

TITLE 6A
LUMMI NATION CODE OF LAWS
CRIMINAL TRAFFIC CODE

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**Chapter 6A.01 Criminal Traffic
Procedures**

6A.01.010 Criminal Procedures

Title 2 of the Lummi Code of Laws, entitled "Criminal Actions," applies to the offenses enumerated in this code.

6A.01.020 Sentencing

(a) Traffic offenses under this title shall be sentenced according to the class of offense. The Court, in its discretion, may suspend all or part of a sentence, including minimum sentences, upon the performance of conditions imposed on the defendant. The following sentences shall be imposed for each class:

- (1) Class C - No more than 30 days in jail; a fine not to exceed \$500;
- (2) Class B - No fewer than 30 days in jail, not to exceed 90 days in jail; and a minimum fine of \$250, not to exceed a fine of \$1,250.
- (3) Class A - No fewer than 90 days in jail, not to exceed 1 year in jail; and a minimum fine of \$500 not to exceed a fine of \$5,000.

(b) **Second or Subsequent Offenses – Class A.** A person convicted under this chapter for a Class A offense who has a prior conviction under the laws of any jurisdiction for an offense that would be included in the description of a Class A offense under this chapter shall be sentenced to both the maximum term of imprisonment and the maximum fine provided for in this chapter.

(c) **Second or Subsequent Offenses – Class B.** A person convicted under this chapter for a Class B offense who has a prior conviction under the laws of any jurisdiction for an offense that would be included in the description of a Class A or Class B offense under this chapter shall be sentenced to both the maximum term of imprisonment and the maximum fine provided for in this chapter.

**6A.01.030 Habitual Traffic Offender –
Infractions**

A person who has been found to have committed six or more traffic infractions within a one year period shall be declared by the Court to be an habitual offender and his driving privilege shall be revoked for a period of no less than one year and no more than five years. Traffic infractions under this section shall include those provided under Title 6 of this Code and traffic infractions under the laws of any state, county, town or city or any federal law.

**6A.01.040 Habitual Traffic
Offender - Criminal Offenses**

A person who has three or more convictions, within a five year period, of the following offenses shall be declared by the Court to be a habitual offender: vehicular homicide (6A.02.040), vehicular assault (6A.02.050), reckless driving (6A.02.060), driving while under the influence (6A.02.090), actual physical control (6A.02.100), attempting to elude pursuing police vehicle (6A.02.110). The Court shall revoke the driving privilege of a person declared to be a habitual offender for a period of no less than one year and no more than five years. In computing the number of convictions, multiple convictions arising from the same incident shall count as a single conviction. Traffic offenses under this section shall include the sections from the Lummi Code of Laws specified above and corresponding offenses under the laws of any state, county, town, or city or any federal law.

**6A.01.050 Transcript or Abstract as
Evidence**

A transcript, abstract, or certified judgment kept by the Lummi Nation or obtained by the Lummi Nation from another jurisdiction may be admitted as evidence in any hearing before the Court and shall be prima facie evidence that the person committed the infractions or offenses. If the person denies that he committed the infractions or offenses, he shall have the burden of proving that such fact is untrue.

6A.01.060 Implied Consent; Blood Tests

(a) A person who operates or is in control of a vehicle within the territorial jurisdiction of the Lummi Tribe shall be deemed to have given his consent to a chemical test or other tests of his blood or breath for the purpose of determining the alcoholic content or presence of other drugs in his blood, if arrested for any offense, where, at the time of the arrest, the officer has reasonable grounds to believe the person has been driving or was in actual physical control of a vehicle while under the influence of alcohol or other drugs.

(b) Any test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or to have been in actual physical control of a vehicle within the territorial jurisdiction of the Lummi Tribe while under the influence of alcohol or other drugs.

(c) Any officer directing or administering such test or tests shall inform the person:

(1) that the person has the right to refuse the test or tests;

(2) that the person has the right to have additional tests administered by any qualified person of his choosing. as used in this section a qualified person shall mean a physician, a registered nurse, or qualified technician; and

(3) that refusal of such test or tests shall result in the person being fined no more than \$500 and forfeiting his privilege to drive a motor vehicle within the territorial jurisdiction of the Lummi Tribe for a period of six months for the first refusal; for a period of not less than six months nor more than one year for the second refusal; for a period not less than one year nor more than two years for the third refusal.

