ORDINANCE 49
LAW & ORDER CODE

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TITLE I TRIBAL COURT

1.1 ESTABLISHMENT OF COURT AND COURT OF APPEALS

There is hereby established for the Tulalip Reservation in Washington courts to be known as the Tulalip Tribal Court, hereafter referred to as the Tribal Court, and a court of appeals, hereafter referred to as the Court of Appeals.

1.2 JURISDICTION

1.2.1 Jurisdictional Statement

The jurisdiction of the Tulalip Tribal Courts shall extend, except as limited by federal or Tulalip tribal law, to (a) all persons natural and legal of any kind and to (b) all subject matters which, now and in the future, are permitted to be within the jurisdiction of any tribal court of a sovereign Indian tribe or nation recognized by the United States of America; and tribal territorial jurisdiction shall extend, except as limited by federal law or Tulalip tribal law, to all lands and waters, in trust or fee, within the Tulalip Indian Reservation and outside the Tulalip Reservation to lands and waters reserved or obtained by the Tribes and its people for their use by any treaty or law or in any other manner, including, but not limited to, court decision, purchase, established right of use, or gift.

The Courts of the Tulalip Tribes shall have jurisdiction to hear and decide all causes of action arising from activities within the boundaries of the Consolidated Borough of Quil Ceda Village and shall hear and decide all matters arising under the duly adopted ordinances and regulations of the Consolidated Borough of Quil Ceda Village

1.2.2 Long Arm Jurisdiction

It has been and continues to be the intent of the Board that the Tribal Court exercise long-arm jurisdiction to the extent consistent with the due process protections provided by 25 USC 1302(8) and the limitations set forth in Section 1.2.3 of this ordinance. Unless prohibited by federal law or beyond the limitations of Section 1.2.3, a person, including any entity, who is a non-member of the Tribe residing outside the Tribe's territorial jurisdiction and/or not present within such territory, submits to the jurisdiction of the Tribal Court by doing any of the following acts:

1) Transacting any business within tribal territory, including, but not limited to construct or supply services or tangible items within the reservation or off-reservation trust lands and conveying any interest in property located within such tribal territory;
2) Committing any tortious act within the reservation or other tribal territory;
3) Owning, using, possessing, or having an interest in any property, whether real or personal, situated within tribal territory;
4) Contracting to insure any person, property, or risk located within the reservation or other tribal territory at the time of contracting;
5) Living in a marital relationship subject to the Tribe's jurisdiction, notwithstanding subsequent departure from tribal territory, so long as one party to the marriage continues to reside within tribal territory;
6) Is the parent, custodian, or other person with a legal interest in an Indian child subject to the jurisdiction of the Tribe;
7) Accepting a privilege from the Tribe, or entering a consensual relationship or commercial transaction with a member, relating to the exercise of tribal fishing or hunting rights.

Where jurisdiction is based on an act listed in this section, the Court may exercise personal jurisdiction over the person who does such act, directly or by an agent, as to any cause of action

under tribal law arising from such act. If an individual, the Court's jurisdiction over the person also extends to his or her personal representative.

1.2.3 Tribal Immunity

The Tulalip Tribes, its Board of Directors, its agencies, enterprises, chartered organizations, corporations, or entities of any kind, and its officers, employees, agents, contractors, and attorneys, in the performance of their duties, shall be immune from suit; except where the immunity of the Tribes or its officers and employees is expressly, specifically, and unequivocally waived by and in a Tulalip tribal or federal statute, a duly executed contract approved by the Tulalip Board of Directors, or a duly enacted ordinance or resolution of the Tulalip Board of Directors.

1.3 GENERAL PROVISIONS

1.3.1 Purpose and Construction

The provisions of this ordinance shall be construed in accordance with Tribal custom as well as to achieve the following general goals:

1) to secure the just, speedy, and inexpensive determination of every civil action;
2) to provide for the just determination of every criminal proceeding;
3) to protect the rights of individuals;
4) to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay; and
5) enhance public safety on the Tulalip Reservation.

1.3.2 Applicable Law

The Tulalip Tribal Courts shall apply the laws and ordinances of the Tulalip Tribes, including the custom laws of the Tribes, to all matters coming before the Courts; provided, that where no applicable Tulalip tribal law, ordinance, or custom law can be found, the Courts may utilize, in the following order, the procedural laws of other federally recognized Indian Tribes, federal statutes, federal common law, state common law, and state statutes as guides to decisions of the Courts.

In all actions, and as to all claims or defenses, which concern or are based upon any contract, lease, lease assignment, loan agreement, credit agreement, a promissory note, assignment of rents, assignment of rental income, assignment of income or revenue, mortgage, deed of trust, any other agreement assigning, pledging or encumbering any collateral as security, or any other agreement or instrument, which contains a choice of law clause or provision that specifies or selects the governing law, the Tulalip Tribal Courts shall apply the governing law so specified or selected.

1.3.3 Venue

There is one venue for causes of action arising under the Tulalip Tribal laws and that is Tulalip Tribal Court.

1.3.4 Freedom From Improper Influence

The Court and the Prosecutor's Office shall be independent from improper influence. No person, including elected or appointed officials or employees of the Tulalip Tribes, shall attempt to improperly influence court proceedings, or to interfere in any way with a judge or prosecutor in the performance of his or her duties.

1.3.5 Rules of Court

The judges may recommend adoption of rules of the court regarding the rules of practice and process in Tulalip Tribal Court and for the keeping of dockets, records and proceedings and the regulation of the Court as may be deemed most conducive for the due administration of justice, The rules of the court shall become effective upon approval by the Board of Directors.

1.3.6 Computation of Time
Whenever a period of time is designated by these rules, it shall mean judicial days, except with reference to computations related to the speedy trial rule.

1.3.7 Principles of Construction
In this code:

1) masculine words shall include the feminine and singular words shall include the plural and vice versa, unless another meaning is clearly stated;
2) words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other definition is specified;
3) whenever a term is defined within a specific section or chapter, that specific definition will control over a general definition unless the Court finds that a contrary meaning is intended;
4) provisions shall be construed as a whole to give effect to all its parts (i.e. titles, chapters, sections, etc.) in a logical, consistent manner; and
5) if any provisions of this code or their application to any person or circumstance is held invalid, the remainder of this code, or the application of the affected provisions to other persons or circumstances, is not affected.

1.3.8 Right to Counsel
Any person appearing as a party in Tribal Court shall have the right to counsel at his or her own expense. Counsel includes attorneys and spokespersons who are members of the Tulalip Tribal Bar. Such counsel shall be of the parties own choosing and need not be an attorney or admitted to practice before the bar of any state.

1.3.9 Attorneys Fees
Attorneys fees are not awardable unless otherwise provided by contract, ordinance, statute, or other law.

1.3.10 Eligibility for Appointed Counsel in Criminal Cases
The Court may appoint counsel to assist any person appearing as a criminal defendant for charges carrying a potential jail sentence. In order to be eligible for such services, the defendant must be determined to be financially qualified based upon standards of indigency established by the Court.

1.3.11 Definitions

Unless otherwise specified in a particular section, the following definitions shall apply to this chapter:

"**Contraband**" means any property which is unlawful in itself, used for any unlawful purpose, or used in connection with or derived from any unlawful property or transaction.

"**Conviction**" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.

"**Counsel**" means an attorney or a Tribal Spokesperson.

"**Defendant**" means the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case.

" **Elder**" means a Tribal member or other individual residing on the Reservation who is:

a. 62 years of age or older; or

b. Determined by the court to be an elder, pursuant to Tribal custom; or
c. At least 45 years of age and unable to protect him/herself from abuse, neglect, or exploitation because of a mental disorder or physical impairment or because of frailties or dependencies brought about by age or disease or alcoholism.

"Firearms" means a weapon or device from which a projectile may be fired by an explosive such as gunpowder. Air guns and other guns fired by the release of compressed gas are firearms. Firearm shall also include any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) similar device.

"**Indian**" means a person who is enrolled in a federally recognized Indian tribe or who is recognized as a Canadian Indian.

"**Law enforcement officer**" or "officer" means any person who by virtue of his or her office or employment by the Tribes or by another government is vested by law with a duty to
a. enforce Tribal or federal civil regulatory laws,
b. maintain public order, or
c. make arrests for offenses while acting within the scope of his or her authority.

"**Statement**" means:
a. a writing signed or otherwise adopted or approved by a person;
b. a mechanical, electronic, or other recording of a person's oral communications or a transcript thereof; or
c. a writing containing a verbatim record as a summary of a person's oral communication(s); or
d. electronic, computer or wireless communication.

"**Subpoena**" means a court document commanding a person to:
a. appear at a certain time and place to give testimony upon a certain matter; or
b. produce specific books, records, papers, documents, or other objects as may be necessary and proper; or
c. do both (a) and (b).

1.4 JUDGES

The Tulalip Tribal Court shall consist of a chief judge and such associate judges as needed, whose duties shall be regular and permanent, as fixed and determined by the Board of Directors. No person shall exercise the judicial authority of the Tulalip Tribes in any Tulalip Tribal Court, Employment Court, Gaming Court, or other court under this code or any other Tulalip ordinance or regulation unless and until such person has been appointed by the Board of Directors in accordance with this chapter. Judges shall receive such compensation as is set by resolution of the Board.

1.4.1 Eligibility

To be eligible to serve as a judge of the Tribal Court, a person must:
1) be over 25 years of age;
2) never have been convicted or found guilty of a felony in any federal or state court or of a Class E offense under Tulalip tribal law;
3) within the previous five (5) years, not have been convicted of a misdemeanor in any tribal, federal, or state court;

4) be of high moral character and never have been convicted of any offense involving moral turpitude;
5) be either a judge from any federally recognized Indian Tribe, licensed to practice before the Washington State Bar Association, or any other qualified person appointed by the Tribal Board of Directors, or possess a J.D. from an accredited law school; and
6) be a member in good standing of the Tulalip Bar.

To be eligible to serve as Chief Judge of the Tribal Court, a person must also possess administrative experience in addition to the requirements included in this section.

1.4.2 Appointment Trial Court

Judges shall be appointed by the Tulalip Board of Directors, subject to acceptance of the position upon signing the oath of office. Judges shall hold office for a term of four years from the date of appointment, unless sooner removed for cause or by resignation, but shall be eligible for reappointment. The Board of Directors shall designate a Judge to hold the office of Chief Judge every two (2) years and assign authority over court administrative matters to that office. Judges pro tem may also be appointed, as necessary.

1.4.3 Appointment Appellate Court

1) Justices of the Court of Appeals

Justices of the Court of Appeals shall meet the same eligibility requirements for judges, as set forth by Section 1.4.1. Justices of the Tulalip Court of Appeals shall be appointed, subject to acceptance of the position upon signing the oath of office. Justices shall serve four (4) year terms from the date of appointment, unless sooner removed for cause or by resignation. The Board of Directors shall appoint at least three (3) justices, including a Chief Justice of the Court of Appeals.

2) Chief Justice

The Board of Directors shall designate a Justice to hold the office of Chief Justice every two (2) years and assign authority over court administrative matters to that office. To be eligible to serve as Chief Justice of the Tribal Court, a person must also possess administrative experience in addition to the requirements included in this section.

3) Duties of Chief Justice

For each matter properly placed before the Court of Appeals, a panel of three (3) justices shall be selected by the Chief Justice to hear and decide the issue or issues before the Court of Appeals. The Chief Justice shall designate a Presiding Justice for each panel and shall serve as Presiding Justice for each panel on which he or she sits. A single regular Justice of the Court of Appeals may act as a full panel where the Board of Directors so provides by rule.

1.4.4 Powers and Duties

Judges shall have the authority to act in all matters within the jurisdiction of the Tulalip Tribal Court. Justices shall have authority to act in all matters within the jurisdiction of the Court of Appeals. No judge or justice shall be qualified to act as such in any case where the judge has any direct interest or wherein any relative by marriage or blood, in the first or second degrees, is a party.

1.4.5 Removal

During tenure in office, Judges or Justices may be suspended, dismissed, or removed for cause by the Board of Directors. 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 Board of Directors at least ten (10) days before the meeting of the Board of Directors before which the Judge at issue is to appear. A public or private hearing shall then be held by the Board of Directors wherein the accused judge shall be given an adequate opportunity to answer any and

all charges. The decision of the Board of Directors shall be final. Causes judged sufficient for removal shall include, by way of example, and not limitation:

1) any act or omission which would have resulted in ineligibility for appointment;
2) illegal use of intoxicants or drugs;
3) conduct involving moral turpitude;
4) conviction of any offense other than minor traffic violations;
5) use of official position for personal gain;
6) desertion of office;
7) negligence in the performance of duties; or
8) conduct determined by the Tulalip Court of Appeals to be violative of the American Bar Association Code of Judicial Conduct, which code is incorporated herein by reference as though set forth in full.

1.5 MAGISTRATES

1.5.1 Appointment Magistrates

The Board of Directors may appoint Magistrates for the Tulalip Tribal Court. The qualifications, eligibility, compensation, term, oath of office, and conditions of removal shall be the same as that for tribal judges.

1.5.2 Powers and Duties

Magistrates shall have authority, concurrent with the Tribal Court and the judges thereof, in the following particulars only:

1) to grant and enter defaults and enter judgment thereon;
2) to issue ex parte temporary restraining orders and temporary injunctions, and to fix and approve bonds hereon;
3) to hear and determine all proceedings supplemental to execution;
4) to grant adjournments administer oaths, preserve order, compel the attendance of witnesses, and to punish by contempt for the refusal to obey or neglect lawful orders;
5) to hold arraignments, accept pleas, and sentence in the instance of a guilty plea; and
6) to issue warrants and subpoenas.

Whenever this Ordinance sets forth procedures and substance governing any of the above powers, authority, and jurisdiction of the tribal judges and Tribal Court, the same shall apply equally to the Magistrate; provided, however, that it shall not serve to increase the power, authority, and/or jurisdiction of the Magistrate.

1.6 DISQUALIFICATION OF JUDGES AND MAGISTRATES

1) As a Matter of Right

A defendant, or other party, to any legal proceedings may accomplish one automatic change of assignment of the case from one judge or magistrate to another upon filing an affidavit of prejudice with the Court, stating that the judge assigned to the case is prejudiced against their case. Such affidavit shall be in written form and must be filed with the court within ten (10) days of assignment or reassignment of the trial judge or before any discretionary ruling, whichever comes first. Rulings made at arraignment, the first appearance, or the initial bail hearing shall not be considered discretionary rulings for purposes of this rule.

2) For Cause

A defendant, or other party, to any legal proceedings may accomplish a second change of assignment of the case from one judge or magistrate to another upon filing an affidavit of prejudice with the Court. A judge shall be disqualified for cause if an affidavit alleging interest or prejudice that would prevent a fair and impartial trial is ruled to be founded by a

preponderance of the evidence after review by the Chief Justice of the Tulalip Court of Appeals. If an affidavit alleging interest or prejudice that would prevent a fair and impartial trial is filed against the Chief Justice of the Tulalip Court of Appeals, the Chief Justice shall recuse him or herself from the matter. Such affidavit shall be in written form and must be filed by the party alleging such interest or prejudice within ten (10) days of discovery of the facts supporting the affidavit, unless good cause is shown for later filing.

3) Recusal
A judge may recuse himself or herself upon grounds that he or she deems sufficient.

1.7 ADMINISTRATION OF THE COURT

The administrative functions of the Tulalip Tribal Court shall be performed by the Office of the Court Director or designee. There shall be a Court Director who shall be responsible for the management of the office and supervision of court employees, including, but not limited to, court clerks and probation officers. The Court Director shall be under the supervision of the Chief Judge.

1.7.1 Duties and Responsibilities of the Clerk

The clerk shall render assistance to the Court, tribal departments, and the public. It shall also be the duty of the clerk to receive and process Court documents; provide forms; attend and assist in Court proceedings; record all Court proceedings; enter orders and judgments; receive and disburse all fees, fines, and charges; and perform such other duties as the Court Director shall designate. Before entering upon these duties, the clerk shall be covered by the blanket bond provided for all tribal employees.

1) Appeals
The clerk shall deliver a copy of the case record to the administrator of the Court of Appeals no later than fifteen (15) days after receiving the notice of appeal.
   a) If an intertribal entity such as the Northwest Intertribal Court System is administering the Court of Appeals on behalf of the Tribe, the clerk shall immediately forward a copy of each notice of appeal to the administrator of the Court of Appeals. If the Tribe is directly administering the Court of Appeals, the clerk shall immediately forward a copy of each notice of appeal to the Presiding Justice.
   b) No longer than ten (10) days after the notice of appeal is delivered to the administrator of the Court of Appeals or to the Presiding Justice as provided above, the clerk shall deliver a copy of the record to the administrator of the Court of Appeals, or, if the Tribe is directly administering the Court of Appeals, to each of the three Justices selected to hear the appeal.

1.8 TULALIP TRIBAL BAR

Any person practicing as counsel in Tulalip Tribal Court must be a member in good standing of the Tulalip Tribal Bar. In order to qualify, all applicants must:

1) schedule and pass the Tulalip Tribal Bar Exam;
2) take the spokesperson's oath;
3) certify they are a member in good standing in any other jurisdiction in which the applicant is licensed.

1.9 PROSECUTOR

There is hereby created a Prosecutor's Office of the Tulalip Tribes within the Office of Reservation Attorney.

1.9.1 Eligibility: To be eligible to serve as a Prosecutor in the Tribal Court, a person must:

1) be over 25 years of age;

2) never have been convicted or found guilty of a felony in any federal or state court, or of a Class E offense as defined by Tulalip tribal law;
3) within the previous five years, not have been convicted of a misdemeanor in any tribal, federal, or state court;
4) be of high moral character and never have been convicted of any offense involving moral turpitude;
5) a member in good standing of the Tulalip Bar; and
6) be licensed as an attorney in the state of Washington in good standing.

1.9.2 Appointment

The Tulalip Board of Directors shall appoint the Prosecutor and any Assistant Prosecutors. The Tulalip Tribes Prosecutor shall receive such compensation as is set by resolution of the Board of Directors.

1.9.3 Powers and Duties

1) The Tulalip Tribes Prosecutor is authorized to represent the Tribes in the prosecution of all matters arising under Tulalip Tribal or federal law. The Prosecutor shall make all final decisions on the submission of complaints or other legal action to be taken in the prosecution of cases.
2) The Prosecutor prepares and tries cases primarily in tribal court; may prepare annual budgets; maintains contact with outside law enforcement agencies and prosecuting authorities as necessary for the administration of justice; and undertakes other responsibilities as assigned by the Tulalip Board of Directors or their designee.
3) The Prosecutor shall be primarily responsible for providing the Tulalip Tribal Police Department with legal advice on daily law enforcement matters, cases and issues.

1.10 PROBATION OFFICERS

1.10.1 Establishment of Tribal Probation Office

There is established a Tribal Probation Office (hereafter "Probation Office"), the purposes of which include the protection of the Reservation community by providing for the acceptance of custody and supervision and rehabilitation of offenders placed on probation by the Tribal Court. The Probation Office shall be a division of the Tribal Court. The Office of Tribal Probation shall consist of at least one probation officer and such other personnel as may be deemed necessary by the Tribal Court and approved by the Board of Directors.

1.10.2 Purpose and Policy

The Board of Directors finds and declares that probation is a desirable disposition of appropriate criminal cases because:

1) it provides a framework by which the Tribe can supervise positive rehabilitative measures imposed on an offender by the Court;
2) the offender remains under the purview of the Court while engaging in the educational, therapeutic, and community restorative pursuits that add up to a successful rehabilitation;
3) it affirmatively promotes the rehabilitation of the offender by continuing community contacts;
4) it provides a means to hold the offender accountable in a less restrictive setting than incarceration; and
5) it minimizes the impact of the conviction upon innocent dependents of the offender.

1.10.3 Eligibility

Upon approval by the Tribal Court, any person holding the title of probation officer or assistant probation officer may have the authority to (A) perform law enforcement search and arrest of supervised offenders; and/or (B) carry a firearm if they have successfully completed the

minimum law enforcement training required of tribal police officers. The Probation Office may employ classes of employees who assist with the duties of the Probation Office, but who do not have law enforcement authority and who are not required to complete law enforcement training.

1) Law Enforcement Authority

A probation officer, in his or her supervision of an offender, possesses all the authority of a Tribal Law enforcement officer, including and without limitation, the authority:

a) to carry firearms, including concealed firearms, when necessary;
b) to request a judge of the Tribal Court to issue a warrant for arrest of the supervised offender, or for search and seizure of the offender's person or property, or for such orders as are necessary to carry out the functions of the Probation Office;
c) to arrest a supervised offender without a warrant for violation of a condition of probation and commit the offender to incarceration by providing Tribal police with a statement that the probation office has found probable cause to believe the offender has violated the conditions of his or her release; and
d) to conduct a search in accordance with the provisions of Chapter 5.3, except that a probation officer may also conduct a warrantless search of the supervised offender's person or personal effects, or any vehicle or residence that is under the custody and control of the offender, if the supervised offender has consented to such searches in writing as a condition of probation.

1.10.4 Duties and Responsibilities

Probation officers shall carry out the following duties:

1) Undertake investigations and make reports, including pre-sentence investigations and reports, which may include alternative sentencing recommendations requested by the Tribal Court;
2) Supervise a probationer when requested to do so by the Tribal Court, and in accord with the conditions set by the Court;
3) Assure that a copy of the conditions of probation is signed by the supervised offender and given to him or her;
4) Regularly advise and consult with the supervised offender to encourage him or her to improve his or her condition;
5) Administer drug and alcohol tests and keep records to report on the progress of persons supervised or under the jurisdiction of the Court;
6) Identify and, where necessary, mobilize Tribal or community programs to which supervised offenders may be assigned for evaluation, treatment, or rehabilitation, or for the purpose of performing community services;
7) Monitor the execution and progress of any court-ordered assignment;
8) Cooperate with all agencies, including Tribal, public, and private, that are concerned with the treatment or welfare of persons on probation; and
9) Perform such other duties as assigned by the Chief Judge of the Tribal Court.

1.11 JURIES

1.11.1 Jury Pool

A list of eligible jurors shall be prepared by the Court. The eligible juror list shall be updated from time to time, but no less than once in each year. The Court shall provide for the selection of names of persons eligible for service as jurors. Jurors shall be eighteen (18) years of age or older and, notwithstanding any other law of the Tulalip Tribes or any of its agencies, shall be chosen from the following classes of persons:

1) tribal members living on or near the Tulalip Indian Reservation;
2) residents of the Tulalip Indian Reservation; and

3) employees of the Tulalip Tribes or any of its enterprises, agencies, subdivisions, or instrumentalities who have been employed by the Tribes for at least one continuous year prior to being called as a juror.

1.11.2 Formation of Jury

Juries will be comprised of six (6) jurors. A person may be excused from serving on a jury upon good cause shown under oath to a judge. Jurors whose employers provide for compensated leave for jury service shall not be excused by the Court because of work related responsibilities, except under extraordinary circumstances. The judge shall consider the needs of the Court to maintain an adequate jury pool before allowing jurors to be excused for employment reasons. Members of the Board of Directors shall be exempt from serving on juries during their terms of office.

1) Random Selection
   The clerk of the Court will randomly select a minimum of twenty-five (25) names from the jury pool.
2) Juror Summons
   The Court shall issue summons and thereby notify persons selected for jury service. Persons selected for jury service shall be summoned by mail or personal service. Persons who do not appear after proper notice of jury service shall be subject to contempt of court.

1.11.3 Selection (Voir Dire)

After summoning jurors and before trial, or at a time designated by the Court, the clerk shall notify the Court and counsel of the names of the members of the jury pool appearing for selection. In selecting a jury from among the panel members, the initial questioning of the jurors shall be conducted by the judge in order to determine whether each prospective juror is capable of being fair and impartial. Questions to be asked by the court include whether a panel member:

1) is directly related to any person involved in the action, including, but not limited to, the parties, counsel, alleged victims, or any prospective witness;
2) is or has been involved in any business, financial, professional, or personal relationship with a party or alleged victim;
3) has had any previous involvement in a civil or criminal lawsuit or dispute with a party or alleged victim;
4) has a financial or personal interest in the outcome of the action before the court; or
5) has formed an opinion as to the defendant's guilt.

When the Court determines that a juror is prejudiced or can not act impartially, the juror shall be excused. After questioning by the judge, both parties may question the jurors using the struck jury system. Either party may question the jurors concerning the nature of the action, including burden of proof in criminal cases and the presumption of innocence. The judge may limit examination of jurors when the judge believes such examination to be improper or unacceptably time consuming.

1.11.4 Challenges

All challenges must be made to the Tribal Court before the jury is empanelled and sworn. When a potential challenge for cause is discovered after the jury is sworn, and before the introduction of any evidence, the Court may allow a challenge for cause to be made.

1) For Cause
   Each party shall have unlimited challenges for cause. Each challenge must be tried and determined by the Court at the time the challenge is made.
2) Peremptory
   Each party shall have two (2) peremptory challenges. In criminal cases where defendants are tried together, the prosecution and defense shall each be entitled to one additional peremptory

challenge. In civil cases involving multiple parties, additional challenges may be allowed at the discretion of the Court.

1.11.5 Motion to Discharge

1) Venire or Jury
Any objection to the manner in which the venire or jury has been selected or drawn shall be raised by motion to discharge.

2) Court's Ruling
It shall be the duty of the Court to conduct a hearing on any motion to discharge. The burden of proof shall be on the movant. If the Court finds that the venire was improperly selected or drawn, the Court shall order a new venire. If the Court finds that the jury was improperly selected or drawn, the Court shall order the jury discharged and the selection or drawing of a new jury.

1.11.6 Conflicts of Interest

No person shall be qualified to sit on a jury panel in the Tribal Court in any case where that person has a direct interest or wherein any relative, by marriage or blood, in the first or second degree is a party; nor shall any party be required to use a peremptory challenge to remove a person not qualified to serve as a juror under this section. This section shall not be construed as the sole cause upon which a juror may be challenged for cause, and other conflicts of interest shall be considered by the judge.

1.11.7 Emergency Additions

In the event there is a shortage of jurors, the Court may call upon anyone eligible to serve as a juror in the case without giving any advance notice.

1.11.8 Fees

Every person who is required to attend court for selection or service as a juror shall be entitled to fees for each day, unless otherwise compensated through tribal ordinance, as set by resolution of the Board of Directors.

1.11.9 Juror Oath

The jury shall be sworn in by the Court. Any juror who violates the oath may be held in contempt of court.

1.11.10 Conduct of Jury During Trial

Once empanelled, jurors shall be instructed by the judge that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon, until the issues of the case are finally submitted to them. Jurors may be allowed to take notes, in the discretion of the Court. At each adjournment recess prior to submission of the case to the jury, jurors notes shall be collected by the bailiff and the judge shall instruct the jurors as to whether they may separate or must remain in the care of the bailiff or other proper officer of the Court.

1.11.11 View of Relevant Place or Property

Upon request by either party, the Court may allow the jury to view any place or property deemed pertinent to the just determination of the case. If viewing of a place or property is deemed appropriate, the Court shall place the jury under the custody of the bailiff, or other proper officer of the court, who shall then transport the jury to the viewing place. The place or property will be shown to the jury by a person appointed by the Court for that purpose, and the jurors may personally inspect the same. The bailiff, or other proper officer of the Court, must ensure that no person speaks or otherwise communicates with the jury, on any subject connected with the trial, while viewing the place or property or traveling to or from the viewing site. After the jury has viewed the place or property, the bailiff, or other proper officer of the Court, shall return the

jurors to the courtroom without unnecessary delay or at a specified time, as directed by the Court.

1.11.12 Jury Instructions

1) Submission

a) General. Each party shall propose jury instructions in writing as set forth by the criminal or civil procedure rules of this Ordinance. If no jury instructions are submitted to the Court, the judge may order one or more parties to submit jury instructions.

b) Special. If either party desires a special instruction to be given to the jury, such proposed instruction shall be reduced to writing, signed by the party offering the instruction, and delivered to the judge.

2) Content

All jury instructions shall adequately inform the jurors of:

a) which decisions are made by the jury and which by the presiding judge;
b) the issues of fact in the case;
c) the rules of law to be applied to the issues of fact; and
d) the burden of proof with respect to each issue of fact.

3) Disputed Instructions

A party not offering a proposed instruction shall be allowed reasonable opportunity to examine the proposed instruction and object to it. The objection must specifically state on what grounds the instruction is not an accurate statement of the law or is not an appropriate instruction for this particular case and, therefore, should not be given. A dispute regarding a proposed jury instruction must be settled during a settlement hearing outside the presence of the jury. Parties must note any objections to the jury instructions at the settlement of instructions or in writing prior to the settling hearing. A record must be made at the hearing to settle instructions.

4) Delivery and Incorporation into the Court Record

After all evidence has been presented, and before closing arguments, the Court shall give both general and specific instructions to the jurors. For the record, but not for the jury, the Court shall mark or endorse each instruction in such a manner that shall distinctly reflect what proposed instructions were rejected, what were given in whole, and what were modified, together with the Court's reasons for giving as requested, as modified, or for refusing a proposed instruction. All proposed instructions are part of the Court record. All objections to jury instructions must be noted on the Court record, as well as the Court's reasons for either giving as requested, as modified, or for refusing a proposed instruction.

1.11.13 Jury Deliberations

After closing arguments, the Court shall commit the jury to the care of a bailiff or other officer of the Court who shall keep the jurors together and prevent communication between the jurors and others. Upon retiring to deliberate, the jurors shall select a juror as foreperson. After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they shall notify the bailiff or the officer appointed to keep them together who shall then notify the Court. The information requested may be given, in the discretion of the Court, after consultation with the parties.

1.11.14 Items That May Be Taken into Jury Room

Upon retiring for deliberation, the jurors shall take with them the written jury instructions read by the Court, exhibits admitted into evidence, specific other exhibits. Jurors notes may be taken into the jury room at the discretion of the Court. All evidence that has been admitted may be allowed in the jury room, unless the judge finds good cause not to permit it in the jury room.

1.11.15 Activity of the Court During Jury's Absence

While the jury is absent, the Court may adjourn or conduct other business, but it must be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

1.11.16 Form of Verdict

The jury shall return a verdict as instructed by the Court and for each offense charged. The verdict must be unanimous in all criminal actions. The verdict must be by five (5) out of six (6) in all civil cases. The verdict must be signed by the foreperson and returned by the jury to the judge in open court. When two or more defendants are involved in the case before the jury, the jurors may reach a verdict regarding any one of the defendants. If the jury cannot agree with respect to all the defendants, the defendant or defendants as to whom it does not agree may be tried again.

1.11.17 Polling the Jury

When a verdict is returned, but before it is recorded, the jury shall be polled at the request of any party or upon the Court's own motion. If the results of the poll show that the verdict does not reflect the verdict returned, the jury may be directed to return for further deliberations or may be discharged at the Court's discretion.

1.11.18 Discharging Jurors

When the jury has reached a verdict or has determined that it shall be unable to do so, even with additional deliberation, the Court shall discharge the jurors from service.

1.12 GENERAL PRIVILEGES

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following enumerated cases.

1.12.1 Spousal

A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other or to a criminal action or proceeding for a crime committed by one against the other; and further does not apply to a criminal action for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian.

1.12.2 Attorney-Client

An attorney or spokesperson cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given to the client in the course of professional employment. A client cannot, except voluntarily, be examined as to any communication made by him to his attorney or Court advocate or the advice given to him by his attorney or Court advocate in the course of the attorney's or Court advocate's professional employment.

1.12.3 Doctor-Patient

Except as provided in Rule 35, Federal Rules of Civil Procedure, a licensed physician, surgeon, or dentist cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient. This privilege shall not apply in the following situations:

1) in any judicial proceedings regarding a child's injury, neglect, or sexual abuse of the cause thereof; and
2) ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to have waived the physician-patient privilege. Waiver of the physician-patient

privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as the Court may impose.

1.12.4 Mental Health Professional-Client

The confidential relations and communications between a counselor, psychiatrist, or psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and client.

1.12.5 Investigative Reports-Board of Directors

An investigator employed by the Tulalip Tribes cannot be examined in any civil cause before the Courts of the Tulalip Tribes regarding an investigation performed at the request of the Tulalip Board of Directors without the formal consent in writing of the Tulalip Board of Directors to such examination. No written report produced as a part of an investigation performed at the request of the Tulalip Board of Directors may be utilized as evidence in any civil case before the Courts of the Tulalip Tribes without formal written consent of the Board of Directors.

1.12.6 Investigative Reports-Tribal Agencies

Any reports or information collected by tribal police or beda?chelh are privileged unless otherwise provided by statute or order of the Court.

1.12.7 Interpreters

Any information that an interpreter gathers pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such person desires that such information be communicated to other persons.

1.12.8 Clergy

A clergyman, priest, or traditional spiritual advisor cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church or religion to which he belongs.

1.12.9 Secret Ballot in a Political Vote

The right of individuals to vote by secret ballot is fundamental. Where tribal law requires elections for public office, the right of individuals to vote by secret ballot shall be guaranteed.

1.12.10 Trade Secrets

A person may refuse to disclose or to prevent other persons from disclosing a trade secret owned by a person, if such refusal will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measures as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

1.12.11 Privileges Not Applicable in Child or Elder Abuse Reporting

None of the privileges contained in Chapter 1.12 shall apply to the extent that reporting or testimony is required by any law related to the mandatory reporting of child or elder abuse or neglect. All persons acting in good faith to report child abuse and who provide testimony directly related to child abuse or neglect in judicial proceedings shall be immune from liability for reporting and/or testifying in good faith.

1.13 RULES OF EVIDENCE

1.13.1 Scope of Rules.

These rules shall constitute the rules of evidence in all proceedings in the Courts of the Tulalip Tribes. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

1.13.2 Rulings on Evidence

1) Effect of Erroneous Ruling

Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected; and

a) Objection
In case the ruling is one admitting evidence, a timely objection or motion to strike appears on the record, stating the specific ground of the objection if the specific ground was not apparent from the context; or

b) Offer of Proof
In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

2) Record of Offer and Ruling
The judge may add any other or further statement which shows the character of the evidence, the form in which it was offered, the object made, and the ruling thereon. He may direct the making of an offer in question and answer form.

3) Hearing of Jury
In jury cases, proceedings shall be conducted, to the extend practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

4) Plain Error
Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the judge.

1.13.3 Limited Admissibility
When evidence, which is admissible as to one party or for one purpose, but not admissible as to another party or for another purpose, is admitted, the judge, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

1.13.4 Related or Remainder of Writings or Recorded Statements
When a writing or recorded statement or part is introduced by a party, an adverse party may require him at that time to introduce any other party or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

1.13.5 Judicial Notice of Adjudicative Facts

1) Scope of Rule
This rule governs only judicial notice of adjudicative facts.

