

**TITLE 5**  
**LUMMI NATION CODE OF LAWS**  
**CODE OF OFFENSES**

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**TITLE 5  
LUMMI NATION CODE OF LAWS  
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**Chapter 5.00 Purpose and Declaration**

**5.00.001 Purpose**

It is declared that the general purposes of this Title are:

- (a) To proscribe conduct that unjustifiably and inexcusably threatens or inflicts substantial harm to individual or public interests;
- (b) To give all persons entering into the jurisdiction of the Lummi Nation a fair warning of proscribed conduct and of the sentences authorized upon conviction;
- (c) To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each;
- (d) To protect the public interest of the Lummi Nation by defining the act or omission which constitutes each offense, and to apply the provisions of this Title equally and unfavorably to all persons within the jurisdiction of the Lummi Nation.

**5.00.005 Declaration of Restorative Justice**

The Lummi Nation declares that criminal offenses should be adjudicated with a focus on the rehabilitation of offenders and reconciliation for the harm caused to victims and the Lummi Community. Where offenders and victims consent, offenders sentenced under this Title are afforded a wide range of opportunities to assume responsibility and take action toward wellness and repairing harm.

Incarceration is always considered an extraordinary measure under any offense enumerated in this Title and should be imposed only where an offender is found to have caused serious injury to a victim or the community or caused other serious circumstances which warrant a jail sentence.

**Chapter 5.01 Crimes Against Persons**

**5.01.005 Homicide**

A person who recklessly, intentionally, or through gross negligence kills another human

being is guilty of homicide and, upon conviction, shall be sentenced to imprisonment for 3 years and a fine of \$15,000.

**5.01.010 Assault**

(a) Assault in the First Degree. A person who commits assault while armed with a dangerous weapon is guilty of assault in the first degree. Assault in the First Degree is a class B offense.

(b) Assault in the Second Degree. A person who commits assault in one or more of the following aggravated circumstances is guilty of assault in the second degree:

- (1) the victim is a law enforcement officer; or
- (2) the victim is a person who by reason of age or disability is functionally, mentally, or physically unable to care for himself.

Assault in the Second Degree is a Class C offense.

(c) Assault in the Third Degree. A person who commits an assault not amounting to assault in the first or second degree is guilty of assault in the third degree. Assault in the Third Degree is a class E offense.

**5.01.020 Assault and Battery**

(a) Assault and Battery in the First Degree. A person who commits assault and battery in one or more of the following aggravated circumstances is guilty of assault and battery in the first degree:

- (1) use of a dangerous weapon;
- (2) use of means of poison or a deadly illness; or
- (3) use of any force or means to produce grave physical harm or substantial risk of death.

Assault and Battery in the First Degree is a class A offense.



(b) Assault and Battery in the Second Degree. A person who commits assault and battery in one or more of the following aggravated circumstances is guilty of assault and battery in the second degree:

- (1) willful infliction of serious physical harm;
- (2) the victim is a law enforcement officer; or
- (3) the victim is a person who by reason of age or disability is functionally, mentally, or physically unable to care for himself.

Assault and Battery in the Second Degree is a class B offense.

(c) Assault and Battery in the Third Degree. A person who commits an assault and battery not amounting to assault and battery in the first or second degree is guilty of assault and battery in the third degree. Assault and Battery in the Third Degree is a class D offense.

#### **5.01.025 Robbery**

A person who unlawfully takes or retains possession of personal property from the person of another or in his presence against his will by the knowing use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone is guilty of robbery. Robbery is a class A offense.

#### **5.01.030 Unlawful Imprisonment**

(a) Unlawful Imprisonment. A person who intentionally takes away or restrains another person against his will or, if such person be under the age of 18, without the consent of the person having lawful care or charge of him, is guilty of unlawful imprisonment. Unlawful Imprisonment is a class D offense.