(d) A person under arrest for driving a vehicle or being in actual physical control of a vehicle while under the influence of alcohol or other drugs within the territorial jurisdiction of the Lummi Tribe, which arrest results from an collision in which another person has received serious bodily injury or in which a vehicular homicide has occurred, may be administered a breath or blood test or tests without the consent of the person arrested.

(e) A person under arrest for the offense of driving a vehicle or being in actual physical control of a vehicle while under the influence of alcohol or other drugs shall not refuse to take a blood or breath test or tests as a defense to the charge of being under the influence of alcohol or other drugs while driving or being in actual physical control of a vehicle. The fact that a person has refused to submit to a test or tests of his breath or blood shall be admissible in aiding the finder of fact in determining whether or not the person was in fact under the influence of alcohol or other drugs.

(f) For the purpose of administering a test for the measurement of alcohol in a person's breath, Lummi law enforcement officers may use an instrument approved by the United States Department of Transportation for evidential use. A breath test result from such an instrument is prima facie evidence of the person's alcohol level, if the officer is properly trained in use of the instrument, the test is performed in conformance with the manufacturer's standards and the device has been properly calibrated. To be calibrated for the purpose of this code, the device must be calibrated at least one time a year under the standards and procedures of the manufacturer, except that the calibration or certification of any component of the device will not require use of instruments traceable to standards maintained by the National Institute of Standards and Technology (NIST) or its successor. The Lummi Indian Business Council finds that traceability to NIST standards requires such a high degree of exactitude and documentation that it is not intended to apply to breath test measurements.

Chapter 6A.02 Criminal Traffic Offenses

6A.02.010 Failure to Appear – Respond

A person who knowingly violates his written and signed promise to appear in court or his written and signed promise to respond to a notice of civil traffic infraction or who fails to respond to a criminal traffic citation or civil traffic infraction whether or not he signed the citation, is guilty of a class C offense.

6A.02.020 Obedience to Enforcement Officers

It is unlawful for a person to refuse or knowingly fail to comply with any lawful order, signal, or direction of any tribal enforcement officer, and any flagger or firefighter, who has authority to direct, control or regulate traffic. A signal under this section includes signals by hand, voice, siren, or emergency light. Violation of this section is a class B offense.

6A.02.030 Refusal to Give Identification

It is unlawful for a person while operating or in charge of a vehicle to refuse, when requested by an enforcement officer, to give his name and address and the name of the owner of the vehicle, or for such person to give a false name and address. It is unlawful for a person to refuse upon demand of such enforcement officer to produce 1) a certificate of license registration for the vehicle, and 2) a vehicle operator's license or tribal enrollment identification card or to refuse to permit the officer to take any such license, certificate, or card for the purpose of examination thereof, or to refuse to permit the examination of any equipment of the vehicle or the weighing of the vehicle. It shall also be unlawful for a person to refuse or neglect to produce any identification listed in this section when requested to do so by the Tribal Court. Violation of this section is a class C offense.

6A.02.040 Vehicular Homicide

When the death of any person ensues within three years as a result of injury proximately caused by the driving of a person while under the influence of intoxicating liquor or any drug, as defined under section 6A.02.090, or by the operation of any vehicle in a reckless manner or with disregard for the safety of others, the person so operating such vehicle is guilty of vehicular homicide. Vehicular homicide is a class A offense.

6A.02.050 Vehicular Assault

A person is guilty of vehicular assault if he operates any vehicle:

- (1) in a reckless manner and his conduct is the proximate cause of serious bodily injury to another; or

(2) while under the influence of intoxicating liquor or any drug, as defined by section 6A.02.090, and this conduct is the proximate cause of serious bodily injury to another. "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of any part or organ of the body. Vehicular assault is a class A offense.

6A.02.060 Reckless Driving

A person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Reckless driving is a class B offense.

6A.02.070 Negligent Driving

It is unlawful for a person to operate a vehicle in a negligent manner, defined as the operation of a vehicle in such a manner as to endanger or be likely to endanger any person or property. 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 and a person charged with operating a vehicle in a reckless manner may be convicted of the lesser offense of operating a vehicle in a negligent manner. A person who exceeds the speed limit by more than 20 miles per hour is guilty of negligent driving, but may also be guilty of reckless driving if the totality of the circumstances establishes the elements of that crime. Negligent driving is a class C offense.

