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AMENDMENT TO QUILEUTE LAW AND ORDER ORDINANCE NO. 74-A7

U.S. DEPARTMENT OF THE INTERIOR
MAY 1 9 1980

WHEREAS, the Quileute Tribe is an organized Indian Tribe, incorporated and chartered under the Indian Reorganization Act; and the Quileute Tribal Council is the duly constituted governing body of the Quileute Indian Reservation by authority of Article III of the Constitution and By-Laws of the Quileute Indian Tribe approved by the Secretary of the Interior on November 11, 1936; and,

WHEREAS, the Tribal Council has authority to enact ordinances under the provisions of Article VI of the Quileute Constitution; and,

WHEREAS, serious law enforcement problems have occurred and continue to occur on the Reservation threatening the health, security, and general welfare of the Quileute Indian Tribe, and making it difficult for the Tribe to effectively manage wildlife and natural resources; and,

WHEREAS, the Tribal Council deems it essential to the health security, and general welfare of the Quileute Indian Tribe and essential to the protection and continued conservation of their land, wildlife and natural resources that there be a comprehensive law and order code;

WHEREAS, the Quileute Tribal Council enacted Ordinance No. 74-A7 on October 9, 1974, which Ordinance, as amended on December 12, 1974, November 4, 1975, August 9, 1979, and March 13, 1980, was approved by the Superintendent, Western Washington Agency; and,

WHEREAS, the Quileute Tribal Council desires to amend and codify Ordinance No. 74-A7, the Quileute Law and Order Ordinance, as hereinafter set forth;

NOW, THEREFORE, the Quileute Tribal Council hereby promulgates the Quileute Law and Order Code by amending Ordinance No. 74-A7 as follows: revising Sections 2.03, 3.02 4.01, 4.05, 5.08, 6.02, Articles VII, XIII, and XIV. in their entirety, and adding 5.09.

- I. Judicial Power.
- II. Judges.
- III. The Court of Appeals.
- IV. The Trial Court.
- V. Juries.
- VI. Witnesses.
- VII. Spokesmen.
- VIII. General Rules of Court.
- IX. Clerk and Records.

- X. Rules of Criminal Procedure--Pretrial Procedure.
- XI. Rules of Criminal Procedure--Trial Procedure.
- XII. Rules of Criminal Procedure--Post Trial Procedure.
- XIII. Criminal Offenses.
- XIV. Reserved.
- XV. Expulsion and Exclusion of Non-Member from the Quileute Indian Reservation.
- XVI. Law Enforcement Officers.
- XVII. Habeas Corpus.
- XVIII. Civil Actions.
- XIX. Effect of Partial Invalidity.
- XX. Effective Date.

ARTICLE I. JUDICIAL POWER

1.01. Power Vested.

The judicial power of the people of the Quileute Reservation shall be vested in the Quileute Tribal Courts. When jurisdiction is vested in the courts, all the means necessary to exercise judicial power is also given. In the exercise of this jurisdiction, if the course of proceeding is not specified in this Ordinance, any suitable process may be adopted which may appear most in keeping with the spirit of Tribal Law.

1.02 Scope

The judicial powers shall extend to all cases and controversies in law and equity arising under the laws of the Quileute Indian Tribe.

Article II. JUDGES.

2.01 Composition of Tribal Court

The Tribal Court shall consist of one Chief Judge. Until such time as the judge has been appointed and trained, the judicial power shall be exercised, in whole or in part, by the Tribal Council or by a person or persons designated by the Tribal Council.

2.02 Appointment, Compensation and Term

The Chief Judge shall be appointed by the Tribal Council and shall be compensated on a basis to be determined by the Tribal Council. The judge appointed by the Tribal Council shall hold office for a period of four (4) years, unless sooner removed for cause as provided in this chapter, or by reason of the abolition of the office, but shall be eligible for re-appointment.

2.03 Eligibility

To be eligible to serve as a judge of the Quileute Tribal Court, a person must: (1) be over 18 years of age; (2) never have been convicted or found guilty of a felony or within one year last past of a misdemeanor involving moral turpitude; and (3) be of high moral character and physically sound. Preference in selection of judges shall be given to persons who are enrolled members of the Quileute Indian Tribe residing on the Quileute Indian Reservation.

2.04 Conflict of Interest

The Chief Judge shall not be qualified to act as such in any case wherein the judge has any direct interest. If the judge has a direct interest in any case, an Acting Chief Judge, selected pursuant to section 4.02, shall exercise judicial power.

2.05 Judicial Cooperation

All judges and personnel of the Tribal Court shall cooperate with all federal, state, county and municipal agencies, when such cooperation is consistent with the Tribal Code, but shall ever bear in mind that their primary responsibility is to the Quileute Indian Tribe.

