2) advances prostitution.

Promoting prostitution in the second degree is a felony.

### **13.15.13. Permitting Prostitution**

A person is guilty of permitting prostitution if having possession or control of premises that he knows are being used for prostitution purposes, he fails without lawful excuse to make reasonable effort to halt or abate such use.

Permitting prostitution is a misdemeanor.

### **13.15.14. Public Indecency**

A person is guilty of public indecency if he makes any open and obscene exposure of his person, or the person of another, knowing that such conduct is likely to cause reasonable affront or alarm.

Public indecency is a misdemeanor unless such person exposes himself to a person under the age of 16, years, in which case public indecency is a gross misdemeanor.

### **13.15.15. Rape in the First Degree**

A person is guilty of rape in the first degree when such person engages in sexual intercourse

with another person, not married to the perpetrator, by forcible compulsion where the perpetrator or an accessory:

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

Rape in the first degree is a felony. No person convicted of rape in the first degree shall be granted a deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility.

### **13.15.16. Rape in the Second Degree**

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

- (1) by forcible compulsion; or
- (2) when the victim is incapable of consent by reason of being bodily helpless or mentally incapacitated.

Rape in the second degree is a felony.

### **13.15.17. Rape in the Third Degree**

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

- (1) where the victim did not consent as defined in § 13.15.1(1) to sexual conduct with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct; or
- (2) where there is threat of substantial unlawful harm to property rights of the victim.

Rape in the third degree is a felony.

## **13.16. ABUSE OF OFFICE**

### **13.16.1. Bribery of a Public Servant**

A person is guilty of bribery if with the intent to secure a particular result in a particular matter involving the exercise of the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity, the person offers, confers, or agrees to confer any pecuniary benefit upon such public servant

Bribery is a felony.

### **13.16.2. Official Misconduct**

A public servant is guilty of official misconduct if, with intent to obtain pecuniary or other benefit for himself or another, or deprive another person of a lawful right or privilege the public servant:

- (1) offers, confers, requests, accepts, or otherwise agrees to an agreement or understanding with another person that his vote, opinion, judgment, exercise of discretion,



or other action, with intent thereby, to secure or attempt to secure a particular result in an official matter; or

(2) requests, accepts, or agrees to accept compensation for advice or other assistance in preparing a bill, contract, claim, or transaction in which the public servant is likely to have an official discretion to exercise; or

(3) knowingly offers, pays, or agrees to pay compensation to another public servant for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction in which the public servant is likely to have an official discretion to exercise

(4) willfully commits an unauthorized act under color of law; or

(5) willfully refrains from performing a duty imposed upon him by law.

It is no defense to a prosecution under this Section that the public servant sought to be influenced was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

Official misconduct is a felony.

## **13.17. CRIMES AGAINST ADMINISTRATION OF JUSTICE**

### **13.17.1. Definitions**

The following definitions apply to this Section 17:

(1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, that could have affect on the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

(2) "Oath" means an affirmation and every other mode authorized by law of attesting to the truth of that that is stated; in this Section, written statements shall be treated as if made under oath if:

- (a) the statement was made on or pursuant to instructions on an official form bearing notice, Authorized by law, to the effect that false statements made therein are punishable; or
- (b) the statement recites that it was made under oath, the declarant was aware of such recitation at the time he made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto;
- (c) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute or regulatory provision;

(3) "Official proceeding" means a proceeding heard before any legislative, Judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;

(4) "Juror" means any person who is a member of any Jury, including a grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a Jury; the term juror also includes any person who has been drawn or summoned

to attend as a prospective juror;

(5) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

### **13.17.2. Perjury in the First Degree**

A person is guilty of perjury in the first degree if, in any official proceeding, he knowingly makes a materially false statement under an oath required or authorized by law.

Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this Section.

Perjury in the first degree is a felony.

### **13.17.3. Perjury in the Second Degree**

A person is guilty of perjury in the second degree if, with intent to mislead a public servant in the performance of his duty, he knowingly makes a materially false statement under an oath required or authorized by law.

Perjury in the second degree is a felony.

### **13.17.4. False Swearing**

A person is guilty of false swearing, if he makes a false statement, that he knows to be false, under an oath required or authorized by law.

False swearing is a gross misdemeanor.

### **13.17.5. Perjury and False Swearing - Inconsistent Statements Degree of Crime**

Where, in the course of one or more official proceedings, a person makes inconsistent material statements under oath, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and known by the defendant to be false. In such case, the prosecution shall prove that material statement was false, but only that one or the other was false and known by the defendant to be false.

The highest crime of which a person may be convicted in such an instance as set forth in this Section shall be determined by hypothetically assuming each statement to be false. If perjury of different degrees would be established by the making of the two statements, the person may only be convicted of the lesser degree. If perjury or false swearing would be established by the making of the two statements, the person may only be convicted of false swearing. For purposes of this Section 17, no corroboration shall be required of either inconsistent statement.

### **13.17.6. Perjury and False Swearing - Retraction**

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

### **13.17.7. Perjury and False Swearing - No Defense**

It is no defense to a prosecution for perjury or false swearing:

- (1) that the oath was administered or taken in an irregular manner; or
- (2) that the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law.

### **13.17.8. Statement of What One Does Not Know to be True**

Every unqualified statement that a person does not know to be true is the same as a statement that he knows to be false.

### **13.17.9. Bribery of a Witness**

A person is guilty of bribery of a witness if he offers, confers, or agrees to confer any benefit upon a witness or person he has reason to believe is about to be called as a witness in any official proceeding with intent to:

- (1) influence the testimony of that person; or
- (2) induce that person to avoid legal process summoning him to testify; or
- (3) induce that person to absent himself from an official proceeding to that he has been legally summoned.

Bribing a witness is a felony.

### **13.17.10. Witness Receipt of Bribery**

A witness or a person who has reason to believe he is about to be called as a witness in any official proceeding is guilty of receiving a bribe if he requests, accepts, or agrees to accept any benefit pursuant to an agreement or understanding that:

- (1) his testimony will thereby be influenced; or
- (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 that he has been legally summoned.

Witness receipt of bribery is a felony.

### **13.17.11. Intimidating a Witness**

A person is guilty of intimidating a witness if, by use of a threat directed to a witness or a person he has reason to believe is about to be called as a witness in any official proceeding, he attempts to:

- (1) influence the testimony of that person; or
- (2) induce that person to elude legal process summing him to testify; or
- (3) induce that person to absent himself from such proceeding.

Intimidating a witness is a felony.

### **13.17.12. Jury Tampering**

A person is guilty of jury tampering if, with intent to influence a juror's vote, opinion, decision, or other official action in a case, that person attempts to communicate directly or indirectly with a juror other than as part of the proceedings in the trial of the case.