(b) Aggravated Unlawful Imprisonment. A person who commits the crime of unlawful imprisonment by the use of force, or by threatening imminent physical harm or with the use of a dangerous weapon, is guilty of aggravated unlawful imprisonment. Aggravated Unlawful Imprisonment is a class B offense.

#### **5.01.050 Subjection to Maltreatment**

In the practice of the culture, traditions, or religions of the Lummi people, no person may be subjected to any of the following:

- (1) brutal treatment including, but not limited to, hitting, clubbing, biting, striking or otherwise inflicting injury;
- (2) total fasting or fasting in a medically inappropriate way;
- (3) deprivation of medical treatment, medicine, or other care;
- (4) forcing any person to take part in any activity relating to traditional, cultural, or religious practices against his will; or
- (5) accepting any person as a dancer, "baby" or initiate who has not received a written clearance from a medical doctor.

A person who knowingly violates this Section shall be guilty of an offense and punished by a fine of not more than \$500 and a jail sentence of not more than 180 days. This Section shall be liberally interpreted and strictly enforced to carry out its purposes.

#### **5.01.060 Reckless and Intentional Endangerment**

(a) Reckless Endangerment. A person who recklessly engages in conduct that creates a substantial risk of death or serious physical harm to another person is guilty of reckless endangerment. Reckless Endangerment is a class D offense.

(b) Intentional Endangerment. A person who intentionally engages in conduct that creates a substantial risk of death or serious physical harm to another person is guilty of intentional endangerment. Intentional Endangerment is a class B offense.

(c) If the person engages in reckless or intentional endangerment under this Section by propelling an object into a residential structure or other structure that is regularly occupied by another person, and the person does not know that the structure is uninhabited at the time of the conduct, it is not a defense to the charge that the structure was not inhabited at the time of the conduct.

### **5.01.070 Stalking**

(a) Stalking. A person is guilty of the crime of stalking if the person knowingly engages in a series of acts over time, however short, that are directed toward another person such as surveillance, harassment, threats, or intimidating behavior that causes that person substantial emotional distress or reasonable fear for that person's safety or the safety of that person's immediate family. Stalking is a class D offense.

(b) Aggravated Stalking. A person commits the crime of aggravated stalking if:

(1) the stalker has committed the offense within five years of a prior conviction for stalking in any jurisdiction;

(2) a court order from any jurisdiction is in place protecting that person from the stalker;

(3) the stalker makes a credible threat with the intent to place that person in reasonable fear of death, sexual assault, abduction, unlawful imprisonment, or serious physical harm to that person or that person's immediate family member;

(4) the stalker has violated the federal Violence Against Women Act; or

(5) the stalker's victim is or was a law enforcement officer, court official, juror, attorney, victim advocate, or council member, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties.

Aggravated Stalking is a class B offense.

(c) It is a defense to an offense under this Section if the accused person had a reasonable and lawful purpose for the acts.

### **5.01.080 Harassment**

(a) Harassment. A person is guilty of harassment if:

(1) without lawful authority, the person knowingly threatens:

(i) to cause physical harm immediately or in the future to the person threatened or to any other person; or

(ii) to cause physical damage to the property of a person other than the actor; or

(iii) to subject the person threatened or any other person to physical confinement or restraint; or

(iv) maliciously to do any other act which is intended to seriously harm the person threatened or another with respect to his physical or mental health or safety; and

(2) the person, by words or conduct, places the person threatened in reasonable fear that the threat will be carried out immediately or in the future. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

Harassment is a class E offense.

(b) Aggravated Harassment. A person who harasses another is guilty of aggravated harassment if either of the following applies:

(1) the person has two or more previous convictions in any jurisdiction of any crime of harassment, stalking, violating an order prohibiting contact, or disobedience of a lawful order of court, with the same victim or members of the victim's family or household or any person specifically named in any civil or criminal order prohibiting contact; or

(2) the person harasses another person under Subsection (a)(1)(i) of this Section by threatening to kill or rape the person threatened or any other person.