2.06 Removal of Judges

Judges may be suspended, dismissed or removed for cause by the Tribal Council. Copies of a written statement setting forth the facts and the reasons for such proposed action must be delivered to the judge and to members of the Tribal Council at least ten days before the meeting of the Tribal Council before which the judge is to appear. A public hearing shall then be held by the Tribal Council wherein the accused judge shall be given an adequate opportunity to answer any and all charges. Causes judged sufficient for removal shall include, by way of example and not limitation: excessive use of intoxicants, immoral behavior, conviction of any offense other than minor traffic violations; use of official position for personal gain; desertion of office; or failure to perform duties. The decision of the Tribal Council shall be final.

2.07 Judges Pro-Tem

Whenever the need arises, the Tribal Council may appoint persons who otherwise meet the qualifications in this Code, to serve as Trial or Appellate Judges Pro-Tem.

ARTICLE III. THE COURT OF APPEALS

3.01 Composition

There shall not be a permanent court of Appeals. Upon a proper appeal from a final judgment of the Tribal Trial Court, a Tribal Court of Appeals shall be designated by the Tribal Council which shall consist of either (a) three members of the Tribal Council, or (b) three persons designated by the Tribal Council who satisfy the eligibility requirements of section 2.03, or (c) any judge from other Indian Reservation. Designation shall be formalized by Resolution.

3.02 Jurisdiction

The Court of Appeals shall have jurisdiction to hear and determine appeals from final judgments of the Tribal Trial Court. All such appeals shall be by review of the tape recording of the trial when available, and when not available, tried as a new trial except for those issues of fact already determined by a jury.

3.03 Limitations.

There may be established by Rule of Court the limitations, if any, to be placed upon the right of appeal, as to the type of cases which may be appealed, as to the grounds of appeal, and as to the manner in which appeals may be granted, according to the needs of the Quilaute Indian Tribe.

3.04 Notice of Appeal

Within ten (10) days from the day of judgment, the aggrieved party may file with the court written notice of appeal, and upon giving proper assurance to the court, through the posting of a bond or any other way that will satisfy the judgment if affirmed, the aggrieved party shall have the right to appeal, provided the case to be appealed meets the requirements established herein or by Rules of Court.

3.05 Stay of Execution.

In any case where a party has perfected his right of appeal as established herein or by Rules of Court, a stay of execution of judgment shall be granted and the sentence shall not be carried out unless affirmed by the Court of Appeals.

3.06 Appellate Trial

Within thirty days from the date of written notice of appeal, the appellate court shall convene to hear the case on appeal at such place as may be designated.

3.07 Conflict of Interest

No person shall be qualified to sit on the Court of Appeals in any case wherein he has any direct interest.

3.08 Decision

The Court of Appeals may either affirm the judgment as entered, modify it, or reverse the judgment by majority vote, and its decision shall be final.

ARTICLE IV. THE TRIAL COURT

4.01 Jurisdiction

(a) The Tribal Court shall have original jurisdiction over:
(1) All crimes proscribed by Tribal ordinance committed within the territorial jurisdiction of the Quileute Reservation by Indian persons. Said territorial jurisdiction shall embrace all land and property within the exterior boundaries of the Reservation. Provided that as to members of the Tribe, said territorial jurisdiction shall embrace all land and property within the exterior boundaries of the Reservation as established in 1889, any land added after that date, any land owned by the Tribe not within the exterior boundaries of the Reservation, and all usual and accustomed hunting and fishing areas established by the Quinalt Treaty of 1885. This jurisdiction shall be concurrent and not exclusive with respect to any offense over which a State or Federal Court may have lawful jurisdiction.

(2) Jurisdiction pursuant to Article XV to exclude non-members of the Tribe from the Reservation.

(3) All other matters which have been or may hereafter be lawfully placed within the jurisdiction of the Court by the Tribal Council or the Tribe.

(b) Entrance by any person onto the Quileute Reservation shall be deemed equivalent to and construed to be an acceptance of the civil jurisdiction of the Tribal Court and a consent to such jurisdiction over his person concerning any legal action pursuant to this Ordinance and shall further be deemed a consent to service of summons or process by registered mail with return receipt requested at his last known address.

4.02 Sessions of Court

Sessions of the Tribal Court for the trial of cases shall be held by the Chief Judge, or in case of the Chief Judge's disability, absence, or unavailability, by an Acting Chief Judge.

4.03 Acting Chief Judge

The Tribal Council shall designate, in writing, a person to act as Chief Judge whenever the Chief Judge is absent from the Reservation, is on vacation, is ill, or is otherwise unable to perform the duties of the office. The acting Chief Judge may exercise all of the power of the Chief Judge. Such Acting Chief Judge shall be either (a) a member of the Tribal Council, or (b) a person who satisfies the eligibility requirements of section 2.03. or (c) any judge from another Indian Reservation.