Jury tampering is a gross misdemeanor.

### **13.17.13. Tampering with Physical Evidence**

A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he:

- (1) destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or
- (2) knowingly presents or offers any false physical evidence,

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

Tampering with physical evidence is a gross misdemeanor.

## **13.18. OBSTRUCTION OF GOVERNMENTAL OPERATION**

### **13.18.1. Definitions**

The following definitions are applicable in this Section unless the context otherwise requires:

- (1) "Court" means the court of the Quileute Tribe.
- (2) "Custody" means restraint pursuant to a lawful arrest or an order of a court;
- (3) "Detention facility" means any place used for the confinement, of a person:
  - (a) arrested, charged with, or convicted of a crime; or
  - (b) charged with being or adjudicated to be, a dependent or delinquent child; or
  - (c) held for extradition, or as a material witness; or
  - (d) otherwise confined pursuant to an order of a court; or
  - (e) in any work release, furlough, or other such facility or program;
- (4) "Contraband" means any article or thing that a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation, or order of a court.

### **13.18.2. Assaulting a Peace Officer**

Any person who knowingly causes bodily injury to a law enforcement officer while the officer was lawfully discharging his official duties is guilty of assaulting a peace officer.

Assaulting a peace officer is a felony.

### **13.18.3. Assaulting a Law Enforcement Animal**

Any person who knowingly causes bodily injury to, or the death of, a law enforcement animal, knowing that the animal is a law enforcement animal, and the injury or death occurs while the law enforcement animal is being used in the lawful discharge of its duties, is guilty of assaulting a law enforcement animal.

"Law enforcement animal" means an animal trained for and used in law enforcement work under the control of a peace officer, corrections officer, or probation officer.

Assaulting a law enforcement animal is a gross misdemeanor in the case of bodily injury and a felony in the case of death of the law enforcement animal.

#### **13.18.4. Bail Jumping**

Any person having been released by court order or admitted to bail with the requirement of a subsequent personal appearance before any court, whether tribal, state or federal, and knowingly fails without lawful excuse to appear as required is guilty of bail jumping.

Unless established by the defendant, the failure to appear when required is presumed to be without lawful excuse.

Bail jumping is a felony if the crime for that the person was held, charged, or convicted was a felony; a gross misdemeanor if the crime for that the person was held, charged or convicted was a gross misdemeanor; and a misdemeanor if the crime for that the person was held, charged or convicted was misdemeanor.

#### **13.18.5. Compounding**

A person is guilty of compounding if he requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he will refrain from initiating any prosecution for a crime; or, he confers, or offers or agrees to confer, any pecuniary benefit upon another pursuant to an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

In any prosecution under this Section, it is a defense if established by a preponderance of the evidence that the pecuniary benefit did not exceed an amount that the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

Compounding is a gross misdemeanor.

#### **13.18.6. Escape in the First Degree**

A person is guilty of escape in the first degree if, being detained pursuant to a conviction of a felony, he escapes from custody or a detention facility.

Escape in the first degree is a felony.

#### **13.18.7. Escape in a Second Degree**

A person is guilty of escape in the second degree if:

- (1) he attempts to, or escapes from a detention facility; or
- (2) having been charged with a felony, he attempts to, or escapes from custody.

Escape in the second degree is a felony.

#### **13.18.8. Escape in the Third Degree**

A person is guilty of escape in the third degree if he attempts to, or escapes from custody.

Escape in the third degree is a gross misdemeanor.

#### **13.18.9. Flight to Avoid Prosecution**

A person is guilty of flight to avoid prosecution if he willfully and knowingly flees from the Jurisdiction of the Quileute Tribe or the Quileute tribal court to avoid prosecution in any criminal matter pending before the tribal court.

Flight to avoid prosecution is a gross misdemeanor.

#### **13.18.10. Intimidating a Public Servant**

A person is guilty of intimidating a public servant if, by use of a threat, he attempts to

influence a public servant's vote, opinion, decision, or other official action as a public servant.

Intimidating a public servant is a felony.

#### **13.18.11. Obstructing a Peace Officer**

Any person who refuses or knowingly fails to make or furnish any statement, report, or information lawfully required of him by a peace officer, without lawful excuse, or, in any such statement or report makes any knowingly untrue statement to a peace officer, or knowingly hinders, delays, or obstructs by means of intimidation, force or bodily interference, any peace officer in the discharge of his official powers or duties is guilty of obstructing a peace officer.

Obstructing a peace officer is a misdemeanor.

#### **13.18.12. Obstructing a Public Servant**

Any person who refuses or knowingly fails to make or furnish any statement, report, or information lawfully required of him by a public servant, without lawful excuse, or, in any such statement or report makes any knowingly untrue statement to a public servant, or knowingly hinders, delays, or obstructs by means of intimidation, force or bodily interference, any public servant in the discharge of his official powers or duties is guilty of obstructing a public servant.

Obstructing a public servant is a misdemeanor.

#### **13.18.13. Refusing to Summon Aid for a Peace Officer**

A person is guilty of refusing to summon aid for a peace officer if, upon request by a person he knows to be a peace officer, he unreasonably refuses or fails to summon aid for such peace officer.

Refusing to summon aid for a peace officer is a misdemeanor.

#### **13.18.14. Refusing to Aid a Peace Officer**

A person is guilty of refusing to aid an officer if he neglects or refuses, when called upon by a peace officer, to assist that officer or any other peace officer in the lawful arrest of any person charged or convicted of any crime, or to assist in conveying the offender to the nearest place of confinement. It shall be a defense to this crime that a person refused to aid an officer because he had a reasonable belief that he would be physically endangered by assisting the officer.

Refusing to aid an officer is a gross misdemeanor

#### **13.18.15. Resisting Arrest**

A person is guilty of resisting arrest if he willfully prevents or attempts to prevent a peace officer from lawfully arresting him.

Resisting arrest is a misdemeanor.

#### **13.18.16. Rendering Criminal Assistance -- Definition**

A person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he knows is being sought by law enforcement officials for the commission of a crime, has been charged with a crime, or has escaped from custody, or a detention facility, he:

- (1) harbors or conceals such person; or

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

### **13.18.17. Rendering Criminal Assistance in the First Degree**

A person is guilty of rendering criminal assistance in the first degree if he renders criminal assistance to a person who is being sought for the commission of any felony, has been charged with the commission of any felony, or has escaped from custody while being detained for suspicion of commission of any felony, or escaped from detention facility.

Rendering criminal assistance in the first degree is a felony.