Aggravated Harassment is a class D offense.

## **Chapter 5.02 Offenses Against Property**

### **5.02.010 Theft**

(a) Theft. A person who takes the property of another person, with intent to deprive the other of possession, is guilty of theft. Theft is a class E offense.

(b) Aggravated Theft. A person who takes the property of another person, with intent to deprive, in one or more of the following aggravated circumstances, is guilty of aggravated theft:

- (1) the property taken exceeds \$1,500 in value;
- (2) the property of any value taken is a firearm or motor vehicle;
- (3) the property is obtained by intentional misrepresentation or deceit or by false interpreting, or by use of false weights or measures; or
- (4) the property of any value was taken from the person of another but does not constitute robbery.

Aggravated Theft is a class D offense.

(c) Each item of property taken shall constitute a separate offense of theft.

**5.02.015 Using a Motor Vehicle Without Permission**

A person is guilty of using a motor vehicle without permission if he, without the permission of the owner or person entitled to possession, intentionally takes or drives away a motor vehicle that is the property of another, or he voluntarily rides in or upon the motor vehicle with knowledge of the fact that the motor vehicle was unlawfully taken. The crime of using a motor vehicle without permission is a lesser included offense of aggravated theft. Using a Motor Vehicle Without Permission is a class D offense.

**5.02.020 Embezzlement**

A person who, having lawful custody of property not his own, embezzles, steals, unlawfully converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any money, funds, credits, goods, assets, or any other property belonging to another with intent to deprive the owner is guilty of embezzlement. Embezzlement is a class D offense.

**5.02.030 Unlawful Issuance of Bank Check**

(a) Any person who shall with intent to defraud, make, draw, utter, or deliver to another person, entity, or business any check or draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he does not have sufficient funds in, or credit with the

bank or other depository, to meet the check or draft, in full upon its presentation, is guilty of unlawful issuance of bank check. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of such check or draft. The uttering or delivery of such a check or draft to another person, entity or business without such funds or credit to meet the same shall be prima facie evidence of an intent to defraud.

(b) Any person who shall with intent to defraud, make, draw, utter, or deliver to another person, entity or business any check or draft on a bank or other depository for the payment of money and who issues a stop-payment order directing the bank or depository on which the check is drawn not to honor the check, and who fails to make payment of money in the amount of the check or draft or otherwise arrange a settlement agreed upon by the holder of the check within twenty days of issuing the check or draft is guilty of unlawful issuance of a bank check.

(c) Unlawful Issuance of a Bank Check is a class D offense. The Court shall order the defendant to make full restitution.

**5.02.040 Forgery**

A person who, with the intent to injure or defraud, falsely makes, signs, executes, or alters any written instrument or document, or who presents as true a written instrument or document which he knows to be forged, is guilty of forgery. Forgery is a class D offense.

**5.02.050 Extortion**

A person who intentionally by any means whatsoever extorts or attempts to extort by means of a wrongful threat any monies, goods, property, services, sexual favors or anything else of any value from another person, is guilty of extortion. Extortion is a class C offense.

**5.02.060 Possession or Sale of Stolen Property**

(a) Possession or Sale of Stolen Property. A person who sells, possesses, receives, or conceals any property, knowing the same to be stolen, embezzled, or obtained by fraud, false pretense, robbery or burglary is guilty of possession or sale of stolen property. Possession or Sale of Stolen Property is a class E offense.

(b) Aggravated Possession or Sale of Stolen Property. A person who sells, possesses, receives, or conceals any property, knowing the same to be stolen, embezzled, or obtained by fraud, false pretense, robbery or burglary in one or more of the following aggravated circumstances, is guilty of aggravated possession or sale of stolen property:

- (1) the property exceeds \$1,500 in value; or
- (2) the property is a firearm or motor vehicle.