4.04 Rules of Court - Procedures

The time and place of court sessions, and all other details of judicial procedure not prescribed by the regulations of this code shall be governed by Rules of Court promulgated as herein provided. It shall be the duty of the Chief Judge to make recommendations to the Tribal Council for enactment or amendment of such Rules of Court as the judge believes to be in the interests of improved judicial procedures. In cases of failure of the Tribal Council to establish or approve Rules of Court, the Chief Judge shall have authority to establish such rules. Rules of Court, enacted or amended in the above manner, will be made a part of this Code.

4.05 Disqualification of Judge

A defendant, or other party, to any legal proceedings may accomplish a change of assignment of his case from one judge to another upon filing an affidavit or prejudice with the court, giving satisfactory reason for such change. Such affidavit shall be in written form and must be filed with the court before any trial action whatever has been taken by the initial judge. The initial judge shall pass on the adequacy of the affidavit of prejudice and enter the appropriate order, either hearing the case or reassigning it to another judge. Only one such change shall be allowed.

ARTICLE V. JURIES

5.01 Eligibility of Jurors

A list of eligible jurors shall be prepared by the Tribal Council each year. Any member of an Indian Tribe at least eighteen years of age and residing on the Reservation shall be eligible to be a juror. A member may decline jury duty upon good cause shown to the tribal judge.

5.02 Number of Jurors

In any case a jury shall consist of six jurors drawn from the current list of eligible jurors by the court clerk or the judge.

5.03 Impanelling a Jury

In cases to be tried to a jury, the clerk shall draw by lot at least twelve names from the jurors' list. Six members shall then be seated. The parties shall then be permitted alternately to question the jurors as to their impartiality and fairness and the Judge may excuse any juror if he feels in his judgment that the juror would not be completely fair and impartial. Each of the parties shall then have an opportunity to excuse three jurors commencing with the complainant and alternating until each has exercised as many challenges as he wishes not to exceed three. As a juror is excused, the clerk shall draw the name of another juror to take his place, and the parties shall alternately have an opportunity to examine such juror as to his fairness.

5.04 Jury Instructions

In all jury cases, after final argument, the trial judge shall instruct the jury as to the particular section of the Law and Order Code, tribal ordinance or enactment or other applicable law that is involved in the case and read them the provisions thereof. In all jury cases, the judge shall instruct the jury that they shall retire to consider the matter and that each juror shall be given an opportunity to state his opinion, that they shall elect a foreman and that their decision shall be by a unanimous vote in criminal cases and at least a five to one majority in civil cases. In all jury cases, the judge shall further instruct the jury as follows:

(a) Jury Instructions - Civil. In a civil jury case, the judge shall instruct the jury that the complainant has the burden of proving his case by the greater weight of the evidence and that if they find that he has proved his case

by the greater weight of the evidence, then their verdict should be for the plaintiff, but, if on the other hand, they find that he has not proved his case by the greater weight of the evidence, then their verdict should be for the defendant.

(b) Jury Instructions - Criminal. In a criminal Jury case, in addition to reading the particular section of the Law and Order Code, or trial ordinance or enactment that may be involved, the judge shall instruct the jury that the defendant is presumed to be innocent and must be proven guilty beyond a reasonable doubt and that if the jury believes beyond a reasonable doubt that the defendant is guilty, then they should find him guilty, but if they do not believe beyond a reasonable doubt that his is guilty, then they should find him not guilty.

5.05 Jury Instructions by a Party

In all jury cases, either party may propose the instructions to the jury which may be allowed by the trial judge if the judge finds that such instructions further the interests of justice.

5.06 Verdict and Judgment

After the jury has returned its verdict in open court with the parties present, the judge shall thereafter enter judgment upon such verdict, in accordance with the provisions of this Code.

5.07 Appeal

Any person aggrieved by the verdict of the jury or the judgment of the judge shall have the right to appeal such decision as provided in this Code.

5.08 Fees

Every person who is required to attend court for selection or service as a juror shall be entitled to a fee of \$10.00 a day for each day his services are required in court, plus \$.025 a mile for traveling to and from the court.

5.09 Failure to appear when called for jury duty shall be deemed an infraction with a penalty of not more than \$60.00.

ARTICLE VI. WITNESSES

6.01 Subpoenas

A Judge of the Quileute Tribal Court shall issue subpoenas for the attendance of witnesses either on his own motion or on the request of the Law and Justice Administrator or any of the parties to the case which subpoena shall bear signature of the judge issuing it. Failure to obey such subpoena shall be deemed an infraction and shall be fined not more than \$75.00. Service of such subpoenas shall be by a regularly acting member of the tribal police or by a person appointed by the court for that purpose.