2) Types of Facts
A judicially noticed fact must be one not subject to reasonable dispute in that it is either (a) generally known within the community, or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, or (c) notice is provided for by statute.

3) When Discretionary
A judge or court may take judicial notice, whether requested or not.

4) When Mandatory
A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.

5) Opportunity to be Heard
A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

6) Time of Taking Notice
Judicial notice may be taken at any stage of the proceeding.

7) Instructing Jury
The judge shall instruct the jury to accept as established any facts judicially noticed.

1.13.6 Presumptions
In all cases not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence. Except as otherwise provided by statute, in criminal cases, presumptions against an accused, recognized as common law or created by statute, including statutory provision that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.

1.13.7 Relevancy
"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. All relevant evidence is admissible, except as otherwise provided by constitution, by statute, by these rules, or by other rules adopted by the Tulalip Court. Evidence which is not relevant is not admissible. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, misleading of the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

1.13.8 Character Evidence

1) Character Evidence Generally
Evidence of a person's character or trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:
   a) Character of Accused
   Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same.
   b) Character of Victim
   Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.
   c) Character of Witness
   Evidence of the character of a witness, as provided in these rules.
2) Other Crimes, Wrongs, or Acts
Evidence of other crimes, wrongs, and acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
3) Reputation or Opinion
In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
4) Specific Instances of Conduct
In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.
5) Habit or Routine Practice
Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the

habit or routine practice. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

1.13.9 Subsequent Remedial Measures

When, after an event, measures are taken which, if taken previously would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

1.13.10 Admissibility of Sympathetic Gestures

The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident, and made to that person or to the family of that person, shall be inadmissible as evidence in a civil action. A statement of fault, however, which is part of, or in addition to, any of the above shall not be made inadmissible by this section. For purposes of this section:

1) "Accident" means an occurrence resulting in injury or death to one or more persons that is not the result of willful action by a party.
2) Benevolent gestures" means actions that convey a sense of compassion or commiseration emanating from humane impulses.
3) "Family" means the spouse or the domestic partner, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted child of a parent, or spouse's or domestic partner's parents of an injured party.

1.13.11 Compromise and Offers to Compromise

Evidence of (1) furnishing, offering, or promising to furnish, or (2) accepting, offering, or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Evidence of furnishing, offering, or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible as an admission of liability for the injury. Evidence of a plea of guilty, later withdrawn, or a plea of no contest, or of an offer to plead guilty or no contest to the crime charged or any other crime, or of statements made in connection with any of the foregoing plea or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

1.13.12 Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue of whether he acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, control, or bias or prejudice of a witness.

1.13.13 Privileges Recognized Only as Provided

Except as otherwise required by law, and except as provided in these rules or in other rules adopted by the judges, no person has a privilege to:

1) refuse to be a witness;
2) refuse to disclose any matter;
3) refuse to produce any object or writing; or

4) prevent another from being a witness or disclosing any matter or producing any object or writing.

1.13.14 Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege

Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was (1) compelled erroneously, or (b) made without opportunity to claim the privilege.

1.13.15 Comment Upon or Interference from Claim of Privilege; Instruction

1) Comment or Interference Not Permitted

The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

2) Claiming Privilege Without Knowledge of Jury

In a jury case, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

3) Jury Instruction

Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

1.13.16 Competency of Witnesses

1) Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. The exception to this is expert witnesses.

2) Oath or Affirmation

Before testifying, every witness shall be required to declare before the court that he will testify truthfully, by oath or affirmation.

3) Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

4) Judge as Witness

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

5) Competency of Juror as Witness

a) At the Trial

A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If a juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

b) Inquiry into Validity of Verdict

Upon an Inquiry into the validity of a verdict, a juror may not testify as to any matter or statement occurring during the court of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether any outside prejudicial information or influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received.

1.13.17 Evidence of Character and Conduct of Witness

1) General Rule

a) Opinion and Reputation Evidence of Character

The credibility of a witness may be attacked or supported by evidence in the form of reputation or opinion, but subject to these limitations:

1. the evidence may refer only to character for truthfulness or untruthfulness, and
2. evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

b) Specific Instances of Conduct

Specific instances of the conduct of a witness, for the purpose of attacking supporting his credibility, other than conviction of crime, may not be proved by extrinsic evidence. They may, however, if probative of truthfulness or untruthfulness and not remote in time, be inquired into on cross-examination of the witness himself or on cross-examination of a witness who testifies to his character for truthfulness or untruthfulness. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the privilege against self-incrimination when examined with respect to matters relating only to credibility.

c) Religious Beliefs

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that, by reason of their nature, his credibility is impaired or enhanced.

2) Previous Convictions

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime is admissible, but only if either the crime was punishable by death or imprisonment in excess of one year under the law under which he was convicted, or the crime involved dishonesty or false statement regardless of the punishment.

a) Time Limit

Evidence of a conviction under this rule is not admissible if a period of more than ten (10) years has elapsed since the date of the release of the witness from confinement imposed for his most recent conviction, or the expiration of the period of his parole, probation, sentence granted or imposed with respect to his most recent conviction, whichever is the later date.

b) Effect of Pardon, Annulment, or Certificate of Rehabilitation

Evidence of a conviction is not admissible under this rule if:

1. The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a substantial showing of rehabilitation and the witness has not been convicted of a subsequent crime, or
2. The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on innocence.

c) Pendency of Appeal

The pendency of an appeal therefore does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

1.13.18 Mode and Order of Interrogation and Presentation

1) Control by Judge

The judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

a) make the interrogation and presentation effective for the ascertainment of the truth;
b) avoid needless consumption of time; and
c) protect witnesses from harassment or undue embarrassment.

2) Scope of Cross-Examination

A witness may be cross-examined only with respect to matters testified to on direct examination.

3) Leading Questions

Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily, leading questions should be permitted on cross-examination. In civil cases, a party is entitled to call an adverse party or witness identified with him and interrogate by leading questions.

1.13.19 Writing Used to Refresh Memory

If a witness uses a writing to refresh his memory for the purpose of testifying, either before or while testifying, an adverse party is entitled to have it produced at the hearing, to inspect it, to cross-examine the witness, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the judge shall examine the writing in camera, excise any portion not so related, and order delivery of the remainder to the party entitled to it. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the judge shall make any order justice requires, except that in criminal cases, when the prosecution elects not to comply, the order shall be one striking the testimony or, if the judge in his discretion determines that the interests of justice so require, declaring a mistrial.

1.13.20 Prior Statement of Witnesses

1) Examining Witness Concerning Prior Statement

In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown or its contents disclosed to him at that time, but on request, the same shall be shown or disclosed to opposing counsel.

2) Extrinsic Evidence of Prior Inconsistent Statement of Witness

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise requires. This provision does not apply to admissions of a party-opponent as defined in Section 1.13.27.

1.13.21 Calling and Interrogation of Witnesses by Judge

1) Calling by Judge

The judge may, on his own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

2) Interrogation by Judge

The judge may interrogate witnesses, whether called by himself or a party; provided, however, that in trials before a jury, the judge's questioning must be cautiously guarded so as not to constitute an implied comment.

3) Objections

Objections to the calling of witnesses by the judge or to interrogation by him may be made at the time or at the next available opportunity when the jury is not present.

1.13.22 Exclusion of Witnesses

At the request of a party, the judge shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and he may make the order of his own motion. This rule does not authorize exclusion of a party to the proceedings or a person whose presence is shown by a party to be essential to the presentation of his case.

1.13.23 Opinion Testimony

1) Testimony of Lay Witnesses

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

a) rationally based on the perception of the witness; and
b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

2) Testimony of Expert Witnesses

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinion or inferences upon the subject, the facts or data need not be admissible in evidence. Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. The expert may testify in terms of opinion or inference and give his reasons therefore without prior disclosure of the underlying facts or data, unless the judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

1.13.24 Expert Witnesses

Any party may call an expert witness of their own selection and at their own expense.

1.13.25 Court Appointed Experts

1) Appointment

The judge may on his own motion, or on the motion of any party, appoint expert witnesses, and may request the parties to submit nominations. The judge may, in his or her discretion, appoint one or more expert witnesses of his own selection to give evidence in the action except that if the parties agree as to the experts to be appointed, he shall appoint only those designated in the agreement. An expert witness shall not be appointed by the judge unless he consents to act. A witness so appointed shall be informed of his duties by the judge in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the judge or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

2) Compensation

Expert witnesses so appointed may be entitled to reasonable compensation in whatever sum the judge may allow. If able, compensation shall be paid by the parties in such proportion and at such time as the judge directs, and thereafter charged in like manner as other costs.

1.13.26 Hearsay

Hearsay is an out of court statement of a person other than the one testifying offered in evidence in order to prove the truth of the matter asserted in that statement.

1.13.27 Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1) present sense impression;
2) excited utterance;
3) then existing mental, emotional, or physical condition;
4) statements for purposes of medical diagnosis or treatment;
5) recorded recollection;
6) records of regularly conducted activity;

7) absence of entry in records of regularly conducted activity;
8) public records and reports;
9) records of vital statistics;
10) absence of public record or entry;
11) records of religious organizations;
12) marriage, baptismal, and similar certificates;
13) family records;
14) records of documents affecting an interest in property;
15) statements in documents affecting an interest in property;
16) statements in ancient documents (20 years old or more);
17) market reports, commercial publications;
18) learned treaties;
19) reputation concerning personal or family history;
20) reputation concerning boundaries or general history;
21) reputation as to character;
22) judgment of previous conviction;
23) judgment as to personal, family, or general history;
24) an admission of a party-opponent; and
25) statement used by a witness at a prior hearing subject to cross-examination.

1.13.28 Hearsay Exceptions; Declarant Unavailable

1) Definition of Unavailability

"Unavailability as a witness" includes a situation in which the declarant:

a) is exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of his statement;
b) persists in refusing to testify concerning the subject matter of his statement despite an order of the judge to do so;
c) testifies to a lack of memory of the subject matter of his statement;
d) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
e) is absent from the hearing and the proponent of his statement has been unable to procure his attention by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

2) Exceptions

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

a) a statement of present sense impression;
b) a statement under belief of impending death;
c) a statement against pecuniary or proprietary interest; or
d) a statement not specifically covered by any of the foregoing exceptions but having comparable guarantees of trustworthiness.

1.13.29 Hearsay Within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms to an exception of the hearsay rule provided in these rules.

1.13.30 Attacking and Supporting Credibility of Declarant

When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported by any evidence which would be admissible for

those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

1.13.31 Foundations for Evidence

All evidence must be authenticated or identified to the satisfaction of the judge that the evidence is what it is claimed to be before it may be admitted.

1.13.32 Best Evidence Rule

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute. When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the judge to determine. However, when an issue is raised regarding: whether the asserted writing ever existed; whether another writing, recording, or photograph produced at the trial is the original; or whether other evidence of contents correctly reflects the contents, then the issue is for the trier of fact to determine as in the case of other issues of fact.

1) Duplicates

   A duplicate is admissible to the same extent as an original unless:

   a) a genuine question is raised as to the authenticity of the original; or
   b) under the circumstances, it would be unfair to admit the duplicate in lieu of the original.

2) Original Not Required

   The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible, if:

   a) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;
   b) Original Not Obtainable. No original can be obtained by any available judicial process or procedure;
   c) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing; or
   d) Collateral Matters. The writing, recording, or photograph is not closely related to a controlling issue.

3) Official Records

   The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilation in any form, if otherwise admissible, may be proved by copy, certified as correct or testified to be correct by a witness who has compared it with the original. If a copy, which complies with the foregoing, cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

4) Testimony Regarding Contents

   Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the non-production of the original.

TITLE II CIVIL RULES OF TRIBAL COURT

2.1 GENERAL PROVISIONS

2.1.1 Civil Jurisdiction

The jurisdiction of the Tulalip Tribal Courts shall extend, except as limited by federal or Tulalip tribal law, to (a) all persons natural and legal of any kind and to (b) all subject matters which, now and in the future, are permitted to be within the jurisdiction of any tribal court of a sovereign Indian tribe or nation recognized by the United States of America; and tribal territorial jurisdiction shall extend, except as limited by federal law or Tulalip tribal law, to all lands and waters, in trust or fee, within the Tulalip Indian Reservation and outside the Tulalip Reservation to lands and waters reserved or obtained by the Tribes and its people for their use by any treaty or law or in any other manner, including, but not limited to, court decision, purchase, established right of use, or gift.

2.1.2 Civil Statute of Limitations

No complaint shall be filed alleging a civil cause of action unless the civil cause of action arose and or accrued within six (6) years prior to the date of the filing of the complaint in a matter involving the breach of a written contract, and in all other matters within three (3) years, unless otherwise specified in a particular ordinance. This general statute of limitations shall not apply to suits filed by the Tulalip Tribes to recover public moneys or public property intentionally misspent, misappropriated, or misused, and further, this general statute of limitations shall not apply to any debt owed the Tulalip Tribes or any of its agencies, arms, or instrumentalities.

2.1.3 Definitions

As used in this title, unless the context otherwise requires, the following definitions apply:

1) "Days"
2) "Judicial days"

2.2 COMMENCEMENT OF AN ACTION

There is one form of action called a civil action. It is commenced by filing a complaint or petition with the court clerk and paying the filing fee as required by law. Once an action is properly commenced, a summons shall issue.

2.3 COMPLAINT OR PETITION

Any person who wishes to commence a civil action in Tribal Court shall first file a written and signed complaint with the court clerk.

2.3.1 Content

A complaint, counterclaim, cross-claim, or third party claim shall:

1) state the names and any known tribal affiliations of the parties;
2) describe the basis for the Court's jurisdiction;
3) contain a short and plain statement of the wrong, injury or breach;
4) state the legal basis for the wrong, injury, or breach;
5) name or describe the person responsible for such wrong, injury, or breach; and
6) state the relief requested.

2.3.2 Summons and Service of Summons

1) Content and Form of Summons

The summons shall be in written form and signed by the plaintiff or his attorney(s).
The summons for personal service shall contain:

a) the title of the cause, specifying the name of the Court in which the action is brought and the names of the parties to the action;
b) a direction to the defendant summoning him to serve a copy of his response within a time stated in the summons;
c) a notice that, in case of failure to do so, judgment may be rendered against him by default.

2) By Whom Served
Service of summons and complaint may be made by any person over the age of eighteen (18) years who is competent to be a witness and is not a party to the action.

3) Personal Service
A copy of the summons and complaint shall be served together upon the defendant. If service is outside the Tribe's territorial jurisdiction, the special summons requirements of this title shall apply. Personal service shall be made as follows:

a) To the defendant personally, or by leaving the summons and complaint at the house of his usual abode with some person of suitable age and discretion then resident therein;
b) If against a minor under the age of fourteen (14) years, to such minor personally, and also to his father, mother, guardian, or if there be none within the jurisdiction, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if applicable;
c) If against the Tribe or any of its instrumentalities, to the person designated by statute;
d) If against any town or incorporation city in the state, to the mayor, manager, or clerk thereof;
e) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefore;
f) If the suit be against a company or corporation, to the president or other head of the company or corporation, secretary, cashier, managing agent of the company or corporation or branch or local office, or to the secretary, stenographer, or office assistant of such individuals;
g) If the suit be against a foreign corporation or non-resident joint stock company, partnership, or association doing business within this state, to any agent, cashier, or secretary thereof.

4) Service Outside the Territorial Jurisdiction of the Tribe

a) Generally
If service is outside the Tribe's territorial jurisdiction, it shall be accomplished by personal delivery in the manner prescribed by the law of the place in which the service is made for service in an action in any of its courts of general jurisdiction. The summons served upon a party outside the Tribal Court's territorial jurisdiction shall be in substantially the same form as that required for personal service.

1. Whenever any domestic or foreign corporation, which has been doing business on the Reservation, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation, service of all process upon such corporation may be made upon the receiver thereof. When tribal law authorizes personal service outside the territorial jurisdiction of the Tribal Court, the service, when reasonably calculated to give actual notice, may be made.

2. When outside the State of Washington, service may be made by any form of mail addressed to the person to be served and requiring a signed receipt.
3. Service may be made as directed by the foreign authority in response to a letter rogatory.

b) Effect of Service Outside Territorial Jurisdiction of Tribe
Personal service of the complaint and summons or other process may be made upon any party outside the territorial jurisdiction of the Tribe, in the manner prescribed in this section. If upon a member of the Tribe, or resident of the Reservation, or a person or entity who has submitted to the jurisdiction of the Tribal Court by any of the acts specified in Section 1.2.2 of this Title, it shall have the same force and effect of personal service within the Tribal Court's territorial jurisdiction. Otherwise, it shall have the force and effect of service by publication.

5) Service by Publication
a) Generally
When the defendant cannot be found within the territorial jurisdiction of the Court, and upon the filing with the Court of a declaration of the plaintiff, plaintiff's agent, or attorney stating a belief that the defendant is not a resident of the county of the Reservation, or cannot be found, and that a copy of the summons and complaint has been deposited in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons by the plaintiff or his attorney in any of the following cases:
1. when the defendant is a foreign corporation and has property within the Reservation;
2. when the defendant, being a resident of the Reservation, has departed therefrom with the intent to defraud his creditors, or to avoid the service of a summons and complaint, or keeps himself concealed therein with like intent;
3. when the defendant is not a resident of the Reservation, but has property therein and the Court has jurisdiction of the subject of the action;
4. when the subject of the action is real or personal property in the Reservation, and the defendant has or claims a lien or interest therein, actual or contingent, and the relief demanded consist wholly or partially in excluding the defendant from any interest or lien therein;
5. when the action is for dissolution of marriage in the cases prescribed by law;
6. when the action is to foreclose, satisfy, or redeem from a mortgage or deed of trust, or to enforce a lien of any kind on real estate in the Reservation, or satisfy or redeem from the same;
7. when the action is against any corporation, whether private or municipal, organized under the laws of the State of Washington or Tulalip Tribes, and the proper officers on whom to make service do not exist or cannot be found; or
8. when the action is brought by one having in his possession, or under his control, any property or money, or being indebted, where more than one person claims to be the owner of, entitled to, interested in, or to have a lien on such property, money, or indebtedness, or any part thereof.

b) Form of Service by Publication
The publication shall be made in a newspaper of general circulation in Snohomish County, Washington once a week for six (6) consecutive weeks; provided, that publication of summons shall not be made until after the filing of the complaint, and the service of the summons shall be deemed complete at the expiration of the time prescribed

for publication. The summons must be signed by the plaintiff or his attorney(s). The summons shall contain the date of the first publication, and shall require the defendant or defendants upon whom service by publication is desired to appear and answer the complaint within sixty (60) days from the date of the first publication of the summons. The summons for publication shall also contain a brief statement of the nature of the action.

c) Effect of Service by Publication
Service by publication alone shall not by itself be taken and held to give the Court jurisdiction over the person of the defendant. By such service, the Court only acquires jurisdiction to give a judgment which is effective as to property or debts attached or garnished in connection with the suit or other property, which property forms the basis of jurisdiction of the Court. If the defendant appears in a suit commenced by such service, the Court shall have jurisdiction over his person. The defendant may appear specially and solely to challenge jurisdiction over property or debts attached or garnished or other property within the jurisdiction of the Court.

6) Alternative Service
If other forms of personal service have been attempted and service has not been affected, the Court may order service by mail to the last known address, or any other method of service that the Court deems effective in providing the best notice available. Service by mail shall be by sending certified return receipt requested and regular mail. Service shall be effective if the letter sent by regular mail is not returned within thirty (30) days.

7) Return of Service
The person serving the complaint and summons shall make proof of service to the Court promptly, and in any event, within the term during which the person served must respond to the summons. This shall be accomplished by his or her declaration or affidavit of service. In case of service other than by publication, the declaration or affidavit of service must state the time, place, and manner of service. Costs shall not be awarded and a default judgment shall not be rendered unless proof of service is on file with the Court. Proof of service shall be made in the following manner:

a) Service Outside the Territorial Jurisdiction of the Tribe
Proof of service outside the territorial jurisdiction of the Tribal Court may be made by declaration or affidavit of the individual who made the service or in the manner prescribed by the law of the place in which the service is made for an action in any of its courts of general jurisdiction.

b) Service by Mail
Proof of service by mail shall include a receipt signed by the addressee, a declaration that the mail was not returned to the sender undelivered for a period of thirty (30) days, or other evidence of personal delivery to the addressee satisfactory to the Court.

c) Service by Publication
Proof of service by publication shall be made by the declaration or affidavit of the printer, publisher, foreman, principal clerk, or business manager of the newspaper showing the same, together with a printed copy of the summons as published.

8) Amendment
At any time in its discretion and upon such terms as it deems just, the Court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

2.4 SERVICE FOR ALL OTHER PAPERS AND PLEADINGS

2.4.1 Service Generally

Every order required by its terms to be served, every written pleading subsequent to the original complaint, every written motion, and every written notice, appearance, demand, offer or judgment, or other paper shall be served upon all parties. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons and complaint in Section 2.3.2.

1) Manner of Service
   Whenever under these rules service of papers other than the complaint and summons is required or permitted, the rules governing the manner of service of such papers in the Superior Court of the State of Washington in and for Snohomish County shall govern.
2) Filing
   All papers after the complaint required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter unless otherwise provided by the Court, and a reference shall be made to them in the record of the Court.

2.4.2 Service of Subpoenas

Service of subpoena shall be made by tribal police officer or other person appointed by the Court for such purposes, or by a competent person who is at least 18 years of age and not a party to the action. As soon as practicable, proof of service of subpoena shall be filed with the clerk of court indicating the date, time, and place of service.

2.5 PARTIES

2.5.1 Real Party in Interest

Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought.

2.5.2 Reasons for Non-Joinder of Omitted Persons

In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, or persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

2.5.3 Minors or Incompetent Parties

1) Minors
   When a party is a minor, he shall appear by parent or legal guardian, or if he has no parent or legal guardian or in the opinion of the Court the parent or legal guardian is an improper person, the Court shall appoint a guardian ad litem.
2) Incompetent Parties
   When an incompetent person is a party to an action, he shall appear by guardian. If he has no guardian, or in the opinion of the Court the guardian is an improper person, the Court shall appoint one to act as guardian ad litem. When the incompetent person is plaintiff, a relative or friend shall make the application for a guardian. If no such application is made within the time he is to appear, application may be made by any party to the action.

2.6 THIRD PARTY PRACTICE

2.6.1 Timing

1) Service of Summons

A defendant may move, on notice to the plaintiff, for leave as a third party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. If the motion is granted and the summons and complaint are served, the person so served herein after called the third party defendant, shall make his defense to the third party plaintiff's claim as provided in Chapter 2.9 and his counterclaims against the third party plaintiff and cross-claims against other third party defendants as provided in Chapter 2.11.

2) Third Party Defendant Response
The third party defendant may assert against the plaintiff any defenses which the third party plaintiff has to plaintiff's claim. The third party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff. The plaintiff may assert any claim against the third party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff, and the third party defendant thereupon shall assert his defenses as provided in Chapter 2.9. A third party defendant may proceed under this section against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third party defendant.

3) When Plaintiff may Bring in Third Party
When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

4) Tort Cases
This rule shall not be applied in tort cases so as to permit the joinder of a liability or indemnity insurance company, unless such company is, by statute or contract, directly liable to the person injured or damaged.

2.6.2 Joinder of Persons Needed for a Just Adjudication

A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

1) in his absence complete relief cannot be accorded among those already parties, or
2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
   a) as a practical matter impair or impede his ability to protect that interest, or
   b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Subject to the provisions of Section 2.6.5, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or an involuntary plaintiff.

2.6.3 Joinder of Claims and Remedies

The plaintiff, in his complaint or in reply setting forth a counterclaim, and the defendant in an answer setting forth a counterclaim, may join either as independent or as alternative claims as many claims, either legal or equitable, or both, as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties and/or there may be a like joinder of crossclaims or third party claims if all the requirements of this title are met. Whenever a claim is one recognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action. The Court, however, shall grant relief in that action only in accordance with the relative substantive rights of the parties.

2.6.4 Permissive Joinder

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of

transactions or occurrences, and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any questions of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

2.6.5 Joinder Not Feasible

When persons who are not indispensable, but who ought to be parties if complete relief is to be granted between those already parties, have not been made parties and are subject to the jurisdiction of the Court as to both service of process and venue, the Court shall order them summoned to appear in the action. The Court, in its discretion, may proceed in the action without making such persons parties if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance, but the judgment rendered therein does not affect the rights or liabilities of absent persons.

2.6.6 Misjoinder

Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party, or of the Court's own initiative, at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

2.6.7 Interpleader

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not grounds for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical, but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this section supplement and do not in any way limit the joinder of parties permitted under other sections.

2.6.8 Intervention

A person desiring to intervene shall serve a motion to intervene upon all parties affected. The motion shall state the grounds for intervention and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The Tribe may intervene in any case where the interpretation of tribal constitution, ordinance, common law, or custom and tradition is a central issue.

1) Intervention of Right

   Upon timely application, anyone shall be permitted to intervene in an action when:

   a) an ordinance confers an unconditional right to intervene; or
   b) when an applicant claims an interest that may not be adequately protected by the existing parties and the applicant is or may be bound by a judgment in the action; or
   c) the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the Court.

2) Permissive Intervention

   Upon timely application, anyone may be permitted to intervene in an action when:

   a) an ordinance confers a conditional right to intervene; or

b) an applicant's claim or defense and the main action share a question of law or fact in common.

In exercising its discretion, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

2.7 SUBSTITUTION OF PARTIES

2.7.1 Death

If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party, and together with the notice of hearing, shall be served on the parties as provided for service of notices, and upon persons not parties, in the manner provided by this Ordinance for the service of a summons and complaint. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

In the event of the death of one or more of the plaintiffs or one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The fact of death shall be noted in the docket, and the action shall proceed in favor of or against the surviving parties.

2.7.2 Incompetency

If a party becomes incompetent, the Court, upon motion served as provided in Section 2.6.1, may allow the action to be continued by or continued by or against his representative.

2.7.3 Transfer of Interest

In case of any transfer of interest, the action may be continued by or against the original party unless the Court, upon motion, directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in Section 2.7.1.

2.8 GENERAL RULES OF PLEADING

There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third party complaint, if the Court allows a person who was not an original party to be summoned; and a third party answer, if a third party complaint is served. No other pleading shall be allowed.

2.8.1 Form

Every pleading submitted to the Court shall be written and shall contain a caption setting forth the name of the Court, the title of the action, and the Court file number for the case if known to the person signing it. In a complaint, the title of the action shall include the names of all the parties, but in other written pleadings it is sufficient to state the name of the first party with an appropriate indication of other parties. When the plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended.

2.8.2 Signature

All pleadings, motions, and legal memoranda of a party represented by an attorney shall be dated and signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall date and sign his pleadings, motions, and legal memoranda and state his address. The signature of a party or an attorney constitutes a certificate that he has read the pleadings, motions, and legal memoranda and that to the best of his knowledge, information, and good faith belief, there exists grounds to support it.

2.8.3 Pleading to be Concise and Direct

Pleadings and motions shall be stated so as to enable a person of common understanding to know what is intended. A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defense. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds or on both. All pleadings shall be so construed as to do substantial justice.

2.8.4 Adoption by Reference Exhibits

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part of that pleading for all purposes.

2.8.5 Filing with the Court

The filing of pleadings and other papers shall be made by filing them with the clerk. The filing date shall be noted at the time of filing.

2.8.6 Time Computation

The time within which an act is to be done shall be computed by excluding the first day and including the last, unless the last day is a holiday or Sunday, and then it is also excluded.

2.9 RESPONSE

A defendant shall serve his answer on or before the time he is required to answer the complaint as stated in the summons. A party served with a pleading stating a cross-claim against him shall answer on the return date fixed in a notice which shall accompany the pleading. The plaintiff shall reply to a counterclaim not less than twenty (20) days prior to trial.

2.9.1 Timing of Response

A summons served within the Tribe's territorial jurisdiction shall require the defendant to respond within twenty (20) days from the date of service. A summons served upon a party outside the Tribe's territorial jurisdiction shall require the defendant to respond within thirty (30) days from the date of service if made within the State of Washington, or sixty (60) days from the date of service if made outside the State of Washington.

2.9.2 Form

The answer shall be written and shall state defenses, denials, and objections to each claim asserted in the complaint in any form which will enable a person of common understanding to know what is intended. If the defendant is without knowledge or information sufficient to form a belief as to the truth of a complaint or petition, he shall so state, and this has the effect of a denial.

2.9.3 Content

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim counterclaim, cross-claim, or third party claim, shall be asserted by the responsive pleading, except that the following defenses may, at the option of the pleader, be made by motion:

1) lack of jurisdiction over the subject matter;
2) lack of jurisdiction over the person;
3) insufficiency of process;
4) insufficiency of service of process;
5) failure to state a claim upon which relief can be granted; and
6) failure to join an indispensable party.

A motion making any of these defenses shall be made before pleading is permitted, except that lack of subject matter jurisdiction can be raised by any party or by the Court at any time. No defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to the claim for relief. If, on a motion asserting failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Section 2.10.5, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

2.9.4 Affirmative Defenses

In a written answer to a complaint or cross-claim and in a written reply to a counterclaim, a party shall set forth affirmatively the following: accord and satisfaction, arbitration and award, assumption or risk, contributory negligence, discharge in bankruptcy, duress, estoppels, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court shall treat the pleading as if there had been a proper designation if justice so requires.

2.9.5 Waiver of Defenses

A party waives all defenses and objections which he does not present in an answer or reply or by motion, except:

1) the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading if one is permitted, by motion for judgment on the pleadings, or at the trial on the merits; and
2) whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

2.9.6 Effect of Failure to Deny

Any statements in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied by responsive pleading.

2.10 MOTIONS

2.10.1 Form of Motions

An application to the Court for an order shall be by written motion. A motion need not be in any special form, but must be such as to enable a person of common understanding to know what is intended. The general rules of pleading shall apply to all motions.

1) Judicial Copy

   A copy of any motion, response, or supporting documentation filed and served under this section shall be provided to the judge at the time it is filed. The judicial copy shall contain the date and time of the hearing and the judge assigned to the matter.

2.10.2 Timing

A written motion, other than one which may be heard ex parte, and notice of the hearing shall be served not later than seven (7) days before the time specified for the hearing as set by the Court. When a motion is supported by affidavit or other documentary evidence, it must be filed and served fourteen (14) days before the time specified for the hearing. Any written response shall be served not later than three (3) days before the time specified for the hearing, unless a different

period is fixed by these rules or by order of the Court. Such an order may, for cause shown, be made on ex parte application.

2.10.3 Motion for More Definite Statement

If a pleading to which a responsive pleading is permitted (for example, the complaint) is so vague or ambiguous that a person of common understanding cannot know what is intended, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within ten (10) days after the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

2.10.4 Motion to Strike

A party may make a motion to strike for good cause.

2.10.5 Motion for Summary Judgment

1) For Claimant

A party seeking to recover upon a claim, counterclaim, or cross-claim may, at any time after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part of the claim, counterclaim, or cross-claim.

2) For Defending Party

A party against whom a claim, counterclaim, or cross-claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part of the claim, counterclaim, or cross-claim.

3) Motion and Proceedings

The motion and supporting affidavits, memoranda of law, and any other supporting documentation shall be filed and served at least 28 days before the time fixed for the hearing as set by the Court. Any opposing affidavits shall be filed and served no later than 14 days prior to the hearing. Any counter response shall be filed and served no later than 3 days prior to the hearing. The judgment sought shall be rendered if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

4) Case Not Fully Adjudicated on Motion

If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court, at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall then make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the fact so specified shall be deemed established, and the trial shall be conducted accordingly.

5) Form of Affidavits; Further Testimony; Defense Required

Supporting and opposing affidavit shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated. Sworn or certified copies of all papers or parts referred to in an affidavit shall be attached or served along with the affidavit. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories,

or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

6) When Affidavits are Unavailable
Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or deposition to be taken or discovery to be had or may make such other order as is just.

7) Affidavits Made in Bad Faith
Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the Court shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

8) Form of Order
The order granting or denying the motion for summary judgment shall include the grounds for the ruling, including any documents and other evidence called to the attention of the Court before the order on summary judgment was entered.

2.10.6 Motion for Shortening Time

The time for notice and hearing of a motion may be shortened only for good cause upon written application to the court in conformance with this rule. A motion for order shortening time may not be incorporated into any other pleading. The court may deny or grant the motion and impose such conditions as the court deems reasonable. All other rules pertaining to confirmation, notice and working papers for the hearing on the motion for which time was shortened remain in effect, except to the extent that they are specifically dispensed with by the court.

1) Notice
As soon as the moving party is aware that he or she will be seeking an order shortening time, that party must contact the opposing party to give notice in the form most likely to result in actual notice of the pending motion to shorten time. The declaration in support of the motion must indicate what efforts have been made to notify the other side.

2) Timing of Ruling
Except for emergency situations, the court will not rule on a motion to shorten time until the close of the next judicial day following filing of the motion (and service of the motion on the opposing party) to permit the opposing party to file a response. If the moving party asserts that exigent circumstances make it impossible to comply with this requirement, the moving party shall contact the bailiff of the judge assigned the case for trial to arrange for a conference call, so that the opposing party may respond orally and the court can make an immediate decision.

3) Proposed Agreed Orders to Shorten Time
If the parties agree to a briefing schedule on motion to be heard on shortened time, the order may be presented by way of a proposed stipulated order, which may be granted, denied or modified at the discretion of the court.

2.10.7 Motion for Reconsideration

A motion for reconsideration shall be plainly labeled as such. The motion shall be filed within ten (10) judicial days after the order to which it relates is filed. The motion shall describe with specificity the matters which the movant believes were overlooked or misapprehended by the Court, any new matters being brought to the Court's attention for the first time, and the particular modifications being sought to the Court's prior ruling. Failure to comply with this subsection may be grounds for denial of the motion. The pendency of a motion for reconsideration shall not stay discovery or any other procedure mandated by these rules.

2.11 CROSS CLAIMS AND COUNTER CLAIMS

2.11.1 Mandatory

A pleading shall state any counterclaim the pleader has against any opposing party at the time of serving the pleading if: 1) it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim, and 2) does not require for its adjudication the presence of third parties of whom the Court can not acquire jurisdiction. The pleader need not state the claim if: 1) at the time the action was commenced, the claim was the subject of another pending action, or 2) the opposing party brought suit upon his claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this section.

2.11.2 Permissive

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

2.11.3 Counterclaim Exceeding Opposing Claim

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

2.11.4 Counterclaim Maturing or Acquired After Pleading

A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

2.11.5 Omitted Counterclaim

When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may, by leave of Court, set up the counterclaim by amendment.

2.11.6 Against Co-Party

A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-complainant.

2.11.7 Set-Offs

To entitle a defendant to a setoff, he must set forth the same in his answer.