6A.02.090 Driving While Under the Influence

(a) A person is guilty of driving while under the influence of intoxicating liquor or any drug if he drives a vehicle, including a motor boat, anywhere within the jurisdiction of the Tribal Court while:

- (1) he is under the influence of or affected by intoxicating liquor or any drug;
- (2) he has 0.08 grams or more of alcohol per 210 liters of breath, as shown by analysis of his breath, blood, or other bodily substance;
- (3) he has a THC concentration of 5.00 or higher based upon nanograms per milliliter of whole blood as shown by analysis of his

blood, or

(4) he is under the combined influence of or affected by intoxicating liquor and any drug.

(b) The fact that a person charged with a violation of this section is or has been lawfully entitled to use such drug shall not constitute a defense against any charge of violating this section.

(c) "Driving" a motor vehicle occurs when a person is seated behind the controls of a motor vehicle with an engine that is running or when the person otherwise assumes control of the vehicle.

(d) Driving while under the influence of alcohol or drugs is a class B offense. If previously convicted two or more times under this section or 6A.02.100, the offense shall be a Class A offense and, without diminishing the sovereignty or jurisdiction of the Lummi Nation and in order to protect the health and safety of the community, shall be reported to the Washington State Department of Licensing. A person convicted under this section shall have his privilege to drive suspended for a minimum of 90 days and a maximum of one year in addition to any penalties under 6A.01.030-6A.01.040.

6A.02.100 Actual Physical Control

(a) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if he has actual physical control of a vehicle, including a motor boat, anywhere within the jurisdiction of the Tribal Court while:

(1) he is under the influence of or affected by intoxicating liquor, or any drug;

(2) he has 0.08 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of his breath, blood, or other bodily substance;

(3) he has a THC concentration of 5.00 or higher based upon nanograms per milliliter of whole blood as shown by analysis of his blood, or

(3) he is under the combined influence of or affected by intoxicating liquor and any drug.

(b) The fact that a person charged with a violation of this section is or has been entitled to

use such drug shall not constitute a defense against any charge of violating this section.

(c) "Actual physical control" of a motor vehicle occurs when a person is seated behind the controls of a motor vehicle with an engine that is operable.

(d) Actual physical control is a class B offense. If previously convicted two or more times under this section or 6A.02.090, the offense shall be a Class A offense and, without diminishing the sovereignty or jurisdiction of the Lummi Nation and in order to protect the health and safety of the community, shall be reported to the Washington State Department of Licensing. A person convicted under this section shall have his privilege to drive suspended for a minimum of 30 days and a maximum of six months in addition to any penalties under 6A.01.030-6A.01.040.

6A.02.110 Attempting to Elude Pursuing Police Vehicle

Any driver of any vehicle who knowingly fails or refuses to immediately bring his vehicle to a stop after being given a visual or audible signal to bring the vehicle to a stop by an enforcement officer, shall be guilty of a class B offense. The signal given by the enforcement office may be by emergency light or siren.

6A.02.120 Failure to Stop and Render Aid

(a) The driver of any vehicle that is involved in a collision that causes damage to another's property shall:

(1) stop the vehicle as close as possible to the scene of the collision;

(2) ascertain whether any person suffered physical injury as the result of the collision; and

(3) immediately notify the owner of the damaged property of the driver's name and address or leave a written notice of the driver's name and address in a conspicuous place on the property.

(b) The driver of any vehicle that hits a person or is involved in a collision resulting in injury or death to the occupant of another vehicle shall also:

(1) report the collision to law enforcement

authorities; and

(2) render reasonable assistance to any person injured in the collision.

(c) A violation of subsection (a) this section is a class C offense. A violation of subsection (b) of this section is a class B offense.

6A.02.130 Driving While License is Suspended or Revoked

It is unlawful for a person to knowingly operate a vehicle when the person's operator's license, or privilege to obtain a license, has been suspended or revoked by any jurisdiction because of a criminal conviction. A violation of this section is a class B offense.

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