6.02 Fees

Each witness answering such subpoena shall be entitled to a fee of \$5 a day for each day his services are required in court, plus \$.205 per mile for travel to and from the court. Witnesses who testify voluntarily shall be paid their actual traveling and living expenses incurred in the performance of their function by the party calling them, if the Court so directs.

6.03 Swearing in Witnesses

All witnesses shall be administered on oath by the Court as follows: "Do you swear (or affirm) to tell the truth in the matter now before you?"

ARTICLE VII. SPOKESPERSONS

7.01 Spokespersons Appearing in Tribal Court

Any person appearing in Tribal Court shall have the right to a spokesperson at his own expense, to assist him in presenting his case, provided that such spokespersons shall first have been admitted to the Tribal Court Bar. The Court may appoint a spokesperson to assist any person if, in the discretion of the Court, it appears necessary to protect such person's rights. A spokesperson need not be an attorney.

7.02 Tribal Court Bar - Admission

To be admitted to the Tribal Court Bar, a person must: (1) be of good moral character, (2) be approved by the Tribal Court, (3) sign and take the spokesperson's Oath, (4) pay the Tribal Court Bar administration fee, (5) be at least eighteen years of age.

7.03 Spokesperson's Oath

The oath which all persons desiring to appear as spokesperson in the Tribal Court shall take is as follows:

"Spokesperson's Oath"

Quileute, Indian Reservation, ss.

I, _____ do solemnly Swear:

1. I have read the Quileute Law and Order Code and am familiar with its contents;
2. I will support the Constitution of the Quileute Tribe in all respects;
3. I will abide by the rules established by the Quileute Tribal Council and the Quileute Tribal Court;
4. I will at all times maintain the respect due the Tribal Court and its officers;
5. I will not counsel or speak for any suit or proceeding which shall appear to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Quileute tribe, unless it be in defense of a person charged with a public offense.
6. I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge or jury by any false statements.
7. I will abstain from all offensive conduct in the Tribal Court.

Subscribed and sworn to before me this _____ day of _____, 19____.

7.04 Tribal Court Bar Roster

The clerk of the Tribal Court will maintain a roster of all spokespersons admitted to practice before the Tribal Court. The clerk will also keep on file the signed oaths of all such persons.

7.05 Tribal Court Bar - Disbarment

Any spokesperson violating the spokesperson's Oath shall be subject to disbarment. The Tribal Court judge shall prepare in writing a complaint against such spokesperson including reasons for disbarment. Within ten days of receipt of such complaint, the Court of Appeals shall hold a hearing at which time the spokesperson involved may present witnesses and a defense of his actions. The decision of the Court of Appeals shall be final.

7.06 Contempt of Court

Any spokesperson failing to maintain the respect due the Tribal Court or engaging in offensive conduct in the courtroom shall be deemed guilty of contempt of court and subject to immediate sentencing by the Tribal Court judge to imprisonment for a period not to exceed 3 days, or a fine not to exceed \$100, or both the jail sentence and fine.

7.07 Appeal

Any person denied admission to the Tribal Court bar or any spokesperson found guilty of contempt of court by the Tribal Court judge may appeal to the Court of Appeals. Such person or spokesperson shall have the right to a hearing before such panel within 10 days of his denial or conviction and shall have the right to present witnesses and present defense. The decision of a majority of the Court of Appeals shall be final.

7.08 Tribal Court Bar Admission fee.

Every person wishing to appear as the spokesperson in the Tribal Court will pay an admission fee of \$5.00. Such fee is to be used for the purpose of maintaining a Tribal Court Law Library. A judge may waive the Tribal Court Bar admission fee for good cause shown.

ARTICLE VIII. GENERAL RULES OF COURT

8.01 Conduct

All Court proceedings shall be conducted in a dignified and respectful manner. All persons addressing the Court shall arise and shall speak in a clear and courteous manner.

8.02 Time

All trials shall be commenced at a designated time determined by the Court with reasonable notice of such time being given to the parties.

8.03 No Discussion with Jurors

No person, including members of the Court's staff, any of the parties or witnesses, or any other person, shall discuss with any known juror, any case pending before such juror, or which may come before such juror, either before or during the trial and any juror who has any personal knowledge about the case or who has discussed it with any of the parties, witnesses or court officials, shall be excused by the judge.

8.04 No Discussion with Judge

No witness or party to any case shall under any circumstances either before or during trial attempt to discuss any case pending before the Court with any of the judges, except in open court and with either the Clerk of the Court or one of the other judges present and then shall under no circumstances attempt to influence the Court's decision unless in the course of regular court proceedings.