1) Against Assignee

The defendant in a civil action upon a contract express or implied other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due which has been assigned to the plaintiff, may set off a demand of a like nature existing against the person to whom he was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment, and belonging to the defendant in good faith, before notice of such assignment, and was such a

demand as might have been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.

2) Against Beneficiary
If the plaintiff be a trustee to any other, or if the action be in a name of a plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents or for whose benefit the action is brought, may be set off as will satisfy the plaintiffs debt, if the same might have been set off in an action brought by those beneficially interested.

2.12 AMENDED AND SUPPLEMENTAL PLEADINGS

2.12.1 Prior to Trial
A party may amend a complaint, counterclaim, cross-claim, or third party complaint once as a matter of course at any time before a responsive pleading is made, or if the pleading is an answer or a reply to a counterclaim, he may so amend it at any time within twenty (20) days after it is served provided that it is amended prior to trial. Otherwise, a party may amend his pleading only by leave of Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service or notice of the amended pleading, whichever period may be longer, unless the Court otherwise orders.

2.12.2 During or After Trial
When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to do so amend does not affect the result of the trial of these issues.
If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be advanced thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

2.12.3 Relating Back
Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

2.12.4 Supplemental Pleadings
Upon motion of a party, the Court may, upon reasonable notice and upon such terms as are just, permit the moving party to serve or make a supplemental pleading setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented.

2.12.5 Interlineations
No interlineations, corrections, or deletions shall be made in any paper after it is filed with the clerk. Any such mark made prior to filing shall be initialed and dated by all persons signing the document.

2.13 PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS
Within the context of any existing civil action, a temporary and/or ex parte order may be issued by the Court upon application by a party if the Court determines that justice so requires.

2.13.1 Preliminary Injunctions

1) Grounds

Following a motion and opportunity for hearing, either on affidavits or on sworn testimony, the Court may enter a preliminary injunction restraining a party from taking certain action or requiring a party to take certain action, during the pendency of the lawsuit. A preliminary injunction may be entered only after an appropriate motion by a party after notice and an opportunity to be heard by the opposing party or parties. A preliminary injunction will only be issued on a showing that:

a) from the specific facts proven, that immediate and irreparable damage, loss, or injury will result to the party requesting the relief during the pendency of the lawsuit;
b) from the specific facts proven, on balance, the party requesting relief will be more likely to suffer a more serious and irreparable harm than the party opposing the injunction; and
c) the party requesting relief has raised serious legal questions and demonstrated a likelihood of prevailing on the merits of his claims.

2) Bond

The Court may, in its discretion, require the party seeking preliminary relief to post a bond to protect the party to be restrained, in the event that such relief is ultimately determined to be unjustified. No bond will be required of the Tulalip Tribes unless specifically allowed by ordinance or resolution of the Tulalip Tribes Board of Directors.

2.13.2 Temporary Restraining Orders

A temporary restraining order may be granted without written or oral notice to the adverse party or his or her counsel only if:

1) it clearly appears from specific facts shown by affidavit or verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his or her counsel can be heard in opposition, and
2) the applicant or his or her counsel certifies to the Court in writing the efforts, if any, that have been made to give notice or the reasons supporting the claim that notice should not be required.

Every temporary restraining order granted without notice shall be endorsed with the date and shall expire by its terms within ten (10) days, or as the Court fixes.

2.13.3 Restraining Orders

Domestic violence restraining orders and civil anti-harassment restraining orders are governed by Ordinance 117.

2.14 PRETRIAL PROCEDURES

2.14.1 Pretrial Scheduling Conference

The court on is own motion, or by motion of either party, may call a pretrial scheduling conference after all the pleadings are complete. At that time, the Court may issue orders or set additional hearings to further the expeditious resolution of the case. Any defenses, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination be deferred until the trial.

2.14.2 Discovery

The Court shall have the absolute discretion to decide whether to permit any discovery procedures. In exercising such discretion, the court shall consider whether all parties are represented by counsel, whether *unreasonable* delay in bringing the case to trial will result, and whether the interests of justice will be promoted. The taking of depositions or the requesting of admissions, the propounding of interrogatories and other discovery procedures may be available to a party only upon obtaining prior permission of the Court.

2.14.3 Subpoenas

The Court shall issue subpoenas for the attendance of witnesses and the production of documents, either on its own motion or by the request of a party or tribal police. Subpoenas shall bear the signature of the issuing judge, unless otherwise authorized by the Court.

2.14.4 Pretrial Offer of Judgment

At any time more than five (5) days before trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him from the money or property or the effect specified in his offer, with costs then accrued. If within five (5) days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service, and the Court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence of the unaccepted offer is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the cost and attorneys fees incurred after the making of the offer. The fact than an offer is made but not accepted does not preclude a subsequent offer.

2.15 TRIAL

2.15.1 Trial by Jury

There shall be no trial by jury in a civil case.

2.15.2 Consolidation

When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial on any or all of the matters in issue. The Court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any matter raised by the pleadings

2.15.3 Questions of Law and Fact

Issues of law shall be decided by the judge. Issues of fact shall be decided by the jury, unless the matter is tried without a jury, in which case issues of fact shall also be submitted to the judge. Parties may stipulate to factual issues and submit them for acceptance by the Court

2.15.4 Testimony

In all trials, the testimony of witnesses shall be taken orally in court, unless otherwise provided by rule or statute.

1) Refusal to Testify
   a) If a party refuses to attend or testify at the trial after proper service of a subpoena, the complaint, answer, or reply of the party may be stricken and judgment taken against the party. The party may also be subject to contempt of court.
   b) If a witness refuses to attend or testify at the trial after proper service of a subpoena, a bench warrant may be issued by the court.
2) Counsel as Witness
   No person shall appear before the Court as both counsel and witness in the same case.
3) Witness Fees
   Each witness answering a subpoena or appearing voluntarily shall be entitled to fees and mileage as set by resolution of the Tulalip Board of Directors.

2.15.5 Default

1) Default Order
   An order of default will enter against the defendant in the event of failure to respond to the summons in the manner or at the time specified by the summons. An order of default will also enter against any party who fails to appear at the time set for trial. If a party fails to respond to a motion filed with the Court and properly served, the motion may be granted.

2) Default Judgment
Upon proper service and proof satisfactory to the Court, default judgment may be granted upon motion by a party. A judgment by default shall not be different in kind from or exceed in amount that which was prayed for in the demand for judgment. Default judgments may include reasonable attorneys fees and costs if permitted by law or written contract between the parties. The prevailing party shall notify the defendant of the entry of a default judgment by mailing a copy of the order and judgment to the defendant at his last known address within five (5) days after entry of the judgment and filing proof of service.

3) Setting Aside a Default
For good cause shown and upon such terms as the Court deems just, the Court may set aside an order of default or a default judgment. This section shall not limit the power of the Court to set aside a judgment, at any time, where the Court lacked jurisdiction to enter the judgment.

2.15.6 Dismissal of Action
The provisions of this section apply to the dismissal of any original action, counterclaim, set-off, cross-claim, or third party claim.

1) Voluntary Dismissal
   a) Mandatory
   An action may be dismissed when all parties who have appeared so stipulate in writing. An action may also be dismissed upon motion of the plaintiff at any time before the plaintiff rests at the conclusion of his or her opening case.
   b) Permissive
   After plaintiff rests following his or her opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the Court deems proper.
   c) Counterclaim
   If a counterclaim has been pleaded by a defendant prior to receiving service of plaintiff's motion for dismissal, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court.
   d) Effect
   Unless otherwise stated in the order of dismissal, the dismissal is without prejudice.
   e) Costs
   The Court may impose costs, in its discretion.
2) Dismissal on Clerk's Motion
   a) Notice
   In all civil cases in which no action of record has occurred during the previous twelve (12) months, the clerk of the Court may notify counsel by mail that the Court will dismiss the case for want of prosecution unless, within 30 days following the mailing of such notice, a party takes action of record or files a status report with the Court indicating the reason for inactivity and projecting future activity and a case completion date. If the Court does not receive such a status report, it may, on motion of the clerk, dismiss the case without prejudice and without cost to any party.
   b) Other Grounds for Dismissal and Reinstatement
   This rule is not a limitation upon any other power that the Court may have to dismiss or reinstate any action upon motion or otherwise.
3) Motion to Dismiss
If the Court determines that the lawsuit was filed frivolously and without good faith, the Court may dismiss the matter and make any other rulings as appropriate.

4) Imposition of Costs and Attorneys Fees
When a motion to dismiss is granted based on the frivolous nature of the pleadings, the Court shall impose costs against the appellant. Attorneys fees may be imposed, when provided by contract or other Tulalip law, in the discretion of the Court.

2.16 JUDGMENT
Judgment includes a decree and any final order. Judgments shall be in writing, signed by the Court.

2.16.1 Entry of Judgment
Upon the verdict of a jury, the judge shall render judgment in accordance with the verdict. If the trial is by judge, the judge may make findings of fact and conclusions of law and shall enter judgment after the close of trial.

2.16.2 Multiple Claims
When more than one claim for relief is presented in an action, the Court may direct the entry of a final judgment upon one or more, but less than all, of the claims.

2.16.3 Cross Claim; Counter Claim
If an original complaint is dismissed and a counter claim or cross claim has been alleged, trial and judgment may be had on the counter claim or cross claim, even if the original complaint has been dismissed or otherwise disposed of.

2.16.4 Stay of Proceeding to Enforce Judgment
When the Court has ordered a final judgment on some but not all of the claims presented in the action, the Court may stay enforcement of the judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit to the party in whose favor the judgment is entered.

2.16.5 Fixing and Collection of Costs
Upon judgment, costs will be assessed as established by the Court. Parties may request additional costs. In an exceptional case, the Court may waive costs. Costs may include: witness fees; cost of service of court papers; and any other costs sustained by the parties in connection with the matter.

2.16.6 Attorneys Fees
Attorneys fees may only be awarded in accordance with the provisions of Title I.

2.17 RELIEF FROM JUDGMENT OR ORDER

2.17.1 Clerical Error
Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party after such notice as the Court may order.

2.17.2 Mistake, Inadvertence, Excusable Neglect, or New Evidence
On motion and upon such terms as are just, but no later than one year after the judgment or order at issue has been entered, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

1) mistakes, inadvertence, surprise, excusable neglect, or irregularity in obtaining a judgment or order;
2) erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record; or
3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial.

2.17.3 Void Judgments, Fraud, or Death

On motion and upon such terms as are just, and within a reasonable time after the judgment or order at issue has been entered, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

1) the judgment is void;
2) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated;
3) unavoidable casualty or misfortune preventing the party from prosecuting or defending**;**
4) fraud;
5) death of one of the parties before judgment in the action; or
6) any other reason justifying relief from the operation of the judgment.

2.18 FOREIGN JUDGMENTS

2.18.1 Registration Procedure

Recognition, implementation, and enforcement of orders, judgments and/or decrees from courts other than the Tulalip Tribal Court shall be allowed in accordance with this Title. The party shall register the order, judgment and/or decree with the Tulalip Tribal Court by filing a certified copy with the tribal court clerk, and paying any necessary filing fee established by the clerk. The registering party shall issue and serve a thirty (30) day summons. Upon obtaining service on the judgment debtor or non-prevailing party in accordance with the provisions of this Title and after the judgment debtor or non prevailing party has failed to respond, the recognition, implementation, and enforcement of orders, judgment and/or decree shall be allowed. Enforcement of foreign orders, judgments, and/or decrees, when so ordered by the Tulalip Tribal Court, shall only be permitted as provided under Tulalip law.

2.18.2 Hearing

Any party to such a foreign order, judgment, and/or decree registered with the Tribal Court may, within thirty (30) days of the service of such order, judgment, and/or decree upon the other party, apply for hearing on the order, judgment, and/or decree before the Tribal Court. Upon such application, the Tribal Court shall hold a hearing to determine the validity of such order, judgment, and/or decree, and shall consider issues raised by the other party, including, but not limited to, the jurisdiction of the foreign court and whether such order, judgment, and/or decree is contrary to laws, both written and customary, of the Tulalip Tribes of Washington.

2.18.3 Immunity

The provisions of this section shall not be construed to waive the immunity of the Tulalip Tribes, its Board of Directors, its agencies, enterprises, chartered organizations, corporations, or entities of any kind, and its officers, employees, agents, contractors and attorneys shall be immune from suit in the performance of their duties; except where the immunity of the Tribes or its officers and employees is expressly, specifically, and unequivocally waived by and in a Tulalip tribal or federal statute, a duly-executed contract approved by the Tulalip Board of Directors, or a duly enacted ordinance or resolution of the Tulalip Board of Directors.

2.19 ENFORCEMENT OF JUDGMENTS

2.19.1 Purpose

The general purpose of this chapter is to provide a fair and equitable means of collecting on debts, to protect the rights of creditors and debtors, and to better enable community members to secure credit by providing a process for creditors to collect on debts. The provisions of this chapter shall not limit the Court from applying applicable tribal customs to disputes between Coast Salish peoples.

2.19.2 Garnishment

The Tulalip Tribes adopts and incorporates as Tribal law the provisions of RCW 6.27 et. Seq., as presently constituted or hereafter amended or recodified, which shall authorize and govern garnishments, except that all references in the garnishment statute and forms to the State of Washington district or superior courts shall be changed to "Tulalip Tribal Court," and references to "sheriff" shall be changed to "Tribal Police"; PROVIDED, where the Tulalip Tribes (including its entities and instrumentalities), is a garnishee defendant, in no event shall the Tulalip Tribes be liable for a default judgment, and in no event shall Tulalip Tribal funds be subject to judgment or execution in an amount that exceeds the amount of nonexempt wages or other funds subject to garnishment that are specifically held for or owing the defendant debtor.

TITLE III SPECIAL PROCEEDINGS

3.1 SEIZURES AND DISPOSITION

3.1.1 Seizures Related to Controlled Substances

1) Subject Property

The following shall be subject to forfeiture to the Tulalip Tribes and no property right shall exist in them:

a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of Tulalip tribal law.

b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or listed chemical in violation of Tulalip tribal law.

c) All property which is used, or intended for use, as a container for property described in paragraph (a), (b), or (i).

d) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (a), (b), or (i).

e) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of Tulalip tribal law.

g) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, an offense involving the manufacture, cultivation, delivery, or possession with intent to manufacture or deliver, of a controlled substance.

h) All controlled substances which have been possessed in violation of Tulalip tribal law.

i) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, dispensed, acquired, or intended to be distributed, dispensed, acquired, imported, or exported, in violation of Tulalip tribal law.

j) Any drug paraphernalia as defined by Tulalip tribal law.

k) Any firearm, as defined by Tulalip tribal law, used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (a) or (b) and any proceeds traceable to such property.

2) Seizure Procedures

Any property subject to forfeiture to the Tulalip Tribes under subsection (1) may be seized by an officer under a search warrant. Seizure without a warrant may be made if:

a) the seizure is incident to an arrest or a search warrant issued for another purpose;

b) the property subject to seizure has been the subject of a prior judgment in favor of the Tribes in a criminal proceeding or a forfeiture proceeding based on this title;

c) the officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

d) the officer has probable cause to believe that the property was used or is intended to be used in violation of Tulalip tribal law.

3) Custody of Tulalip Tribes
   Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Tulalip Tribes, subject only to the orders and decrees of the Court or the official having jurisdiction. Whenever property is seized under any of the provisions of this subchapter the Tribe may:
   a) Place the property under seal;
   b) Remove the property to a designated place; or
   c) Require that the Tulalip Tribes take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.
4) Summary Forfeiture
   Property seized pursuant to subsections (1)(a), (b), (c), (h), (i), (j), and (k) is subject to summary forfeiture, subject to possible discovery and use by the defendants in their defense.
5) Non-Summary Forfeiture
   For purposes of this section, "days" means calendar days. Property seized pursuant to subsections (1)(d), (e), (f), and (g) is subject to the following forfeiture procedures.
   a) Forfeiture Proceedings
      1. Within 45 days of the seizure, a petition may be filed to institute forfeiture proceedings with the Court. The clerk shall issue a summons at the request of the petitioner, and the petitioner shall cause the petition and summons to be served upon all owners or claimants of the property as provided by the civil rules.
      2. Within 30 days after the service of the petition and summons, the owner or claimant of the seized property shall file an answer to the allegations described in the petition to institute forfeiture proceedings. No extension of this time may be granted, unless extraordinary circumstances exist.
         a. If an answer is not filed within 30 days after the service of the petition and summons, the Court upon motion shall order the property forfeited to the Tribes.
         b. If an answer is filed within 30 days, the forfeiture proceeding must be set for hearing without a jury no later than 60 days after the answer is filed. Notice of the hearing must be given as provided by the civil rules.
      3. A claimant of a security interest in the property who has a verified answer on file must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged.
      4. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business within the Tulalip Reservation under any applicable law relating to financial institutions, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.
   b) Forfeiture Hearing
      The petitioner must prove the allegations in the petition by a preponderance of the evidence. If the Court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, it shall order

the property released to the owner of record as of the date of the seizure. If the Court finds that the property was used for the purpose charged and that the property was used with the knowledge or consent of the owner, the property shall be forfeited to the Tribes.

6) Disposition of Forfeited Property
   a) Whenever property is civilly or criminally forfeited under this title, the Tulalip Tribes may:
      1. Retain the property for official use;
      2. Sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public;
      3. Take custody of the property and dispose of it in accordance with law;
      4. Forward it to the Tulalip Police Department for disposition or destruction; or
      5. Transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any other jurisdiction which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer
         a. has been agreed to by the Tribe; or
         b. is authorized in an agreement between the Tulalip Tribes and the other jurisdiction.
   b) The proceeds from any sale under subparagraph (2) of paragraph (a) and any monies forfeited under this subchapter shall be used to pay:
      1. All property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and
      2. Awards of up to $100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills, kidnaps, or injures a Tulalip tribal police officer.

      Any award paid for information concerning the killing, kidnapping, or injuring of a Tulalip tribal police officer shall be paid at the discretion of the Tulalip Tribes. The Tulalip Court shall issue an order directing the seizing department to forward to the Treasurer of the Tulalip Tribes for deposit any amounts of such monies and proceeds remaining after payment of the expenses provided in this section.
7) Forfeiture and Destruction of Controlled Substances
   a) All controlled substances defined in this ordinance that are possessed, transferred, sold, or offered for sale in violation of the provisions of Tulalip tribal law; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (1)(b) of this section; and any equipment or container subject to forfeiture under subsection (1)(b) or (c) of this section which cannot be separated safely from such raw materials or products shall be deemed contraband and seized and summarily forfeited to the Tulalip Tribes. Similarly, all controlled substances defined in Ordinance 49, which are seized or come into the possession of the Tulalip Tribes, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the Tulalip Tribes.
   b) The Tulalip Tribes may direct the destruction of all controlled substances defined in Ordinance 49; all dangerous, toxic, or hazardous raw materials or products subject to forfeiture under subsection (1)(b) of this section; and any equipment or container subject to forfeiture under subsection (1)(b) or (c) of this section which cannot be separated safely from such raw materials or products under such circumstances as the Tulalip Tribes may deem necessary.
8) Plants

   All species of plants from which controlled substances in Ordinance 49 may be derived which have been planted or cultivated in violation of Tulalip tribal law, or of which the

owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the Tulalip Tribes. The Tulalip Tribes, or its duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

9) Vesting of Title in the Tulalip Tribes
All right, title, and interest in property described in subsection (1) of this section shall vest in the Tulalip Tribes upon commission of the act giving rise to forfeiture under this section, subject to possible discovery and use by the defendants in their defense.

3.1.2 Seizures Related to All Other Property

1) Subject Property
Any property, real or personal, within the jurisdiction of the Tribe that is subject to forfeiture under Tulalip tribal law.

2) Seizure Procedures
Any property subject to forfeiture to the Tulalip Tribes under subsection (1) may be seized by an officer under a search warrant. Seizure without a warrant may be made if:
   a) the seizure is incident to an arrest or a search warrant issued for another purpose;
   b) the property subject to seizure has been the subject of a prior judgment in favor of the Tribes in a criminal proceeding or a forfeiture proceeding based on this title;
   c) the officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
   d) the officer has probable cause to believe that the property was used or is intended to be used in violation of Tulalip tribal law.

3) Custody of Tulalip Tribes
Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Tulalip Tribes, subject only to the orders and decrees of the Court or the official having jurisdiction. Whenever property is seized under any of the provisions of this subchapter the Tribe may:
   a) Place the property under seal;
   b) Remove the property to a designated place; or
   c) Require that the Tulalip Tribes take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

4) Summary Forfeiture
Any contraband property is subject to summary forfeiture.

5) Return of Seized Non-Contraband Property
Non-contraband property may be returned to the owner prior to forfeiture at the discretion of the tribal police chief or his designee. A hearing may be requested before the Tribal Court within 30 days of any seizure to determine the disposition of all property seized by law enforcement officers.
   a) Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is to be used as evidence in a pending case. Non-contraband property taken as evidence shall be returned to the owner after final judgment has been rendered. Non-contraband property may be returned to the owner prior to final judgment upon application to and at the discretion of the Court.
   b) Property in the possession of the police department and of unknown ownership shall become the property of the Tribes and may be disposed of according to the procedures for handling abandoned property.

6) Non-Summary Forfeiture

For purposes of this section, "days" means calendar days. Non-contraband property that is not returned to the owner is subject to the following forfeiture procedures.

a) Forfeiture Proceedings
   1. Within 45 days of the seizure, a petition may be filed to institute forfeiture proceedings with the Court. The clerk shall issue a summons at the request of the petitioner, and the petitioner shall cause the petition and summons to be served upon all owners or claimants of the property as provided by the civil rules.
   2. Within 30 days after the service of the petition and summons, the owner or claimant of the seized property shall file an answer to the allegations described in the petition to institute forfeiture proceedings. No extension of this time may be granted, unless extraordinary circumstances exist.
      a. If an answer is not filed within 30 days after the service of the petition and summons, the Court upon motion shall order the property forfeited to the Tribes.
      b. If an answer is filed within 30 days, the forfeiture proceeding must be set for hearing without a jury no later than 60 days after the answer is filed. Notice of the hearing must be given as provided by the civil rules.
   3. A claimant of a security interest in the property who has a verified answer on file must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged.
   4. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business within the Tulalip Reservation under any applicable law relating to financial institutions, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

b) Forfeiture Hearing
   The petitioner must prove the allegations in the petition by a preponderance of the evidence. If the Court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent for the unlawful purpose of the owner, it shall order the property released to the owner of record as of the date of the seizure. If the Court finds that the property was used for the purpose charged and that the property was used with the knowledge or consent for the unlawful purpose of the owner, the property shall be forfeited to the Tribes.

7) Disposition of Forfeited Property
   Notwithstanding any other provision of the law, the Tulalip Tribes is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as may be determined by the Tulalip Tribes. Whenever property is civilly or criminally forfeited under this chapter, the Tulalip Tribes may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any other jurisdiction which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer:

   a) has been agreed to by the Tribe; or

b) is authorized in an agreement between the Tulalip Tribes and the other jurisdiction.
A decision by the Tulalip Tribes pursuant to this paragraph shall not be subject to review. The other jurisdiction shall, in the event of a transfer or property or proceeds of sale of property under this subsection, bear all expenses incurred by the Tulalip Tribes in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Tulalip Tribes may set.

8) Vesting of Title in the Tulalip Tribes
All right, title, and interest in property described in subsection (1) of this section shall vest in the Tulalip Tribes upon commission of the act giving rise to forfeiture under this section.

3.1.4 Stay of Civil Forfeiture Proceedings

1) Upon the motion of the Tulalip Tribes, the Court shall stay the civil forfeiture proceeding if the Court determines that civil discovery will adversely affect the ability of the Tulalip Tribes to conduct a related criminal investigation or the prosecution of a related criminal case.
2) Upon the motion of a claimant, the Court shall stay the civil forfeiture proceeding with respect to that claimant if the Court determines that:
   a) The claimant is the subject of a related criminal investigation or case;
   b) The claimant has standing to assert a claim in the civil forfeiture proceeding; and
   c) Continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.
3) With respect to the impact of civil discovery described in (a) and (b), the Court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the Court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.
4) In this subsection, the terms "related criminal case" and "related criminal investigation" mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is "related" to a civil forfeiture proceeding, the Court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.
5) In requesting a stay under (a), the Tulalip Tribes may, in appropriate cases, submit evidence ex parte and in camera in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial and the court may take appropriate action.
6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the Court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect or make such other orders for compensation as may be required in the interests of justice.
7) A determination by the Court that the claimant has standing to request a stay pursuant to (b) shall apply only to this subsection and shall not preclude the Tulalip Tribes from objecting to the standing of the claimant by dispositive motion or at the time of trial.

3.2 MEDIATION

Mediation is a process whereby the parties meet with a trained mediator to try to settle their case on mutually agreeable terms. The Court may, in its discretion, order the parties in a case to engage in mediation. The parties do not have to agree to settle their case. Everything said by the parties or the mediator in the mediation is confidential. The parties shall not mention whose

fault it was that settlement was not reached. The mediator shall not be called as a witness in the case mediated.

3.3 ARBITRATION

Arbitration is a process where instead of a judge or jury deciding a case, an arbitrator decides the case. The decision of the arbitrator is entered as a judgment by the court. Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this section, any controversy which may be the subject of an action existing between them at the time of the agreement to submit, or they may include in a written agreement a provision to settle by arbitration any controversy thereafter arising between them out of or in relation to such agreement. Such agreement shall be valid, enforceable, and irrevocable, save upon such grounds as exist in law or equity for the revocation of any agreement.

3.3.1 Commencing Arbitration

1) Application

Any application made under authority of this section shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions or petitions, except as otherwise herein expressly provided. Jurisdiction under this section is specifically conferred on the Tulalip Tribal Court, subject to jurisdictional limitations.

2) Notice of Intent

a) Form

When the controversy arises from a written agreement containing a provision to settle by arbitration a controversy thereafter arising between the parties out of or in relation to such agreement, the party demanding arbitration shall serve upon the other party, personally or by registered mail, a written notice of his intention to arbitrate.

b) Contents

Such notice must state in substance that unless within twenty (20) days after its service, the party served therewith shall service a notice of motion to stay the arbitration, he shall thereafter be barred from putting in issue the existence or validity of the agreement or the failure to comply therewith.

3.3.2 Motion to Compel

A party to written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the Court for an order directing the parties to proceed with the arbitration in accordance with their agreement.

1) Notice

Eight (8) days notice in writing of such application shall be served upon the party alleged to be in default. Service thereof shall be made in the manner provided by law for service of a summons or notice in a civil action in the Court specified in Section 3.3.1(2).

2) Response

In order to raise an issue as to the existence or validity of the arbitration agreement or the failure to comply therewith, a party must set forth evidentiary facts raising such issue and must either: a) make a motion for a stay of the arbitration, or b) contest the motion to compel arbitration as provided in this section. If a notice of intention to arbitrate has been served as provided in Section 3.3.1(2), notice of the motion for the stay must be served within twenty (20) days after service of said notice.

3) Court Findings

If the Court is satisfied after hearing the parties that no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith, the Court shall make an order directing the parties to proceed to arbitrate in accordance with the terms of the agreement. If the Court shall find that a substantial issue is raised as to the existence or validity of the arbitration agreement or the failure to comply therewith, the Court shall proceed immediately to the trial of such issue. If upon such trial the Court finds that no written agreement providing for arbitration was made or that there is no default in proceeding thereunder, the motion to compel arbitration shall be denied.

3.3.3 Stay of Action

If any action for legal or equitable relief or other proceedings be brought by any party to a written agreement to arbitrate, the court in which such action or proceeding is pending, upon being satisfied that any issue involved in such action or proceeding is referable to arbitration under such agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in accordance with the agreement.

3.3.4 Order to Preserve Property or Secure Satisfaction of Award

At any time before the final determination of the arbitration, the Court may, upon application of a party to the agreement to arbitrate, make such order or decree or take such proceeding as it may be deemed necessary for the preservation of the property or for securing satisfaction of the award.

3.3.5 Appointment of Arbitrators

When a case is set for arbitration, a list of five (5) proposed arbitrators shall be furnished to the Court by the parties. Upon the application of any party to the arbitration agreement, and upon notice to the other parties thereto, the Court shall appoint an arbitrator, or arbitrators, in any of the following cases:

1) When the arbitration agreement does not prescribe a method for the appointment of arbitrators;
2) When the arbitration agreement does not prescribe a method for the appointment of arbitrators, the arbitrators have not been appointed, and the time within which they should have been appointed has expired; or
3) When any arbitrator fails or is otherwise unable to act and his successor has not been duly appointed.

In any of the foregoing cases, where the arbitration agreement is silent as to the number of arbitrators, the Court shall appoint three (3) arbitrators. Arbitrators appointed by the Court shall have the same power as though their appointment had been made in accordance with the agreement to arbitrate.

3.3.6 Hearing

The arbitrators shall appoint a time and place for the hearing and notify the parties, and may adjourn the hearing from time to time as may be necessary, and on application of either party and for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award. All arbitrators shall meet and act together during the hearing, but a majority of them may determine any question and render a final award. The Court shall have power to direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

1) Attorneys

   Any party shall have the right to be represented by an attorney at law in any arbitration proceeding or any hearing before the arbitrators.

2) Depositions

Depositions may be taken in the same manner and upon the same grounds as provided by law for the taking of depositions in suits pending in Tribal Court.

2) Witnesses
The arbitrators, or a majority of them, may require any person to attend as a witness, and to bring with him any book, record, document, or other evidence. The fees for such attendance shall be the same as the fees of witnesses in the Tribal Court. Each arbitrator shall have the power to administer oaths. Subpoena shall issue and be signed by the arbitrators, or any one of them, and shall be directed to the person and shall be served in the same manner as subpoena to testify before the tribal court.

3) Failure to Appear
   a) Parties
   If any party neglects to appear before the arbitrators after reasonable notice of the time and place of hearing, the arbitrators may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them.
   b) Witnesses
   If any person summoned to testify shall refuse or neglect to obey such subpoena, upon petition unauthorized by the arbitrators or a majority of them, the court may compel the attendance of such person before the said arbitrator or arbitrators, or punish said person for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in Tribal Court.

3.3.7 Award

1) Timing
If the time within which the award shall be made is not fixed in the arbitration agreement, the award shall be made within thirty (30) days from the closing of the proceeding, unless the parties, in writing, extend the time in which that award may be made. If the arbitrator fails to make an award when required, the Court, upon motion and hearing, shall order the arbitrator to enter an award within the time fixed by the Court, and may impose sanctions or terms deemed reasonable by the Court. Failure to make an award within the time required shall not divest the arbitrators of jurisdiction to make an award or to correct or modify an award as provided in subsection (3).

2) Form
The award shall be in writing and signed by the arbitrators or by a majority of them. The arbitrators shall promptly upon its rendition deliver a true copy of the award to each of the parties or their attorneys.

3) Modification by Arbitrators
On application of a party or, if an application to the Court is pending, on submission to the arbitrators by the Court under such conditions as the Court may order, the arbitrators may modify or correct the award upon the grounds stated in subsection (7)(a) and (c). The application shall be made, in writing, within ten (10) days after delivery of the award to the applicant. Written notice shall be given to the opposing party, stating that objections, if any, must be served within ten (10) days from the notice. The arbitrators shall rule on the application within twenty (20) days after such application is made. Any award so modified or corrected is subject to the provisions of subsections (5), (6), and (7), and is to be considered the award in the case for purposes of this section, said award being effective on the date the corrections or modifications are made. If corrections or modifications are denied, then the award shall be effective as of the date the award was originally made.

4) Notice

Notice of a motion to vacate, modify, or correct an award shall be served upon the adverse party, or his attorney, within three (3) months after a copy of the award is delivered to the party or his attorney. Such motion shall be made in the manner prescribed by law for the service of notice of a motion in an action. For the purposes of the motion, any judge who might make an order to stay the proceedings in an action brought in the same court may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

4) Confirmation by Court

At any time within one year after the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the Court for an order confirming the award, and the Court shall grant such an order unless the award is beyond the jurisdiction of the Court or is vacated, modified, or corrected, as provided in subsections (6) and (7). Notice of the motion, in writing, must be served upon the adverse party, or his attorney, seven (7) days before the hearing. The validity of an award, otherwise valid, shall not be affected by the fact that no motion is made to confirm it.

5) Vacation by Court

In any of the following cases, the Court shall, upon the application of any party to the arbitration, and after notice and hearing, make an order vacating the award:

a) Where the award was procured by corruption, fraud, or other undue means;
b) Where there was evident partiality or corruption in the arbitrators or any of them;
c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, refusing to hear evidence that is pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced;
d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made;
e) If there was no valid submission or arbitration agreement and the proceeding was situated without either serving a notice of intention to arbitrate, as provided in Section 3.3.1(2), or without serving a motion to compel arbitration, as provided in Section 3.3.2.

An award shall not be vacated upon any of the grounds set forth under subsections (a) to (d), inclusive, unless the Court is satisfied that substantial rights of the parties were prejudiced. Where an award is vacated, the Court may, in its discretion, direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the agreement for the selection of the original arbitrators. Any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and it shall commence from the date of the Court's order.

7) Modification or Correction by Court

In any of the following cases, the Court shall, upon application of any party to the arbitration, and after notice and hearing, make an order modifying or correcting the award:

a) Where there was evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property referred to in the award;
b) Where the arbitrators have awarded upon a matter not submitted to them;
c) Where the award is imperfect in a matter of form, not affecting the merits of the controversy.

3.3.8 Judgment

1) Costs

Upon granting of an order, or confirming, modifying, correcting, or vacating an award, judgment or decree shall be entered in conformity therewith. Costs of the application and of the proceedings subsequent may be awarded by the Court in its discretion.

2) Attorneys Fees
Attorneys fees may only be awarded in accordance with the provisions of Title I.

3) Docketing
Immediately after entering judgment, the clerk must attach together and file the following papers, which constitute the judgment roll:
   a) the agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award;
   b) the award;
   c) each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the Court upon such an application; and
   d) a copy of the judgment.

4) Effect
The judgment so entered has the same force and effect in all respects as, and is subject to all the provisions of law relating to, a judgment in an action. It may be enforced as if it had been rendered in an action in the Court in which it is entered.

3.3.9 Appeal
An appeal may be taken from any final order made in a proceeding under this section, or from a judgment entered upon an award, as from an order or judgment in any civil action.

TITLE IV APPEALS

4.1 COURT OF APPEALS

4.1.1 Jurisdiction

The Court of Appeals shall have jurisdiction to hear appeals from the Tulalip Tribal Court, unless otherwise restricted by provision of the Tulalip Tribal Code.