### **13.18.18. Rendering Criminal Assistance in the Second Degree**

A person is guilty of rendering criminal assistance in the second degree if he renders criminal assistance to a person who has committed or is being sought for the commission of any gross misdemeanor, has been charged with the commission of any gross misdemeanor, or has escaped from custody while being detained for suspicion of commission of any gross misdemeanor, or escaped from detention facility.

Rendering criminal assistance in the second degree is a gross misdemeanor.

### **13.18.19. Rendering Criminal Assistance in the Third Degree**

A person is guilty of rendering criminal assistance in the third degree if he renders criminal assistance to a person who is being sought for the commission of any misdemeanor, has been charged with the commission of any misdemeanor, or has escaped from custody while being detained for suspicion of commission of any misdemeanor.

Rendering criminal assistance in the third degree is a misdemeanor.

## **13.19. CRIMES AGAINST PUBLIC ORDER**

### **13.19.1. Abandonment of Vehicles**

(1) Any vehicle appearing not to be in normal use and has not been moved from the roads or streets under the jurisdiction of the Quileute Indian Tribe for a period of sixty (60) days shall be presumed to be abandoned by the owner.

(2) Any person found guilty of abandoning a vehicle on the roads or streets under the jurisdiction of the Quileute Reservation shall be ordered to remove the vehicle or to forfeit all rights in such vehicle, and the court may order the abandoned vehicle to be destroyed, sold or otherwise disposed of.

(3) Any net proceeds above the expenses of any sale of an abandoned vehicle shall be remitted to the owner of record; otherwise, expenses of disposition of the vehicle incurred by the court shall be assessed against the owner of record.

Abandonment of a vehicle is a gross misdemeanor.

### **13.19.2. Abandoning Refrigeration Equipment**

A person is guilty of abandoning refrigeration equipment if he discards, abandons or leaves in any place accessible to children any refrigerator, icebox, or deep-freeze locker having a capacity of one and one-half cubic feet or more, that is no longer in use, and that 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.

Abandoning refrigeration equipment is a gross misdemeanor.

### **13.19.3. Adulteration**

A person is guilty of adulteration if he manufactures, knowingly sells, or offers for sale, or willfully keeps any food, drug, or drink that is adulterated with a harmful substance, or that, because of a defect in its manufacturing process, is harmful when ingested.

Adulteration is a gross misdemeanor.

### **13.19.4. Allowing a Vicious Animal at Large**

(1) A person having the care or custody of any animal known to possess any vicious or dangerous tendencies, and who allows the same to escape or run at large in any place or manner is guilty of a allowing a vicious animal at large.

(2) A person may lawfully kill such animal when reasonably necessary to protect his own safety.

Allowing a vicious animal at large is a gross misdemeanor.

### **13.19.5. Allowing Animals to Run Loose**

(1) A person is guilty of allowing animals to run loose if he willfully and knowingly allows an animal including livestock, horses, fowl, pets, or other domestic animals, to enter, occupy, graze or remain upon any public or private lands, or waters, without being properly licensed or privileged to do so.

(2) In addition to any sentence imposed by the court, the court shall require the owner of the animal to pay restitution to any victim who has been damaged as a result of any animal running loose. Any animal that is allowed to run loose shall be impounded and either sold to pay for damages or turned over to the humane society for disposal.

Allowing animals to run loose is a gross misdemeanor.

### **13.19.6. Animal Fighting**

A person commits the crime of animal fighting if he:

(1) owns, trains, or orders the training of an animal with the intention that the animal engage in an exhibition of fighting; or

(2) promotes, conducts, participates in, or is present as a spectator, at an exhibition of animal fighting or preparations thereto; or

(3) keeps or uses, or in any way is connected with, or interested in the management of, or receives money for the admission of any person to any place kept or used for the purpose of an exhibition of animal fighting; or

(4) knowingly suffers or permits any place over that the person has possession or control to be occupied, kept or used for the purpose of an exhibition of animal fighting.

Animal fighting is a gross misdemeanor.



### **13.19.7. Cruelty to Animals**

A person is guilty of cruelty to animals if he willfully, recklessly or knowingly tortures, mistreats, mutilates, abandons, or unreasonably deprives of food or drink an animal that he owns, or has custody of, or if he causes or procures the same.

Cruelty to animals is a gross misdemeanor.

### **13.19.8. Desecration**

Any person who purposely defaces, damages pollutes or otherwise physically mistreats any public monument, structure or place of worship or burial, shall be deemed guilty of desecration.

Desecration is a gross misdemeanor.

### **13.19.9. Disobedience to Lawful Orders of Court**

Any person who shall willfully disobey any order, subpoena, or warrant or command duly issued, made or given by the court or any officer thereof, shall be deemed guilty of disobedience to lawful orders of the court.

Disobedience to lawful orders of the court is a gross misdemeanor.

### **13.19.10. Disorderly Conduct**

A person is guilty of disorderly conduct if he:

- (1) uses abusive language and thereby willfully creates a risk of assault; or
- (2) willfully disrupts any lawful assembly or meeting or persons without lawful authority; or
- (3) willfully obstructs vehicular or pedestrian traffic without lawful authority.

Disorderly conduct is a misdemeanor.

### **13.19.11. Disturbing the Peace**

A person is guilty of disturbing the peace if he, by means of a loud noise or disruptive act, endangers or disrupts the peace, tranquility, health, or welfare of any person or natural wildlife community.

Disturbing the peace is a misdemeanor.

### **13.19.12. Failure to Disperse**

A person is guilty of failure to disperse if:

- (1) he congregates with a group of three or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person, or substantial harm to property; and
- (2) he refuses or fails to disperse when ordered to do so by a peace officer or other public servant engaged in enforcing or executing the law; or
- (3) he fails to disperse, when ordered to do so, from any locatin where law enforcement officers, or other public servants charged with the investigation of crimes and/or accidents are engaged in investigating a possible crime or accident.

Failure to disperse is a misdemeanor.<sup>1</sup>

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<sup>1</sup> Annotation. This section is intended to supersede Quileute Law & Order Code  
Quileute Indian Tribe  
Law & Order Code  
Enacted by Resolution No. 2011-A-27 (5/12/11)

### **13.19.13. False Reporting**

A person is guilty of false reporting if, with knowledge that the information reported, conveyed or circulated is false, he initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, or emergency, knowing that such false report is likely to cause evacuation of a building, place of assembly, or transportation facility, or to cause public inconvenience or alarm

False reporting is a gross misdemeanor.

### **13.19.14. Fireworks- Crime and Infraction<sup>2</sup>**

(1) Any person who lights or explodes fireworks within 50 feet of any residential area is guilty of a fireworks crime. Fireworks crime is a gross misdemeanor.