8.05 Conduct of Trial

Complainants shall make the opening statement setting forth the charge or charges against the defendant. The defendant shall have an opportunity to make a statement of his position. Upon the conclusion of such statement, the complainant shall call such witnesses and produce such exhibits as he may see fit. The defendant shall then have an opportunity to call such witnesses and produce such evidence as he may see fit. The complainant shall thereafter, in rebuttal, have an opportunity to call such witnesses and produce such evidence as he may see fit to rebut the evidence produced by the defendant. Both the complainant and the defendant shall have the right to cross-examine witnesses produced by the other side.

8.06 Final Agreement

Upon the conclusion of the evidence, the complainant shall be given an opportunity to argue his case. The defendant shall then be given opportunity to argue his case, and the complainant shall be given an opportunity to make a closing statement. Further argument may be allowed at the Court's discretion.

8.07 Judgment in Non-Jury Case

After final arguments in cases filed without a jury, the judge shall decide the case and render a judgment within a reasonable time, but not to exceed thirty (30) days from the conclusion of trial.

ARTICLE IX. CLERK AND RECORDS

9.01 Clerk

The Chief Judge with the concurrence of the Tribal Council shall appoint a Clerk of the Court. The Clerk of the Court shall be under the supervision of the Chief Judge. The Clerk shall render assistance to the Court, to the Appellate Court, to the police force of the Reservation, and to individual members of the Reservation in the drafting of complaints, subpoenas, warrants, and any other documents incidental to the lawful function of the court. It shall be the further duty of the clerk to attend and to keep a written record of all proceedings of the court, to administer oaths to witnesses, and to perform such other duties as the Chief Judge shall designate. The clerk, before entering upon the clerk's duties, shall, at tribal expense, post bond in an amount determined by the Tribal Council, or shall be covered by the blanket bond provided for all tribal employees.

9.02 Records

The Tribal Court shall keep for its own information and for inspection by duly qualified officials, a record of all proceedings of the court, which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of hearing or trial, by whom conducted, the findings of the court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case.

9.03 Copies of Laws

The Tribal Court shall be provided with copies of the Tribal Code, all Ordinances of the Council, and such Regulations as may be applicable to the conduct of the business of the Court.

ARTICLE X. RULES OF CRIMINAL PROCEDURE PRETRIAL PROCEDURE

10.01 Rules to Govern

These rules govern the procedures in all criminal cases in the Quileute Tribal Court. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expenses and delay.

10.02 Complaint

Any criminal complaint filed in the court to be valid shall state the following facts:

(a) The name of complaining witness, the name of the defendant and a statement whether the defendant is within the exterior boundaries of the Quileute Indian Reservation.

(b) A short statement of the acts constituting the offense in ordinary language, including the time and place of the acts and the names of all witnesses.

(c) The name of the judge who filed the complaint and the date of filing. A complaint shall be signed by the complaining witness and the judge.

(d) No complaint shall be filed charging the commission of any offense defined by this Code unless such offense shall have been committed within a one-year period prior to the date of the complaint.

10.03 Warrant to Apprehend

(a) An arrest warrant shall be issued by a judge, after a complaint has been filed from which it appears that there is probable cause to believe that an offense has been committed and that the defendant has committed it.

(b) The warrant shall contain the following information:

(1) The name of the person to be arrested, or if his name is unknown, any name or description by which he can be identified with reasonable certainty; and

(2) The offense or offenses charged in the complaint and,

(3) The date of issuance and signature of the judge.

10.04 Execution of Warrant

No law enforcement officer shall arrest any person for any offense defined in this Ordinance unless:

(a) The offense was committed in the presence of a law enforcement official, or

(b) The law enforcement Officer had reasonable cause to believe that the person has committed such an offense, or

(c) A warrant has been issued for the arrest of the person.

10.06 Warnings

When any person is arrested, he shall

(a) Be informed of the right to remain silent and that any statement made by him may be used against him.

(b) Be informed of his right to retain a spokesperson.

(c) Be informed of the complaint against him.

(d) If arrested pursuant to a warrant, receive a copy of the warrant at the time of arrest or as soon thereafter as possible.

10.07 Bail, Bonds and Fines

Except as provided for herein, every person charged with any offense before the Tribal Court may be admitted to bail. Bail shall be by cash deposit or by assurance of two reliable members of the community resident within the boundaries of the Reservation who shall execute an agreement in compliance with the form provided therefor to the effect that they will pay any bail forfeited. In no case shall the bail specified in the agreement exceed twice the maximum penalty set by the section of this Code for the offense for which the accused has been charged. The cash or bond agreement shall be executed before the court clerk, or any bonded employee authorized by the Tribal Council to accept bail. All such bonds shall be promptly filed with the Clerk of the Court.