4.1.2 Composition

The Tulalip Court of Appeals is the appellate body for the Tulalip Tribes. Panels shall be composed of three Justices. The Chief Justice may, in his discretion, empanel all of the justices of the Court of Appeals for an *en banc* panel to decide the issues on appeal.

4.1.3 Finality

Decisions issued by the Court of Appeals are final.

4.1.4 Definitions

As used in this title, unless the context otherwise requires, the following definitions shall apply:

1) "Costs"
2) "Days"
3) "Frivolously"

4.2 RIGHT OF APPEAL

4.2.1 Who May Appeal

Any party who claims, in good faith, that the Tulalip Tribal Court made a mistake in interpreting the law or a mistake in procedure which affected the outcome of the case, shall have the right to appeal.

4.2.2 Appealable Orders

An appeal is properly before the Court of Appeals if it concerns an appealable order, unless otherwise restricted by provision of the Tulalip Tribal Code. An appealable order is:

1) a final judgment or order of the Tribal Court; or
2) an order denying appellant's request for recusal; or
3) an order affecting a substantial right and which determines the action and prevents a judgment from which an appeal might be made.

The Tribes may not appeal a verdict of not guilty in a criminal case.

4.3 NOTICE OF APPEAL

4.3.1 Timing

Any party who wishes to appeal an appealable order of the Tribal Court shall, within twenty (20) days after the appealable order is entered, file a written notice of appeal with the clerk of the trial court and serve each party of record with a copy of the notice of appeal. For good cause shown, the time for notice of appeal may be extended in the discretion of the Court of Appeals. Such request for extension must be filed within the original twenty (20) day timeline for appeal. If a party first asks for a new trial, rehearing, or reconsideration, and the motion is denied, the twenty day time limit shall be counted from the day when the motion is denied.

4.3.2 Form

The notice of appeal must specify the party or parties taking the appeal and designate the judgment, order, or part thereof being appealed. The notice of appeal must also state the reason or grounds for appeal. The party filing the appeal shall attach the appealable order to the notice

of appeal. All filings submitted by mail shall be clearly marked "Court of Appeals" on the envelope.

4.3.3 Service

The party filing the notice of appeal shall cause service of the notice of appeal to be made on all parties by personal service or by mail to the last known address of the party. A copy of proof of service on all parties must be filed with the clerk at the same time the Notice of Appeal is filed or within five (5) days after filing.

4.4 BOND ON APPEAL AND STAY OF EXECUTION OF JUDGMENT

1) Criminal Cases
   Upon the request of the defendant for a Stay of Execution of Judgment pending the filing and perfection of an appeal, the Trial Court shall set bond requirements pending the disposition of a perfected appeal in all criminal cases, pursuant to this code.
2) Civil Cases
   The appellant in any case may request, and the Trial Court may grant, a stay of execution of the judgment pending the appeal. Except when the appellant is the Tribe or any of its subdivisions, agents, enterprises, or officers acting in their official capacity, the Trial Court may require as a condition to the granting of such a stay, the appellant post a bond, or guarantee control by the Court of sufficient assets of the appellant to satisfy the judgment in the event it is affirmed.
3) Failure of Trial Court to Rule on Motion to Stay
   In instances when the Trial Court has failed to rule on a written motion to stay in a reasonable time, any party may petition the Court of Appeals for a Writ of Mandamus to require the Trial Court to rule on the Motion to Stay. The Petition for a Writ of Mandamus may be heard by the Chief Justice or his designee.
4) Decision on Motion to Stay
   Where the Trial Court has entered a written decision on the motion to stay, either party may request a review by the Court of Appeals to determine if the Trial Court's decision should be affirmed or denied. The review will be on the written documents only, unless the Panel decides otherwise.

4.5 DISMISSAL

4.5.1 Motion to Dismiss

On the request of the appealing party, an appeal shall be dismissed at any time. On the request of the appellee, an appeal may be dismissed in the discretion of the Court. If the Court of Appeals determines that an appeal was filed frivolously and without good faith, it shall dismiss the appeal. If a party fails to comply with the appellate rules or a valid order of the Court, the Court may dismiss the appeal or make other rulings as appropriate.

4.5.2 Imposition of Costs and Attorneys Fees

When a motion to dismiss is granted based on the frivolous nature of the appeal, the Court shall impose costs against the appellant. Attorneys fees may be imposed, when provided by contract or other Tulalip law, in the discretion of the Court.

4.6 RECORD ON APPEAL

The record on appeal shall be made up of all papers filed in a case plus the audio recording and/or transcript made of all court hearings in the case. Upon receipt of a notice of appeal, the trial court clerk shall make sure that the case record is complete and in order and shall make the record available to all parties for inspection and copying at the parties' expense.

4.6.1 Inaudible Record

If the appellate panel finds that the copy of the electronic record is inaudible, it may require the appellant to file a certified written transcript of the relevant parts of the original record, if such a transcript can be made. If not, the case may be vacated and remanded to the Trial Court for a new hearing so that an adequate record can be made.

4.6.2 Sending Record to the Court of Appeals

The clerk shall deliver a copy of the case record to the administrator of the Court of Appeals no later than fifteen (15) days after receiving the notice of appeal.

4.7 BRIEFS AND MOTIONS

The parties shall be required to submit their arguments in written briefs. The Court of Appeals shall notify all parties of a schedule for the filing of briefs. The schedule shall require the appellant to file the opening brief, followed by a response brief from the appellee. The appellant may then file a reply brief. The scheduled court hearing shall be set not less than ten (10) days after the filing of the last brief.

4.7.1 Briefs

All briefs shall be filed with the clerk. An original and three (3) copies shall be submitted, with any case law cited to be attached in its entirety to the brief. Briefs shall not exceed thirty (30) pages in length, excluding the attached case law. Briefs which are not clearly legible may be stricken by the Court of Appeals.

1) Appellant's Brief

   The appellant's brief shall include:

   a) A short statement of the case, including such facts as are material to the issues presented on appeal, with appropriate references to the record;
   b) A concise argument containing the contentions of the appellant;
   c) The relevant supporting legal authority; and
   d) A short conclusion stating the specific relief sought by the appellant.

2) Appellee's Brief

   The appellee's brief shall include:

   a) A statement of the case is not required, unless the appellee finds the statement presented by the appellant to be insufficient or incorrect;
   b) A response to the contentions of the appellant;
   c) The relevant supporting legal authority; and
   d) A short conclusion.

3) Amicus Curiae

   A person may appear as amicus curiae in any proceeding by request of the Court of Appeals, or by permission of the Court of Appeals upon written request served upon all parties. The request shall set forth the interest of the applicant in the appeal or proceeding and the name of the party in whose support the amicus curiae would appear. The application shall also state whether permission is sought to file an amicus brief or participate in oral arguments, or both. Any objections to the appearance of an amicus curiae shall be made by motion within fourteen (14) days of service of the application. Approval to appear as amicus curiae shall be by written order of the Court of Appeals which shall specify the manner of appearance by the amicus curiae and state the time for filing of any amicus briefs.

4) Motions for Extending Time to File Brief

   Motions for extending the time to file a brief shall be filed at least ten (10) working days prior to the requesting party's submission deadline, with proof of service on all parties,

unless the motion is a joint motion by the parties. Motions for extending time may be ruled upon by the Presiding Justice or the Chief Justice.

5) Failure to File Brief
   If the appellant fails to file an opening brief which has been ordered pursuant to an established briefing schedule, and no extension of time has been granted, the appeal may be subject to dismissal by the Court of Appeals. If the appellant fails to brief all the issues cited in the Notice of Appeal, the issues not briefed may be considered waived and the appellant may not be allowed to raise them at oral argument.
6) Supplemental Briefs
   If deemed necessary by the Presiding Justice, supplemental briefing may be ordered.

4.7.2 Motions

A party who wishes to raise a question of procedure or request court action during an appeal shall present the issue to the Court of Appeals in a written motion. Motions must conform to the requirements for briefs in this chapter. All motions shall be filed with the trial court clerk and served on the opposing party. The opposing party may respond to the motion within five (5) days from the date of service. The trial court clerk shall immediately send a copy of all motions and replies to motions to the administrator of the Court of Appeals and to the presiding justice. The presiding justice may rule on the motion alone or after consulting with the associate justices. A motion filed by an adverse party that would result in the dismissal or resolution of an appeal may only be granted by a majority vote of all three justices. The clerk shall provide the parties with a copy of the Court's ruling.

4.7.3 Service of Briefs and Motions

The party filing the brief or motion shall serve it on all parties by personal service or by mail. Proof of service on all parties must be filed with the court clerk within five (5) days of the filing of the brief or motion.

4.8 ORAL ARGUMENT

The oral argument shall be held no fewer than thirty (30) days and no more than one hundred and twenty (120) days after the Court of Appeals receives the notice of appeal and the record, except with good cause show. The administrator of the Court of Appeals shall notify all parties of the time and place of the hearing on appeal and any hearing on a motion. At the time set for oral argument, the parties may present arguments relevant to the issues raised by the appeal. Parties may not present arguments orally that have not been properly raised in a written brief or motion. The appellant shall speak first, followed by the appellee. The appellant may then respond briefly in rebuttal. The judges may set a limit on the time each party is allowed to speak.

4.9 STANDARD OF REVIEW

In deciding an appeal, the Court of Appeals shall apply the following standards:

1) A finding of fact by a judge shall be sustained unless clearly erroneous;
2) A factual inference drawn by a judge or jury shall be reviewed as a finding of fact if more than one reasonable inference can be drawn from the fact;
3) Any finding by the judge, whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact;
4) A conclusion of law shall be reviewed de novo, or without deference to the Tribal Court's determination;
5) Construction of an unambiguous contract term is reviewed as a conclusion of law;
6) A matter which is a mixture of law and fact is reviewed by the standard applicable to each element;

7) A sentence and the imposition of fine, forfeiture, or other penalty, excluding the assessment of damages, shall be reviewed as a discretionary determination of the Tribal Court;
8) A matter which is within the discretion of the Tribal Court shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority, applied the appropriate legal standard to the facts, and did not abuse its discretion. A matter committed to the discretion of the Tribal Court shall not be subject to the substituted judgment of the Court of Appeals.

4.10 DECISION ON APPEAL

Cases appealed pursuant to these rules shall be decided on the basis of the trial court record and any written or oral arguments presented by the parties in accordance with the requirements of these rules. The Court of Appeals may affirm the trial court decision, modify the trial court decision in whole or in part, reverse the trial court decision in whole or in part, order a new trial, or make any other ruling which disposes of the issues raised by the appeal.

4.10.1 Form

The Court of Appeals shall put the decision on appeal in writing and deliver a copy to all parties. The decision on appeal shall be made by a majority vote of the justices. The Court of Appeals shall have ninety (90) days from the oral argument to render a decision, unless the Presiding Justice determines there is good cause for an extension with notice to all parties.

4.10.2 Costs

The prevailing party shall be entitled to costs.

4.10.3 Attorneys Fees

Attorneys fees may only be awarded in accordance with Title I.

4.11 MOTIONS FOR RECONSIDERATION

Any party who is in disagreement with the final decision of the Court of Appeals, except for decisions on motions for reconsideration, may request that the Court of Appeals review its decision.

1) Motion and Brief
   The party who is in disagreement with a decision must file a Motion for Reconsideration with service on the opposing party. The motion must be accompanied by a brief which states with particularity, the points of law which the moving party contends the Court of Appeals overlooked, misapprehended, or wrongly decided. The brief shall be limited to five (5) pages in length, unless otherwise authorized by the Court of Appeals. Accompanying legal authority shall not count towards the page limit.
2) Time
   The Motion for Reconsideration must be filed within ten (10) days of service of the decision or order. Notice of service on the opposing party must accompany the motion.
3) Response Brief
   Within ten (10) days after service of the Motion for Reconsideration, the opposing party may file a response brief to such motion, with service on the moving party. The response brief shall be limited to five (5) pages in length, unless otherwise allowed by the Court of Appeals, and shall be similar in form to the moving party's brief. Notice of service on the opposing party must accompany the response brief.
4) Decision
   The Motion for Reconsideration shall be decided on the briefs filed. No oral argument will be allowed unless requested by the Court of Appeals.
5) Only One Motion Permitted

Each party may file only one Motion for Reconsideration, even if the Court of Appeals modifies its decision or changes the language in the opinion rendered by the Court of Appeals.

6) Further Appeal
No further appeal may be taken from a final decision or order of the Court of Appeals.

TITLE V CRIMINAL PROCEDURES

5.1 GENERAL PROVISIONS

5.1.1 Criminal Jurisdiction

Tulalip Tribal Court shall have exclusive jurisdiction over all crimes committed within the exterior boundaries of the Reservation, unless otherwise provided by federal law. Tulalip Tribal Court will have concurrent jurisdiction over offenses defined by federal law. An Indian defendant is subject to prosecution in Tribal Court for any offense enumerated in Title VI of this Ordinance or another Tribal ordinance which is committed totally or partially within the exterior boundaries of the Tulalip Reservation, or is committed on lands and waters outside the Tulalip Reservation reserved or obtained by the Tribes and its people for their use by any treaty or law or in any other manner, except where such exercise of criminal jurisdiction is limited by federal or tribal law. Any offense is committed partially within the Tulalip Reservation or within other Tribal lands, as described above, if either the conduct which is an element of the offense or the result which is an element occurs within the exterior boundaries of the Tulalip Reservation or other Tribal lands. An offense based on an omission to perform a duty imposed by Tribal law is committed within the exterior boundaries of the Tulalip Reservation, regardless of the location of the defendant at the time of the omission.

5.1.2 Extradition

Nothing in this section shall be considered to limit or restrict an individual's right to seek a writ of habeas corpus in Tribal Court. If a Tribal law enforcement officer arrests an individual based on a warrant issued by another jurisdiction, or a reasonable belief that a warrant has been issued, the Tribes may hold such individual for up to forty-eight (48) hours after any Tribal sentence has been served for transport by authorized officials. If officials representing the other jurisdiction do not retrieve the defendant within that time, he or she shall be released. The defendant shall be entitled to bail at the amount set in the warrant.

5.1.3 Criminal Statute of Limitations

For purposes of time computation under this section, an offense is committed either when every element occurs, or if the offense is based upon a continuing course of conduct, when the course of conduct is terminated. The period of limitations starts to run on the day after the offense is committed, and a prosecution is commenced when a complaint is filed.

1) Generally

Unless otherwise specified by statute, the following time limitations apply to all proceedings under this Title:

a) prosecution for any Class A or Class B offense must be commenced within one year after the alleged offense is committed;
b) prosecution for any Class C or Class D offense must be commenced within five years after the alleged offense is committed; and
c) prosecution for any Class E offense must be commenced within ten years after the alleged offense is committed.

2) Minor Victims

If the victim is a minor at the time the offense occurred, the time limitations in this section do not begin to run until the victim reaches the age of majority.

3) Victims with Unsound Mind

If the victim has a mental disorder at the time the offense occurred, prosecution must be commenced within one year after the legal disability terminates.

4) Exceptions

The period of limitations does not run under the following conditions:

a) during any period in which the offender is not usually and publicly residing within the Reservation or is beyond the jurisdiction of the Tribal Court;
b) during any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or
c) during prosecution pending against the offender for the same conduct by another jurisdiction even if the prosecution is dismissed.

5.1.4 Definitions

Unless otherwise specified in a particular section, the following definitions shall apply to this chapter:

"**Bail**" means the security given, in the form of cash, stocks, bonds, real property, or any other form of approved collateral, for the primary purpose of insuring the presence of the defendant in a pending criminal proceeding.
"**Charge**" means a written statement accusing a person of the commission of a specific offense.
"**Citation**" means a written direction that is issued by a law enforcement officer and that requests a person to appear before the court at a stated time and place to answer a charge for the alleged commission of an offense.
"**Elder**" or "**older person**" means a Tribal member or other individual residing on the Reservation who is:

a. 62 years of age or older;
b. determined by the Court to be an elder, or
c. at least 45 years of age and unable to protect himself or herself from abuse, neglect, or exploitation because of a mental disorder or physical impairment or because of frailties or dependencies brought about by age or disease or alcoholism.

"**Family member**" or "**household member**" means a spouse, former spouse, person related by blood or marriage, person residing with the offender due to adoption or foster placement, any person currently cohabiting with the offender at any time during the year immediately preceding the commission of any alleged abuse.
"**Frisk**" means an external patting of a person's outer clothing.
"**Incarceration**" **or** "**imprisonment**" means the confinement or detention of an offender pursuant to court ordered sentencing, including, but not limited to, confinement in a jail or correctional facility, treatment facility, residential detention or G.P.S. monitoring
"**Judgment**" means an adjudication by the Tribal Court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, the judgment includes the sentence pronounced by the Court.
"**Mental disorder**" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.
"**Offender**" means a person who has been convicted of an offense under Tulalip Law.
"**Offense**" means a violation of Tulalip Tribal Criminal Law.
"**Personal recognizance**" means the release from lawful custody of a defendant upon his or her promise to appear in court at all appropriate times.
"**Probation**" means the release by the Court without imprisonment of an offender found guilty of a crime upon verdict or plea, subject to conditions imposed by the Court and subject to supervision by the Probation Office upon direction of the Court.

"**Summons**" means a written document issued by the court that commands a person to appear before the court at a stated time and place.
"**Supervised offender**" means an offender who is either:

a. sentenced to probation; or
b. who is subject to a deferred sentence; or
c. who is subject to a Stipulated Order of Continuance; or
d. released from incarceration subject to conditions imposed by the Court and subject to the supervision of the department.

"**Temporary roadblock**" means any structure, device, or other method used by law enforcement officers to control the flow of traffic through a point on a highway or road whereby all vehicles be slowed or stopped.
"**Witness**" means a person whose testimony is desired in a criminal action, prosecution or proceeding.

5.2 INVESTIGATIVE PROCEDURES

5.2.1 Investigative Subpoenas

A judge may cause a subpoena to be issued commanding a specified person to appear before the tribal prosecutor or a designated agent of the prosecutor and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. An investigative subpoena may only be issued by a judge when supported by an affidavit of the prosecutor sufficient to show that the administration of justice requires the testimony or information being sought.

5.2.2 Immunity from Self-Incrimination

No person subpoenaed to give testimony pursuant to this part may be required to make a statement or to produce evidence that may be personally incriminating. The prosecutor may, with the approval of the judge who authorized the issuance of the subpoena, grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution. Nothing in this part prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in the prosecutor's sole discretion, that the best interest of justice would be served by granting immunity. After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena. Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

5.2.3 Relief from Improper Subpoena

A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

5.2.4 Investigative Hearings

Before a judge, the prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. Failure to obey, without just cause, a subpoena served under this part is punishable for contempt of court. Proceedings conducted under this part are closed and confidential except to the extent that they supply probable cause for arresting or charging a defendant in a subsequent criminal action or are admissible in a later criminal trial. A person who divulges the contents of the prosecutor's affidavit or the proceedings without legal privilege to do so is punishable for

contempt of court. All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

5.3 SEARCHES

A search of a person, object, or place may be made, and evidence, contraband, or persons may be seized when a search is made, either by the authority of a search warrant or in accordance with federally judicially recognized exceptions to the warrant requirement.

5.3.1 Search Warrants

A search warrant is a court order that shall:

1) be in writing;
2) in the name of the Tribes;
3) signed by a judge;
4) particularly describing the premises, property, place, or person to be searched and the instruments, articles, or items to be seized; and
5) directed to a specific law enforcement officer commanding the officer to search for and seize the person or property designated in the warrant and bring the person or property before a judge.

Every judge has the authority to issue warrants for the search of persons, premises, and property and the seizure of goods, instruments, articles, or items. A warrant issued under this title shall not be held invalid due to minor irregularities in the warrant which do not substantially affect any rights of a person named in the warrant.

5.3.2 Grounds for a Search Warrant

No search warrant shall issue except upon a written or oral sworn statement of a law enforcement officer or tribal prosecutor, based upon reliable information and stating facts sufficient to support probable cause to believe that an offense has been committed, particularly describing the place, object, or persons to be searched and who or what is to be seized, which sufficiently shows probable cause exists to indicate a search will discover:

1) stolen property, embezzled property, contraband, or otherwise criminally possessed property;
2) property which has been or is being used to commit a criminal offense; or
3) property which constitutes evidence of the commission of a criminal offense.

5.3.3 Issuance of a Search Warrant

When a warrant is requested based on oral testimony, communicated by telephone or otherwise, a judge shall:

1) immediately place the requesting person(s) under oath;
2) record by voice recording device if available, or otherwise make a verbatim record of the requesting person's statement and certify the accuracy of this record;
3) enter on an original warrant the grounds indicating probable cause exists to issue a warrant and the scope of the search warrant as requested or as modified;
4) sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued; and
5) direct the requesting party to:
    a) prepare a document identical to the original warrant to be known as a duplicate original warrant;
    b) sign the duplicate original warrant on behalf of the judge; and
    c) enter the exact time of execution on the face of the duplicate original warrant.

A judge may require the applicant to furnish further testimony or documentary evidence in support of the application for the warrant.

5.3.4 Exceptions to the Warrant Requirement

1) Pursuant to Arrest

When a lawful arrest is effected, a law enforcement officer may make a reasonable search of the person arrested and the area within such person's immediate presence, without a search warrant, for the purpose of:

a) protecting the officer from attack;
b) discovering and seizing the fruits of the crime;
c) discovering and seizing instruments, articles, or other property which may have been used in the commission of the offense, or which may constitute evidence of the offense, in order to prevent its destruction; or
d) preventing the person from escaping.

2) Investigative Stop

In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a law enforcement officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit, an offense.

3) Stop and Frisk

A law enforcement officer who has lawfully made an investigative stop:

a) may frisk the person and take other reasonable steps necessary for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present;
b) may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe the object is a deadly weapon; and
c) may demand the name and present address of the person.

4) Roadblocks

Law enforcement officers may use a temporary roadblock in order to apprehend a person suspected of committing a criminal offense. Unless exigent circumstances exist justifying a departure from the requirements given below, the minimum requirements to be met by law enforcement officers when establishing roadblocks include:

a) establishing the roadblock at a point on the highway that is clearly visible at a distance of not less than 100 yards in either direction;
b) placing a sign on the center line of the highway at the point of the roadblock displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;
c) placing a flashing or intermittent beam of light, which is visible to oncoming traffic for at least 100 yards, on the side of the road at the point of the roadblock; and
d) placing warning signs, which will attract an oncoming driver's attention, at least 200 yards prior to the roadblock indicating that all vehicles should be prepared to stop.

5) Duration of Stop

An authorized stop may not last longer than is necessary to effectuate the purpose of the stop.

5.3.5 Execution of a Search Warrant

1) Generally

Search warrants shall only be executed by law enforcement officers between the hours of 6:00 a.m. and 10:00 p.m., unless the issuing judge otherwise authorizes the warrant to be served anytime day or night. A warrant is only effective within ten (10) days of the date of issuance, and warrants not executed within this time limit are void.

2) Return of Warrant

The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant.

3) Reasonable Force
Only reasonable and necessary force may be used to execute a search warrant.

4) Notice
Before entering the premises named in a search warrant, the law enforcement officer shall give appropriate notice of her or his identity, authority, and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. Before undertaking any search or seizure pursuant to the warrant, the executing law enforcement officer shall show and give a copy of the original or duplicate original warrant to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the warrant suitably affixed to the premises.

5) Receipt for Seized Items
If the warrant is executed, a receipt for all articles taken shall be left with any person at the place from which any items were seized. The inventory of the items shall be made in the presence of an officer and the person from whose possession or premises the property was taken, if present, or in the presence of at least one other credible person. Failure to give or leave a receipt of all items seized shall not render the seized property inadmissible at any subsequent trial. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the receipt suitably affixed to the premises.

5.3.6 Scope of Search pursuant to Warrant

The scope of any search shall only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the persons or property specified in the warrant. Upon discovery of the person or property named in the warrant, the law enforcement officer shall take possession or custody of the person or property and search no further under the authority of the warrant. If, in the course of an authorized search, the law enforcement officer discovers property not specified in the warrant and the officer has probable cause to believe the discovered property constitutes evidence of the commission of a criminal offense, the officer may also take possession of that property.

1) What may be seized
A warrant may be issued to search for and seize any evidence, contraband, or person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained.

5.4 ARRESTS

5.4.1 Method of Arrest

An arrest is made by actually restraining the person to be arrested or by that person voluntarily submitting to the custody of the person making the arrest. All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain the person. All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest. An arrest made outside the boundaries of the Tulalip Reservation shall be valid if made pursuant to the laws of the jurisdiction where the arrest occurred.

5.4.2 Time Restraints

An arrest may be made any day of the week and at any time of the day or night. A person charged with a Class A, B, or C offense can only be arrested at night in a private dwelling with a

signed arrest warrant specifically permitting arrest at night, unless there is an immediate threat of harm to another person.

5.4.3 Arrest Warrant

An arrest warrant shall be issued by a judge, based on a sworn complaint or a declaration under risk of perjury attesting that there is probable cause to believe an offense has been committed, or that a mandate, sentence, or order of the Court has been violated, and that the named person has committed the offense.

1) Content
   The warrant shall be in writing in the name of the Tribes; set forth the nature of the offense; command that the person against whom the sworn complaint or affidavit was made be arrested, or contain a description of the person as well as any alias used by the person; be signed by a judge; and include any bail amount, if deemed appropriate by the issuing judge.
2) Duty of Arresting Officer
   The officer making an arrest must inform the defendant that he or she acts under authority of a warrant. Provided, that if the officer does not have the warrant in his or her possession at the time of arrest, the officer shall declare that the warrant does presently exist and will be shown to the defendant as soon as possible on arrival at the place of intended confinement.
3) Minor Irregularities
   An arrest warrant shall not be dismissed due to minor irregularities in the warrant which do not substantially affect any rights of the arrested person.

5.4.4 Grounds for Arrest

A law enforcement officer may arrest a person within the exterior boundaries of the Tulalip Reservation under the following circumstances:

1) when the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds that a warrant for the person's arrest has been issued by the Tribal Court or that a warrant for the person's arrest has been issued in another jurisdiction;
2) when the person has committed an offense in the officer's presence; or
3) when the officer has probable cause, as reflected by stated and provable facts, to believe the person to be arrested has committed an offense and exigent circumstances require an immediate warrantless arrest in order to prevent the person from:
   a) fleeing the jurisdiction or concealing himself or herself to avoid arrest;
   b) destroying or concealing evidence of the commission of an offense;
   c) injuring another person; or
   d) damaging property belonging to another.

Arrest is the preferred response in situations involving bodily harm to an elder, family member, or household member; use or threatened use of a weapon against an elder, family member, or household member; or where there appears to be imminent danger of bodily harm to another.

5.4.5 Warrantless Arrest

A law enforcement officer having probable cause to believe that a person has committed or is committing a Class E or above offense shall have the authority to arrest the person without a warrant. A law enforcement officer may arrest a person without a warrant for committing any other class of offense only when the offense is committed in the presence of the officer, except as provided in the subsections below:

1) Any law enforcement officer having probable cause to believe that a person has committed or is committing a criminal offense under Tulalip law shall have the authority to arrest the person.

2) A law enforcement officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:
   a) An order or foreign domestic violence protection order has been issued of which the person has knowledge restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or in the case of an order imposing any other restrictions or conditions upon the person; or
   b) The person has assaulted a family or household member defined in the Domestic Violence ordinance and the offer believes:
      1. A Class D or above assault has occurred;
      2. An assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or
      3. That any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death.
3) Any law enforcement officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic or natural resource laws which have criminal penalties shall have the authority to arrest the person:
   a) Relating to duty on striking an unattended car or other property;
   b) Relating to duty in case of injury to or death of a person or damage to an attended vehicle;
   c) Relating to reckless driving or racing of vehicles;
   d) Relating to persons under the influence of intoxicating liquor or drugs;
   e) Relating to driving a motor vehicle while operator's license is suspended or revoked;
   f) Relating to operating a motor vehicle in a negligent manner.
4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.
5) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington and/or the Tulalip Tribes.
6) Except as specifically provided, nothing in this section extends or otherwise affects the powers of arrest prescribed by tribal, federal, or state law.

5.4.6 Notice of Rights Prior to Interrogation

Prior to questioning any person in custody, a law enforcement officer must inform the person in clear and unequivocal terms of the following rights:

1) that the person has the right to remain silent;
2) that anything said by him or her can and will be used against the person in any subsequent court proceedings;
3) that the person has the right to legal counsel or representation at their own expense prior to answering any questions; and
4) that if, at any point during questioning, the person indicates that he or she wishes to remain silent, the questioning will cease.

Any statement obtained in violation of these rights shall not be admitted into evidence. The fact that a person chooses to remain silent cannot be used against him or her in any subsequent criminal proceedings.

5.4.7 Abuse Situations

1) Report Where no Arrest

When a law enforcement officer is called to the scene of a reported incident of child neglect or abuse, elder abuse, or domestic abuse, but does not make an arrest, the officer shall file a written report with the Tulalip Police Department stating the reasons that an arrest was not made.

5.5 DEFENDANT MUST APPEAR

The defendant shall personally appear at all stages of the proceedings. If the defendant fails to appear, the Court may issue a bench warrant. Appearance by counsel is insufficient to avoid issuance of a bench warrant. The Court may in its discretion, however, allow the defendant to appear by counsel or telephonically.

5.6 COMMENCING PROSECUTION

5.6.1 Complaint

All criminal prosecutions shall be initiated by complaint.

1) Content

The complaint shall contain:

a) the name of the person accused, if known, or a description sufficient to identify the person accused of committing the alleged offense;
b) the general location where the alleged offense was committed;
c) the name, class, and code citation of the alleged offense;
d) a concise statement of the specific acts or omissions to act constituting an offense;
e) the person, if any, against whom the alleged offense was committed, if known, except in the case of a sexual offense or an offense involving a minor;
f) the date and approximate time of the commission of the alleged offense, if known; and
g) the signature of a tribal prosecutor.

2) Minor Omissions

No minor omission from, or error in, the form of the complaint shall be grounds for dismissal unless the defendant is shown to be significantly prejudiced by the omission or error.

3) Amending the Complaint

The defendant shall be arraigned on the amended complaint without unreasonable delay, and shall be given a reasonable period of time to prepare for trial on the amended complaint.

a) Amendments as to Substance

A complaint may be amended in matters of substance at any time prior to arraignment without leave of the Tribal Court. A complaint may be amended in matters of substance at any time before the commencement of trial with leave of the Tribal Court. If the motion is timely filed, the amended complaint is supported by probable cause, and there is no undue prejudice to the defendant, the Court shall grant leave to amend. When the prosecution seeks leave to amend a complaint as to a matter of substance, the prosecutor shall file the following:

1. A motion for leave to amend stating the nature of the proposed amendment;
2. A copy of the proposed complaint, as amended; and

3. An affidavit setting forth facts and circumstances sufficient to show probable cause exists to justify the amended complaint.

b) Amendments as to Form

The Court may permit a complaint to be amended as to form at any time before a verdict or a finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced. No charge may be dismissed because of a defect in form which does not tend to prejudice any substantial right of the defendant.

5.6.2 Summons in Lieu of Arrest Warrant

The Court may, or upon request of a prosecutor shall, issue a summons instead of an arrest warrant. The summons may be served personally or by first class mail, and shall:

1) be in writing in the name of the Tribes;
2) state the name of the person summoned, along with that person's address, if known;
3) set forth the nature of the offense charged;
4) state the date issued;
5) command the person to appear in Tribal Court at a specified date and time; and be signed by a judge.

5.6.3 Joinder and Severance of Offenses

Two or more offenses may be charged in the same complaint in separate counts.- Allegations made in one count may be incorporated by reference in another count. The Tribal Court may order that different offenses or counts set forth in the complaint be tried separately or consolidated. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the Tribal Court.

1) Prosecution for Multiple Offenses

When the conduct of an offender establishes the commission of more than one offense, the offender may be prosecuted separately for each offense. The offender, however, may not be convicted of more than one offense if:

a) one offense is included in the other;
b) one offense consists only of conspiracy or some other form of preparation for committing the offense;
c) inconsistent findings of fact are required to establish the commission of the offenses;
d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or
e) the offense is defined to prohibit a continuing course of conduct and the offender's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

5.6.4 Lesser Included Offenses

An offender may be convicted of an offense included in an offense charged without having been specifically charged with the lesser included offense. An offense is included when:

1) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;
2) it consists of attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or
3) it differs from the offense charged only in that it is a less serious injury or risk of injury to the same person, property, or Tribal interest, or a lesser kind of culpability suffices to establish its commission.

The Tribal Court need not charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting the defendant of the lesser included offense.

5.7 RIGHTS OF THE DEFENDANT IN A CRIMINAL PROCEEDING

5.7.1 Presence of the Defendant

Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

5.7.2 Rights of the Defendant

In all criminal proceedings, the defendant shall have the following rights:

1) to be free from excessive bail and cruel punishment;
2) to defend in person or by counsel;
3) to be informed of the nature of the charges pending against him or her and to have a copy of those charges;
4) to confront and cross examine all prosecution or hostile witnesses;
5) to compel by subpoena:
   a) the attendance of any witnesses necessary to defend against the charges; and
   b) the production of any books, records, documents, or other things necessary to defend against the charges;
6) to have a speedy and public trial by judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
7) to appeal any final decision of the Tribal Court to the Tribal Court of Appeals;
8) to be tried only once by the Tribal Court for the same offense;
9) not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and
10) to petition for a writ of habeas corpus.

5.7.3 Right to Counsel

During the initial appearance before the Court, every defendant must be informed of the right to have counsel at his or her own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause.

5.7.4 Right to a Jury Trial

A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six (6) fair and impartial jurors. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

5.7.5 Subsequent Prosecutions

A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

1) the defendant consents to the termination or waives, by motion, an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;
2) the Tribal Court finds that a termination, other than by acquittal, is necessary because:
   a) it is impossible to proceed with the trial in conformity with the law;
   b) there is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;
   c) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;
   d) the jury cannot agree upon a verdict; or
   e) a false statement of a juror on voir dire prevents a fair trial.
3) the subsequent prosecution was for an offense which was not completed when the former prosecution began; or

4) there was a transfer of jurisdiction to another authority.

The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal.

5.7.6 Writ of Habeas Corpus

1) Availability of Writ
   a) Except as provided in subsection (1)(b), every person within the jurisdiction of the Tulalip Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.
   b) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.
   c) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.
2) Issuance of Writ
   a) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the clerk of the court. It must specify:
      1) that the petitioner is unlawfully imprisoned or restrained of liberty,
      2) why the imprisonment or restraint is unlawful, and
      3) where or by whom the petitioner is confined or restrained.
   b) The parties to a Writ, namely the Tulalip Prosecutor, Chief Judge of the Tribal Court, and the Tulalip Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.
   c) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.
3) Granting of the Writ

   Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.
4) Time of Issuance and Requirements for Service
   a) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The Writ should be served on the Tribal Prosecutor and Chief Judge of the Trial Court.
   b) The writ must be served upon the person to whom it is directed. If the writ is directed to a tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.
   c) The writ must be served by a tribal police officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise

expressly directed by the Justice, the Court, or the employee of any correctional facility in which the petitioner is held.