(2) Any person, not subject to the criminal jurisdiction of the Quileute Tribe, who lights or explodes fireworks within 50 feet of any residential area is subject to a civil fine not greater than \$500 and/or exclusion from the Quileute Reservation.

### **13.19.15. Fishing and Hunting -- Reference**

Fishing and hunting activities within the jurisdiction of the Quileute Tribe is and shall be controlled pursuant to the Hunting and Fishing Ordinance.

### **13.19.16. Gambling -- Reference**

Gambling on the Quileute Reservation is and shall be controlled pursuant to the Quileute Gaming Ordinance, any duly approved tribal-state compact, and other applicable law.

### **13.19.17. Illegal Sale, Purchase or Possession of Liquor or Tobacco**

(1) No person shall:

- (a) sell or offer for sale by the drink or bottle, or keep or possess with intent to sell any liquor; or
- (b) purchase liquor from any person other than at a duly authorized tribal liquor store; or
- (c) transfer an identification of age to a minor for the purpose of permitting such minor to obtain liquor or tobacco, provided, that corroborative testimony of a witness other than a minor shall be a requirement of conviction; or
- (d) attempt to purchase liquor through the use of false or altered identification that falsely purports to show the individual to be over the age of 21 years.

(2) No person under 21 years of age shall purchase or possess any liquor.

(3) No person under 18 years of age shall purchase, consume or possess tobacco in any form.

(4) No person shall sell, or supply tobacco in any form to anyone under the age of 18 years.

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§ 13.28.1; however, the offense is reclassified as a misdemeanor rather than a gross misdemeanor.

<sup>2</sup> Annotation. This section is intended to supersede Quileute Tribal Council Resolution No. 97-A-58.

Illegal sale, purchase or possession of liquor or tobacco is a gross misdemeanor.

### **13.19.18. Intoxication**

Any person who, under circumstances not amounting to disorderly conduct, is under the influence of an intoxicating beverage, drugs or other controlled substance, or a substance having the property of releasing vapors to a degree that the person may endanger himself or another, in a public place or in a private place where he unreasonably disturbs another person, shall be deemed guilty of intoxication.

Intoxication is a gross misdemeanor.

### **13.19.19. Libel**

(1) Every malicious publication by writing, printing, picture, effigy, sign, radio broadcasting or that shall in any other manner transmit the human voice or reproduce the same from records or the appliances or means, with intent to expose any living person to hatred, contempt, ridicule, slander or blame, or to deprive him of that benefit of public confidence or social intercourse; or to expose the memory of one deceased to hatred, contempt, ridicule, slander or blame; or to injure any person, corporation or association of persons in his or their business or occupation, shall be guilty of libel.

(2) Every publication having the tendency or effect mentioned shall be deemed malicious unless justified or excused. Such publication is justified whenever the matter charged as libelous charges the commission of a crime, is a true and fair statement, and was published with good motives and for justifiable ends. It is excused when honestly made in belief of its truth and fairness and upon reasonable grounds for such belief, and consists of fair comments upon the conduct of any person in respect of public affairs, made after a fair and impartial investigation.

(3) Any method by that matter charged as libelous may be communicated to another shall be deemed a publication thereof.

Libel is a misdemeanor.

### **13.19.20. Littering**

Any person who throws, dumps, places or deposits any garbage, debris, junk, carcasses, trash, refuse, or any other substance of nature whatsoever upon the lands of another or upon any public land or water, as defined in § 13.19.24.1, without the consent of the owner, shall be deemed guilty of the crime of littering.

Littering is an infraction.<sup>3</sup>

### **13.19.21. Maintaining a Public Nuisance**

A person who maintains or allows his personal or real property to be in a state that poses a substantial threat to the health or safety of others is guilty of maintaining a public nuisance.

Maintaining a public nuisance is an infraction for the first crime, and any subsequent crimes shall be misdemeanors.

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<sup>3</sup> Annotation. This section is intended to supersede QUILEUTE LAW & ORDER CODE § 13.28.6.

### **13.19.22. Noise Pollution [to be added]**

### **13.19.23. Panhandling**

A person commits the crime of panhandling by:

(1) soliciting for personal gain money, food, clothing, or any other item of value in any public place, or on public land or water as defined in § 13.19.24.1; or

(2) posing as or misrepresenting himself to be an official or employee of the Quileute Tribe, the Quileute Tribal School, or any nonprofit entity for the purpose of falsely collecting a donation, tax, fee, or fine from another person.

(3) This § 13.19.23 shall not prohibit the legitimate solicitation of donations for nonprofit corporations and charitable causes; provided that any such solicitation has the prior written approval, by motion of the Quileute Tribal Council.

Panhandling is a misdemeanor.

### **13.19.24. Public Possession of Open Container**

A person who possesses any open container of alcohol while on any public land or public water is guilty of public possession of an open container of alcohol.

Public possession of an open container is a misdemeanor.<sup>4</sup>

#### **13.19.24.1. Public Land and Water – Definitions**

(1) "Public land" shall include but is not limited to, any lot or facility open for business to the public, any land that does not contain a dwelling or other structure, and any beach extending into the ocean for a distance of 0.25 miles from the low water mark.

(2) "Public water" shall include but is not limited to, any river or river bank within the boundaries of the Quileute Reservation or in the Quileute Tribe's usual and accustomed hunting and fishing grounds.

### **13.19.25. Riot**

A person is guilty of the crime of riot if, acting with three or more other persons, he 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.

The crime of riot is a felony if the actor is armed with a deadly weapon; the crime of riot is a gross misdemeanor in all other cases.

### **13.19.26. Taking, Concealing, Injuring, or Killing an Animal**

Any person, with intent to deprive or defraud the owner of an animal he owns, including livestock, horses, fowl, pets, or other domesticated animals:

(1) takes or leads away or confines the animal: or

(2) conceals the identity of the animal or its owner by obscuring or removing from the animal any collar, tag, license, tattoo or other identifying device or mark; or

(3) willfully kills or injures the animal unless excused by law, custom or usage of the Quileute Tribe, is guilty of taking, concealing, injuring, or killing an animal.

Taking, concealing, injuring, or killing an animal is a gross misdemeanor.

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<sup>4</sup> Annotation. This section supersedes QUILEUTE LAW & ORDER CODE § 13.28.2.

### **13.19.27. Throwing Away Lighted Material**

Any person who throws away any lighted tobacco, cigars, cigarettes, matches or other lighted materials from any vehicle, or in any place other than a safe receptacle, or without lawful authority, leave any open fire unattended is guilty of throwing away lighted material.