*

(a) Personal Recognizance. In lieu of bail, a person charged with any offense may be released on his personal recognizance (PR) without posting bail or bond, pursuant to the discretion of the Court. In determining whether to grant PR, the Court may consider the following factors:

(1) Whether the person had identified himself satisfactorily;

(2) Whether detention appears necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace;

(3) Whether the person has ties to the community or is a local resident, so as to provide reasonable assurance of his appearance before the Trial Court, or whether there is substantial likelihood that he will refuse to appear for trial; and

(4) In any case, to secure his release the person must give his written promise to appear in Court as required by this citation.

(b) Bail Schedule. The Chief Judge may establish a bail schedule for all offenses under this Code and any other regulations, resolutions or ordinances promulgated by the Quileute Tribal Council. Any person arrested and taken into custody for violation of such Code and regulations may be released upon posting the specified bail with the clerk, or other person authorized by the Court to receive bail, unless released on personal recognizance or detention as ordered by the Court.

(c) Denial of Bail. The Court may deny a person release on bail if it appears reasonably certain that the person will pose a serious threat to the safety and well-being of himself, the Reservation, or its residents, if released, or if there is a substantial likelihood that the person will not appear for trial.

(d) Fine Schedule. The Chief Judge may also establish a schedule for fines for specified violations of this Code or any other resolutions, ordinances or regulations of the Quileute Tribe within the limits prescribed by the Code and the section establishing the offense.

(e) Payment of Fine Without Trial. The Court in its discretion may allow the payment of a fine without trial. A fine may be paid by the defendant advising the court, either in person, by telephone, or in writing, that he is willing to enter a guilty plea and pay the stated fine. In such cases, no court appearance shall be required, provided, the fine must be paid prior to the date set for the defendant's trial.

10.08 Forfeiture.

Upon good cause shown, the Tribal Court may increase or decrease the bail originally set. In no event shall the bail be set for more than \$5,000. If the defendant fails to appear before the Tribal Court as lawfully required, the Court may direct an entry of such failure to be made in the record, order the forfeiture of the bond or cash deposit and issue a warrant for the arrest of the defendant.

10.09 Return of Safety

Any cash or other property given as security by the surety or defendant shall be returned by the Court upon the appearance of the defendant on the date set for trial.

10.10 Detention and Arraignment

No person shall be detained, jailed or imprisoned under this Code for a period longer than 24 hours (exclusive of Saturdays and Sundays and holidays) without a hearing before a judge of the Tribal Court or release from custody. At the arraignment:

(1) The complaint shall be read to the defendant.

(2) The judge shall explain the offense and the penalties prescribed by this Code to the Defendant and shall determine that the defendant understands the nature of the charges and possible penalties.

(3) The judge shall advise the defendant of his right to remain silent and to have a spokesperson.

(4) The judge shall ask the defendant to plead not guilty, guilty or no consent.

10.11 Citation in Lieu of Detention

Whenever a person is arrested for a violation of this Code or any other resolution, ordinance or regulation of the Quilleute Tribe, the arresting officer, or any other authorized law enforcement officer, may serve upon the arrested person a citation and notice to appear in court, in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the enforcement officer may consider the following factors: (1) whether the person has identified himself satisfactorily; (2) whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace; (3) whether the person has ties to the community or is a local resident, so as to provide reasonable assurance

AMENDMENT TO QUILEUTE LAW AND ORDER ORDINANCE NO. 74-A7

WHEREAS the Quileute Tribe is an organized Indian Tribe, incorporated and chartered under the Indian Reorganization Act, and the Quileute Tribal Council is the duly constituted governing body of the Quileute Indian Reservation by authority of Article III of the Constitution and bylaws of the Quileute Indian Tribe approved by the Secretary of the Interior on November 11, 1936; and,

WHEREAS, the Tribal Council has authority to enact ordinances under the revisions of Article VI of the Quileute Constitution; and,

WHEREAS, the Quileute Tribal Council enacted Ordinance No. 74-A7 on October 9, 1974, which ordinance has been amended several times, the last amendment dated April 27, 1989,

WHEREAS, the Quileute Tribal Council finds it necessary to strengthen the laws of the Quileute Reservation and to amend the Law and Order code to facilitate the handling of cases in the Tribal Court System,

NOW, THEREFORE, The Quileute Tribal Council hereby promulgates the Quileute Law and Order Code by amending Ordinance No. 74-A7 as follows: Revising 10.04.

10.14 Trial Date

If the defendant enters any other plea, the judge shall set a date for trial not less than seven days nor more than -95 ninety days from the date of arraignment, provided that the trial may be set for less than seven days if an emergency exists and the defendant would not be unduly prejudiced thereby.

of his appearance before the Tribal Court, or whether there is substantial likelihood that he will refuse to respond to the citation; and (4) whether the person has previously failed to appear in response to a citation issued pursuant to this section or to other lawful process of the Tribal Court.