5) Return of the Writ
The Prosecutor or his or her designee shall make a return and state in that return:
a) whether the person is in custody or under that person's power of restraint; and
b) if the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or
c) if the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.
The return must be signed and verified by affirmation.

6) Hearing
The Chief Judge commanded by the writ shall cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

7) Refusal to Obey Writ is Contempt
If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

8) Disposition of Petitioner
If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

5.7.7 Right to a Speedy and Public Trial

A defendant not released from jail pending trial shall be brought to trial not later than sixty (60) days after the date of arraignment. A defendant released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than ninety (90) days after the date of arraignment. The following extensions of time limits apply, notwithstanding the preceding time limits:

1) Revocation of Release
A defendant whose release has been revoked by the Court shall be brought to trial no later than sixty (60) days following the revocation or previously scheduled trial date, whichever is sooner.

2) Failure to Appear
When a defendant fails to appear for any hearing, all future hearings shall be stricken from the court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the judge, the speedy trial clock begins at zero.

3) Trial Preparation Time

The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

4) Extensions

When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court, even if the time for trial has expired, may extend the time within which trial must be held in increments of no more than five (5) judicial days unless the defendant will be substantially prejudiced in his or her defense. The Court must state on the record or in writing the reasons for the extension.

a) Disqualification of Judge

In the event that the trial judge is disqualified by affidavit or by recusal under Section 1.5, the speedy trial date shall be extended beyond its current expiration by fifteen (15) days.

5) Continuances

The Court may continue a trial beyond the speedy trial period as follows:

a) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the Court on the record or in writing.

b) On motion of the Tribal prosecutor, the Court, or a party, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The Court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that parties objection to the requested delay.

6) Computation of Time

The following periods shall be excluded in computing the time for arraignment and the time for trial:

a) all proceedings relating to the competency of a defendant to stand trial, terminating when the Court enters a written order finding the defendant to be competent;

b) preliminary proceedings and trial on another charge;

c) the time during which a defendant is detained in jail or prison by authorities other than the Tulalip Tribes and the time during which a defendant is subjected to conditions of release not imposed by a Court of the Tulalip Tribes; and (4) all proceedings in juvenile court.

7) Waiver

A defendant may waive the right to a speedy trial. Such waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain.

5.8 PRETRIAL RELEASE

5.8.1 Right to Bail

A person charged with any offense is bailable before conviction and shall be released from custody by the Court upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person unless otherwise provided by ordinance. Bail shall not be excessive.

1) Bail Schedule

The Chief Judge of the Tribal Court may, if needed, establish and post a schedule of bail for offenses to be used by law enforcement officers. The schedule may be revised yearly, at the discretion of the Chief Judge. Bail may be specifically set by a judge for any offense not listed on the posted bail schedule.

5.8.2 Conditions of Release

The conditions of release of the defendant must be determined immediately upon the defendant's initial appearance.

1) Criteria

The criteria for determining the conditions of release include, but are not limited to the following:

a) Defendant's employment status and work history;
b) Defendant's financial condition;
c) The nature and extent of defendant's family relationships and ties to the Reservation community;
d) Defendant's past and present residences;
e) Names of individuals personally agreeing to assure defendant's court appearance;
f) The nature and circumstances of the current charge, including whether the offense involved the use of force or violence;
g) The defendant's prior criminal record, if any, and whether, at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for an offense;
h) The defendant's record of appearance at court proceedings;
i) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and
j) any drug or alcohol tests ordered by the Court at initial appearance, provided however that any results of such tests or statements made by the defendant during such tests shall not be used to criminally charge the defendant and may not be used as evidence against the defendant in the current or any future criminal prosecutions.

2) Conditions

The Court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including, but not limited to the following conditions:

a) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the Court, if the designated person is reasonably able to assure the Court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;
b) the defendant may not commit an offense during the period of release;
c) the defendant shall maintain employment or, if unemployed, actively seek employment;
d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;
e) the defendant shall avoid all contact with an alleged victim and any potential witness who may testify concerning the offense;
f) the defendant shall comply with a specified curfew;
g) the defendant may not possess a firearm, destructive device, or other dangerous weapon;
h) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;
i) the defendant shall report on a regular basis to a designated agency or individual, or both;
j) the defendant shall furnish bail; or
k) the defendant shall return to custody for specified hours following release for employment, schooling, or other approved purposes.

The Court shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any

person or the community. At any time, the Court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

3) GPS Monitoring
GPS monitoring is available as an option, at the discretion of the Court upon meeting the eligibility requirements as determined by the Court.

5.8.3 Personal Recognizance
Any person in custody, if otherwise eligible for bail, may be released on his own personal recognizance subject to such conditions as the Court may reasonably prescribe to assure his appearance when required.

5.8.4 Funeral Leave
Defendants may be released, in the discretion of the Court, for funerals of persons they are related to in the degrees specified in HRO 84 funeral leave policy.

5.8.5 Forms of Bail
Bail may be furnished in the following ways, as the Court may require:

1) by a deposit with the Court of an amount equal to the required bail of cash or other personal property approved by the Court;
2) by pledging real estate situated within the Reservation with an unencumbered equity, not exempt, owned in fee simple by the defendant or sureties at a value double the amount of the required bail;
3) by posting a written undertaking by the defendant and by two sufficient sureties; or
4) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company.

The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding and remain in effect until final sentence is pronounced in open court. Nothing in this part prohibits a surety from surrendering the defendant in a case in which the surety feels insecure in accepting liability for the defendant.

5.8.6 Property and Surety Bonds

1) Personal
If property posted as a condition of release is personal property, the defendant or sureties shall file a sworn schedule that must contain a list of the personal property, including a description of each item, its location and market value, and the total market value of all items listed.
2) Real Estate
If the property is real estate, the defendant or sureties shall file a sworn schedule that must contain a legal description of the property, a description of any encumbrance on the property, including the amount of each encumbrance and its holder, and the market value of the unencumbered equity owned by the defendant or sureties.
3) Surety Bond
If the property is a written undertaking with sureties, each surety must be a Reservation equivalent to the amount required.
4) Commercial Bond
If the property posted is a commercial bond, it may be executed by any domestic or foreign surety company that is qualified to transact surety business in Washington. The undertaking must state the following: the name and address of the surety company that issued the bond; the amount of the bond and the unqualified obligation of the surety company to pay the Court should the defendant fail to appear as guaranteed; and a provision that the surety company may not revoke the undertaking without good cause.

The Court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted.

5.8.7 Exoneration of Bail

When all conditions of release have been satisfactorily performed and the defendant has been discharged from any obligations imposed by the Tribal Court, the Court shall return any security posted by the defendant to satisfy bail requirements.

5.8.8 Changing Bail or Conditions of Release

Upon application by the Tribes or the defendant, the Court may increase or reduce the amount of bail, alter the conditions in the bail or release order, or revoke bail. Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

5.8.9 Revocation of Release Order

If a defendant violates a condition of release, including failure to appear, the prosecutor may make a motion to the Court for revocation of the order of release. The Court may issue a warrant for the arrest of a defendant charged with violating a condition of release and declare the bail to be revoked. Upon arrest, the defendant must be brought before the Court without unnecessary delay, and the Court shall conduct a hearing and re-determine bail. On finding probable cause that the defendant has violated a tribal, state, or federal law, or on finding a violation of any other release condition by clear and convincing evidence, the Court may:

1) reinstate the original release order on the same conditions and amount of bail; or
2) revoke the original bail, increase the amount of the bail, and modify the conditions of release; or
3) at the defendant's request, revoke the defendant's release for any period of time, up to ten (10) days, and then reinstate release on the original conditions and bail or on such conditions and bail as the Court deems appropriate, but such time shall not be credited as time served.

Sanctions may be given for violating an order without revoking the agreement in its entirety. This section provides the exclusive remedy for a violation of a release order. A defendant may not be charged with contempt or found in contempt for violation of a release order.

5.8.10 Surrender of Defendant

At any time before the forfeiture of bail: the defendant may surrender to the Court or any Tribal law enforcement officer, or the surety company may arrest the defendant and surrender the defendant to the Court or to any Tribal law enforcement officer. The law enforcement officer will detain the defendant. The Court may then order the bail exonerated.

5.8.11 Forfeiture of Bail

If defendant fails to appear for hearing, and bail or bond has been posted, the court may enter an order for forfeiture of bail or bond. If within 90 days of a forfeiture order, the defendant, or the defendant's surety, appears and presents evidence justifying the defendant's failure to appear or otherwise meet the conditions found in the release order, the Court may direct the forfeiture of the bail to be discharged upon such terms as are just. If the forfeiture order is not discharged by the Court, the Court shall proceed with the forfeiture of bail as follows:

1) if money has been posted as bail, the Court shall pay the money to the Tribal Board Treasurer;
2) if a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions; or
3) if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the forfeiture must be paid to the Tribal Board Treasurer.

Neither a cash bond nor a commercial bond may be forfeited for violation of release conditions, except for failing to appear for court proceedings without a lawful excuse. Notice of an order of forfeiture must be mailed to the defendant and the defendant's sureties at their last known address(es) within ten (10) working days of the date of the order or the bond becomes void.

5.9 INITIAL APPEARANCE

A person arrested, whether with or without a warrant, must be taken before a judge of the Tribal Court for an initial appearance within two judicial days following the arrest. A person not arrested shall appear for an initial appearance at the time and place designated in the citation or summons. A person who is arrested without a warrant shall have a judicial determination of probable cause at the initial appearance. If probable cause is not found, the person shall be released immediately without conditions.

5.9.1 Duty of Court at Initial Appearance

The judge shall inform the defendant of:

1) the charge or charges against him or her;
2) the maximum penalty allowed under Tribal Law for the offense;
3) the defendant's right to counsel at defendant's expense, or to have counsel appointed pursuant to Section 5.7.3;
4) the right to call any witness on his or her behalf;
5) the right to request a jury trial where the crime charged carries a possible jail sentence;
6) the right to remain silent and that any statement made by her or him may be used in evidence against her or him at any subsequent court proceedings;
7) the right to cross-examine the Tribes' witnesses;
8) the right to have up to five (5) judicial days before arraignment;
9) the right to petition for a writ of habeas corpus; and
10) the right to discuss bail and conditions of release.

5.9.2 Scheduling Arraignment

Unless the arraignment occurs at the initial appearance, arraignment shall be scheduled within five (5) judicial days of the initial appearance, unless waived by the defendant. If the defendant is not arraigned within this time limit, and the right to a speedy trial has not been extended, the defendant shall be released without conditions.

5.10 ARRAIGNMENT

5.10.1 Procedure upon Arraignment

A defendant shall be arraigned in open Tribal Court whenever a complaint has been filed by a Tribal prosecutor. Arraignment consists of reading the charge, unless the defendant waives the reading, supplying a copy of it to the defendant, and calling on the defendant to plead to the charge. If the defendant waives his or her right to counsel in writing, the Court may arraign the defendant at the initial appearance. Prior to accepting any plea at the time of arraignment, the presiding judge must:

1) verify that the person appearing before the Tribal Court is the defendant named in the complaint, and that the defendant's true name appears on the complaint and if different from the name used on the complaint, order the complaint amended to reflect the true name; and
2) determine whether the defendant has a mental disorder that would prevent the defendant from understanding the charges, the penalties, or the effects of a plea, and, if the determination is that defendant has a mental disorder, the arraignment may be continued until the defendant is able to proceed.

5.10.2 Case Management Schedule

A Case Management Schedule shall be ordered at the arraignment, which shall include the following: assignment of trial judge, pretrial hearing, discovery deadline, trial readiness hearing, trial date, and speedy trial deadline.

5.10.3 Joint Defendants

Defendants who are jointly charged may be arraigned separately or together in the discretion of the Court.

5.10.4 Entry of Plea

A defendant shall enter a plea of guilty, not guilty, or if the judge agrees, no contest, to each charge contained in the complaint. All pleas shall be entered in open court. In exceptional circumstances and at its discretion, the Court may accept a defendant's change of plea through a recorded telephonic proceeding.

5.11 PLEA PROCEDURES

5.11.1 Pleas

1) Not Guilty

A plea of not guilty puts in issue every element of the charged offense, and the case shall proceed according to the case management schedule. A defendant pleading not guilty must inform the judge at the time of arraignment if a jury trial is requested.

2) Guilty

A plea of guilty may be accepted by a judge only after due consideration of the views of the parties and interest of the Tribes in the effective administration of justice. The Court may not accept a plea of guilty without first determining:

a) that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The Court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecutor and the defendant or the defendant's attorney;

b) that the defendant understands the following: (i) the nature of the charge for which the plea is offered, any mandatory minimum penalty, the maximum penalty, and, when applicable, that the Court may require the defendant to make restitution to the victim, and (ii) the defendant will be giving up his or her right to a trial and right to remain silent;

c) that if the defendant pleads guilty in fulfillment of a plea agreement, the Court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted;

d) that, in charges for which imprisonment is a possible penalty, there is a factual basis for the plea; and

e) if a defendant voluntarily enters a plea of guilty, the judge may impose a sentence at that time or, on the Court's own motion or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.

3) No Contest

A no contest plea differs from a plea of guilty only in that the defendant need not make an admission of guilt but accepts an entry of conviction.

4) Guilty or No Contest Reserving Right to Appeal

With the approval of the Court and the consent of the prosecutor, a defendant may enter a plea of guilty or no contest, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

5.11.2 Alternatives to Pleas

1) Deferred Prosecution Agreement
   Deferred prosecutions may not be agreed to in cases of domestic violence or violent crimes.
   a) Conditions for Agreement
      At any time, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:
      1. that the defendant may not commit any offense;
      2. that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;
      3. that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;
      4. that the defendant shall make restitution in a specified manner for harm or loss caused by the offense, or any other reasonable conditions, including voluntary exclusion from the reservation; and
      5. participation in the Elders Panel or Wellness Court.
   b) Contents of Agreement
      A Deferred Prosecution Agreement is subject to approval by the Tribal Court. The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the an additional sixty (60) days past the end of the deferral period. The agreement may include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement shall be filed with the Court.
   c) Violations of Agreement
      The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms. Sanctions can be imposed for violation of the agreement, without revoking the agreement in its entirety. The conditions of the agreement shall be monitored by the Tulalip Tribal Probation Officer.
   d) Expungement of Records
      Whenever the Court has deferred the prosecution and after expiration of the period of deferral and after the defendant's successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court shall allow the expungement of the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceeding with the word "Expunged" and sealing the file.
2) Stipulated Order of Continuance
   In certain circumstances, a stipulated order of continuance may be available.

5.11.3 Plea Negotiations and Recommendations

A prosecutor and counsel for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do one of the following:

1) move for dismissal of other charges; or
2) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding on the Court; or
3) reduce the charges.

A plea bargain agreement may be entered into anytime prior to a verdict or finding of guilt by judge or jury. If a plea agreement has been reached by the parties, the Court shall, on the record, require a disclosure of the agreement in open court at the time the plea is offered.

5.12 PRE-TRIAL

5.12.1 Discovery

1) Attorney Work Product Exception
Attorney work product of the Tribal Prosecutor's office and defense counsel is not subject to disclosure and production.

2) Disclosure by Prosecution
At the time of the initial appearance and upon request, the prosecutor shall furnish to the defendant the name of the person, if any, against whom the offense was committed if it is not disclosed in the complaint. At the arraignment or as soon thereafter as practicable, the defendant shall be furnished all evidence the prosecutor intends to use in the prosecution's case-in-chief at trial. Any of the following information or evidence which is within the possession, custody, or control of the Tribal Prosecutor is subject to disclosure and production and may be copied or photographed, as appropriate for the item, by the defendant:
   a) any relevant written or recorded statement made by the defendant while in the custody of the Tribes and of any person who will be tried with the defendant;
   b) the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case in chief;
   c) the record of defendant's convictions that is in the possession of the prosecutor;
   d) any books, papers, documents, photographs, tangible objects, drawings of buildings or places, or other physical or demonstrative evidence which is intended for use by the prosecution at trial;
   e) any written reports of or statements of experts who have personally examined the defendant or any evidence in the particular case, together with results of physical examinations, scientific tests or experiments, or comparisons; and
   f) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.
   g) whether there has been any electronic surveillance of any conversation to which the defendant was a party;
   h) whether an investigative subpoena has been executed in connection with the case; and
   i) The prosecutor shall provide written notice of any evidence of any prior wrongs, acts, or crimes it may introduce in the case in chief at least two weeks prior to the trial readiness hearing. The notice shall describe the prior wrong or act, the closest approximation possible as to when and where it occurred and who witnessed it, unless the prior crime is confirmed as a conviction, in which case the Court and date of conviction must be disclosed. The prosecutor must also disclose the purpose for which the evidence would be offered.

3) Disclosure by Defendant
   a) Generally
   The defendant or defendant's counsel shall make available to the prosecutor for testing, examination, or reproduction:
      1. The names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case in chief;
      2. The names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or

comparisons, including all written reports and statements made by these experts in connection with the particular case;

3. All papers, documents, photographs, and other tangible objects that the defendant may use at trial.

b) Notice of Affirmative Defenses
At the close of discovery, as set forth in the Case Scheduling Management Order, or at such other time as set forth in that order, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or of any affirmative defenses. The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, including all reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement, or the witness who made it, at trial.

c) Notice of Alibi
If a defendant intends to rely upon a defense of alibi, the defendant will so notify the prosecutor, in writing, by the Pretrial Hearing. The defendant's notice of alibi defense shall state the specific place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call to establish such alibi.

d) Specific Discovery Requests
At any time after the filing of a complaint, the defendant, in connection with the particular offense charged, shall upon written request of the prosecutor and approval of the Court:

1. appear in a lineup;
2. speak for identification by witnesses;
3. be fingerprinted, palm printed, footprinted, or voiceprinted;
4. pose for photographs not involving reenactment of an event;
5. try on clothing;
6. provide handwriting samples;
7. permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions; and
8. submit to reasonable physical or medical examination where the examination does not involve psychological or psychiatric evaluation.

4) Depositions
The taking of depositions or the requesting of admissions, the propounding of interrogatories, and other discovery procedures may be available to a party for good cause only upon obtaining prior permission of the Court.

5) Continuing Duty to Disclose
The obligations imposed by this section are continuing.

6) Regulating Discovery

a) Protective and Modifying Orders
At any time, the Court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The Court may permit a party to show good cause by a written statement that the Court will inspect ex parte. If relief is granted, the Court must preserve the entire text of the party's statement under seal.

b) Failure to Comply
If a party fails to comply with the requirements of discovery, the Court may:

1. Order that party to permit the discovery or inspection; specify its time, place and manner, and prescribe other just terms and conditions;
2. Grant a continuance;
3. Prohibit that party from introducing the undisclosed evidence; or
4. Enter any other order that is just under the circumstances.

5.12.2 Subpoenas

1) Issuance

A judge of the Tribal Court has the power to issue subpoenas to compel the attendance of witnesses and the production of documents either on the Court's own motion or on the request of any party to a case, which shall bear the signature of the Judge issuing the subpoena. The subpoenas may direct the attendance of witnesses or the production of documents or evidence at a specified date, time, and location. Subpoenas under this section may be issued for purposes of discovery, for pretrial hearing, or for a trial or post trial proceeding. For witness appearances at pretrial hearings and trial, the parties may issue subpoenas under their own signature directing the witness to appear at the specified date, time, and location of such hearing or trial, provided however that copies of those subpoenas and their return of service be filed with the Court.

2) Service

Service of subpoena shall be made by a tribal police officer or other person appointed by the Court for such purposes, or by a competent person who is at least 18 years of age and not a party to the action. As soon as practicable, proof of service of subpoena shall be filed with the Clerk of Court indicating the date, time, and place of service. The Court, in its discretion, may assess reasonable costs.

3) Failure to Obey

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be subject to a bench warrant to compel their attendance.

4) Material Witnesses

a) Warrant

On motion of the prosecuting authority or the defendant, the Court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant shall issue only on a showing, by affidavit or on the record in open court, that the testimony of the witness is material and that:

1. the witness has refused to submit to a deposition ordered by the Court; or
2. the witness has refused to obey a lawfully issued subpoena; or
3. it may become impracticable to secure the presence of the witness by subpoena.

Unless otherwise ordered by the Court, the warrant shall be executed and returned in the same manner as an arrest warrant.

b) Hearing

After the arrest of the witness, the Court shall hold a hearing no later than the next Court day. The witness shall be entitled to be represented by counsel at his or her own expense or as appointed at the discretion of the Court.

c) Release/Detention

Upon a determination that the testimony of the witness is material and that one of the conditions set forth in subsection (4)(a) above exists, the Court shall set conditions for release of the witness. Release of a material witness may be delayed for a reasonable period of time until the testimony or deposition of the witness can be taken.

5.12.3 Pre-Trial Hearing

The trial court shall hold a pretrial hearing to consider such matters as will promote a fair and expedient trial. At the hearing:

1) The defense shall certify to the Court that they have received the Tribes' discovery;
2) The defense shall note any affirmative defenses in writing;
3) All parties shall note any motions in writing and shall request an order setting a briefing and hearing schedule for such motions; and
4) The parties may raise other issues of importance that should be addressed by the Court.

Failure of a party to raise defenses or objections or to make a request that must be made prior to trial, except lack of jurisdiction or the failure of a complaint to state an offense, which must be noticed by the Court at any time during the pendency of a proceeding, constitutes a waiver of the defense, objection, or request. The Court, for good cause shown, may grant relief from any waiver provided in this subsection.

5.13 MOTIONS

5.13.1 Form of Motions

An application to the Court for an order shall be by written motion. A motion need not be in any special form, but must be such as to enable a person of common understanding to know what is intended. The general rules of pleading shall apply to all motions.

1) Judicial Copy
   A copy of any motion, response, or supporting documentation filed and served under this section shall be provided to the judge at the time it is filed. The judicial copy shall contain the date and time of the hearing and the judge assigned to the matter.
2) Timing
   The Court shall set the time frames for any motions not covered by this section. Notice of any hearing date or other deadline shall be given to all parties.

5.13.2 Motion to Sever Co-Defendant or Charge

A defendant may move for severance of defendants or charges. Such motion shall be filed no later than the pretrial hearing unless otherwise directed by the Tribal Court. If it appears that the defendant is prejudiced by a joinder of related prosecutions or defendants in a single charge, or by a joinder of separate charges or defendants for trial, the Court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

5.13.3 Motion to Suppress

1) Evidence
   A defendant may move to suppress as evidence anything obtained by the unlawful search and seizure. The motion must be filed no later than the pretrial hearing, unless good cause is shown for waiving this time restriction. The motion must identify the evidence sought to be suppressed and the grounds upon which the motion is based. The prosecution has the burden of proving, by a preponderance of the evidence, that the search and seizure were valid. If the motion is granted, the evidence is not admissible at trial.
2) Confession/Admission
   A defendant may move to suppress as evidence any confession or admission given by him or her on the ground that it was not voluntary or that it was otherwise obtained in violation of his or her rights. The motion must be filed no later than the pretrial hearing, unless good cause is shown for waiving this time restriction. The Court shall conduct a hearing on the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was not obtained in violation of the defendant's rights. The issue of admissibility of the confession or admission may not be submitted to the jury. If the

confession is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission. If the motion to suppress is granted, the confession or admission may not be admitted into evidence by the prosecution at the time of trial.

5.13.4 Motion for Continuance

Any party may file a written motion for continuance, or the Court may continue the proceedings on its own motion. If a party so moves less than ten (10) days before a scheduled hearing or trial, the Court may require that the motion be supported by an affidavit, whether or not the motion is opposed by the adverse party. This section, however, shall be applied in a manner which ensures criminal cases are tried in consistence with the rights of the defendant to a speedy trial and effective representation at trial.

5.13.5 Motion in Limine

Motions in Limine should be made at least five (5) days before trial, unless good cause is shown.

5.13.6 Motion to Dismiss

1) On Motion of Prosecution
   The Court may, in its discretion, upon written motion of the prosecuting attorney, dismiss an indictment, information, or complaint.
2) On Motion of Court
   The Court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The Court shall set forth its reasons in a written order.
3) On Motion of Defendant for Pretrial Dismissal
   The defendant may, prior to trial, move to dismiss a criminal charge due to insufficient evidence establishing a prima facie case of the crime charged.
   a) The defendant's motion shall be in writing and supported by an affidavit or declaration alleging that there are no material disputed facts and setting out the agreed facts, or by a stipulation to facts by both parties. The stipulation, affidavit, or declaration may attach and incorporate law enforcement reports, witness statements, or other material to be considered by the Court when deciding the motion to dismiss.
   b) The prosecuting attorney may submit affidavits or declarations in opposition to defendant's supporting affidavits or declarations. The affidavits or declarations may attach and incorporate police reports, witness statements, or other material to be considered by the Court when deciding defendant's motion to dismiss.
   c) The Court shall grant the motion if there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. In determining the defendant's motion, the Court shall view all evidence in the light most favorable to the prosecuting attorney and the Court shall make all reasonable inferences in the light most favorable to the prosecuting attorney. The Court may not weigh conflicting statements and base its decision on the statement it finds the most credible. The Court shall not dismiss a sentence enhancement or aggravating circumstance unless the underlying charge is subject to dismissal under this section. A decision denying a motion to dismiss under this rule is not subject to appeal. A defendant may renew the motion to dismiss if the trial court subsequently rules that some or all of the prosecuting attorney's evidence is inadmissible.

d) If the defendant's motion to dismiss is granted, the Court shall enter a written order setting forth the evidence relied upon and conclusions of law. The granting of defendant's motion to dismiss shall be without prejudice.

5.13.7 Motion for Reconsideration

A motion for reconsideration shall be plainly labeled as such. The motion shall be filed within ten (10) judicial days after the order to which it relates is filed. The motion shall be noted for consideration for the day it is filed. The motion shall describe with specificity the matters which the movant believes were overlooked or misapprehended by the Court, any new matters being brought to the Court's attention for the first time, and the particular modifications being sought to the Court's prior ruling. Failure to comply with this subsection may be grounds for denial of the motion. The pendency of a motion for reconsideration shall not stay discovery or any other procedure mandated by these rules.

5.14 TRIAL

The provisions of Chapter 1.11 apply to jury trials, unless otherwise provided in this chapter.

5.14.1 Trial Priority

Defendants held in custody have priority on the trial calendar over defendants released on bail, unless otherwise directed by the Court. Generally, criminal actions and child dependency actions take precedence over civil actions when determining a hearing or trial date, unless otherwise directed by the Court.

5.14.2 Questions of Law and Fact

Issues of law shall be decided by the judge. Issues of fact shall be decided by the jury, unless the matter is tried without a jury, in which case issues of fact shall also be submitted to the judge. Parties may stipulate to factual issues and submit them for acceptance by the Court.

5.14.3 Testimony

In all trials, the testimony of witnesses shall be taken orally in court, unless otherwise provided by rule or statute.

1) Refusal to Testify

a) If a witness other than the defendant refuses to attend or testify at the trial after proper service of a subpoena, that person shall be subject to contempt of court. A bench warrant may also be issued by the court.

2) Counsel as Witness

No person shall appear before the Court as both counsel and witness in the same case.

3) Witness Fees

Each witness answering a subpoena or appearing voluntarily shall be entitled to fees and mileage as set by resolution of the Tulalip Board of Directors.

5.14.4 Order of Trial

1) Preliminary Instructions

In a jury trial, after selecting and empaneling the jurors, the Court shall state the nature of the charges and generally instruct the jurors as to their duties.

2) Opening Statements

The prosecution and the defense will be afforded an opportunity to make an opening statement prior to the presentation of any evidence or testimony, unless waived. The defense may reserve its opening statement until after the prosecution has presented its case in chief.

3) Prosecution

The prosecution must offer evidence supporting the allegations contained in the complaint. The defense shall be given an opportunity to cross-examine any witness called by the prosecution.

4) Defense
After the prosecution has rested its case, the defense may give any reserved opening statement and present any defenses or evidence relating to the allegations contained in the complaint. The prosecution shall be given an opportunity to cross-examine any witness called by the defense.

5) Rebuttal
Rebuttal evidence may be presented by the prosecution after the conclusion of the defense case when appropriate, and if necessary, surrebuttal evidence may be offered by the defense.

6) Evidence
No new evidence may be presented after the prosecution and the defense have rested their cases, unless allowed by the judge in the interest of justice.

7) Jury Instructions
In a trial by jury, after the close of evidence and before the closing arguments are given, the Court shall give final instructions. All instructions shall be in writing and filed as part of the record.

8) Closing Arguments
After the judge reads the instructions to the jury, the prosecution and then the defense may make closing arguments. The prosecution may also make a rebuttal closing argument.

9) Verdict or Judgment
Upon the conclusion of the case, the jury shall deliberate. If the case is tried by a jury, a verdict shall be rendered, if tried by a judge, a judgment shall be rendered.

5.14.5 Burden of Proof
A plea of not guilty requires that the prosecution prove beyond a reasonable doubt that the defendant committed every element of the crime alleged.

5.14.6 Insufficient Evidence
If the Court determines at the close of the prosecution's case in chief, or at the conclusion of the case, that the evidence presented is insufficient to sustain a conviction for the charged offense or offenses, the Court may, on its own motion or on the motion of the defense, dismiss the action and discharge the defendant. If the judgment of acquittal is vacated or reversed on appeal, the Court may grant a new trial.

5.14.7 Conviction of Lesser Included Offense
A lesser included offense instruction must be given when there is a proper request by one of the parties based on the evidence admitted, and the jury could be warranted in finding the defendant guilty of a lesser included offense. The verdict form for an offense charged or necessarily included in the offense charged, or an attempt to commit either the offense charged or any offense necessarily included therein, may be submitted to the jury.

5.14.8 Motion for a New Trial
Within twenty (20) days of a guilty verdict or judgment, the defendant may file with the Court, and serve upon the prosecution, a written motion for a new trial. The motion must specify the grounds for a new trial. After hearing the motion for a new trial, the Court may, in the interest of justice, deny the motion, grant a new trial, or provide for such other relief that may be deemed appropriate. The granting of a new trial starts the speedy trial clock at zero.

5.15 JUDGMENT AND SENTENCING

5.15.1 Judgment
The verdict of the jury or the judgment shall be rendered in open court.

5.15.2 Sentencing

Sentences shall be pronounced within a reasonable time. Sentencing shall be imposed on all offenses pursuant to Tribal law. To the extent that any foreign provisions incorporated into Tribal law provide a penalty that conflicts with Tribal sentencing law, Tribal sentencing law will control. Unless the Court otherwise orders, all sentences stemming from offenses occurring in the same transaction or course of conduct are presumed to run concurrently and not consecutively. Where the Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in this Code.

1) Considerations

   Considerations in sentencing include:

   a) the crime committed;
   b) the prospects of rehabilitation of the offender;
   c) the circumstances under which the crime was committed;
   d) the criminal history of the offender;
   e) the safety of the community, victim, or the offender;
   f) statements of the victim;
   g) alternatives to imprisonment of the offender;
   h) the ability of the defendant to pay a fine; and
   i) any other consideration the court deems relevant.

2) Penalties and Consequences

   An offender found guilty of an offense may be sentenced to one or more of the following penalties and/or consequences:

   a) Imprisonment for a period of time not to exceed the maximum permitted for the offense;
   b) A fine in an amount not to exceed the maximum permitted for the offense;
   c) Community service;
   d) Any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate;
   e) Restitution to a victim of an offense for which the offender was convicted;
   f) Participation in an Elders Panel or Wellness Court;
   g) Suspension of all or part of the sentence for a reasonable time, not to exceed three (3) years, under such terms imposed by the Court;
   h) Deferred imposition of sentence with reasonable restrictions and conditions monitored by the Tribal Probation Officer, and with the following characteristics:
      1. The record of the offense, based on criminal history, shall be expunged upon satisfactory performance by the offender of the restrictions and conditions of deferral for a period not to exceed one year for Class A, B, C, and D offenses, and three years for a Class E offense; and
      2. Upon a finding of violation of a restriction or condition of deferral, an appropriate sanction may be ordered, including imposition of sentence;
   i) Prohibiting the offender from owning or carrying a dangerous weapon;
   j) Restricting the offender's freedom of movement;
   k) Restricting the offender's freedom of association;
   l) Requiring the offender, if employed, to remain employed and, if unemployed, to actively seek employment;
   m) Subjecting the offender to search of their residence, vehicle, and person; and
   n) Any requirement or limitation intended to improve the mental or physical health or marketable skills of the offender.

3) Pre-Sentence Report

The Court may order or consider any pre-sentence reports offered by the parties. The offender and the offender's counsel shall be afforded an opportunity to examine any pre-sentence report and to cross-examine the preparer of such report on the basis for any sentencing recommendations contained in the report

4) Imposition of Sentence
   No sentence shall be imposed until:
   a) the prosecution and defense have had an opportunity to present evidence, witnesses, and an argument regarding the appropriateness of a sentencing option; and
   b) the judge has given the defendant an opportunity to inform the Court of any extenuating or mitigating circumstances which should be considered by the Court in imposing penalties.
5) Incarceration
   If the offender is sentenced to imprisonment, the offender shall be discharged from custody after satisfactorily fulfilling the conditions of the imposed sentence or upon earlier order of the Court.
6) Credit for Time Served
   A defendant subject to a judgment of imprisonment must be allowed credit for each day of incarceration prior to or after conviction for that offense. This does not include time served pursuant to a violation of a release order. No credit shall be allowed for time served on other charges and/or for other jurisdictions unless specifically provided by the Court.
   a) Credit Pursuant to Modification
      If a defendant has served any of the defendant's sentence under a commitment based upon a judgment that is subsequently declared invalid or that is modified during the term of imprisonment, the time served must be credited against any subsequent sentence received upon a new commitment for the same criminal act or acts. This does not include time served pursuant to a violation of a release order.
   b) Application of Credit Toward Fines
      Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense must be allowed a credit for each day of incarceration prior to conviction, except that the amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration is $50.00 per day, unless otherwise set by the Board of Directors. This does not include time served pursuant to a violation of a release order.
7) Probation
   After conviction by plea or verdict of guilty, the Court may, upon application or its own motion, summarily grant or deny probation. The Court may set a subsequent hearing to consider the matter of probation and the conditions of such probation.
8) Restitution
   When restitution is ordered, the Court shall specify the amount, method of payment, and payment schedule imposed. Before restitution may be ordered, the defendant shall receive notice of the amount and terms requested and shall be entitled to a hearing upon his or her timely request.
   a) Civil Actions
      The fact that restitution was ordered is not admissible as evidence in a civil action. The Court trying the civil action shall determine the amount of any reduction due to payment of restitution by an offender under this section. However, in the event that criminal and civil actions against an offender arising from the same transaction or events are heard in courts of different jurisdictions, one of which is the Tribal Court, the Tribal Court shall adjust

offender's payments within its jurisdictional control for restitution or otherwise to assure that an injured party does not recover twice for the same harm. Restitution for time lost by the Tribe may be imposed and will be calculated by the Judge at the time of the order of restitution.