Throwing away lighted material is an infraction.

### **13.19.28. Vagrancy**

Any person, who is without a permanent abode and without any visible means of financial support, who fails to sufficiently provide for their basic needs and as a direct result engages in lewd, obscene, immoral or otherwise illegal acts in a public place or on public lands or waters, as defined in § 13.19.24.1, is guilty of vagrancy.

Vagrancy is a misdemeanor.

If a nonmember of the Quileute Tribe has more than two convictions for vagrancy, the court shall order the nonmember excluded from the Quileute Reservation for a period of not less than 6 months and not more than 12 months.<sup>5</sup>

### **13.19.29. Violation of Tribal Ordinance**

Any person who violates any tribal ordinance or other tribal enactment designed to preserve the peace, health, safety, welfare and morals of the Quileute Reservation, and whose activities have not been punished under any other section of this Title or of the ordinance or enactment involved, is guilty of violation of a tribal ordinance.

Violation of a tribal ordinance is an infraction.

## **13.20. WEAPONS CRIMES**

### **13.20.1. Definitions**

(1) "Dangerous Weapon" means any sand club, metal knuckles, spring blade knife, knife the blade of that is automatically released by a spring mechanism or other mechanical device, or any knife having a blade that opens, or falls, or is ejected into position by the force of gravity or by an outward, downward or centrifugal movement.

(2) "Machine gun" shall be defined as in RCW 3.41.200.

(3) "Firearm" shall be defined as in 44 U.S.C. §321 and shall include "destructive devices" as defined in that section. "Ball bearing" or "BB" guns shall be considered firearms.

### **13.20.2. Committing Crime When Armed; Inherently Dangerous Crimes**

(1) Any person who commits or attempts to commit any misdemeanor or gross misdemeanor listed in the following subsection (2) while armed with, or in the possession of any firearm, shall upon conviction be guilty of a felony, in addition to the penalty provided by law for the crime committed without use or possession of a firearm.

(2) For purposes of this Section, the following misdemeanors and gross misdemeanor are inherently dangerous when committed with the use of a firearm: assault in the third degree, provoking an assault, interfering with a public officer, disturbing a meeting, riot, remaining after a warning, obstructing firemen, petit larceny, injury to property, intimidating a public officer, shoplifting, indecent liberties and soliciting a minor for immoral purposes.

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<sup>5</sup> Annotation. This section supersedes QUILEUTE LAW & ORDER CODE § 13.28.3.

### **13.20.3. Being Armed Prima Facie Evidence of Intent**

In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a pistol and had no license to carry the same shall be prima facie evidence of his intention to commit said crime of violence.

### **13.20.4. Certain Persons Forbidden to Possess Firearms; Felony**

No person who has been convicted under this Title or elsewhere of a crime of violence shall own a pistol or have one in his possession or under his control. Such person, upon being convicted of a violation of this Section shall be guilty of a felony.

### **13.20.5. Sale, Possession or Use of Certain Weapons.**

No person shall:

- (1) sell, dispose of or have in his possession a dangerous weapon; or
- (2) use a device for suppressing the noise of any firearm; or
- (3) carry with intent to conceal a dagger or dangerous weapon; or
- (4) carry a concealed pistol without the appropriate license from the Quileute Indian Tribe and the State of Washington.

Sale, possession or use of certain weapons is a gross misdemeanor.

### **13.20.6. Loaded Firearms in Vehicles**

No person shall carry a loaded firearm in any vehicle without a license from the Quileute Tribe, if required, and the State of Washington.

Loaded firearms in vehicles is a misdemeanor.

### **13.20.7. Sale or Possession of Machine Guns**

No person shall sell, furnish or have in possession any machine gun, or any part thereof, capable of use or assembling or repairing any machine gun. No person shall set a spring gun.

Sale or possession of machine guns is a felony.

### **13.20.8. Aiming or Discharging Firearms**

(1) No person shall willfully discharge any firearm, airgun or throw any destructive device within a settled community, along or across any public road or highway, or any other place where any person might be endangered by it regardless of whether injury results.

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

Aiming or discharging firearms is a misdemeanor.

### **13.20.9. Intimidation by Use of Certain Weapons**

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

Intimidation by use of certain weapons is a gross misdemeanor.

### **13.20.10. Exceptions to Sections 13.20.8(2) and 13.20.9**

Sections 13.20.8(2) and 13.20.9 shall not apply to the following:

- (1) any person vested by law with a duty to preserve public safety, maintain public order, or make arrests for crimes, while performing such duty; or
- (2) any person acting to protect himself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person; or
- (3) any person making or assisting in making a lawful arrest of a felony; or
- (4) any person engaged in military activities sponsored by the federal government.

### **13.20.11. Permitting Possession of Firearms by a Minor**

No person shall allow a minor under the age of 16 years to possess any firearm for hunting, target practice, or any other purpose except:

- (1) while accompanied by or under the immediate charge of his parent or guardian or other adult approved for the purpose of this Section by the parent or guardian; or
- (1) while under the supervision of a certified safety instructor at an established gun range or firearm training class.

Permitting possession of firearms by a minor is a misdemeanor.

### **13.20.12. Delivery of Pistol to Certain Persons**

No person shall deliver a pistol to any person under the age of 21 years, or to a person who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, a habitual drunkard, or of unsound mind.

Delivery of a pistol to certain persons is a misdemeanor.

## **13.21. DRUG RELATED CRIMES**

### **13.21.1. Definitions**

For purposes of § 13.21, unless the context indicates otherwise:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, direct inhalation, ingestion or any other means, to the body of a patient by a practitioner or authorized agent thereof acting in the course of his professional duties.
- (2) "Controlled substance" or "drug" means any substance defined as a controlled substance under the Uniform Controlled Substance Act of Washington. Controlled substance includes marijuana, in any form.
- (3) "Dispense" means to deliver a controlled substance to a person who lawfully possesses a controlled substance by or pursuant to the lawful order of a practitioner.
- (4) "Practitioner" means a physician, dentist, veterinarian, certified nurse practitioner, physician assistant or other person licensed, registered or otherwise permitted by law, to dispense or administer a controlled substance in the course of professional practice but does not include a pharmacist.
- (5) "Prescription" means a written, oral, or electronically transmitted direction, given by a practitioner for the preparation and use of a drug.

### **13.21.2. Causing Another Person to Ingest a Controlled Substance**

Any person who knowingly or willfully causes another person to ingest, by oral, intravenous, inhalation or other method of consumption, other than by administering or dispensing, a controlled substance without the consent of the person is guilty of a crime.

Causing another person to ingest a controlled substance is a gross misdemeanor.