Aggravated Possession or Sale of Stolen Property is a class D offense.

**5.02.065 Alteration of Property Identification Marks**

A person who knowingly removes, alters, or obliterates any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved, etched, or marked upon an item of another's personal property, or property believed to be stolen, embezzled, or obtained by fraud, false pretense, robbery, or burglary, is guilty of alteration of property identification marks. Alteration of Property Identification Marks is a class D offense.

**5.02.070 Malicious Mischief**

A person is guilty of malicious mischief if the person knowingly:

- (1) causes physical damage to the property of another;
- (2) causes a substantial risk of interruption or impairment of public services;
- (3) causes a substantial risk of impairment of the safety, efficiency, or operation of a motor vehicle; or
- (4) marks on any public structure or any

real or personal property owned by another person without express permission from an authorized person.

Malicious Mischief is a class D offense.

**5.02.080 Trespass**

(a) Trespass. A person who knowingly enters or remains in any building, structure, or on real property, other than a motor vehicle or residential dwelling, of another person without permission of the owner or the lawful occupant, unless otherwise authorized by law, or who allows livestock to occupy or graze on such cultivated lands, is guilty of trespass. Trespass is a class E offense.

(b) Residential Trespass. A person who knowingly enters any part of a residential dwelling, without permission of the owner or the lawful occupant, unless otherwise authorized by law, is guilty of residential trespass. Residential Trespass is a class D offense.

(c) Vehicle Trespass. A person who knowingly enters any part of any motor vehicle without permission of the owner or the lawful operator, unless otherwise authorized by law, is guilty of vehicle trespass. Vehicle Trespass is a class E offense.

**5.02.085 Burglary and Vehicle Prowl**

(a) Burglary. A person who enters or remains in a building, other than a residential dwelling, with the intent to commit a crime against a person or property in the building is guilty of burglary. If the building is a church or other structure that is used as a spiritual gathering place, the person shall be sentenced to a period not less than 30 days. Trespass is a lesser included offense. Burglary is a class D offense.

(b) Residential Burglary. A person who enters or remains in a residential dwelling, with intent to commit a crime against a person or property in the dwelling, is guilty of residential burglary. Residential Trespass is a lesser included offense. Residential Burglary is a class B offense.

(c) Vehicle Prowl. A person who enters or remains in a motor vehicle with the intent to commit a crime against a person or property therein, is guilty of vehicle prowling. Vehicle Trespass is a lesser included offense. Vehicle Prowl is a class D offense.

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

(e) A person who, in the commission of a burglary or vehicle prowling, commits any other crime, may be punished for the other crime as well as for the burglary or vehicle prowling, and may be prosecuted for each crime separately.

#### **5.02.090 Injury to Public Property**

A person who, without proper authority, recklessly uses or injures any public property of the Lummi Nation, the State, or the United States is guilty of injury to public property. Injury to Public Property is a class D offense.

#### **5.02.095 Arson**

(a) Arson. A person who knowingly causes a fire or explosion which damages a building, structure, improvement, motor vehicle, crop, timber, or any property is guilty of arson. Arson is a class C offense.

(b) Aggravated Arson. A person is guilty of aggravated arson if the person knowingly causes a fire or explosion:

- (1) that is manifestly dangerous to any human life;
- (2) that damages a residential dwelling;
- (3) on property valued at \$10,000 or more with intent to collect insurance proceeds; or
- (4) that causes damages in excess of \$10,000.

Aggravated Arson is a class A offense.

#### **5.02.100 Beach Littering**

A person who knowingly breaks or places broken glass or other dangerous objects in the lakes and streams, on the shorelines and beaches, or around picnic and camping areas is guilty of beach littering. Beach Littering is a class F offense.

#### **5.02.110 Unlawful Dumping**

A person who dumps garbage, including animal carcasses or offal from cattle or game animals, on public property or the property of another without authorization is guilty of unlawful dumping. Unlawful Dumping is a class E offense.

