

TITLE 5
LUMMI NATION CODE OF LAWS
CODE OF OFFENSES

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

Amended: Resolution 82-114 (12/20/82)
Resolution 83-014 (2/11/83)
Resolution 94-104 (8/4/94)
Resolution 94-105 (8/4/94)
Resolution 94-106 (8/4/94)
Resolution 98-102 (8/31/98)
Resolution 2004-076 (6/7/04)
Resolution 2004-085 (7/12/04)
Resolution 2014-121 (9/15/14)
Resolution 2016-013 (1/5/16)

5.09A.110 Prohibited Acts

(a) Manufacture of an Illegal Substance. A person who knowingly manufactures or possesses with intent to manufacture any of the substances listed in LCL §5.09A.050 shall be found guilty of the offense of manufacture of an illegal substance. Manufacture of an Illegal Substance is a class A offense.

(b) Delivery of an Illegal Substance. A person who knowingly delivers any of the substances listed in LCL §5.09A.050 shall be found guilty of the offense of delivery of an illegal substance and sentenced as follows:

- (1) for a class B offense, or
- (2) for class A offense when charged and convicted of delivery of an illegal substance in conjunction with an Aggravated Factor listed in LCL §5.09A.140.

(c) Possession of an Illegal Substance with Intent to Deliver. A person who knowingly possesses with intent to deliver any of the substances listed in LCL §5.09A.050 shall be found guilty of the offense of possession of illegal substance with intent to deliver. Possession of an Illegal Substance with Intent to Deliver is a class A offense.

(d) A person who knowingly administers to a human body, or who otherwise possesses any substance listed in LCL §5.09A.050 is guilty of an offense as follows:

- (1) Possession of Marijuana (up to 1 ounce). Possessing up to one (1) ounce of marijuana is a class D offense.
- (2) Possession of Marijuana (over 1 ounce). Possessing over one (1) ounce of marijuana is a class C offense. This is a lesser included offense of Possession of an Illegal Substance with Intent to Deliver, LCL §5.09A.110(c).
- (3) Possession of Illegal Substance (up to 25 grams). Possessing a combination of up to 25 grams of any substance or combination of substances listed in LCL §5.09A.050 (excluding marijuana) is a class B offense. This is a lesser included offense of Possession of an Illegal Substance with Intent to Deliver, LCL §5.09A.110(c).

(4) Possession of Illegal Substance (over 25 grams) Possessing over 25 grams of any substance listed in LCL §5.09A.050 (excluding marijuana) is a Class A offense.

If charged with a violation of LCL §5.09A.110(d), a person may raise the affirmative defense that, at the time of the offense, the person had a valid prescription issued by a health professional authorized by law to dispense or prescribe the substance unless the substance was prescribed or dispensed as a result of fraud, deceit, misrepresentation, or subterfuge by the person, except as prohibited by LCL §5.09A.050(c).

(e) A person who knowingly possesses an item of drug paraphernalia is guilty of an offense as follows:

(1) Possession of Paraphernalia. A person who possesses any item of drug paraphernalia used, or intended to be used, to ingest, inject, inhale, consume or otherwise introduce illegal substances into the human body shall be found guilty of the offense of possession of paraphernalia. Each item of drug paraphernalia is a separate criminal act. Possession of Paraphernalia is a class D offense.

(2) Aggravated Possession of Paraphernalia. A person who possesses any item of drug paraphernalia used, or intended to be used, to sell, distribute, deliver, import, export, manufacture, compound, convert, conceal, produce, package, analyze, process, possess, store, or transport illegal drugs is guilty of the offense of aggravated possession of paraphernalia. Aggravated Possession of Paraphernalia is a class B offense.

(3) Immunity from Criminal Liability. As a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne disease among persons who use syringes, hypodermic needles, and injection supplies, and to prevent subsequent infection of sexual partners, newborn children, or other persons, LCL § 5.09A.110(e) shall not apply to the possession solely for personal use of hypodermic needles or syringes or injection supplies if acquired from a physician.

pharmacist, harm reduction program, or any other source that is authorized by law to provide sterile syringes, hypodermic needles, or injection supplies without a prescription.

(A) The limited immunity provided in this subsection shall apply only if the person claiming immunity provides written verification that a hypodermic needle, syringe, or injection supplies were obtained from a harm reduction program or any other source that is authorized by law to provide syringes, hypodermic needles, or injection supplies.

(f) Controlled Substance Outside of Original Container. A person who knowingly possesses any amount of a controlled substance, as defined in LCL §5.09A.050(a)(1), which is not in the original container in which it was delivered to him by the person validly selling or dispensing the controlled substance shall be found guilty of controlled substance outside of original container. Controlled Substance Outside of Original Container is a class D offense.

5.09A.140 Aggravated Factors

(a) Distribution to Persons Under Age Eighteen (18). A person who is found guilty of delivery of an illegal substance under LCL §5.09A.110(b) shall be sentenced for a Class A offense if the person was 18 years of age or over at the time of the offense and delivered the illegal substance to a person under the age of 18 and shall be sentenced to both the maximum term of imprisonment and the maximum fine provided for the offense in this Chapter.