### **13.21.3. Delivery of a Counterfeit Controlled Substance**

Any person who knowingly delivers a substance that is not a controlled substance upon the express or implied representation that the substance is a controlled substance, or delivers a substance that is not a controlled substance upon the express or implied representation that the substance is of such nature or appearance that the recipient of the delivery will be able to distribute the substance as a controlled substance, is guilty of a crime.

Delivery of a counterfeit controlled substance is a gross misdemeanor.

### **13.21.4. Distribution of Alcohol or Controlled Substances to Children**

A person is guilty of distribution of alcohol or controlled substances to children if he sells, barter or gives to a person under the age of 21 years, any alcoholic beverage, marijuana, narcotic drugs, or any controlled substance, not specifically prescribed for said child by a practitioner, or if he allows a person under the age of 21 years to use such substance in his presence.

Distribution of alcohol or controlled substances to children is a gross misdemeanor.

### **13.21.5. Intoxication by Inhalation**

Any person who willfully inhales, for the purpose of becoming intoxicated, any gasoline, lighter fluid, glue, cement, spray paint, paint thinner, canned air, nitrous oxide, or any similar product for that intoxication by inhalation is not its intended use, shall be deemed guilty of an crime. This Section excludes the inhalation of administered nitrous oxide or other similar substance.

Intoxication by inhalation is a misdemeanor.

### **13.21.6. Falsifying Drug Test Results**

Any person commits the crime of falsifying drug test results if he:

(1) uses, or possesses with the intent to use, any substance or device designed to falsify the results of a lawfully conducted test designed to detect the presence of a controlled substance; or

(2) induces another person to submit to a lawfully conducted test designed to detect the presence of a controlled substance on his behalf.

Falsifying drug test results is a misdemeanor.

### **13.21.7. Possession of Drug Paraphernalia**

#### **13.21.7.1. Definition**

(1) "Drug paraphernalia" shall be defined as stated in the currently effective RCW § 69.50.102, as it may be amended from time to time.

(2) A person is guilty of possession of drug paraphernalia if he is found in



possession of drug paraphernalia used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any such drug paraphernalia found within the Quileute Reservation shall be immediately seized by tribal peace officers without compensation to its owner and shall be held by the La Push Police Department until it is no longer needed as evidence or other lawful purposes, at that time it shall be destroyed or otherwise disposed of as ordered by the tribal court.

Possession of drug paraphernalia is a misdemeanor.

### **13.21.8. Providing Drug Test Falsification Equipment**

Any person who willfully delivers, possesses with the intent to deliver, or manufactures with the intent to deliver a substance or device designed to enable a person to falsify the results of a drug test is guilty of a crime.

Providing drug test falsification equipment is a misdemeanor.

### **13.21.9. Sale of Drug Paraphernalia**

Any person who sells, transfers, or offers to sell or transfer any drug paraphernalia including marijuana and hash pipes, bongs, roach holders and any other containers and devices commonly used in connection with the consumption or manufacture of any controlled substance within the Quileute Reservation is guilty of a crime. Any drug paraphernalia found within Quileute the Reservation shall be immediately seized by tribal law enforcement authorities without compensation to its owner and shall be held by the La Push Police Department until it is no longer needed as evidence or other lawful purposes, at that time it shall be destroyed or otherwise disposed of as ordered by the court.

Sale of drug paraphernalia is a misdemeanor.

### **13.21.10. Tampering with Drug Records**

Any person who alters, defaces, or removes a controlled substance label affixed by a manufacturer or pharmacist, affixes a false or forged label to a container or package containing controlled substances, or makes or uses a false or forged prescription for a controlled substance is guilty of an crime.

Tampering with drug records is a gross misdemeanor.

### **13.21.11. Unlawful Delivery of a Controlled Substance**

Any person who delivers, transfers, distributes or sells a controlled substance to another person is guilty of a crime. This provision excludes the delivery of a controlled substance by a pharmacist, practitioner, or any authorized agent thereof pursuant to a valid prescription.

(1) Unlawful delivery of a controlled substance in an amount under 40 grams is a gross misdemeanor.

(2) Unlawful delivery of a controlled substance in an amount over 40 grams is a felony.

### **13.21.12. Unlawful Manufacture of a Controlled Substance**

Any person who unlawfully cultivates or manufactures a controlled substance is guilty of a crime.

Unlawful manufacture of a controlled substance is a felony.

### **13.21.13. Unlawful Use or Possession of a Controlled Substance**

Any person who knowingly uses, consumes, possesses, or causes another person to possess a controlled substance without a valid prescription is guilty of a crime. This provision excludes pharmacists, practitioners, law enforcement officials, and any authorized agents thereof acting in the course of their professional duties.

(1) Possession of any controlled substance, other than methamphetamine, in an amount under 40 grams is a gross misdemeanor.

(2) Possession of any controlled substance, other than methamphetamine, in an amount over 40 grams is a felony.

(3) Possession of any amount of methamphetamine is a felony.

### **13.22. GANG RELATED CRIMES**

#### **13.22.1. Definitions**

For purposes of § 13.22, unless the context indicates otherwise:

(1) "Criminal street gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.

(2) "Pattern of criminal street gang activity" means the commission or attempted commission of, or solicitation or conspiracy to commit any combination of the following, on separate occasions within a three year period:

- (a) two or more felonies defined under Quileute law or the state in which they occur, or two crimes under the Major Crimes Act, 18 U.S.C. § 1153; or
- (b) three or more crimes under Quileute law, or misdemeanors defined under the laws of the state in which they occur; or
- (c) a combination of one felony or Major Crimes Act crime and any crime under Quileute law, or two misdemeanor crimes under the law of any state; or
- (d) the comparable number of delinquent acts or violations of law committed by a juvenile that would be classified as above if committed by an adult.

#### **13.22.2. Criminal Street Gang Activity – Enhancement of Penalties**

(1) Upon a finding at sentencing that the defendant committed a crime in violation of the Quileute law for the benefit of, at the direction of, or in association with any criminal street gang, the penalty for the crime, delinquent act, or violation shall be enhanced.

(2) The burden of proof required for a finding allowing sentence enhancement shall be a preponderance of the evidence; however, the burden of proof for a conviction of

the underlying offense shall be beyond a reasonable doubt. The enhancement shall be sentencing at the maximum punishment set forth in § 13.25.2.

### **13.22.3. Soliciting or Recruiting Criminal Street Gang Membership**

Any person who willfully causes, encourages, solicits, or recruits another person to join a criminal street gang that requires as a condition of membership, or continued membership, the commission of any crime is guilty of soliciting or recruiting criminal street gang membership.

Soliciting or recruiting criminal street gang membership is a gross misdemeanor.