### **Chapter 5.03 Offenses Involving Animals**

#### **5.03.020 Cruelty to Animals**

(a) Notwithstanding any provisions in Title 32 of this Code, a person who causes unnecessary pain to an animal is guilty of cruelty to animals if the person knowingly:

- (1) causes unnecessary pain to an animal;
- (2) kills or maims, without legal cause or justification, an animal belonging to another; or
- (3) fails to provide the minimal necessities to maintain an animal's health, including food and water.

Cruelty to Animals is a class D offense.

(b) The penalties under this Section shall be in addition to any penalties imposed under Title 32 of this Code.

#### **5.03.030 Harming a Law Enforcement Animal**

(a) A person is guilty of harming a law enforcement animal, whether or not the animal is actually engaged in law enforcement work at the time, if the person:

- (1) intentionally, without lawful cause or justification, causes serious physical harm, permanent disability or death to, or uses a dangerous weapon upon a law enforcement animal that the person knows or has reason to know is a law enforcement animal;

(2) maliciously touches, strikes, or causes physical harm to a law enforcement animal that the person knows or has reason to know is a law enforcement animal; or

(3) knowingly harasses, teases, interferes with, or attempts to interfere with a law enforcement animal that the person knows or has reason to know is a law enforcement animal.

(b) A violation of Subsection (a)(1) of this Section is a class B offense. A violation of Subsection (a)(2) of this Section is a class D offense. A violation of Subsection (a)(3) of this Section is a class E offense. Any person convicted of any offense under this Section shall make restitution for injuries caused to the law enforcement animal and shall pay the replacement cost of the animal if, as a result of the offense, the animal can no longer perform its duties.

## **Chapter 5.04 Offenses Involving Conduct**

### **5.04.010 Disorderly Conduct**

A person is guilty of disorderly conduct if the person:

(1) engages in fighting, threatening or violent behavior;

(2) makes or instigates unreasonable noise or makes offensively coarse utterances, gestures, or displays, or addresses abusive language to any person present;

(3) creates a hazardous or physically offensive condition in a public place for no legitimate purpose;

(4) is under the influence of alcohol or any illegal substance and does any of the following:

(A) passes out or is asleep in a public place or on the property of another without permission;

(B) bothers, disrupts or otherwise intrudes upon another person or group of persons in a public place;

(C) places himself in danger; or

(D) is in an area set aside for religious or ceremonial activities (including the Lummi Stommish Grounds) that are to

be free from alcoholic beverages or illegal substances or the presence of intoxicated persons during the period of such religious or ceremonial activity; or

(5) while in an area owned or maintained by the LIBC:

(A) uses an illegal substance; or

(B) uses alcoholic beverages, except where use is permitted;

(6) exposes his genitals, buttocks or female breasts under circumstances in which that person knows or should know that person's conduct is likely to annoy, offend or alarm another person.

Disorderly Conduct is a class E offense.

### **5.04.020 Maintaining a Public Nuisance**

A person who acts in such a manner, or permits his property to fall into such condition or to be used for such a purpose, as to injure or endanger the safety, health, comfort, or property of his neighbors or the community, is guilty of maintaining a public nuisance. Maintaining a Public Nuisance is a class F offense.

### **5.04.030 Unlawful Public Gathering**

A person who holds any public dance, game or gathering without obtaining a valid permit from LIBC or without notifying the Lummi Nation Police Department at least five days in advance of such gathering and receiving approval, or who allows such gathering to become a public nuisance, is guilty of unlawful public gathering. The sponsor of such a public gathering is responsible for maintaining order at the gathering. Unlawful Public Gathering is a class F offense.

### **5.04.040 Prostitution**

(a) Prostitution. A person is guilty of prostitution if such person engages, agrees or offers to engage in sexual conduct with another person in return for a fee. Prostitution is a class D offense.