9) Payment of Fines and Restitution

All monies collected as the result of a fine or restitution imposed by the Court shall be paid to the Court. Upon receiving the monies:

a) a receipt shall be issued to the paying person;
b) the account of the offender shall be credited, noting whether the fine is paid in full or what balance, if any, remains due; and
c) for fines, the monies shall be transferred to the general fund of the Tribes, unless otherwise specifically directed by a provision of this Code; for restitution, the monies shall be transferred to the person to whom restitution is to be paid.

10) Failure to Pay

If a defendant sentenced to pay a fine or restitution fails to make payment as ordered, the Probation Officer or the Prosecutor may move that the offender show cause why sanctions should not be imposed for failure to pay.

a) Show Cause Hearing

Notice of a show cause hearing shall be served on the offender personally or by first class mail at the address provided by the offender at least five (5) days prior to the date set for hearing. Notice shall also be served on the victim if the show cause was issued for failure to pay restitution. Unless the offender shows that the nonpayment was not attributable to an intentional refusal to obey a Tribal Court order or the offender's failure to make a good faith effort to make the ordered payments, the Court may impose sanctions, including incarceration. If the Court determines that the offender's nonpayment was not attributable to an intentional refusal, the Court may modify the original sentence, judgment, or order, allowing the offender additional time to pay the fine or restitution or reducing the amount owed.

11) Dismissal and Expungement after Deferred Sentencing

Whenever the Court has deferred the imposition of sentence, and after expiration of the period of deferral and the defendants successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court shall allow the defendant to withdraw his or her plea of guilty or strike the verdict or judgment expunging the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

5.15.3 Fixing and Collection of Costs

Upon conviction or judgment of any offense, costs will be assessed to the defendant as established by the Court. In an exceptional case, the Court may waive costs. Such costs shall be payable to the Court Clerk, and may include: witness fees; cost of service of court papers; and any other costs sustained by the Court in connection with the matter.

5.16 REVOCATION OF PROBATION

5.16.1 Arrest for Violation of Probation

A probation officer may arrest or cause to be arrested a supervised offender for violation of a condition of probation. Any probation officer may cause the arrest of the supervised offender without a warrant by providing Tribal police with a statement that the probation officer has found probable cause to believe the offender has violated the conditions of his or her probation.

If the initial probable cause statement is oral, a written statement shall be prepared by the probation officer within 24 hours of the arrest. The probation officer's statement shall be sufficient to commit the offender to incarceration pending a probable cause determination by the Tribal Court.

1) In the event of arrest, the probation officer shall cause to be filed a petition for revocation of probation, which shall include but not be limited to, facts showing the basis for the arrest and for revocation of probation.
2) A probationer arrested without a warrant is entitled to determination of probable cause for the grounds for his or her arrest by a Tribal Court judge within two (2) judicial days of the time of arrest. The presence of the offender shall be required for the judge to make the probable cause determination. If probable cause is found, the arrested probationer shall be or remain incarcerated without bail until the probation revocation hearing is held, provided the judge in his or her discretion may set bail and such other conditions for release.

5.16.2 Probation Revocation Hearing

1) A probationer is entitled to a hearing before the Court prior to revocation of probation on the date set in any notice of revocation unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.
2) A probationer who is arrested for a probation violation and who remains incarcerated on the first Monday after the arrest, shall appear no later than the date of any regular probation calendar occurring in the same week as the first Monday referenced above and the revocation hearing will be set there for no later than the tenth day after that appearance date, unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.
3) The supervised offender shall be entitled to notice of the date and time of the hearing, and the grounds for the proposed revocation. Notice to the probationer may be accomplished by personal service or service by first class mail to the probationer's mailing address on record with the Tribal Court.
4) A violation of a condition is deemed to be a knowing violation if the probationer signed, and was given a copy of, the conditions of the probation.
5) Supervised offenders do not have a right to a jury trial at a revocation hearing.
6) If the probationer admits to violating a condition of probation, the Court may revoke the probation after the probationer has had the opportunity to offer testimony or evidence regarding any circumstances tending to mitigate the violation.
7) If the probationer does not admit to violating a condition of the probation, the prosecutor or Probation Office has the burden of proving by a preponderance of the evidence that the probationer violated a condition of the probation. Evidence may not be suppressed on the ground that, if an admission of a violation, no warning was given of a right not to incriminate oneself. The judge may issue an order that any testimony or information from the defendant may not be used against the defendant in any criminal case arising from the same charge or incident that is the basis for the revocation.
8) Revocation may be based on demonstrably reliable hearsay evidence unless the judge request witnesses present on the issue. The prosecutor may how any aggravating circumstances, and the probationer may show any mitigating circumstances.
9) The Court shall determine the appropriate disposition of a petition for revocation. An order revoking probation shall be in writing.

5.16.3 Penalty Upon Revocation of Probation

A probationer who is found, after a hearing, to have violated a condition of his or her probation may be required:

1) In the case of probation during a suspended sentence, to serve the term of the original sentence in whole or in part, including incarceration and payment of fines; or
2) In the case of deferred imposition of sentence, to serve such sentence as may be imposed by the Court after a sentencing hearing.
3) Probation may be continued with consent of defendant and approval by the Court.

TITLE VI
TRIBAL OFFENSES

Part 1 - General Preliminary Provisions

6.1.1 PURPOSE AND CONSTRUCTION.

The provisions of this Chapter shall be construed in accordance with Tribal customs as well as to achieve the following general principles and purposes:

1) to forbid and prevent the commission of offenses and give fair warning of conduct which is declared to be an offense;
2) to adequately define the conduct and mental state which constitute an offense and to safeguard permitted conduct;
3) to prescribe penalties which are proportionate to the seriousness of the offense and which permit recognition of differing rehabilitative needs of individual offenders while at the same time recognizing the need of the entire Reservation Community to protect itself from offenders;
4) to prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons; and
5) to protect any Tribal member or other person residing on the Reservation whose health or welfare may be adversely affected or threatened due to abuse, neglect or exploitation by family, household members, or other person in a legal or contractual position of providing physical, mental, or medical assistance and support to the affected person.

6.1.2 Civil Actions not Barred.

The Code of Tribal Offenses does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered. Civil injury is not merged into the criminal offense.

6.1.3 Exclusiveness of Offenses.

No conduct constitutes an offense unless so declared by this Code of Tribal Offenses, by any Tribal ordinance, or by specific Washington law incorporated by reference into this Code of Tribal Offenses. The elements of any offense as contained in this code are the sole elements required for conviction in Tribal Court. Extraneous elements required by other jurisdictions shall not be considered by the judge or jury in reaching a verdict of guilt or innocence. However, this provision does not affect the power of the Tribal Court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

6.1.4 Prosecution for Multiple Offenses.

When the conduct of an offender establishes the commission of more than one offense, the offender may be prosecuted separately for each offense. The offender, however, may not be convicted of more than one offense if:

1) one offense is included in the other;
2) one offense consists only of conspiracy or some other form of preparation for committing the offense;

3) inconsistent findings of fact are required to establish the commission of the offenses;
4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or
5) the offense is defined to prohibit a continuing course of conduct and the offender's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

6.1.5 Lesser included Offenses.

An offender may be convicted of an offense included in an offense charged without having been specifically charged with the lesser included offense. An offense is included when:

1. it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;
2. it consists of attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or
3. it differs from the offense charged only in that it is a less serious injury or risk of injury to the same person, property, or Tribal interest, or a lesser kind of culpability suffices to establish its commission.

The Tribal Court need not charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting the defendant of the lesser included offense.

6.1.6 Burden of Proof.

The defendant in a criminal proceeding is presumed to be innocent until each element of the offense with which the defendant is charged is proved beyond a reasonable doubt. In the absence of such proof, the defendant shall be acquitted.

6.1.7 Classification of Offenses.

Exclusive and concurrent jurisdiction. Offenses shall be designated as Class A, Class B, Class C, Class D, or Class E offenses.

6.1.8 Time Limitations.

1) Unless otherwise specified by statute:
   a) prosecution for any Class A or Class B offense must be commenced within one year after the alleged offense is committed;
   b) prosecution for any Class C or Class D offense must be commenced within two years after the alleged offense is committed;
   c) prosecution for any Class E offense must be commenced within three years after the alleged offense is committed;
   d) if the victim is a minor or has a mental disorder at the time the offense occurred, prosecution must be commenced within one year after the legal disability terminates.
2) The period of limitation does not run under the following conditions:
   a) during any period in which the offender is not usually and publicly residing within this Reservation or is beyond the jurisdiction of the Tribal Court;
   b) during any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or
   c) during a prosecution pending against the offender for the same conduct even if the prosecution is dismissed.

3) An offense is committed either when every element occurs or, if the offense is based upon a continuing course of conduct, when the course of conduct is terminated. The time starts to run on the day after the offense is committed.
4) A prosecution is commenced when a complaint is filed.

6.1.9 Sentencing.

1) A person convicted of an offense may be sentenced as follows:
   a) for a conviction of a Class A offense, the offender may only be sentenced to pay a fine or some other sentence not involving imprisonment. For Class A offenses where no fine amount is specifically provided, the maximum fine shall be $100;
   b) for a conviction of a Class B offense, the offender may be sentenced to imprisonment for a period not to exceed 10 days, or a fine not to exceed $250, or both, unless another sentence is specified by statute;
   c) for a conviction of a Class C offense, the offender may be sentenced to imprisonment for a period not to exceed 30 days, or a fine not to exceed $1000, or both, unless another sentence is specified by statute;
   d) for a conviction of a Class D offense, the offender may be sentenced to imprisonment for a period not to exceed 180 days, or a fine not to exceed $2,500, or both, unless another sentence is specified by statute; or
   e) for conviction of a Class E offense, the offender may be sentenced to imprisonment for a period not to exceed one year, or a fine not to exceed $5,000, or both, unless another sentence is specified by statute;
2) The fines listed above may be imposed in addition to any amounts ordered paid as restitution.
3) Any person adjudged guilty of an offense under this Code shall be sentenced in accordance with this section and Section 2.11.3, unless otherwise specified.

6.1.10 Mental State.

A person is not guilty of an offense unless the person acts purposely, knowingly, or negligently, as the Code may provide, with respect to each element of the offense, or unless the person's acts constitute an offense involving strict liability.

6.1.11 Strict Liability.

A person may be guilty of an offense without having the requisite mental state only if the Code provision defining the offense clearly indicates the Council's purpose to impose strict liability for the conduct described.

6.1.12 Definitions.

Unless otherwise specified in a particular section, the following general definitions shall apply in this Chapter:

1) "Abuse" includes, but is not limited to:
   a. the infliction of physical or mental injury; or
   b. the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of a person.
2) "Acts" has its usual and ordinary meaning and includes any voluntary bodily movement, any form of communication, and when relevant, a failure or omission to take action.
3) "Another" means a person or persons, as defined in this Code, other than the offender.
4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage.

5) "Bodily harm" or "bodily injury" means physical pain, illness or any impairment of physical condition.
6) "Citation" means a written direction that is issued by a law enforcement officer and that requests a person to appear before the court at a stated time and place to answer a charge for the alleged commission of an offense.
7) "Cohabit" means to live together in an arrangement whereby the parties voluntarily assume the rights, duties and obligations which are normally manifested by married persons.
8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or persons, or the same property.
9) "Conduct" means an act or series of acts and the accompanying mental state.
10) "Conviction" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.
11) "Deceit" means:
    a) creating or confirming in another an impression which is false and which the offender does not believe to be true;
    b) failing to correct a false impression which the offender previously had created or confirmed;
    c) preventing another from acquiring information pertinent to the disposition of the property involved;
    d) selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is of value or is not a matter of official record; or
    e) promising performance which the offender does not intend to perform or knows will not be performed. Mere failure to perform, without additional evidence, is not conclusive proof that the offender did not intend to perform.
12) "Deprive" means to withhold the property of another:
    a) permanently;
    b) for such a period as to appropriate a portion of its value; or
    c) with the purpose to restore it only upon payment of a reward or other compensation.
13) "Felony" means a Class E offense.
14) "Force" means the infliction, attempted infliction, or threatened infliction of bodily harm by a person, or the commission or threat of any other crime by a person against the complainant or another which causes the complainant to reasonably believe that the person has the present ability to execute the threat, thereby causing the complainant to submit.
15) "Harm" means the loss, disadvantage, or injury or anything so regarded by the individual affected, including loss, disadvantage, or injury to any person or entity in which the individual has a recognized interest.
16) "Intoxicating substance" means any drug or any alcoholic beverage, including but not limited to any beverage containing ½ of 1% or more of alcohol by volume, which, when used in sufficient quantities, ordinarily or commonly produces intoxication.
17) "Involuntary act" means any act which is:
    a) a reflex or convulsion;
    b) a bodily movement during unconsciousness or sleep;
    c) conduct during hypnosis or resulting from hypnotic suggestion; or
    d) a bodily movement that otherwise is not consciously or habitually a product of the effort or determination of the actor.

18) "Knowingly" - A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.
19) "Law enforcement officer" means any person who by virtue of his or her office of public or Tribal employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his or her authority.
20) "Mental Disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.
21) "Misdemeanor" means a Class A, Class B, Class C, or Class D offense.
22) "Negligently" A person acts negligently with respect to an element of an offense when the person should be aware of a substantial and unjustifiable risk that the element presently exists or will result from his or her conduct. The risk must be of such a nature and degree that the person's failure to perceive it involves a gross deviation from the standard of care that a reasonable person would observe in the same situation, considering the nature and purpose of the person's conduct and the circumstances known to her or him.
23) "Obtain or exert unauthorized control" means a person acting without lawful authority:
    a) tries to bring about a transfer of interest or possession in property, whether to the offender or to another; or
    b) tries to secure the performance of labor or services, whether for the offender's benefit or the benefit of another; or
    c) takes, carries away, sells, conveys or transfers title to, interest in or possession of property.
24) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business regardless of whether a person is actually present. Each unit of a building consisting of 2 or more units separately secured or occupied is a separate occupied structure.
25) "Offense" means a crime for which a sentence of labor, time in jail, a fine, restitution, or other penalty provided by law may be imposed.
26) "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of a crime, or any other detention for law enforcement purposes.
27) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.
28) "Person" an individual, association, corporation, partnership, or other legal entity.
29) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.
30) "Premises" includes land, buildings, and appurtenances thereto.
31) "Property" means anything of value to the owner. Property includes but is not limited to:
    a) real estate, money and commercial instruments;
    b) written instruments representing or embodying rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;
    c) things growing on, or affixed to, or found on land, or part of or affixed to any building;
    d) birds, fish, livestock and other animals ordinarily kept in a state of confinement; and
    e) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine-or-humanreadable

form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

32) “Property of another" means real or personal property in which a person other than the offender or a government has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.
33) "Protective order" is a court order restraining a person from engaging in the commission or continuance of some act which may result in irreparable harm to another.
34) "Public place" means any place to which the public has access.
35) "Purposely". A Person acts purposely with respect to a result or to conduct described by a statute defining an offense when:
    a) if the element of the offense involves the nature of his or her conduct or a result thereof, it is his or her conscious object to engage in conduct of that nature or to cause such a result; and
    b) if the element of the offense involves the attendant circumstances, he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist.
36) "Reasonable apprehension" is deemed to exist in any situation where a person knowingly points a firearm at or in the direction of another person, whether or not the offender 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.
37) "Restitution" means a requirement, as a condition of a sentence, that an offender repay the victim or the Tribes in money or services.
38) "Serious bodily harm" or "serious bodily injury" means bodily injury which creates a risk of death, causes serious permanent or protracted loss or impairment of the function or process of any bodily member or organ, causes permanent disfigurement, or causes a serious mental disorder.
39) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party or for the purpose of satisfying the defendant's aggressive impulses.
40) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party or for the purpose of satisfying the defendant's aggressive impulses. Any penetration, however slight, is sufficient.
41) "Solicit" or "solicitation" means to command, authorize, urge, incite, request or advise another to commit an offense.
42) “Statute" means any Tribal Code section, Tribal ordinance, or adopted section of the Revised Code of Washington.
43) “Tamper" means to interfere with something improperly, make unwarranted alterations in its existing condition, or deposit refuse upon it.
44) "Threat" means a menace, however communicated, to:
    a) inflict physical harm on any person, or on the property of another;
    b) subject any person to physical confinement or restraint;
    c) commit any criminal offense;
    d) falsely accuse any person of a criminal offense;
    e) expose any person to hatred, contempt, or ridicule;
    f) harm the credit or business reputation of any person;
    g) reveal any information sought to be concealed by the person threatened;
    h) take an unauthorized action as an official against anyone or anything, withhold an official action, or cause the withholding of an official action; or

j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

45) "Tribes" refers to the Tulalip Tribes.

46) "Underage person" means a person who is below the age designated by the particular section of the statute.

47)

a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:
The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.
The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

b) When it cannot be determined if the value of the property is more or less than $1,000 by the standards set forth in subsection (a), its value is considered to be an amount less than $1,000.

c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

48) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provisions for transport of an operator.

49) "Weapon" means any instrument, firearm, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily harm.

50) "Witness" means any person whose testimony is desired in any official proceeding or in any investigation.

Part 2 - Liability Principles

6.2.1 CONDUCT AND RESULT.

1) Conduct is the cause of a result if:

a) without the conduct the result would not have occurred; and

b) any additional causal requirements imposed by the specific code provision are satisfied.

2) If knowingly or purposely causing a result is an element of an offense and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

a) the final result differs from the contemplated result only in the respect that a different person or different property is affected or that the injury or harm caused is less than originally contemplated; or

b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury is different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

3) If negligently causing a particular result is an element of an offense and the offender is not aware or should not have been aware of the probable result, negligence can nevertheless be established if:
   a) the actual result differs from the probable result only in the respect that a different person or different property is affected or that the actual injury or harm is less; or
   b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or the gravity of the offense.

6.2.2 Voluntary act.

An element of every offense is a voluntary act, which includes an omission to perform a duty which the person is mentally, physically and financially capable of performing.

6.2.3 Responsibility.

A person who is in an intoxicated or drugged condition is criminally responsible for her or his conduct unless such conduct is involuntarily produced and deprives the person of the capacity to appreciate the criminality of the conduct or to conform her or his conduct to the requirements of the law.

6.2.4 Accountability.

1) A person is legally accountable for the conduct of another when:
   a) having a mental state described by the code provision defining the offense, the person causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;
   b) the code provision defining the offense makes the person accountable;
   c) either before or during the commission of an offense with the purpose to promote or facilitate such commission, the person solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense.
2) However, a person is not accountable if:
   a) the person is a victim of the offense committed; or
   b) before the commission of the crime the person terminates her or his efforts to promote or facilitate the commission of the crime and takes steps to negate the effect or otherwise prevent the commission of the offense.
3) A person may not be found guilty of an offense on the testimony of one responsible or legally accountable for the same offense unless that testimony is corroborated by other evidence that in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense, tends to connect the defendant with the commission of the offense.

Part 3 - Affirmative Defenses and Justifiable Use of Force

6.3.1. CONSENT.

1) The complainant's or victim's consent to the performance of the conduct constituting an offense or to the result is an affirmative defense which must be proved by the defendant by a preponderance of the evidence.
2) Consent is ineffective if:

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

6.3.2 Compulsion.

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

6.3.3 Entrapment.

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

6.3.4 Self-defense.

1) A person is justified in the use of force or threat to use force against another when and to the extent the person reasonably believes that such conduct is necessary to:
   a) defend herself or himself or another against such other's imminent use of unlawful force;
   b) prevent or terminate such other's unlawful entry into or attack upon an occupied structure; or
   c) prevent or terminate the offender's trespass on, or other tortuous or criminal interference with, either real or personal property lawfully in the person's possession, or which the person has a legal duty to protect, or in the possession of another who is a family or household member.
2) A person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes such force is necessary to prevent imminent death or serious bodily harm to herself or himself or another person.
3) The defendant has the burden of producing sufficient evidence to raise a reasonable doubt of his or her culpability when the defendant raises self-defense as an affirmative defense.

6.3.5 Use of Force by Aggressor.

Self-defense is not available to a person who:

1) is attempting to commit, committing, or escaping after the commission of an offense; or
2) knowingly or purposely provokes the use of force against herself or himself, unless:
   a) such force is so great that the person reasonably believes there is imminent danger of death or serious bodily harm and the person has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or,
   b) in good faith, the person withdraws from physical contact with the assailant and clearly indicates to the assailant the desire to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

6.3.6 Use of Deadly Force.

A law enforcement officer, or any person acting under the officer's command to aid and assist, is justified in using deadly force when the officer is performing a legal duty or the execution of legal process and reasonably believes the use of force is necessary to protect herself or himself or others from imminent danger to life.

6.3.7 Resisting Arrest.

A person is not authorized to use force to resist arrest which the person knows is being made by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person believes the arrest is unlawful and the arrest is in fact unlawful.

Part 4 - Inchoate Offenses

6.4.1 CONSPIRACY.

1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, the person agrees with another to the commission of the offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by the person or by a co-conspirator.
2)
   a) "Act in furtherance" is any course of conduct which makes it more probable than not that an act towards the commission of an offense will occur and the person's present conduct is not terminated.
   b) Proof of an "act in furtherance" may be drawn from the circumstances surrounding the involved parties' actions and does not require direct proof of an agreement.
3) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:
   a) has not been prosecuted or convicted;
   b) has been convicted of a different offense;
   c) is not amenable to justice;
   d) has been acquitted; or
   e) lacked the capacity to commit the offense.
4) A person convicted of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

6.4.2 Solicitation.

1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.
2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

6.4.3 Attempt.

1) A person commits the offense of attempt when, with the purpose to commit a specific offense, the person does any act towards the commission of such offense.
2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.
3) A person convicted of attempt shall be punished not to exceed the maximum sentence provided for the offense attempted.

4) A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of the criminal purpose, the person avoided the commission of the offense attempted by abandoning the criminal effort.
5) Proof of the completed offense does not bar conviction for the attempt.

Part 5 - Offenses Involving Damage to the Person

6.5.1 HOMICIDE.
1) A person commits the offense of homicide by purposely, knowingly, or negligently causing the death of another human being.
2) Homicide is a Class E offense.

6.5.2 Aiding or Soliciting Suicide.
1) A person commits the offense of aiding or soliciting a suicide by purposely aiding or assisting another in taking his or her own life.
2) The fact suicide was not successfully carried out is not a defense.
3) Aiding or soliciting suicide is a Class E offense.

6.5.3 Assault.
1) A person commits the offense of assault by:
   a) knowingly or purposely causing bodily harm to another;
   b) negligently causing bodily harm to another with a weapon;
   c) knowingly or purposely making physical contact of an insulting or provoking nature with an individual; or
   d) knowingly or purposely causing reasonable apprehension of bodily harm in another.
2) "Reasonable apprehension" is deemed to exist in any situation where a person knowingly 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.
3) Except as provided in subsection (4), assault is a Class D offense.
4) If the victim is less than 14 years old and the offender is an adult, the assault is a Class E offense.

6.5.4 Aggravated Assault.
1) A person commits the offense of aggravated assault by knowingly or purposely causing:
   a) serious bodily harm to another;
   b) bodily harm to another with a weapon;
   c) reasonable apprehension of serious bodily harm in another by use of a weapon; or
   d) bodily harm to a law enforcement officer or a person who is responsible for the care or custody of a prisoner.
2) Aggravated assault is a Class E offense.

6.5.5 Intimidation.
1) A person commits the offense of intimidation by attempting to have another person perform or refrain from performing a specific act by threatening, under circumstances producing a fear that the threat will be carried out, to:
   a) inflict bodily harm on the person threatened or any other person;
   b) subject any person to physical confinement or restraint; or
   c) commit any Class E offense.

2) Intimidation is a Class E offense.

6.5.6 Mistreating Prisoners.

1) A person commits the offense of mistreating prisoners, if, being responsible for the care or custody of a prisoner, he purposely or knowingly,
   a) assaults or otherwise injures a prisoner; or
   b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner; or
   c) violates any civil right of a prisoner.
2) Mistreating prisoners is a Class D offense.

6.5.7 Negligent vehicular assault.

1) A person who negligently operates a motor vehicle under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, and who causes bodily injury to another, commits the offense of negligent vehicular assault.
2) Negligent vehicular assault is a Class D offense.

6.5.8 Negligent Endangerment.

1) A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.
2) Negligent endangerment is a Class D offense.

6.5.9 Criminal Endangerment.

1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment.
2) For the purposes of this Section, "knowingly" means that the person is aware of the high probability that the conduct in which he or she is engaging, whatever that conduct may be, will cause a substantial risk of death or serious bodily injury to another.
3) Criminal endangerment is a Class E offense.

6.5.10 Elder Abuse.

1) A person commits the offense of elder abuse by knowingly or purposely, physically or mentally, abusing or exploiting an older person.
2) "Exploiting" means the unjust use of an individual's money or property for another's advantage by means of duress, menace, fraud, or undue influence.
3) "Older person" means a Tribal member or other person residing on the Reservation who is:
   a) 62 years of age or older;
   b) determined by the Tribal Court to be an elder; or
   c) at least 45 years of age and unable to protect herself or himself from abuse, neglect, or exploitation because of a mental disorder or physical impairment, or frailties or dependencies brought about by age or disease or alcoholism.
4) Elder abuse is a Class D offense.

6.5.11 Robbery.

1) A person commits the offense of robbery if, in the course of committing a theft, the person:
   a) inflicts bodily harm upon another;
   b) threatens to inflict bodily harm upon any person;
   c) purposely or knowingly puts any person in fear of immediate bodily harm; or (d) commits or threatens to commit any Class E offense other than theft.
2) "In the course of committing a theft" includes acts which occur in an attempt to commit theft, in the commission of a theft, or in flight after the attempt or commission of a theft.

3) Robbery is a Class E offense.

6.5.12 Unlawful Restraint.

1) A person commits the offense of unlawful restraint by knowingly or purposely, and without lawful authority, restraining another so as to interfere substantially with another's liberty.
2) Unlawful restraint is a Class C offense.

6.5.13 Kidnapping.

1) A person commits the offense of kidnapping by knowingly or purposely, and without lawful authority, restraining another person by:
   a) secreting or holding the person in a place of isolation; or
   b) using or threatening to use physical force against the other person.
2) Kidnapping is a Class E offense.

6.5.14 Aggravated Kidnapping.

1) A person commits the offense of aggravated kidnapping if he or she knowingly or purposely and without lawful authority restrains another person by either secreting or holding him or her in a place of isolation or by using or threatening to use physical force, with any of the following purposes:
   a) to hold for ransom or reward or as a shield or hostage;
   b) to facilitate commission of any felony or flight thereafter;
   c) to inflict bodily injury on or to terrorize the victim or another; or
   d) to interfere with the performance of any governmental or political function.
2) Aggravated kidnapping is a Class E offense.

6.5.15 Terrorism.

1) A person commits the offense of terrorism when he or she knowingly or purposely:
   a) threatens to destroy or damage any structure, conveyance, or other real or personal property within the Reservation Boundaries;
   b) attempts or conspires to destroy or damage any structure, conveyance, or other real or personal property within the Reservation Boundaries; or
   c) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the reservation boundaries.
2) Terrorism is a Class E offense.

6.5.16 Harassment.

1) A person commits the offense of harassment if:
   a) Without lawful authority, the person knowingly threatens:
      1. To cause bodily injury 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 restraint; or
      4. Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and
   b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.
2) Harassment is a Class C Offense

6.5.16.1 Statement of Purpose.

It is the purpose of this section to create and maintain a peaceful and safe environment for all persons on the Tulalip Indian Reservation by making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the person harassed. Harassment is a serious crime against society and this section seeks to guarantee to the victim of harassment the maximum protection under the law.

6.5.16.2 Definitions.

1)

a) "Harassment": For the purpose of this section. "harassment" means a knowing and willful course of conduct directed at a specific person, which seriously alarms, annoys harasses, or is detrimental to that person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress or would cause a reasonable person to fear for the well being of his or her family, and shall actually cause fore the petitioner substantial emotional distress or fear for the well being of his or family.
b) "Course of Conduct": For the purpose of this section, "course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, but is not limited to, the use of electronic media as a means of conducting harassment.
c) "Electronic Communication": For the purpose of this section, "electronic communication" means any form of expression or exchange of information by speech or writing using electronic means. Electronic communication includes but is not limited to, communication via telephone, facsimile and electronic mail.
d) "Specific Person": For the purpose of this section, "specific person" means any person who is subjected to harassment as defined by Section 3.5.16.2.a.
e) "Electronic Surveillance": For the purpose of this section, "electronic surveillance" means close observation of or listening to a person or place by electronic means for the purpose of harassment by any electronic means.
f) "Emotional Distress": For the purpose of this section, "emotional distress" means a highly unpleasant reaction such as anguish, grief, fright, humiliation, or fury.
g) "Harassment Restraining Order": For the purpose of this section, "Harassment restraining order" means a court order restricting a person from harassing, threatening, contacting, or approaching another specified person for a period of time.
h) "Temporary Harassment Restraining Order": For the purpose of this section, "temporary restraining order" means a court order restricting a person from harassing, threatening, contacting, or approaching another specified person not longer than fifteen (15) days.

6.5.16.3 Petition for an Harassment Restraining Order-Availability.

There shall exist an action known as Harassment retraining order ("restraining order") for cases of harassment. The condition for obtaining such an order are as follows:

1)

a) A petition to obtain a retraining order under this section may be filed by any person claiming to be the victim of harassment.
b) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit under oath stating the facts and circumstances from which relief is sought.
c) Standard, simplified petition forms with instructions for completion shall be available to persons seeking restraining orders against a harasser at the office of the court clerk.

d) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties, expect that a parent may not petition for a restraining order on behalf of a child against the child's other parent. Petitioner shall be required to disclose nay pending suits t the time the petition is entered.
e) Civil filing fees shall apply for filing of a petition under this section, unless the court makes a finding upon due inquiry that the petitioner lacks the financial resources to pay filing fees.
f) The parent or guardian of a child under eighteen may petition for a restraining order to enjoin a person age eighteen years or over who is not that child's parent from contact with that child upon showing that contact with the person to be enjoined is detrimental to the welfare of the child.
g) The parent or guardian of a child under the age of eighteen may petition for a restraining order to enjoin a person under the age of eighteen years from contact with that child, but only where the person to be enjoined has been adjudicated of offense against the child protected by the other, or is under investigation or has been investigated for such an offense. The parent, guardian, or custodian of the respondent child shall be notified of such action and served with process. In issuing a restraining order under this section, the court shall consider, among the other facts of the case, the severity of the alleged offense, any continuing physical danger or emotional distress to the alleged victim, and the expense, difficulty, and educational disruption that would be caused by enforcement of the order. The court shall send notice of the restriction to the school(s) attend by the person restrained and the person protected by the order. If the court deems that either the person restrained or the person protected by the order must transfer schools for the order to be enforceable, the parents(s) or legal guardian(s) of the person affected are responsible for transportation and other costs associated with the change of school.

6.5.16.4 Harassment Restraining Orders-Ex Parte Temporary Hearing– Longer Term and Renewal.
1)

a) Upon filing a petition for a Harassment order under this section, the petitioner may obtain an ex parte temporary Harassment retraining order with or without serving notice upon the respondent by filing an affidavit which, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary anti-restraining order is not granted. This temporarily restraining order shall be valid for fifteen (15) calendar days.
b) Upon the issuance of a temporary anti-restraining order, the petitioner shall cause a copy of the order together with notice of hearing to be personally served on the respondent a minimum of five (5) days prior to the hearing. Service may be made by certified mail if personal service cannot be completed within specified period, and the return receipt indicating actual notice must be given to court.
c) At the hearing within fifteen (15) calendar days after the granting of the ex parte order of protection, a harassment restraining order shall be issued prohibiting such harassment if the court finds by a preponderance of the evidence that harassment exists or has occurred. Otherwise, the temporary retraining order shall be vacated. If the respondent does not appear, the petitioner must demonstrate that he received notice before or that despite petitioner's own due diligence service could not be made, a default judgment will be entered.
d) An order issued under this section shall be effective for not more than one year unless the court finds that the respondent is likely to resume harassment of the petitioner when the order expires. If so, the court may enter an order to a fixed time exceeding one year or may enter a permanent Harassment restraining order.
e) In the event that a respondent fails to appear for a hearing and the petitioner cannot demonstrate service upon him, the court may grant a second ex parte temporary Harassment restraining order

by the same petitioner enjoining the same respondent. After two consecutive ex parte temporary Harassment orders have been issued, and notice still cannot be effected, the court may issue an Harassment restraining order. When a peace officer investigates a report of an alleged violation a restraining order issued without notice pursuant to this section, the officer shall issue notice of the order upon the respondent during the investigation. See Section 3.5.16.5.b.

f) At anytime within three month before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal with the court. The petition for renewal shall state the reasons why the petitioner seeks to renew the order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be held within fifteen (15) days from the date of petition. The court shall grant the petition for renewal unless the respondent proves by preponderance of evidence that he will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed period or may enter a permanent order as provided in Subsection (3.5.16.4.d) of this section.

g). The court, in granting a Harassment restraining order, shall have broad discretion to grant such relief, as the court deems proper including:

1. Restraining the respondent from making attempts to contact the petitioner.
2. Restraining the respondent from making any attempts to monitor the petitioner by actual or electronic surveillance.
3. Requiring the respondent to stay a specified minimum distance from the petitioner's residence, workplace, and /or school.

6.5.16.5 Notice to Local Law Enforcement Agencies –Enforceability.

1)

a) A copy of an Harassment restraining order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day the Tulalip Police Department or appropriate law enforcement agency. Upon receipt of the order, the Police Department shall enter the order into nay computer-based criminal intelligence information system currently in use by the Department to list outstanding warrants. The Police Department shall expunge expired orders from the computer system. Entry into the information system constitutes notice to the Police Department of the existence of the order.

b) If an officer investigates an alleged violation of an order issued pursuant to Section 3.5.16.4.e and notice has not been effected prior to contact, the office shall arrest the respondent, but rather provide notice as described herein. Law enforcement should update the criminal information system to reflect that notice has been effected.