(1) The citation written to the offender shall include the name of the person, his address, the date of birth and sex, the date, time, and place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person to sign a promise to appear. To secure his release, the person must give his written promise to appear in court as required by the citation. The citation shall also state the time and place at which the person is to appear in Tribal Court to hear the charges against him and post bail, which shall be not less than 72 hours after the date of the citation, nor more than 35 days after the date of citation.

(2) The citation when completed by the officers shall serve as the complaint for the purpose of prosecution in Tribal Court. If a defendant fails to appear, the Chief Judge shall issue warrant of arrest and shall order any bail deposited by the defendant as hereafter set forth forfeited.

10.12 Failure to Plead

If the defendant fails to plead, the judge shall order the entry of a plea of Not Guilty.

10.13 Sentencing

If the defendant pleads Guilty, the judge shall sentence the defendant immediately or within a reasonable period.

10.14 Trial Date

If the defendant enters any other plea, the judge shall set a date for trial not less than seven days nor more than ~~thirty five~~ days from the date of arraignment, provided that the trial may be set for less than seven days if an emergency exists and the defendant would not unduly prejudiced thereby.

10.15 Release

The defendant shall be eligible for release from custody in accordance with the provisions of this Code.

10.16 Order for Detention.

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Unless so released, the judge may order the detention of the defendant by signing a written order to that effect.

10.17 Commitments.

There shall be issued for each person held for trial, a temporary commitment and for each person held after sentence, a final commitment.

10.18 Search and Seizure - Warrant

Every judge of the Quileute Tribal Court shall have the power to issue warrants for search and seizure of property within the jurisdiction of the Court provided that no warrant shall be issued except:

(a) Upon probable cause that an offense has been committed, supported by oath or affirmation signed by the complaining witness naming or describing the person and particularly describing the items or articles to be seized, the place to be searched and the reasons for its issuance; and,

(b) To a law enforcement officer to be served between 7:00 a.m. and 7:00 p.m. unless the judge for good cause authorizes service at another time and such authorization is noted on the warrant.

(c) If, in an emergency situation, the Chief Judge is not on the Reservation, the Chief Judge may authorize the Clerk of the Court by telephone to issue a warrant in the name of the Chief Judge.

10.19 Search and Seizure - No Warrant

No law enforcement officer shall search or seize any property without a warrant unless:

(a) He has reasonable cause to believe that the person in possession of such property is engaged in the commission of an offense; or

(b) The search is incidental to a lawful arrest and is reasonably related to the offense for which the defendant is taken into custody.

10.20 Extradition

(a) If a person is charged with a violation of the laws of any other tribe or reservation or the federal or a state government, the Tribal Court may order that such person be delivered up to the proper authorities, provided, that a

copy of warrant or proof of its existence, is presented to a judge of the Quilleute Tribal Court, and that such appears to be in the best interests of justice.

(b) On receipt of a valid warrant, the judge may issue a court order directed to the Law and Justice Administrator, instructing him that the person named shall be apprehended by a member of the tribal police and delivered over to the proper authority.

(c) When such a person is apprehended, it shall be the duty of the Law and Justice Administrator or the arresting officer to notify the proper authority of the apprehension of the subject, and the subject may be detained in the tribal jail for a period not to exceed 24 hours from the time of apprehension. If the lawful authority requesting the apprehension of the subject after first being notified, does not take possession of the person within 24 hours, the Court shall not honor the same warrant for the person but shall require a new warrant to be presented and shall require the requesting authorities representative to accompany the tribal police officer to apprehend the person on the warrant and take immediate custody over the apprehension by the tribal police officer.

ARTICLE XI. RULES OF CRIMINAL PROCEDURE -- TRIAL PROCEDURE

11.01 Right to Jury

Cases shall be tried by the Court unless the defendant demands a jury trial. Any person accused of an offense punishable by imprisonment may demand a jury trial. Such demand may be made by oral demand in open court or by filing a written demand with the Clerk of the Court. In any case, such demand must be made at least one week before the date set for trial, or the right shall be deemed waived. The verdict of the jury shall be unanimous and shall be returned by the jury to the judge in open court.