### **13.22.4. Seizure of Profits, Proceeds, and Instrumentalities of Criminal Street Gang Activities or Recruitment; Forfeiture**

All profits, proceeds, and instrumentalities of criminal street gang activity or recruitment and all property used or intended or attempted to be used to facilitate the criminal activity or recruitment activities of any criminal street gang is considered contraband subject to seizure and forfeiture.

## **13.23. CRIME VICTIM PROTECTION**

### **13.23.1.1. Mandatory Protection Orders for Harassment Crimes**

When a person charged with any offense under § 13.10 is released from custody before trial, upon the request of the victim or tribal prosecutor, the court shall order that the accused:

- (1) stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;
- (2) refrain from contacting, interacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

### **13.23.1.2. Other Protection Orders**

When a person charged with an offense under this Code, other than under § 13.10, is released from custody before trial, upon the request of the victim or tribal prosecutor, the court may order that the accused:

- (1) stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;
- (2) refrain from contacting, interacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

### **13.23.1.3. Required Language**

Any order issued pursuant to § 13.23.1.1 or § 13.23.1.2 shall state:

**VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER § 13.23.1.6  
OF THE QUILEUTE LAW AND ORDER CODE.**

**13.23.1.4. Victim Notification of Final Disposition**

The LaPush Police Department and the tribal prosecutor shall notify the victim of final disposition of any case in which the victim is involved. If a condition of the defendant's sentence restricts the defendant's ability to contact a victim or witness, the court shall include that condition in writing in the final disposition order, and the tribal court clerk shall provide a certified copy of that order, which shall comply with § 13.23.1.3, to the victim and/or witnesses.

**13.23.1.5. Service of Protection Orders**

The tribal court clerk shall provide a certified copy of any protection order issued under § 13.23 to the victim, the LaPush Police Department, any affected witnesses, and the accused.

**13.23.1.6. Violation of Protection Orders**

Any person who willfully violates an order issued under § 13.23.1.1 or § 13.23.1.2 is guilty of violation of a protection order.

Violation of a protection order is a gross misdemeanor on the first occurrence. Violation of a protection order more than one time is a felony.

**13.24. DEFERRED PROSECUTION**

**13.24.1. Deferred Prosecution -- Minor First Crimes**

(1) The tribal prosecutor may enter into a deferred prosecution agreement with a person charged for the first time with a misdemeanor, gross misdemeanor, or fishing violation where no firearm was used in the crime and where no violence occurred in connection with the crime.

(2) The agreement shall be signed by the judge and it shall set forth the following conditions:

- (a) the defendant shall refrain from engaging in any unlawful activity for a specified period of time up to one year;
- (b) delay in bringing the case to trial shall not be grounds for dismissal;
- (c) the prosecutor shall defer prosecution of the defendant during the specified period of time if the defendant is not charged with any criminal or fisheries crimes during that time; and
- (d) the court shall dismiss with prejudice the charges against the defendant at the end of the specified period of time if the defendant has not been charged with any criminal or fisheries violation during that time.

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

## **13.24.2. Deferred Prosecution -- Crimes Involving Alcohol or Drug Abuse**

### **13.24.2.1. Timing and Contents of Request for Deferred Prosecution**

A person charged with a misdemeanor or gross misdemeanor who is affected by alcohol or drug abuse may request the tribal court to be considered for a deferred prosecution program under this Section.

- (1) The request shall be made at arraignment or before the trial.
- (2) The person's request must state the following:
  - (a) the person charged suffers alcohol or substance abuse problems;
  - (b) those problems influenced the person's action in committing the crime charged;
  - (c) the person charged is in need of treatment for alcohol or substance abuse problems;
  - (d) without treatment, there is a great probability of future reoccurrence of similar misconduct; and
  - (e) a case history of the person's alcohol or drug problems.

### **13.24.2.2. Referral; Required Report**

In its sole discretion, the court may continue the arraignment and refer the person to a licensed substance abuse counselor for a diagnostic evaluation. The counselor shall conduct an examination and shall make a written report to the court with a copy to the defendant including the following findings:

- (1) a professional opinion as to whether the person suffers from the problem alleged; and
- (2) a professional opinion as to whether there is a probability that similar misconduct will reoccur in the future if the problem is not treated; and
- (3) a professional opinion as to whether extensive treatment is required; and
- (4) whether affective treatment for the person's problem is available; and
- (5) if treatment is recommended, a treatment plan specifying the location, nature, length, treatment time schedule and cost of the plan.

### **13.24.2.3. Required Contents of Recommended Treatment Plan**

If the report recommends treatment, the court shall examine the plan to ensure the proposed plan specifies the location, nature, length, treatment time schedule and cost.

### **13.24.2.4. Court's Determination to Order Treatment**

- (1) If the defendant agrees to comply with the terms and conditions of the plan and agrees to pay the cost thereof or arrange for the treatment, the court shall order that the defendant be accepted for deferred prosecution.
- (2) If treatment is not recommended, the plan does not meet the requirements in § 13.24.2.3, or the defendant declines to accept the treatment plan, the defendant shall be arraigned on the charges.

### **13.24.2.5. Use of Evidence re Request for Treatment**

Evidence pertaining to or resulting from the defendant's request and/or the evaluation is inadmissible in any trial on the charges but may be used after conviction in determining a sentence.

### **13.24.2.6. Effect of Defendant's Noncompliance with Treatment Plan**

If a defendant in a deferred prosecution program fails or neglects to fulfill any term or condition of the treatment plan, the facility or agency administering the treatment shall immediately report the breach to the court. Upon receiving such a report, the court shall hold a hearing to determine whether the defendant should be removed from the deferred prosecution program. If removed from deferred prosecution, the defendant shall be arraigned on the original charge.

## **13.25. SENTENCING**

### **13.25.1. Felony**

Every person convicted of a felony shall be punished by imprisonment for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than \$5,000, or both imprisonment and fine; provided however and notwithstanding § 13.25.10.2 below, that the court shall have no discretion to impose a term of imprisonment less than 5 days actually served unless the record clearly establishes that the person so convicted has committed no previous felonies.

### **13.25.2. Gross Misdemeanor**

Every person convicted of a gross misdemeanor shall be punished by imprisonment for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than \$3,000, or by both imprisonment and fine; provided however and notwithstanding § 13.25.10.2 below, that the court shall have no discretion to impose a term of imprisonment less than 2 days actually served unless the record clearly establishes that the person so convicted has committed no previous crimes..

### **13.25.3. Misdemeanor**

Every person convicted of a misdemeanor shall be punished by imprisonment for a maximum term fixed by the court of not more than three months, or by a fine in an amount fixed by the court of not more than \$1,000, or by both imprisonment and fine.