6.5.16.6 Contempt and Violation of Order-Penalties.

1)

a) Willful violation of any Harassment retraining order subjects the respondent to criminal penalties under this ordinance.

b) Any respondent who is found guilty of violating the terms of Harassment restraining order may also, subject to the court's discretion, be held in contempt of court, and the court may impose such sanctions, as it deems appropriate.

c) The first violation of a Harassment restraining order is a Class C offense, and the offender may be sentenced to imprisonment for a period not to exceed thirty (30) days or a fine not to exceed $1,000, or both.

d) Subsequent violation of a Harassment restraining order is a Class D offense, and an offender may be sentenced to imprisonment for a period not to exceed one hundred eight (180) days, or fine not to exceed $2,500, or both.

6.5.16.7 Full Faith and Credit.

1)
   a) Harassment restraining orders issued by the Tulalip Tribal Court will be enforced throughout the state of Washington pursuant to RCW 13.34.240 and CR 82.5 (c).
   b) To ensure that Harassment restraining orders issued by the Tulalip Tribal Court are enforced outside of the boundaries of the reservation, ant-harassment restraining orders issued in the Washington State Superior courts will be enforced within the boundaries of the Reservation.
   c) Notice of reciprocal enforcement pursuant to this section shall be printed all Harassment orders issued by the court.

Part 6 - Sex Crimes

6.6.1 SEXUAL ASSAULT.

1) A person commits the offense of sexual assault by knowingly making sexual contact with another without consent, or who commits an assault as defined by Section 3.5.3, when such assault involves sexual contact.
2) "Without consent", as used in this section and in section 2-1-602, means:
   a) the victim is compelled to submit by force against himself, herself, or another, or
   b) the victim is incapable of consent because he or she is:
      1. mentally defective or incapacitated;
      2. physically helpless; or
      3. less than 16 years old.
   c) As used in subsection (2)(a), the term "force" means:
      1. the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or
      2. the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.
3) Except as provided in subsection (3), sexual assault is a Class D offense.
4) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender commits a Class E offense.
5) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

6.6.2 Sexual Intercourse without Consent.

1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent.
2) Sexual intercourse without consent is a class E offense.

6.6.3 Indecent Exposure.

1) A person who, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person, exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm commits the offense of indecent exposure.
2) Indecent exposure is a Class C offense.

6.6.4 Sexual Abuse of Children.

1) As used in this section, the following definitions apply:

a) "Sexual conduct" means actual or simulated:
   1. sexual intercourse, whether between persons of the same or opposite sex;
   2. penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;
   3. bestiality;
   4. masturbation;
   5. sadomasochistic abuse;
   6. lewd exhibition of the genitals, breasts, pubic or rectal area of any person; or
   7. defecation or urination for the purpose of the sexual stimulation of the viewer.

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

c) "Visual medium" means;
   1. any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or
   2. 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.

2) A person commits the offense of sexual abuse of children if he or she knowingly:
   a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;
   b) photographs, films, videotapes, or records a child engaging in sexual conduct, actual or simulated;
   c) persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated;
   d) 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
   e) finances any of the activities described in subsections (1)(a) through (1)(d) knowing that the activity is of the nature described in those subsections.
3) Sexual abuse of children is a Class E offense.
4) For purposes of this section, "child" means any person less than 16 years old.

6.6.5 Incest.

1) A person commits the offense of incest if he or she has sexual contact as described in section 3.1.12(39) or sexual intercourse with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter.
2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.
3) Incest is a Class E offense.

6.6.6 Provisions Generally Applicable to Sexual Crimes.

1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he or she reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.
2) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).
4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.
5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

Part 7 - Offenses Against the Family

6.7.1 PROSTITUTION.
1) A person commits the offense of prostitution if such person knowingly engages in or agrees or offers to engage in sexual intercourse with another person, not his or her spouse, for compensation, whether such compensation is paid or to be paid.
2) Prostitution is a Class B offense.

6.7.2 Aggravated Promotion of Prostitution.
1) A person commits the offense of aggravated promotion of prostitution if he or she purposely or knowingly commits any of the following acts:
   a) compels another to engage in or promote prostitution;
   b) promotes prostitution of a child under the age of 18 years, whether or not he or she is aware of the child's age;
   c) promotes the prostitution of one's child, ward, or any person for whose care, protection, or support he or she is responsible.
2) Aggravated promotion of prostitution is a Class E offense.

6.7.3 Bigamy.
1) A person commits the offense of bigamy if, while married, the person knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:
   a) the person believes on reasonable grounds that the prior spouse is dead;
   b) the person and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the person to be alive;
   c) a court has entered a judgment purporting to terminate or annul a prior marriage and the person does not know the judgment to be invalid; or
   d) the person reasonably believes she or he is legally eligible to marry.
2) Bigamy is a Class B offense.

6.7.4 Failure to Support or Care for Dependent Person.
1) A person commits the offense of failure to support or care for a dependent person by knowingly:
   a) refusing or neglecting to furnish food, shelter, or proper care, which the person is physically and financially able to provide to any person recognized as legally dependent upon the person;
   b) endangering the health, welfare or emotional well being of any child under the person's care; or
   c) failing to provide financial support, which the person is legally obligated to provide and the person is financially able to provide.
2) Failure to support or care for a dependent person is a Class D offense.
3) It is not a defense to a charge of failure to support that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

4) A person commits the offense of aggravated failure to support if:
   a) the person has left the Reservation to avoid the duty of support; or
   b) the person has been previously convicted of the offense of failure to support.
5) Aggravated failure to support is a Class E offense.

6.7.5 Contributing to the Delinquency of an Underage Person.

1) The term underage person as used here denotes a person who is below the age designated by the particular section of the statute. A person commits the offense of contributing to the delinquency of an underage person by knowingly:
   a) selling, giving, supplying or encouraging the use of any intoxicating substances by a person under the age of 21;
   b) selling or giving explosives to a person under the age of 18;
   c) assisting, promoting, or encouraging a person under the age of 16 to
      1. abandon her or his place of residence without the consent of the minor's parents or legal guardian,
      2. enter a place of prostitution,
      3. engage in sexual conduct,
      4. commit, participate, or engage in a criminal offense.
2) For a first conviction for contributing to the delinquency of an underage person, the offense is classified as a Class C offense.
3) For a second conviction for contributing to the delinquency of an underage person, the offense is classified as a Class D offense.
4) For a third or subsequent conviction for contributing to the delinquency of an underage person, the offense is classified as a Class E offense.

6.7.6 Failure to Send Children to School.

1) A person commits the offense of failure to send children to school by repeatedly neglecting or refusing, without good cause to send any child of school age under the person's care to school.
2) For a first conviction of failure to send children to school, the offense is classified as a Class B offense.
3) For a second or subsequent conviction of failure to send children to school, the offense is classified as a Class C offense.

6.7.7 Custodial Interference.

1) A person commits the offense of custodial interference when, with the intent to deprive another person or public agency of any custodial rights, the person maliciously takes, detains, entices, or conceals, either within or outside the exterior boundaries of the Reservation, any person under the age of 16, any incompetent person or any person entrusted by authority of law to the custody of another person or institution.
2) Expenses incurred in locating and regaining physical custody of the person taken, enticed or kept in violation of this section are "pecuniary damages" for purposes of restitution.
3) Custodial interference is a Class E offense.

6.7.8 Visitation Interference.

1) A person who has legal custody of a minor child commits the offense of visitation interference if he or she knowingly or purposely frustrates the visitation rights of a person entitled to visitation under an existing court order.
2) Visitation interference is a Class C offense.

6.7.9 Curfew Violation.

1) Every person under the age of 18 years is subject to curfew times as follows:
   a) 11 p.m. Sunday through Thursday, and
   b) 12:00 midnight on Friday and Saturday.
2) Parents or guardians of children under the age of 18 are responsible for curfew compliance. Exceptions are permitted if the child is under the immediate supervision of a parent, guardian, or other adult approved by the parent or guardian. A child may attend authorized school functions without such supervision.
3) Any child who fails to obey curfew regulations as well as any parent, guardian or custodian whose children fail to obey curfew regulations commits the offense of curfew violation.
4) Curfew violation is a Class A offense with a maximum fine of $50.

Part 8 - Offenses Against Property

6.8.1 ARSON.

1) A person commits the offense of arson by knowingly or purposely using fire or explosives
   a) to damage or destroy a building or occupied structure of another without consent; or
   b) in a manner which places another person in danger of death or bodily harm, including a firefighter responding to or at the scene of the fire or explosion.
2) Arson is a Class E offense.

6.8.2 Negligent Arson.

1) A person commits the offense of negligent arson if he or she purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently
   a) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene, or
   b) places property of another in danger of damage or destruction.
2) Negligent arson as defined above in (1)(b) is a Class C offense. Negligent arson as defined above in (1)(a) is a Class E offense.

6.8.3 Criminal Mischief.

1) A person commits the offense of criminal mischief by knowingly or purposely:
   a) injuring, damaging, or destroying any property of another without his or her consent;
   b) tampering with the property of another or Tribal property without consent, so as to endanger or interfere with the use of the property; or
   c) damaging or destroying property in an attempt to defraud an insurer;
2) If the verified damage amount does not exceed $1,000, criminal mischief is a Class C offense.
3) If the verified damage amount is greater than $1,000, criminal mischief is a Class E offense.

6.8.4 Trespass.

1) A person commits the offense of trespass by knowingly or purposely and without express or implied privilege
   a) entering or remaining in an unoccupied structure;
   b) entering or remaining in or upon the premises of another;
   c) entering any vehicle or any part thereof; or
   d) allowing livestock to occupy or graze on the cultivated or enclosed land of another.

e) entering onto the Tulalip Reservation after having been excluded from the reservation pursuant to Ordinance 71.

2) A privilege to enter may be extended
   a) by explicit invitation, license, or permission from the landowner or any other authorized person,
   b) by a landowner's failure to give notice that the lands are restricted, or
   c) by law.
3) Access to Tribal lands, waters, and natural resources by persons who are not Tribal members is restricted as provided by Tribal and federal law. Tribal members crossing Reservation lands in order to exercise hunting and fishing rights retained by treaty do so with privilege.
4) Notice restricting entry onto non-Tribal lands must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal posts are used the top one-third of the post must be painted. Notice must be placed at all normal points of access to the property. A privilege to enter may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.
5) Trespass is a Class C offense.

6.8.5 Burglary.

1) A person commits the offense of burglary by knowingly entering or remaining in an occupied structure, without privilege to be there, with the purpose of committing an offense therein.
2) Burglary is a Class E offense.

6.8.6 Theft.

1) A person commits the offense of theft by knowingly and purposely obtaining or exerting unauthorized control, including by threat or deception, over the property of the owner or by obtaining control over stolen property knowing the property to have been stolen by another, and the person
   a) has the purpose of depriving the owner of the property,
   b) uses, conceals, or abandons the property in such a manner as to deprive the owner of the property, or
   c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.
2) A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered or otherwise disposed of after a Tribal police officer has requested him to hold the property for 30 days commits the offense of theft.
3) If the verified value of the property does not exceed $1,000, theft is a Class C offense.
4) If the verified value of the property is greater than $1,000, theft is a Class E offense.

6.8.7 Theft of Lost or Mislaid Property.

1) A person commits the offense of theft by obtaining control over lost or mislaid property when the person
   a) knows or learns the identity of the owner or knows, is aware, or learns of a reasonable method of identifying the owner; or
   b) fails to take reasonable measures to restore the property to the owner; and
   c) has the purpose of depriving the owner permanently of the use or benefit of the property.
2) Theft of lost or mislaid property is a Class B offense.

6.8.8 Theft of Labor or Services or Use of Property.

1) A person commits the offense of theft when he or she obtains use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor, or services.
2) If the verified value of the labor or services or use of property does not exceed $1,000, its theft under this Section is a Class C offense.
3) If the verified value of the labor or services or use of property is greater than $1,000, its theft is a Class E offense.

6.8.9 Failure to Return Rented or Leased Property.

1) A person commits the offense of failure to return rented or leased property if, without notice to and permission of the lessor, the person knowingly and purposely fails to return such property after the time provided for such return in the rental agreement, provided that the date and time when return of the property is required and the penalty prescribed in this section is clearly stated, in bold print, in the written agreement.
2) Obtaining rental or leased property through the use of false identification constitutes prima facie evidence of the commission of this offense.
3) Failure to return the rental property within 72 hours after written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time the rental agreement was entered into or personally served on the renter or lessee, constitutes prima facie evidence of the commission of this offense.
4) If the verified value of the rented or leased property does not exceed $1,000, failure to return rental property is a Class C offense.
5) If the verified value of the rented or leased property is greater than $1,000, failure to return rental property is a Class E offense.

6.8.10 Aiding the Avoidance of Telecommunications Charges.

1) A person commits the offense of aiding the avoidance of telecommunications charges when he or she knowingly publishes the number or code of an existing, canceled, revoked expired, or nonexistent telephone credit card with the purpose of avoiding payment of lawful telecommunications charges.
2) Aiding the avoidance of telecommunications charges is a Class B offense.
3) For purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally in person, by telephone, radio, or television, or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

6.8.11 Unauthorized Acquisition or Transfer of Food Stamps.

1) A person commits the offense of unauthorized acquisition or transfer of food stamps if he or she knowingly:
   a) acquires, purchases, possesses, or uses any food stamp or coupon that he or she is not entitled to; or
   b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.
2) The unauthorized acquisition or transfer of food stamps with a value of less than $1,000 is Class C offense.
3) The unauthorized acquisition or transfer of food stamps with a value of greater than $1,000 is a Class E offense.

6.8.12 Waste, Sale or Trade of Food Distribution Program Foods.

1) A person commits the offense of waste, sale or trade of food distribution program foods (commodities) if he or she knowingly
   a) wastes the foods by discarding them,
   b) sells the foods to another for money, or
   c) trades the foods for other items or services.
2) Waste, sale or trade of food distribution program foods is a Class B offense.

6.8.13 Unauthorized Use of Motor Vehicle.

1) A person commits the offense of unauthorized use of a motor vehicle by knowingly operating the vehicle of another without his or her consent.
2) It is a defense that the offender reasonably believed that the owner would have consented to the offender's operation of the motor vehicle if asked.
3) Unauthorized use of a motor vehicle is a Class C offense.

6.8.14 Unlawful Use of a Computer.

1) A person commits the offense of unlawful use of a computer by knowingly or purposely
   a) obtaining the use of a computer, computer system, or computer network without consent of the owner;
   b) altering or destroying or causing another to alter or destroy a computer program or computer software without consent of the owner; or
   c) obtaining the use of, or altering or destroying a computer, computer system, computer network, or any part thereof, for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or from any other person.
2) If the verified value of the property used, altered, destroyed, or obtained does not exceed $1,000, unlawful use of a computer is a Class C offense.
3) If the verified value of the property used, altered, destroyed, or obtained is greater than $1,000, unlawful use of a computer is a Class E offense.

6.8.15 Issuing a Bad Check.

1) A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depositary for the payment of money knowing it will not be honored by the depositary.
2) If the person issuing the check or other order has an account with the depositary, failure to make good the check or other order within 15 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the person knew it would not be paid by the depositary.
3) Issuing a bad check for services, labor, or property obtained not exceeding $1,000 is a Class C offense.
4) Issuing a bad check for services, labor, or property obtained or attempted to be obtained exceeding $1,000 is a Class E offense.

6.8.16 Defrauding Creditors.

1) A person commits the offense of defrauding secured creditors if he or she knowingly destroys, conceals, encumbers, transfers, removes from the Reservation, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.
2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.
3) Defrauding creditors is a Class C offense.

6.8.17 Deceptive Practices.

1) A person commits the offense of deceptive practices by knowingly or purposely:
   a) causing another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred,
   b) making, directing another to make, or accepting a false or deceptive statement regarding the person's financial condition for the purpose of procuring a loan or credit;
   c) making or directing another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property, or
   d) obtaining or attempting to obtain property, labor, or services through the use of an invalid credit card.
2) Deceptive practices is a Class C offense.

6.8.18 Deceptive Business Practices.

1) A person commits the offense of deceptive business practices if, while in the course of engaging in a business, occupation, or profession, the person knowingly or purposely:
   a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quantity or quality,
   b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service,
   c) takes or attempts to take more than the represented quantity of any commodity or service when furnishing the weight or measure,
   d) sells, offers, or exposes for sale adulterated commodities,
   e) sells, offers, or exposes for sale mislabeled commodities, or
   f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.
2) Deceptive business practices is a Class C offense.

6.8.19 Forgery.

1) A person commits the offense of forgery when, with purpose to defraud, the person knowingly falsely signs, makes, executes, or alters any written instrument.
2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.
3) Except as provided in subsection (4), forgery is a Class C offense.
4) If the forgery is part of a common scheme, or if the value of the property, labor, or services obtained or attempted to be obtained exceeds $1,000, the offense is a Class E offense.

6.8.20 Obscuring the Identity of a Machine.

1) A person commits the offense of obscuring the identity of a machine if he or she:
   a) removes, defaces, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm, or
   b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.
2) Obscuring the identity of a machine is a Class C offense.

3) The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

6.8.21 Illegal Branding or Altering or Obscuring a Brand.

1) A person commits the offense of illegal branding or altering or obscuring a brand if he or she marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal.
2) Illegal branding or altering or obscuring a brand is a Class E offense.

6.8.22 Possessing Stolen Property.

1) A person is guilty of possessing stolen property in the first degree if he or she knowingly possesses stolen property with a verified value greater than $1000, or knowingly possesses a stolen firearm of any value. Possessing stolen property in the first degree is a Class E offense.
2) A person is guilty of possessing stolen property in the second degree if he or she knowingly possesses stolen property with a verified value that does not exceed $1000. Possessing stolen property in the second degree is a Class C offense.
3) “Stolen property” means property obtained through theft.

6.8.23 Embezzlement.

1) A person who shall, having lawful custody of property not his or her own, appropriate the same to his or her own use, with intent to deprive the owner thereof, commits the crime of embezzlement.
2) If the verified value of the property is greater than $1,000, embezzlement is a Class E offense
3) If the verified value of the property does not exceed $1,000, embezzlement is a Class C offense.

6.8.24 Unauthorized Use of Credit Cards.

1) A person commits the crime of unauthorized use of a credit card if he or she uses the card for the purpose of obtaining property or services with the knowledge that;
   a) the card is stolen or forged; or
   b) the card has been revoked or canceled; or
   c) For any other reason his or her use is unauthorized.
2) Credit card means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.
3) Unauthorized use of a credit card is a Class C offense.

6.8.25 Violation of Exclusion Order

1) A person who commits the offense of violation of an exclusion order by knowingly or purposely entering onto the restricted lands of the Tulalip Indian Reservation in violation of an order of exclusion issued by Tulalip Tribal Court.
2) A first violation is a Class C offense. A second violation is a Class D offense. A third violation and any subsequent violation each constitute a Class E offense.

Part 9 - Offenses Against Public Administration

6.9.1 DEFINITIONS.

For purposes of this Part, the following definitions apply:

1) "Administrative proceeding" means any Tribal proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.
2) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.
3) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.
4) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.
5) “Petition” mean a list of signatures submitted to any Tribal government official, program or office pursuant to any ordinance, resolution or constitutional provision providing for the submission of such signatures for the purpose of initiating or requesting governmental action.
6) "Tribal public servant" means any officer or employee of the Tribal government including but not limited to a member of the Board of Directors, a judge, anyone who has been elected or designated to become a Tribal public servant, or any person serving as a juror, administrator, executor, personal representative, guardian, or court-appointed fiduciary.

6.9.2. Bribery.

1) A person commits the offense of bribery by knowingly or purposely offering, conferring, agreeing to confer upon another, soliciting, accepting, or agreeing to accept from another, any benefit, including pecuniary benefit, as consideration for:
   a) the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a Tribal public servant or voter,
   b) the recipient's decision, vote, recommendation, or other exercise of official discretion in a Tribal judicial or administrative proceeding, or
   c) a violation of a known duty as a Tribal public servant.
2) It is not a defense that a person whom the offender sought to bribe was not qualified to act in the desired way.
3) Bribery is a Class D offense.
4) A person convicted of the offense of bribery shall forever be disqualified from holding any position as a Tribal public servant.

6.9.3 Improper Influence in Official Matters.

1) A person commits the offense of improper influence by purposely or knowingly:
   a) threatening harm to any person, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal public servant or voter;
   b) threatening harm to any Tribal public servant, to the Tribal public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the Tribal public servant's decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding;
   c) threatening harm to any Tribal public servant, the public servant's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person to violate her or his duty, or
   d) privately talking about the circumstances of a pending or potential controversy with any Tribal public servant who has or will have official discretion in a judicial or administrative proceeding

or any other communication with such Tribal public servant designed to influence or with the potential to influence the outcome of such proceedings on the basis of considerations other than those authorized by Tribal law.

2) It is not a defense that a person whom the offender sought to influence was not qualified to act in the desired way.
3) Improper influence in official matters is a Class D offense.

6.9.4 Compensation for Past Official Behavior.

1) A person commits an offense under this section if he or she knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a Tribal public servant, given a decision, opinion, recommendation, or vote favorable to another, for having exercised a discretion in another's favor, or for having violated his or her duty. A person commits an offense under this section if he or she knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.
2) Compensation for past official behavior is a Class C offense.

6.9.5 Gifts to Tribal Public Servants by Persons Subject to their Jurisdiction.

1) No Tribal public servant in any department or agency exercising a regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of Tribal government, or having custody of prisoners shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.
2) No Tribal public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.
3) No Tribal public servant having judicial or administrative authority and no Tribal public servant employed by a Tribal court having such authority or participating in the enforcement of its decision shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such Tribal public servant or tribunal with which he or she is associated.
4) This section shall not apply to:
   a) fees or payments prescribed by law to be received by a Tribal public servant or any other benefit for which the recipient gives legitimate consideration or to which he or she is otherwise entitled; or
   b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.
5) No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (3).
6) An offense committed under this section is a Class C offense.

6.9.6. Perjury.

1) A person commits the offense of perjury by knowingly making in any Tribal judicial or administrative proceeding a false statement under oath or equivalent affirmation, or by swearing or affirming the truth of a false statement previously made when the statement is material to the proceedings.
2) Perjury is a Class D offense.

6.9.7 False Swearing.

1) A person commits the offense of false swearing by knowingly making a false statement under oath or equivalent affirmation, or swearing or affirming the truth of such a statement previously made when the person does not believe the statement to be true and:
   a) the falsification occurs in an official proceeding;
   b) the falsification is purposely made to mislead a Tribal public servant in performing his or her official function; or
   c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.
2) False swearing is a Class C offense.

6.9.8 Unsworn Falsification to Authorities.

1) A person commits an offense under this section if, with purpose to mislead a Tribal public servant in performing his or her official function, he or she
   a) makes any written false statement which he or she does not believe to be true,
   b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading,
   c) submits or invites reliance on any writing which he or she knows to be forged, altered, or otherwise lacking in authenticity, or
   d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.
2) Unsworn falsification is a Class B offense.

6.9.9 Petition Misconduct

1) A person commits an offense under this section if he or she
   a) signs a petition with a name of another person or fictitious person, or any name other than his or her true name; or
   b) signs a petition knowing that he or she is not eligible to sign under applicable Tribal Ordinance, Resolution or Constitutional provision; or
   c) in signing a petition, makes a false statement as to his or her residence, age, tribal membership or other qualifications necessary to sign the petition; or
   d) knowing that a petition contains false signatures or statements, files the petition, or puts the petition off with intent that it should be filed, as a true and genuine petition; or
   e) for any consideration or gratuity or promise thereof, signs or declines to sign any petition; or
   f) provides or receives consideration for soliciting or procuring signatures on a petition if any part of the consideration is based on the number of signatures solicited or procured, or offers to provide or agrees to receive such consideration any of which is based on the number of signatures solicited or procured; or
   g) gives or offers any consideration or gratuity to any person to induce him or her to sign or not to sign any petition; or
   h) interferes with or attempts to interfere with the right of any voter to sign or not to sign a petition by threats, intimidation, or any corrupt means or practice.
2) Petition misconduct is a Class C offense

6.9.10 False Alarms to Agencies of Public Safety.

1) A person commits an offense under this section if he or she knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, Tribal or otherwise, official or volunteer, which deals with emergencies involving danger to life or property.

2) False alarms to public agencies is a Class C offense.

6.9.11 False reports to law enforcement officers.

1) A person commits the offense of giving false reports to law enforcement officers by knowingly
   a) giving false information to any law enforcement officer with the purpose to implicate another,
   b) reporting to a law enforcement officer an offense or other incident within their concern, knowing that the alleged offense or incident did not occur, or
   c) pretending to furnish such officers with information relating to an offense or incident when the person does not have information relating to such offense or incident.
2) Giving false reports to law enforcement officers is a Class C offense.

6.9.12 Tampering with witnesses, informants, or physical evidence.

1) A person commits the offense of tampering if, believing that an official proceeding or investigation is pending or about to be instituted, the person knowingly or purposely attempts to or does
   a) induce or otherwise cause a witness or informant to testify or inform falsely,
   b) withhold any testimony, information, document or other material evidence,
   c) cause a witness to elude legal process summoning the witness to testify or supply evidence, or
   d) alter, destroy, conceal, or remove any record, document, or other physical object in order to impair its availability or reliability in such proceeding or investigation.
2) Tampering is a Class D offense over which the Tribes have exclusive jurisdiction.

6.9.13 Impersonating a Tribal public servant.

1) A person commits the offense of impersonating a Tribal public servant by knowingly and purposely pretending to hold a position as a public servant of the Tribes as a means of inducing another to submit to the person's authority or otherwise act in reliance upon such representation.
2) Impersonating a Tribal public servant is a Class B offense.

6.9.14 False claims to Tribal agencies.

1) A person commits an offense under this section if he or she purposely and knowingly presents for allowance or for payment a claim already paid by another or a false or fraudulent claim, bill, account, voucher, or writing to a Tribal agency, Tribal public servant, or to a contractor authorized to allow of pay claims presented to a Tribal agency, if genuine.
2) A false claim is a Class D offense.

6.9.15 Resisting arrest.

1) A person commits the offense of resisting arrest by knowingly preventing or attempting to prevent a law enforcement officer from making an arrest by:
   a) using or threatening to use physical force or violence against the law enforcement officer or another; or
   b) using any other means which creates a risk of causing physical injury to a law enforcement or another.
2) It is no defense to a charge of resisting arrest that the arrest was unlawful, provided the law enforcement officer was acting under the color of his or her official authority.
3) Resisting arrest is a Class D offense.

6.9.16 Obstructing a law enforcement officer or other Tribal public servant.

1) A person commits the offense of obstructing a law enforcement officer or other Tribal public servant if he or she knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a Tribal governmental function.
2) It is no defense to a charge under this section that the law enforcement officer or other Tribal public servant was acting in an illegal manner, provided he was acting under the color of his or her official authority.
3) Obstructing a law enforcement officer or other Tribal public servant is a Class C offense.

6.9.17 Obstructing justice.

1) For the purpose of this section, "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a Tribal offense.
2) A person commits the offense of obstructing justice if, knowing another person is an offender, he or she purposely:
   a) harbors or conceals an offender;
   b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;
   c) provides an offender with money, transportation, a weapon, disguise, or other means of avoiding discovery or apprehension;
   d) prevents or obstructs, by means of force, deception, or intimidation, anyone from performing an act that might aid in the discovery or apprehension of an offender;
   e) supports, by act of concealment, alteration, or destruction, any physical evidence that might aid in the discovery or apprehension of an offender; or
   f) aids an offender who is subject to detention to escape from such detention.
3) Obstructing justice is a Class C offense.

6.9.18 Violation of a protective order.

1) A person to whom a protective order is directed commits the offense of violating a protective order by, with knowledge of the order, knowingly or purposely engaging in any conduct proscribed by the protective order or by failing to meet any requirement of the order
2) The person requesting the protective order or for whose protection it was issued may not be charged with violation of this section.
3) The person against whom the protective order is directed may not be convicted of a violation of the order if the person who requested the protective order initiates the contact.
4) Violation of a protective order is a Class D offense.

6.9.19 Escape.

1) A person commits the offense of escape by:
   a) unlawfully removing herself or himself from official detention or failing to return to detention following temporary leave granted for a specific purpose or limited time period;
   b) aiding another person to escape from official detention; or
   c) knowingly procuring, making, possessing or providing a person in official detention with anything which may facilitate escape.
2) Escape is a Class D offense.

6.9.20 Providing contraband.

1) A person commits the offense of providing contraband by knowingly providing a person in official Tribal detention with alcoholic beverages, implements of escape or any other items or substances which the person knows are unlawful or improper for the detainee to possess.

2) Providing contraband is a Class D offense.

6.9.21. Bail-jumping.

1) A person commits the offense of bail-jumping if, having been released on bail, or on the person's own recognizance, by Tribal Court order or other lawful Tribal authority upon condition that the person subsequently appear on a charge of an offense, the person fails, without just cause, to appear in person or by counsel at the time and place lawfully designated for the person's appearance.
2) Bail-jumping constitutes a Class D offense.

6.9.22 Criminal contempt.

1) A person commits the offense of criminal contempt by knowingly engaging in any of the following conduct:
   a) disorderly, contemptuous, or insolent behavior committed during the sitting of the Tribal Court or the Court of Appeals, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due its authority;
   b) breaching the peace by causing a disturbance directly tending to interrupt the proceedings of the Tribal Court or the Court of Appeals;
   c) purposely disobeying or refusing any lawful process or other mandate of Tribal Court or the Court of Appeals;
   d) unlawfully refusing to be sworn as a witness in any Tribal Court proceeding or, after being sworn, refusing to answer any legal and proper questions;
   e) purposely publishing a false or grossly inaccurate report of a Tribal Court proceeding; or
   f) purposely failing to obey any mandate, process, or notice relative to serving as a juror.
2) Criminal contempt is a Class C offense.

6.9.23 Official misconduct.

1) A Tribal public servant commits the offense of official misconduct when in his or her official capacity he or she commits any of the following acts:
   a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;
   b) knowingly performs an act in his or her official capacity which he or she knows is forbidden by law;
   c) with the purpose to obtain advantage for himself or herself or another, performs an act in excess of his or her lawful authority;
   d) solicits or knowingly accepts for the performance of any act a fee or reward which he or she knows is not authorized by law.
2) Official misconduct is a Class D offense.
3) A public servant who has been charged as provided in this section may be suspended from his or her office without pay pending final judgment.

6.9.24 Misuse of Tribal Funds

1) Any person who shall, being a tribal employee or other person charged with receipt, safekeeping, transfer or disbursement of tribal funds, without lawful authority, appropriates funds to his or her own use or the use of another, or who shall otherwise handle tribal funds in a manner not authorized by law, shall commit the crime of misuse of public funds.
2) If the amount of the Tribal funds misused is greater than $1,000, misuse of tribal funds is a Class E offense

3) If the amount of the tribal funds misused does not exceed $1,000, misuse of tribal funds is a Class C offense.

Part 10 - Offenses Against Public Order

6.10.1 DISORDERLY CONDUCT.

1) A person commits the offense of disorderly conduct by knowingly disturbing the peace of another by:
   a) knowingly uttering fighting words with a direct tendency to violence, challenging to fight, or fighting;
   b) making loud or unusual noises;
   c) using physically threatening, profane, or abusive language;
   d) discharging firearms, except at a shooting range during established hours of operation;
   e) obstructing vehicular or pedestrian traffic on a public way without good cause;
   f) rendering the free entrance or exit to public or private places impassable without good cause; or
   g) disturbing or disrupting any lawful assembly or public meeting after having been asked to cease such disturbance or disruption or leave the premises by one in authority at the assembly or meeting.
2) Disorderly conduct is a Class B offense.

6.10.2. Riot.

1) A person commits the offense of riot if he or she purposely disturbs the peace by engaging in an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.
2) Riot is a Class C offense.

6.10.3 Public nuisance.

1) A person commits the offense of public nuisance by knowingly creating, conducting, or maintaining a public nuisance.
2) "Public nuisance" includes, but is not limited to:
   a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property;
   b) persons gathering on any premise for the purpose of engaging in unlawful conduct;
   c) a condition making passage of any public right-of-way, or waters used by the public, dangerous; or
   d) a person appearing in a public place in an intoxicated condition such that the person is unable to care for himself of herself.
3) Uses of Reservation lands and waters by Tribal members or the Tribes, whether agricultural operations or otherwise, existing prior to nearby residential or commercial development or population increase, will not be considered a public nuisance.
4) Public nuisance is a Class A offense with a maximum fine of $1000. In addition, the person creating the public nuisance may be ordered to abate the nuisance or pay all costs of abatement.

6.10.4 Creating a hazard.

1) A person commits the offense of creating a hazard by knowingly:
   a) discarding in any place where it might attract children a container having a compartment with a capacity of more than 1.5 cubic feet and an attached door or lid that automatically locks or otherwise securely fastens when closed and cannot be easily opened from the inside;

b) maintaining any property under her or his control in a manner which could attract children and which constitutes a potential health or safety hazard to the children, without taking proper steps to restrict access to the area;
c) failing to cover or fence with suitable protective materials a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 or more feet and a width of 12 or more inches located upon property in the person's possession; or
d) being the owner or otherwise having possession of any property owning or possessing any property upon which industrial, construction, or farming equipment is located and allowing the equipment to be maintained or operated in an unsafe manner or condition.

2) Creating a hazard is a Class C offense.

6.10.5 Harming a police dog.

1) A person commits the offense of harming a police dog if he or she purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a Tribal law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.
2) Harming a police dog is a Class C offense.

6.10.6. Causing animals to fight.

1) A person commits the offense of causing animals to fight by:
   a) owning, possessing, keeping, or training any animal with the intent that such animal fight or engage in an exhibition of fighting with another animal;
   b) allowing or causing any animal to fight with another animal or causing any animal to menace or injure another animal for the purpose of sport, amusement, or gain;
   c) knowingly permitting any act in violation of subsection (1)(a) or (1) (b) to take place on any premises under the person's charge or control, or aids or abets any such act; or
   d) participating in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.
2) Causing animals to fight is a Class D offense.

6.10.7 Dog Control Violations.

A person commits an offense if they violate any of the criminal provisions of the Dog Control Code, Ordinance 113. Sentencing for violations of the Dog Control Code shall be in accordance with Section 13 of Ordinance 113.

6.10.8 Unlawful camping.

1) It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia in the following areas, except as otherwise provided by ordinance:
   a) Any park, unless park or park area is specifically designated for camping;
   b) Any public or tribal street;
   c) Any publicly or tribally owned parking lot or publicly owned area, improved or unimproved, unless the area is specifically designated for camping.
2) For purpose of this Ordinance, “camp” means occupying a place, with or without a vehicle, for the purpose of sleeping overnight or temporarily residing.
3) Unlawful camping is a Class A offense with a maximum fine of $75.00.