11.02 Trial

The Tribe shall prosecute the charge by presenting the evidence against the defendant by the testimony of the law enforcement officer and any other witnesses called to support the charge, and in presenting such evidence, the Tribe may make use of either a tribal official, Law and Justice Administrator or arresting officer, or a professional attorney approved as a spokesperson pursuant to this Code. The Court shall require the charge to be proved beyond a reasonable doubt. The defendant shall be afforded a full opportunity to present his evidence. Trial shall be conducted as follows:

- (a) The Clerk shall read the complaint and state the defendant's plea.
- (b) The opening statement shall be made by the prosecutor.
- (c) Evidence shall be presented in support of the charge, and the defendant or his spokesperson shall have the right to cross-examine any witnesses called by the prosecution.
- (d) Testimony of witnesses shall be taken orally in open court, or by properly executed affidavits. Physical evidence shall be introduced and admitted only after a proper foundation has been laid.
- (e) The defendant may make a motion for judgment of acquittal at the close of the evidence offered by the prosecution or the close of all evidence. If the evidence is not sufficient to support a conviction of the offenses charged, the Court shall order the entry of judgment of acquittal of the offense charged.
- (f) The Court may also enter a judgment of acquittal on its own motion after the evidence on either side is closed, and shall do so if the evidence is not sufficient to support a conviction of the offense charge.
- (g) The defendant or his spokesperson shall present the defense and evidence in support thereof, and the prosecution shall have the right to cross-examine any witnesses called by the defendant or his spokesperson.
- (h) The parties may then offer rebutting testimony only, except that the Court may in the interest of justice permit the introduction of new evidence.
- (i) The prosecution and the defendant or his spokesperson may argue the case, the prosecution having the right to open and close.
- (j) The judge shall charge the jury orally or in writing stating the law applicable to the case as provided in this Code.
- (k) Objections to the instructions not made before the jury retires to determine its verdict shall be waived.
- (l) The defendant may be found guilty of a lesser offense, necessarily included in the offense charged without the necessity of having been formally charged with such lesser offense.

11.03 Rights of Defendant

In all criminal prosecutions, the defendants shall have the following rights:

- (a) The right to be present throughout the proceeding and to defend himself in person or by a spokesperson.
- (b) The right to know the nature and cause of the charge and to receive a copy of the complaint.
- (c) The right to meet the witnesses against him face to face.
- (d) The right to compulsory process to obtain the testimony of witnesses in his behalf and physical evidence.
- (e) The right to a speedy public trial by an impartial jury or judge.
- (f) The right not to testify. The failure of the defendant to testify shall not be construed against him or be commented upon by the prosecution.

ARTICLE XII. RULE OF CRIMINAL PROCEDURE -- POST TRIAL PROCEDURE

12.01 Directed Verdict

At any time after the close of the evidence the Court may direct a verdict of acquittal. After the charge, the jury shall retire to determine a verdict. The jury must render a verdict on every allegation in the complaint. After the verdict of the jury has been announced to the judge, he shall discharge the jury.

12.02 Acquittal

If the Court finds for the defendant or the jury brings in a verdict of not guilty on all counts of the complaint, a judgment of acquittal shall be announced by the Court and entered in the official records by the Clerk of Court, along with the names of the jurors in the case, and the defendant shall be immediately discharged.

12.03 Conviction and Sentencing

A sentence shall be imposed at once or, in the discretion of the judge, at a later date not to exceed thirty (30) days from the day of judgment. After a pre-sentencing investigation as the judge may direct, the judge shall

sentence the defendant in conformity with the applicable provisions of this Code, and deliver to the law enforcement officer a signed copy of the sentence. The judgment of conviction shall state the charge, the plea, the verdict and the sentence. The judgment shall be signed by the judge and entered in the official records by the clerk. The judgement shall direct that the prisoner be held in custody until the prisoner has satisfied the sentence according to law.

12.04 Payment of Fine

When the defendant is sentenced to pay a fine, the Court may permit payment within a definite period or by installment. In the absence of such permission, a fine shall be payable forthwith. Fines and any installment thereof shall be payable to the Clerk of the Court. At the option and discretion of the Court the fine or a portion thereof in lieu of cash may be paid through work on public projects, if such work is available.

12.05 Motion for New Trial

A motion for a new trial to be held in the Tribal Court may be made by the defendant within 7 days after judgment. The Court shall grant a motion for a new trial if good cause is shown and if such trial is required in the interest of justice.

12.06 Right of Appeal

After imposing sentence in a case which has gone to trial on a plea of not guilty, the Court shall advise the defendant of his right to appeal. All appeals shall be made in accordance with this Ordinance.

12.07 Probation

After conviction of an offense, the Court may upon such reasonable terms and conditions as it considers necessary, suspend any sentence and release the prisoner on probation. In granting probation, the judge shall consider the prior criminal record of the prisoner, his background, character, financial conditions, family obligations and other reasonable and relevant circumstances.

12.08 Violation of Probation

If any person shall violate his probation, he may be required to serve his original sentence plus any additional penalty for violation of his probation, but the Court shall

not revoke probation except after a hearing at which the defendant shall be present and advised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing.

12.09 Liberal Construction

This Title shall be liberally construed to the end that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities; that dangerous offenders shall be correctively treated in custody for longer terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety, and the welfare of the individual and the Tribe.