### **13.25.4. Infraction**

Every person convicted of an infraction shall be punished by a fine in an amount fixed by the court of not more than \$1,000.

### **13.25.5. Restitution**

If a person has gained money, or property, or caused a victim to lose money or property through the commission of a crime, in addition to the sentence identified above, the court may order the defendant to pay an amount not to exceed double the amount of the defendant's gain or victim's loss to provide restitution to the victim. In the event that restitution is ordered, the court must hold a separate hearing to determine the amount of the defendant's gain or victim's loss.

### **13.25.6. Enhancement of Penalties for Multiple Domestic Violence Offenses**

When a defendant admits to, pleads guilty to, or is convicted of two or more crimes involving domestic violence within 5 years, the court shall enhance the penalty one degree above the penalty otherwise required for that offense.

### **13.25.7. Enhancement of Penalties for Street Gang Activities**

See § 13.22.2, above.

### **13.25.8. Exercise of Enhanced Sentencing Authority under the Tribal Law and Order Act of 2010**

Upon the court making the findings in § 13.25.8.3, below, the court may enhance penalties as follows:

#### **13.25.8.1. Enhanced Sentencing Authority for Conviction of a Felony**

Upon the court's exercise of enhanced sentencing authority under this Section and supported by findings required in § 13.25.8.3, the court may sentence a person convicted of a felony to imprisonment for a maximum term of not more than 3 years, or by a fine of not more than \$15,000, or both imprisonment and fine; provided however and notwithstanding § 13.25.10.2 below, that the court shall have no discretion to impose a term of imprisonment less than 5 days actually served.

#### **13.25.8.2. Enhanced Sentencing Authority for Conviction of a Gross Misdemeanor**

Upon the court's exercise of enhanced sentencing authority under this Section and supported by findings required in § 13.25.8.3, the court may sentence a person convicted of a gross misdemeanor to imprisonment for a maximum term of not more than 2 years, or by a fine in an amount fixed by the court of not more than \$2,000, or by both imprisonment and fine; provided however and notwithstanding § 13.25.10.2 below, that the court shall have no discretion to impose a term of imprisonment less than 2 days actually served.

#### **13.25.8.3. Findings Required to Support Enhanced Sentencing Authority**

Prior to exercising enhanced sentencing authority under this Section, the court shall conduct a sentencing hearing at which the convicted offender shall have all rights to which he is entitled at trial of the offense; provided, however, that the evidentiary standard for determining the following matters shall be clear and convincing rather than beyond a reasonable doubt. The court shall determine that:

- (1) the person convicted had, at all times during the proceeding, the assistance of an attorney licensed to practice law in any jurisdiction of the United States;
- (2) the judges presiding over all proceedings on the charges for which the person is convicted are licensed to practice law in any jurisdiction of the United States; and
- (3) the Quileute Tribe has published its criminal laws or made such laws and documents interpreting those laws publicly available.

#### **13.25.8.4. Serving Sentences Imposed by Enhanced Sentencing Authority**

In the exercise of its enhanced sentencing authority under this Section, the court may require a convicted offender to serve the sentence

(1) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines developed by the Bureau of Indian Affairs, in consultation with Indian tribes; or

(2) In the nearest appropriate federal facility, at the expense of the United States pursuant to a memorandum of agreement with the Bureau of Prisons pursuant to § 304(4) of the Tribal Law and Order Act of 2010 and 25 U.S.C. § 1302 as amended by that Act,

(3) in a state or local government-approved detention or correctional center pursuant to an agreement between the Quileute Tribe and the state or local government; or

(4) in accordance with article VII (Bill of Rights) of the QUILEUTE CONSTITUTION and the Indian Civil Rights Act, § 1302, as amended by the Tribal Law and Order Act of 2010, to serve an alternative form of punishment, as determined by the judge of the Quileute Tribal Court in accordance with this Title and other applicable Quileute law.

#### **13.25.9. Discretion to Impose Concurrent or Consecutive Sentences**

The Quileute Tribal Court shall have discretion to require that any sentence made hereunder be either concurrent or consecutive; provided, however, that the court may not impose any consecutive sentence longer than 9 years.

#### **13.25.10. Suspending Sentences**

##### **13.25.10.1. Authorization**

Subject to the felony and gross misdemeanor sentencing provisions above, whenever any person shall be convicted of any crime, the court may in its discretion, at the time of imposing sentence upon such person, direct that such sentence, or any part of it, be stayed and suspended until otherwise ordered by the court, and that the sentenced person be placed under the charge of the tribal court clerk during the term of such suspension, upon such terms as the court may determine; provided however, that as a condition to suspension of sentence, the court may require the convicted person to make such monetary payments, on such terms as the court deems appropriate under the circumstances, as are necessary to meet the expenses of the prosecution of terms of suspension.

##### **13.25.10.2. Use Encouraged**

The court is encouraged to investigate the use of suspended sentences in all cases, including the use of community service work, alcohol or drug treatment facilities, and all other available alternatives to imposition of fines and/or imprisonment.

##### **13.25.10.3. Failure to Comply**

Upon failure of an offender to comply with the terms of a suspension of his sentence, the court clerk is required to bring such failure to the attention of the court. After a hearing to investigate the allegations, at that the offender has the rights available to him that he had at trial, the court may revoke the suspension and order all orders of fines, and/or imprisonment immediately imposed; continue the suspension in effect charged; or continue the suspension in effect under new terms.



### **13.26. OTHER LAW**

As to any matters that are not covered by the traditional customs and usages of the Quileute Tribe, or by-laws, codes, ordinances and resolutions of the Tribal Council, or by applicable federal laws and regulations, the tribal court may be guided by common law as developed by state and federal courts.

### **13.27. DISPOSITION OF FINES**

All fines and fees collected by the court under the provisions of this Title shall be held in a special account of the Quileute tribal court to be used for solely for maintenance of the tribal court.

### **13.28. FORFEITURE**

In any case where contraband, fruits of a crime, or instrumentalities of crime have been seized, the court may order the forfeiture of such property. Any property forfeited shall be sold, destroyed or assigned to a branch of tribal government as directed by written court order.

### **13.29. EFFECTIVE DATE**

This Title XIII A shall take effect and be enforced immediately upon the approval, pursuant to Quileute Constitution, art. IV, § 1(j), of the Secretary of the Interior or his designee.

### **13.30. BIA APPROVAL**

Pursuant to Quileute Constitution, art. IV, § 1(j), this Title XIII A is approved by the Secretary of the Interior, or his designee, on this 20th day of May, 2011.