(b) Delivery of Illegal Substances for Value. A person who is found guilty of delivery of an illegal substance under LCL 5.09A.110(b) shall be sentenced for a Class A offense if the person obtained anything for value in exchange for the illegal substance.

(c) Second or Subsequent Offenses. A person convicted of any offense under this Chapter who has a prior conviction under the laws of any jurisdiction for the sale, manufacture,

delivery, or possession of an illegal substance with intent to manufacture or deliver any substances listed in LCL §5.09A.050, shall be sentenced to both the maximum term of imprisonment and the maximum fine provided for the offense in this Chapter.

(d) Illegal Drug Activity Within 500 feet of school, child care facility or building used for the treatment of substance abuse. A person who is found guilty of: manufacture of an illegal substance under LCL §5.09A.110(a); delivery of an illegal substance under LCL §5.09A.110(b); possession of an illegal substance with intent to deliver under LCL §5.09A.110(c); possession of illegal substance (up to 25 grams) under LCL §5.09A.110(d)(3); or possession of illegal substance (over 25 grams) under LCL §5.09A.110(d)(4); and the act occurred within 500 feet of a school, child care center or building used for the treatment of substance abuse shall be sentenced to both the maximum term of imprisonment and the maximum fine provided for the offense in this Chapter.

(e) Illegal Drug Activity on LIBC or Lummi Housing Authority property. A person who is found guilty of: manufacture of an illegal substance under LCL §5.09A.110(a); delivery of an illegal substance under LCL §5.09A.110(b); possession of an illegal substance with intent to deliver under LCL §5.09A.110(c); possession of illegal substance (up to 25 grams) under LCL §5.09A.110(d)(3); or possession of illegal substance (over 25 grams) under LCL §5.09A.110(d)(4); and the act occurred on or within the property of LIBC or the Lummi Housing Authority shall be sentenced to both the maximum term of imprisonment and the maximum fine provided for the offense in this Chapter.

5.09A.150 Medical Assistance, Drug Related Offenses, Prosecution for Possession

(a) A person acting in good faith who seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance under Chapter 5.09A, if the evidence for the charge of possession of a controlled substance was obtained as a result

of the person seeking medical assistance.

(b) A person who experiences a drug-related overdose and is in need of medical assistance shall not be arrested, charged, or prosecuted for possession of a controlled substance under Chapter 5.09A, if the evidence for the charge of possession of a controlled substance as obtained as a result of the overdose and the need for medical assistance.

(c) The protection in this section from prosecution for possession crimes under Chapter 5.09A shall not be grounds for suppression of evidence in other criminal charges.

5.09A.160 Opioid Overdose Medication

(a)(1) A practitioner may prescribe, dispense, distribute, and deliver an opioid overdose medication: (i) Directly to a person at risk of experiencing an opioid-related overdose; or (ii) by collaborative drug therapy agreement, standing order, or protocol to a first responder, family member, or LIBC employees, or Lummi Nation community members, or other person or entity in a position to assist a person at risk of experiencing an opioid-related overdose. Any such prescription or protocol order is issued for a legitimate medical purpose in the usual course of professional practice.

(2) At the time of prescribing, dispensing, distributing, or delivering the opioid overdose medication, the practitioner or other designee shall inform the recipient that as soon as possible after administration of the opioid overdose medication, the person at risk of experiencing an opioid-related overdose should be transported to a hospital or a first responder should be summoned.

(b) A pharmacist may dispense an opioid overdose medication pursuant to a prescription issued in accordance with this section and may administer an opioid overdose medication to a person at risk of experiencing an opioid-related overdose. At the time of dispensing an opioid overdose medication, a pharmacist

shall provide written instructions on the proper response to an opioid-related overdose, including instructions for seeking immediate medical attention. The instructions to seek immediate medication attention must be conspicuously displayed.

(c) Any person or entity may lawfully possess, store, deliver, distribute, or administer an opioid overdose medication.

(d) The following individuals, if acting in good faith and with reasonable care, are not subject to criminal or civil liability under the Lummi Code of Laws for any action authorized by this section or the outcomes of any action authorized by this section:

(1) A practitioner who prescribes, dispenses, distributes, or delivers an opioid overdose medication pursuant to subsection (a) of this section;

(2) A pharmacist who dispenses an opioid overdose medication pursuant to subsection (b) of this section;

(3) A person who possesses, stores, distributes, or administers an opioid overdose medication.

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

5.09B.010 Construction

The individual and collective sections within this Chapter shall be construed liberally in accordance with the legislative objective of preventing and deterring persons from using their property, or allowing their property to be used, in such a manner that facilitates the manufacture, compounding, processing, preparation, sale, distribution, transferring, possession, storage, transportation, or concealment of illegal substances which are intended to be sold for value, or from benefiting from the proceeds of such activity.

Criminal prosecution under Chapter 5.09A of this Title is neither precluded by, nor required for, civil forfeiture under Chapter 5.09B of this Title.