Part 11- Communications Offenses

6.11.1. PROMOTING OBSCENE ACTS OR MATERIALS.

1) A person commits the offense of promoting obscene acts or materials when, with knowledge of the obscene nature thereof, he or she purposely or knowingly:
   a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;
   b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;
   c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;
   d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;
   e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18;
   f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.
2) A thing is obscene if:
   a)
      1. it is a representation or description of perverted ultimate sexual acts, actual or simulated;
      2. it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and taken as a whole, the material
      3. applying contemporary community standards, appeals to the prurient interest in sex;
      4. portrays conduct described in subsection (2)(a) in a patently offensive way; and
      5. lacks serious literary, artistic, political, or scientific value.
3) In any prosecution for an offense under this section, evidence shall be admissible to show:
   a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;
   b) the artistic, literary, scientific, educational, or other merits of the material;
   c) the degree of public acceptance of the material in the community;
   d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or
   e) the purpose of the author, creator, publisher, or disseminator.
4) Promoting obscene acts or materials is a Class D offense.

6.11.2. Public display or dissemination of obscene material to minors.

1) A person having custody, control or supervision of any commercial establishment or newsstand may not knowingly or purposely:
   a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;
   b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or
   c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.
2) A person does not violate this section if:
   a) he or she had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth

certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;
   b) the person is, or is acting as, an employee of a public school, college, or university or a retail outlet affiliated with the serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;
   c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;
   d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or
   e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.
3) Public display or dissemination of obscene material to minors is a Class D offense.

6.11.3. Violation of privacy in communications.
1) A person commits the offense of violating privacy in communication who knowingly or purposely:
   a) communicates with any person by telephone and uses any obscene, lewd or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person, intending that the communication terrify, intimidate, threaten, harass, annoy, or offend the person;
   b) uses a telephone to extort anything of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;
   c) records or causes to be recorded any conversation by use of hidden electronic or mechanical devices which reproduce conversation without the knowledge of all parties to the conversation, unless:
      1. the recording is of a person speaking at a public meeting, or
      2. the person making the recording has given warning that the conversation is being recorded, or
      3. the recording is specifically authorized in advance by a Tribal Court Order using the standards set forth for search warrants.
   d) reading or disclosing any communications addressed to another person without the permission of such person, unless directed by a court order to read or disclose such communications.
2) Violating privacy in communications is a Class C offense.

6.11.4. Bribery in contests.
1) A person commits the offense of bribery in contests if he or she purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:
   a) any pecuniary benefit as a consideration for the recipient's failure to use his or her best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or
   b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.
2) Bribery in contests is a Class E offense.

Part 12 - Weapons Offenses

6.12.1. CARRYING CONCEALED WEAPON.

1) A person commits the offense of carrying a concealed weapon by knowingly carrying or bearing a dirk, dagger, pistol, revolver, slingshot, sword cane, billy club, knuckles made of any metal or other hard substance, knife having a blade at least 4 inches long, non-safety type razor, or any other deadly weapon which is wholly or partially covered by the clothing or wearing apparel of the person carrying the weapon, or is carried any place within the occupant compartment of a motor vehicle.
2) Subsection (1) does not apply to:
   a) any law enforcement officer;
   b) a person authorized by a judge of the Tribal Court to carry a concealed weapon;
   c) a person permitted under state and tribal law to carry a concealed weapon; or
   d) the carrying of arms on one's own premises or at one's home or place of business.
3) Carrying a concealed weapon is a Class C offense.

6.12.2 Possession of deadly weapon by prisoner.

Every prisoner committed to the Tribal jail, who while at the jail, while being conveyed to or from the jail, or while under the custody of prison or jail officers, or employees, purposely or knowingly possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a Class D offense.

6.12.3 Carrying a concealed weapon while under the influence.

1) A person commits the offense of carrying a concealed weapon while under the influence if he or she purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. For the purpose of this statute "under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a weapon It is not a defense that the person had is a person permitted to carry a concealed weapon under section 3.12.1(2)©).
2) Carrying a concealed weapon while under the influence is a Class D offense.

6.12.4 Carrying concealed weapon in a prohibited place.

1) A person commits the offense of carrying a concealed weapon in a prohibited place if he or she purposely or knowingly carries a concealed weapon in:
   a) a building owned or leased by the federal, state, local government, or Tribes or any governmental entity;
   b) a bank, credit union, savings and loan institution, or similar institution; or
   c) a commercial establishment in which alcoholic beverages are sold, dispensed, and consumed.
2) It is not a defense that the person had the permission of the Tribal Court or a state permit to carry
   a. concealed weapon.
3) Carrying a concealed weapon in a prohibited place is a Class D offense.

6.12.5 Carrying handgun in occupant compartment of motor vehicle.

1) A person commits an offense under this section if he or she knowingly carries or bears a handgun, pistol or revolver in any location within the occupant compartment of a motor vehicle.
2) The occupant compartment of a motor vehicle includes any place within a motor vehicle that is accessible from the driver or passenger seats, including any glove or utility compartment, but does not include a trunk that is not accessible to the occupant compartment.
3) Subsection (1) shall not apply to:
   a) any law enforcement officer;

b) a person permitted under tribal or state law to carry a concealed weapon.

4) Carrying a handgun in occupant compartment of a motor vehicle is a Class C offense.

6.12.6 Carrying or bearing a switchblade knife.

1) Every person who knowingly carries or bears upon his or her person, who carries or bears within or on a motor vehicle or other means of conveyance operated by him or her or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be guilty of a Class C offense.
2) A bona fide collector whose collection is registered with the Tribal Police is exempted from the provisions of this section.
3) For the purpose of this section, a switchblade knife is defined as any knife which has a blade 1 and ½ inches long or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.
4) Carrying or bearing a switchblade knife is a Class C offense.

6.12.7 Reckless or malicious use of explosives.

1) Every person who shall recklessly or maliciously use, handle, or have in his or her possession any explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a Class C offense.
2) "Explosive" means any chemical compound that is commonly used or intended for the purpose of producing a destructive effect and which contains compounds or ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion, or a detonator of any part of the compound or mixture may cause a destructive effect on surrounding objects or persons.
3) Reckless or malicious use of explosives is a Class C offense.

6.12.8 Possession of a destructive device.

1) A person who, with the purpose to commit a Class E offense, has in his or her possession any destructive device on a public street or highway, in or near a theater, hall, school, college, church, hotel, Tribally-owned building, or any other public building, or private habitation, in, on or near any aircraft, railway passenger train, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.
2) “Destructive device" as used in this section includes, but is not limited to the following weapons:
   a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;
   b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;
   c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;
   d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than .60 inch or a launching device therefor and a rocket, rocket-propelled projectile or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes; or
   e) a breakable container which contains a flammable liquid with a flash point of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.
3) For purposes of this section, the term “destructive device” does not include fireworks that are not prohibited by the Fireworks Code, Ordinance 52.

4) Possession of a destructive device is a Class E offense.

6.12.9 Possession of explosives.

1) A person commits the offense of possession of explosives if he or she possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and
   a) has the purpose to use such explosive material or device to commit an offense, or
   b) knows that another has the purpose to use such explosive material or device to commit an offense.
2) For purposes of this section, the term "explosives" does not include fireworks that are not prohibited by the Fireworks Code, Ordinance 52.
3) Possession of explosives is a Class E offense.

6.12.10 Possession, transportation, sale or discharge of prohibited fireworks.

1) A person commits the offense under this section if he or she possesses, transports, discharges, sells, or offers for sale any fireworks prohibited by Ordinance 52, Fireworks Code.
2) "Fireworks" means any device containing any combustible or explosive substance for the purpose of producing a visible or audible display of combustion, explosion, deflagration or detonation, but not including any firearms.
3) Possession of prohibited fireworks is a Class C offense.

6.12.11 Possession of a silencer.

1) A person commits the offense of possession of a silencer if he or she possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.
2) Possession of a silencer is a Class E offense.

6.12.12 Possession of a sawed-off firearm.

1) A person commits the offense of possession of a sawed-off firearm if he or she knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:
   a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or
   b) 18 inches or more and an overall length of 26 inches of more in the case of a shotgun; and
   c) the firearm has been modified in a manner so that the barrel length, overall length, or both are less than specified in subsection (1)(a) or (1)(b).
2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.
3) This section does not apply to firearms possessed:
   a) for educational or scientific purposes in which the firearms are incapable of being fired;
   b) by a person who has a valid federal tax stamp for the firearm, issued by the Bureau of Alcohol, Tobacco, and Firearms; or
   c) by a bona fide collector of firearms if the firearm is a muzzle loading, sawed-off firearm manufactured before 1900.
4) Possession of a sawed-off firearm is a Class D offense.

6.12.13 Firing firearms.

1) Except as provided in subsections (2) and (3), every person who purposely shoots or fires off a gun, pistol, or any other firearm within the limits of any town, city, Tribal housing or community area, or any private enclosure which contains a dwelling house is guilty of a Class A offense.

2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town, city, Tribal housing or community area, or an enclosure that contains a private dwelling.
3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Part 3 of this Chapter.

6.12.14 Use of firearms by children under 14 years.
1) Unless a child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor who has been authorized by the parent or guardian, it is unlawful for a parent, guardian, or other person having charge of custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms.
2) "Public places" means any place to which the public, Tribal licensees or invitees, or any group of substantial size has access.
3) Any parent, guardian, or other person having charge or custody of a minor child under the age of 14 years violating the provisions of this section is guilty of a Class A offense.

Part 13 - Traffic Violations

6.13.1 WASHINGTON STATE PROVISIONS INCORPORATED. The following sections of the Revised Code of Washington as presently constituted or hereafter amended are incorporated herein as provisions of this ordinance and shall apply to all persons subject to the jurisdiction of the Tulalip Tribal Court: RCW Chapters 46.04, 46.37, 46.61, and RCW sections 46.09.020, 46.09.120, 46.09.130, 46.09.140, 46.09.190,
46.12.210, 46.12.215, 46.12.220, 46.20.001, 46.20.015, 46.20.017, 46.20.024, 46.20.025, 46.25.050, 46.52.010, 46.52.020, 46.52.030, 46.52.035, 46.52.040. In incorporating the above statutes, the Tulalip Tribes do not incorporate any State agency interpretation of such statutes, and State case law shall not be controlling authority in the interpretation of such statutes by the Tribal Court.

6.13.2. Amendments.
Amendments, additions, deletions or recodifications of such provisions by the State of Washington after the enactment of this Ordinance shall become a part hereof for all purposes unless the Board of Directors by ordinance or resolution specifically provides otherwise.

6.13.3. Motor Vehicle Offenses.
It is unlawful for any person to operate, drive or move a motor vehicle on the roads of the Tulalip Indian Reservation in violation of any of the requirements of Section 3.13.1 or to do any act forbidden or fail to perform any act required by Section 3.13.1.

6.13.4 Definitions.
As contained in the above-cited motor vehicle laws, "highways", "state highways" and "public highways" shall be construed to mean "all roads, public and private, within the jurisdiction of the Tulalip Tribes", and "county jail" or "jail" shall be construed to mean "tribal or other jail authorized by the Tribes to receive prisoners". Reference to any "court" shall be construed to mean the "Tulalip Tribal Court".

6.13.5 Inapplicable Provisions.
Any of the provisions or portions of the provisions of the Revised Code of Washington listed above which, by their nature, would not apply to the Tulalip Tribes, Reservation, or Tribal Court, or the

incorporation of which would undermine the underlying principles and purposes of this Code, or which are inconsistent with the provisions of this Chapter or this Code are not incorporated herein.

6.13.6 Driving While License Suspended or Revoked.

Any person who drives a motor vehicle on any roads within the Tulalip Reservation at a time when his privilege to do so is suspended or revoked by the Tribal Court or any other jurisdiction with lawful authority, shall be guilty of Driving While License Suspended or Revoked, which shall be a civil infraction subject to the penalties as provided in this title, except that second and subsequent offenses committed by persons subject to the criminal jurisdiction of the Court shall be a Class C criminal offense.

6.13.7 Negligent Driving.

Any person who drives any vehicle in a negligent manner without due care and caution or in such a manner as to endanger or be likely to endanger any persons or property shall be guilty of negligent driving, which shall be a Class B criminal offense for persons subject to the criminal jurisdiction of the Tulalip Tribes and for all other persons shall be a civil infraction subject to the penalties as provided in this title.

6.13.8 Negligent Driving Lesser Included Offense.

The offense of operating a vehicle in a negligent manner shall be considered to be a lesser offense than, but included in the offense of operating a vehicle in a reckless manner.

6.13.9 Financial Responsibility- Liability Insurance Requirement.

1)
   a) No person may operate a motor vehicle on roads within the Tulalip Reservation unless the person is insured under a motor vehicle liability policy, or equivalent coverage by bond or self insurance, with liability limits of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of, property to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident. Written proof of financial responsibility for motor vehicle operation must be provided on the request of a law enforcement officer.
   b) When asked to do so by a law enforcement officer, failure to display an insurance identification card creates a presumption that the person does not have motor vehicle insurance.
   c) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set forth in this title.
2) If a person cited for a violation of subsection (1) of this section appears in person before the court and provides written evidence that at the time the person was cited, he or she was in compliance with the liability insurance requirements of subsection (1) of this section, the citation shall be dismissed. In lieu of personal appearance, a person cited for a violation of subsection (1) of this section may, before the date scheduled for the person's appearance before the court, submit by mail to the court written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court may assess court administrative costs of twenty-five dollars at the time of dismissal.

6.13.10 Implied Consent--Suspension of Driving Privileges.

1) Any person who operates a motor vehicle within the jurisdiction of the Tulalip Tribes is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503.
2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within the jurisdiction of the Tulalip Tribes while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing instrument is not present or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that:
    a) His or her privilege to drive will be revoked or denied if he or she refuses to submit to the test;
    b) His or her privilege to drive will be suspended, or denied if the test is administered and the test indicates the alcohol concentration of the person's breath or blood is 0.08 or more, in the case of a person age twenty-one or over, or in violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a person under age twenty-one; and
    c) His or her refusal to take the test may be used in a criminal trial.
3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.
4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.
5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.
6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or is in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one, or the person refuses to submit to a test, the person’s privilege to operate a motor vehicle within the jurisdiction of the Tulalip Tribes shall be suspended or denied. The arresting officer shall notify the person of the intention to suspend the person’s driving

privileges and shall transmit to the Tribal Court within seventy-two hours, except as delayed as the result of a blood test, a declaration or sworn report that states:

a) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within the jurisdiction of the Tulalip Tribes while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;
b) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one.

7) The Tulalip Tribal Court, upon the receipt of a report of the law enforcement officer under subsection (6) above, shall suspend or deny such person's privilege to drive within the exterior boundaries of the Tulalip Reservation for a period of six months after the date of the alleged violation, subject to review as hereinafter provided.
8) Upon suspending or denying the privilege to drive of any person, as hereinbefore directed in this section, the Tulalip Tribal Court shall immediately notify the person involved in writing by personal service or by registered or certified mail of its decision and the grounds therefor, and of his right to a hearing, specifying the steps he must take to obtain a hearing. The person upon receiving such notice may, in writing and within ten days therefrom, request a formal hearing. The Tulalip Tribal Court shall schedule a hearing for a date within thirty days of receipt of the request and shall give ten days' notice of the hearing to the person requesting the hearing. The scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within the jurisdiction of the Tulalip Tribes while having alcohol in his or her system in a concentration in violation of RCW 46.61.503 and was under the age of twenty-one, whether the person was placed under arrest, and
   a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or
   b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or was in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of twenty-one at the time of the arrest. The sworn report or declaration submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within the jurisdiction of the Tulalip Tribes while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within the jurisdiction of the Tulalip Tribes while having alcohol in his or her system in a concentration in violation of RCW 46.61.503 and was under the age of twenty-one and that the officer complied with the requirements of this section.

   The Tulalip Tribal Court shall order that the suspension or denial either be rescinded or sustained. Any decision by the Tribal Court suspending or denying a person's driving privilege

shall be stayed and shall not take effect while a formal hearing is pending or during the pendency of a subsequent appeal to the Tulalip Tribal Appellate Court.

9) A suspension imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in Section 2.8.10 for the incident upon which the suspension is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension canceled.
10) If the suspension or denial is sustained by the Tribal Court in the formal hearing, the person whose privilege to drive is so affected shall have the right to file a notice of appeal with the Tulalip Tribal Court. The Subchapter on Appellate Proceedings set forth in Section 1.11 of Ordinance 49 shall govern any appeal that may be filed under this Subchapter.

6.13.11 Occupational Driver's Permit--Petition--Eligibility--Restrictions-Cancellation.

1) Any person whose privilege to drive within the exterior boundaries of the Tulalip Reservation is suspended or denied under this Subchapter may petition the Tribal Court for an occupational driver's permit. The Court upon determining that the petitioner is engaged in an occupation or trade which makes it essential that the petitioner operate a motor vehicle may, in its discretion, issue a permit to drive to the petitioner and may set definite restrictions such as hours of the day, which may not exceed twelve hours in any one day, days of the week, type of occupation, areas or routes of travel permitted, or no driving if the person has been drinking.
2) The Tribal Court may cancel an occupational driver's permit upon receipt of notice that the holder has operated a motor vehicle in violation of its restrictions or upon notice of the commission of an alcohol related driving offense.

6.13.12 Notice to Tribal Police Department.

The Tribal Court shall notify the Tribal Police Department in writing of any suspension or denial of driving privileges within the boundaries of the Tulalip Reservation and of any occupational permits issued by the Court and restrictions placed upon such occupational permit.

6.13.13 Infraction - What Constitutes.

1) Failure to perform any act required or the performance of any act prohibited by the laws incorporated by section 3.13.1 is designated a traffic infraction and may not be classified as a criminal offense except for the following provisions of the Revised Code of Washington incorporated by reference in section 3.13.1:
   a) RCW 46.09.120(2) relating to the operation of a non-highway vehicle while under the influence;
   b) RCW 46.09.130 relating to operation of non-highway vehicles;
   c) RCW 46.52.010 relating to hitting or striking an unattended car or other property;
   d) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
   e) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
   f) RCW 46.62.020 relating to refusal to give information to or cooperate with an officer;
   g) RCW 46.61.022 relating to failure to stop and give identification to an officer;
   h) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
   i) RCW 46.61.500 relating to reckless driving;
   j) RCW 45.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
   k) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

l) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
m) RCW 46.61.522 relating to vehicular assault;
n) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
o) RCW 46.61.530 relating to racing of vehicles on highways;
p) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running.

6.13.14 Criminal Penalties.

The penalties imposed by the Tribal Court for criminal traffic violations shall be those set forth in the above referenced sections of the Revised Code of Washington, except that no Tribal Court penalty may exceed one year jail time or a fine of $5,000, or both. In addition to any other penalties imposed on a person convicted of a traffic offense, the Court may prohibit or set restrictions on the operation of a vehicle by such person on any road within the jurisdiction of the Tulalip Tribes for a period not to exceed one year, or may utilize the provisions for the suspension or revocation of driver's licenses under the laws of the jurisdiction issuing such license.

6.13.15 Traffic Infraction Procedure.

Unless otherwise provided by this Title, prosecution of traffic infractions listed under this Title shall be in accordance with the procedures for traffic infraction violations provided for in Part 2.12 of this Ordinance. The provisions of Ordinance 114 shall not be applicable to traffic infractions.

6.13.16 Monetary Deterrent Schedule for Infractions.

The penalty for any traffic infraction not listed below shall be $57, except for infractions in which a specific penalty or fine amount is provided in other sections of this code. The Court may impose on a defendant a lesser penalty in an individual case.

1) Equipment RCW 46.37
   a) Illegal Use of Emergency Equipment, RCW 46.37.190, $62.00;
   b) Defective or modified exhaust system, mufflers, prevention of noise and smoke, RCW 46.37.390(1) and (3). First offense, $57.00; Second offense within one year, $82.00; Third and subsequent within one year, $102.00;
   c) All other RCW 46.37 Equipment Infractions, $57.00;
2) Rules of the Road (46.61)
   a) Failure to stop, RCW 46.61.050 and 210, $57.00;
   b) Failure to yield right of way, RCW 46.61.180, 185, 190, 205, 210, 235,300,365, $57.00;
   c) Following too close, RCW 46.61.145 and 635, $57.00;
   d) Failure to signal, RCW 46.61.310, $57.00;
   e) Improper lane usage or travel, RCW 46.61.140, $57.00;
   f) Impeding traffic, RCW 46.61.435, $57.00;
   g) Improper passing, RCW 46.61.110, 115, 120, 125, 130, $57.00;
   h) Prohibited and improper turn, RCW 46.61.290, 295, 305, $57.00;
   i) Crossing double yellow line left of center, RCW 46.61.100,.130,.140, $57.00;
   j) Operating with obstructed vision, RCW 46.61.615, $57.00;
   k) Wrong way on one-way street, $57.00;
   l) Failure to comply with restrictive signs, RCW 46.61.050, $82.00;
3) Speeding, RCW 46.61.400
   a) If speed limit is over 40 mph:
      1 - 5 mph over limit, $42.00;
      6 - 10 mph over limit, $52.00;
      11 - 15 mph over limit, $67.00;

16 - 20 mph over limit, $82.00;
21 - 25 mph over limit, $97.00;
26 - 30 mph over limit, $117.00;
31 - 35 mph over limit, $142.00;
36 - 40 mph over limit, $167.00;
Over 40 mph over limit, $197.00;

b) If speed limit is 40 mph or less:
1 - 5 mph over limit, $52.00;
6 - 10 mph over limit, $57.00;
11 - 15 mph over limit, $72.00;
16 - 20 mph over limit, $92.00;
21 - 25 mph over limit, $117.00;
26 - 30 mph over limit, $142.00;
31 - 35 mph over limit, $167.00;
Over 35 mph over limit, $197.00;
Speed too fast for conditions, RCW 46.61.400(1), $57.00;

4) Serious Infractions
   a) Wrong Way on Freeway, RCW 46.61.150, $185.00;
   b) Wrong Way on Freeway Access, RCW 46.61.155, $90.00;
   c) Backing on limited access highway, RCW 46.61.605, $90.00;
   d) Spilling for failure to secure load, RCW 46.61.655, $90.00;
   e) Throwing or depositing debris on highway, RCW 46.61.645, $90.00;
   f) Disobeying school patrol, RCW 46.61.385, $90.00;
   g) Passing stopped school bus with red lights flashing, RCW 46.61.370, $150.00;
   h) Violation of posted road restriction, RCW 46.44.080 and 105(4), $90.00;
   i) Driving while suspended or revoked, 3.13.6, $250.00;
   j) Negligent driving, 3.13.7, $145.00;
   k) Failure to possess liability insurance, 3.13.9, $145.00;
5) Parking
   a) Illegal parking on roadway, RCW 46.61.560, $30.00;
   b) Parking in any prohibited place RCW 46.61.570 $15.00;
   c) Any other parking infraction, $15.00.
6) Pedestrians Any infraction regarding pedestrians, $15.00.
7) Bicycles Any infraction regarding bicycles, $25.00.
8) All other unlisted infractions, $57.00;
9) If an accident occurs with any of the above listed infractions or speed too fast for conditions, the penalty for the infraction shall be a minimum of $102.00.

6.13.17 Tribal Driver Improvement Program.

Nothing in this Part shall prohibit the Tribes from developing and instituting their own driver improvement program to allow for reinstatement of driving privileges for Tribal members.

6.13.18 Vehicle Impoundment.

Tulalip law enforcement officers shall have the authority to impound any vehicle on the Reservation that causes a public safety hazard or if the operator of the vehicle is in violation of a criminal offense. In cases of impoundment, the registered owner of the vehicle shall be responsible for all costs relating to impoundment, and the procedures governing traffic infraction appeals shall govern appeals challenging payment of vehicle impoundment costs.

Part 14 - Offenses Involving Dangerous Drugs

6.14.1 DRUG ABUSE.

Any person, under the jurisdiction of this Law and Order Code, who violates any of the following subsections shall be guilty of committing the offense of Drug Abuse and upon conviction shall be sentenced according to the penalties herein described.

6.14.2 DEFINITIONS.

As used in this section:

a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body.
b) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I and II.
c) "Delivery" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.
d) "Distribute" means to deliver other than by administering or dispensing a controlled substance.
e) "Drug" means (1) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement of any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure of any function of the body of man or animals; (4) substances intended for use as a component of any article specified in clause (1), (2), (3) of this subsection. It does not include devices or their components, parts, or accessories.
f) "Legend Drug" means any drug which is required by Washington state law or regulation of the state board of pharmacy to be dispensed on prescription only or is restricted to use by licensed physicians, dentists, pharmacists, veterinarians or other health care professionals.
g) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by:
    1. a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or
    2. a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
h) "Marijuana" means all parts of the plant of the genus Cannabuis L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
i) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
    1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

2. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.
3. Opium poppy and poppy straw.
4. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

j) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

6.14.3 SCHEDULE I.

1)

a) The controlled substances listed in this section, by whatever official name, common or unusual name, chemical name, or brand name, are included in Schedule I.
b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:
   1. Acethylmethadol;
   2. Allylprodine;
   3. Alphacethylmethadol;
   4. Alphameprodine;
   5. Alphamethadol;
   6. Benzathidine;
   7. Betacethylemethadol'
   8. Betameprodine;
   9. Betamethadol;
   10. Betaprodine;
   11. Clonitazene;
   12. Dextromoramide;
   13. Diampromide;
   14. Diethylthiabutene;
   15. Difenoxin;
   16. Dimenoxadol;
   17. Dimepheptanol;
   18. Dimethylthiambutene;
   19. Dioxaphetyl butyrate;
   20. Dipipanone;
   21. Ethylmethylthiambutene;
   22. Etonitazene;
   23. Etoxeridine;
   24. Furethidine;
   25. Hydroxypethidine;
   26. Ketobemidone;
   27. Levomoramide;
   28. Levophynacylmorphan;
   29. Morpheridine;

30. Noracymethadol;
31. Norlevorphanol;
32. Normethadone;
33. Norpipanone;
34. Phenadoxone;
35. Phenampromide;
36. Phenomorphan;
37. Phenoperidine;
38. Piritramide;
39. Propheptazine;
40. Properidine;
41. Propiram;
42. Racemoramide;
43. Trimeperidine.

c) Opium derivative. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:
   1. Acetorphine;
   2. Acetyldihydrocodeine
   3. Benzylmorphine;
   4. Codeine methylbromide;
   5. Codeine-N-Oxide;
   6. Cypernorphine;
   7. Desomorphine;
   8. Dihydromorphine;
   9. Drotebanol;
   10. Etorphine (except hydrochloride salt);
   11. Heroin
   12. Hydromorphinol;
   13. Methyldesorphine;
   14. Methyldihydromorphine;
   15. Morphine methylbromide;
   16. Morphine methylsulfonate;
   17. Morphine-N-Oxide;
   18. Myrophine;
   19. Nicocodeine;
   20. Nicormorphine;
   21. Normorphine;
   22. Phoclodine;
   23. Thebacon

d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of these salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation. (For purposes of paragraph (d) of this section, only the term “isomer” includes the optical, position, and geometric isomers.):

1. 3,4-methylenedioxy amphetamine;
2. 5-methoxy-3,4-methylenedioxy
19. Psilocyn;
20. Tetrahydrocannabinols, synthetic

amphetamine;
3. 3,4,5-trimethoxy amphetamine;
4. 4-bromo-2,5-dimethoxyamphetamine;
5. 2,5-dimethoxyamphetamine;
6. 4-methoxyamphetamine;
7. 4-methyl-2,5-dimethoxyamphetamine;
8. Bufotenine;
9. Diethyltryptamine;
10. Dimethyltryptamine;
11. Ibogaine;
12. Lysergic acid diethylamide;
13. Marijuana;
14. Mescaline;
15. Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds, or extracts;
16. N-ethyl-3-piperidyl benzilate;
17. N-methyl-3-piperidyl benzilate;
18. Psilocybin;
equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, specifically, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
i. Delta 1-cis-or trans tetrahydrocannabinol, and their optical isomers;
ii. Delta 6-cis-or trans tetrahydrocannabinol, and their optical isomers;
iii. Delta 3.4-cis-or trans tetrahydrocannabinol, and its optical isomers;
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are all included.)
21. Ethylamine analog of
22. Pyrrolidine analog of phencyclidine;
23. Thiopene analog of phencyclidine.

e) Depressant.
Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of mecloqualone having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

6.14.4 SCHEDULE II.
1)
a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.
b) Substances. (Vegetable origin or chemical synthesis). Unless specifically excepted, any of the following substances, except those listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:
i. Raw opium; x. Hydrocodone;
ii. Opium extracts; xi. Hydromorphone;
iii. Opium fluid extracts; xii. Metopon;
iv. Powdered opium; xiii. Morpine;

v. Granulated opium; xiv. Oxycodone;
vi. Tincture of opium; xv. Oxymorphone; and
vii. Codeine; xvi. Thebaine.
viii.Ethylmorphine;
ix. Etorphine hydrochloride;

2. Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b) (1) of this section, but not including the isoquinoline alkaloids of opium.
3. Opium poppy and poppy straw.
4. Coca leaves and salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions which do not contain cocaine or ecgonine.
5. Concentrate of poppy straw. (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.)

c) Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

1. Alphaprodine;
2. Anileridine;
3. Bezitramide;
4. Dihydrocodeine;
5. Diphenozylate;
6. Fentanyl;
7. Isomethadone;
8. Levomethorphan;
9. Levorphanol;
10. Metazocine;
11. Methadone;
12. Methadone-Intermediate, 4-cyano 2-dimethylamino-4,4 diphenylbutane;
13. Moramide-intermediate, 2-methyl3-3-moropholino-1, 1-diphenylpropane-caroxylic acid;
14. Pethidine (meperidene);
15. Pethidine-Intermediate-A, 4-cyano 1-methyl-4-phenylpiperidine;
16. Pethidine-Intermediate-B, ethyl-4 phenylpiperidine-4-carboxylate;
17. Pethidine-Intermediate-C, methyl-4-phenylpiperidine-4 carboxylic acid;
18. Phenazocine;
19. Piminodine;
20. Racemethorphan;
21. Racemorphan

d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
   1. Amphetamine, its sales, optical isomers, and salts of its optical isomers;
   2. Methamphetamine, its salts, isomers, and salts of its isomers;
   3. Phenmetrazine and its salts;
   4. Methylphenidate.

e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
   1. Amobarbital;

2. Methaqualone;
3. Pentobarbital;
4. Phencyclidine;
5. Phencyclidine immediate precursors;
    i. 1-phenylcyclophexylamine;
    ii. 1-piperidinocyclohexanecarbonitrile (PPC);
6. Secobarbital.

6.14.5 DRUG PARAPHERNALIA: DEFINITIONS.

1) Drug paraphernalia means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:
2) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
3) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
4) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substances;
5) Testing equipment used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
6) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
7) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
8) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
9) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
10) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
11) Containers and other objects used, intended for use, or designed for use in storing and concealing controlled substances;
12) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
13) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish oil into the human body, such as:
    i. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
    ii. Water pipes;
    iii. Carburetion tubes and devices;
    iv. Smoking and carburetion masks;
    v. Roach clips: meaning objects used to hold burning material, such as marijuana cigarette, that has become too small or too short to be held in the hand;
    vi. Miniature cocaine spoons, and cocaine vials;
    vii. Chamber pipes;

viii. Carburetor pipes;
ix. Electric pipes;
x. Air-driven pipes;
xi. Chillums;
xii. Bongs; and
xiii. Ice pipes, or chillers.

In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant facts, the following:

1) Statements by an owner or by anyone in control of the object concerning its use;
2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state, federal or tribal law relating to any controlled substance;
3) The proximity of the object, in time and space, to a direct violation of this chapter;
4) The proximity of the object to controlled substances;
5) The existence of any residue of controlled substances on the object;
6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
7) Instructions, oral or written, provided with the object concerning its use;
8) Descriptive materials accompanying the object which explain or depict its use;
9) National and local advertising concerning its use;
10) The manner in which the object is displayed for sale;
11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13) The existence and scope of legitimate uses for the object in the community; and
14) Expert testimony concerning its use.

6.14.6 Prohibited Acts (Manufacture, Cultivate, Deliver): Penalties.

Except as authorized by this section, it is unlawful for any Indian person to manufacture, cultivate, deliver, or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this subsection is guilty of a Class E offense.

6.14.7 Prohibited Acts (Possession): Penalties.

Except as authorized by this section, it is unlawful for any person to possess a controlled substance. Any person who violates this subsection with respect to any controlled substance other than marijuana is guilty of a Class E offense. Any person who violates this section with respect to possession of more than 40 grams of marijuana is guilty of a Class E offense. A first offense of possession of less than 40 grams of marijuana is a Class C offense. A second and subsequent offense of possession of less than forty grams of marijuana is a Class D offense.

6.14.8 Prohibited Acts (Drug Paraphernalia): Penalties.

Except as authorized by this section, it is unlawful for any person to possess any drug paraphernalia. A first offense of possession of drug paraphernalia is a Class B offense. A second and subsequent offense of possession of drug paraphernalia is a Class C offense.

6.14.9 Defenses.

Any Indian person lawfully involved in the possession, distribution, manufacture or delivery of any controlled substance listed in Schedule I and II shall not be in violation of this section.

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

Any Indian person who, being under the age of 21 years old, shall possess, purchase, consume, obtain, or sell any beer, wine, ale, whiskey or other alcoholic beverage or misrepresent his age for the purpose of buying or otherwise obtaining an alcoholic beverage shall be guilty of Possession of an Alcoholic Beverage by a Person Under 21. Possession of an Alcoholic Beverage by an Indian Person Under 21 is a Class C offense.

6.14.11 Use or Possession of Alcoholic Beverages Prohibited-Community Center.

The use or possession of alcoholic beverages on the premises of the Tulalip Tribal community center at 6700 Totem Beach Road is prohibited. Any Indian person who shall use or possess alcoholic beverages on the premises of the Tribal Community Center shall be guilty of Use or Possession of Alcoholic Beverages and/or drugs at Community Center. Violation of this section is a Class C offense.

6.14.12. Violations by Persons Not Subject to Tribal Criminal Jurisdiction.

Any person found responsible for a violation of this Substance Abuse prohibition, who is not subject to the criminal jurisdiction of the Tulalip Tribes, shall be subject to other provisions of the Tulalip Tribal laws including but not limited to exclusion or expulsion from the lands of the Tulalip Indian Reservation.

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

6.14.14 Public Consumption of Alcoholic Beverages / Open Container

1. No person shall open a package containing an alcoholic beverage or consume an alcoholic beverage in a public place, unless consumption of alcoholic beverages in such public place is specifically permitted or licensed by the Tribes.
2. Unlawful open container or consumption of alcoholic beverages in a public place is a Class A offense, punishable by a fine not to exceed $100.00.