(b) Promoting Prostitution. A person is guilty of promoting prostitution if such person knowingly profits from prostitution or advances prostitution. Promoting Prostitution is a class D offense.

(c) Aggravated Promoting Prostitution. A person is guilty of aggravated promoting prostitution if such person knowingly advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force. Aggravated Promoting Prostitution is a class B offense.

(d) Permitting Prostitution. A person is guilty of permitting prostitution if, having possession or control of premises which such person knows are being used for prostitution purposes, he fails without lawful excuse to make reasonable effort to halt or abate such use. Permitting Prostitution is a class D offense.

(e) Patronizing a Prostitute. A person is guilty of patronizing a prostitute if:

(1) pursuant to a prior understanding, he pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him;

(2) he pays or agrees to pay a fee to another person pursuant to an understanding that in return therefore such person will engage in sexual conduct with him; or

(3) he solicits or requests another person to engage in sexual conduct with him in return for a fee.

Patronizing a Prostitute is a class D offense. Patronizing a Juvenile Prostitute is a separate offense under LCL §5.09C.05.160.

(f) Definitions. For purposes of this Section:

(1) "Fee" means anything of value.

(2) "Profit" means the obtaining of anything of value. A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he

participates or is to participate in the proceeds of prostitution activity.

(3) "Sexual Conduct" means "Sexual Intercourse" or "Sexual Contact," both as defined in Sub-Chapter 5.09C.04.010 of this Title.

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

#### **5.04.050 Unlawful Gambling**

Gambling is prohibited on the Lummi Reservation and trust lands unless conducted in accordance with laws, rules, and regulations adopted by LIBC. A person who violates any law, rule or regulation adopted by LIBC for the control or regulation of gambling on the Reservation and trust lands is guilty of unlawful gambling. Unlawful Gambling is a class D offense.

#### **5.04.060 Failure to Disclose a Sexually Transmitted Disease**

(a) A person who has sexual intercourse or sexual contact with another person while knowingly infected with a sexually transmitted disease, including, but not limited to HIV and Hepatitis C, and fails to inform such other person of the presence of the sexually transmitted disease prior to the sexual intercourse or contact, is guilty of the offense of failure to disclose a sexually transmitted disease. Failure to Disclose a Sexually Transmitted Disease is a Class D offense.

(b) This Section does not require that the other person actually become infected with the sexually transmitted disease. The lack of disclosure is the violation. Nothing in this Section prohibits the prosecution of a person for additional crimes should such other person become infected with the undisclosed sexually transmitted disease.

**5.04.070 Unlawful Discharge of Weapon**

A person who willfully discharges a firearm, air gun, or other explosive device, or throws any explosive device, in a place where any person might be placed in danger is guilty of unlawful discharge of weapon. Unlawful Discharge of Weapon is a class D offense.

**5.04.080 Carrying a Concealed Weapon**

A person who is in a public place armed with a dangerous weapon concealed upon his person, unless he has a permit issued by a Lummi, state, or federal law enforcement department, is guilty of carrying a concealed weapon. Carrying a Concealed Weapon is a class D offense and the weapons so carried may be confiscated and forfeited on order of the Lummi Tribal Court.

**5.04.085 Unlawful Possession of Firearms**

(a) Unlawful Possession of Firearms. A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm, if the person knowingly owns, possesses, obtains, receives, transfers, sells, or uses any firearm and:

(1) has previously been convicted or found not guilty by reason of insanity in the Lummi Tribal Court of the following serious offenses: Homicide; First Degree Assault and Battery; First Degree Assault; Robbery; Aggravated Unlawful Imprisonment; Intentional Endangerment; Aggravated Stalking; Aggravated Harassment; First Degree Rape; and Class A Drug Offenses, or any crime in which a firearm was used or displayed;

(2) is prohibited from possessing firearms by order of the court in any jurisdiction, including any criminal judgment, order after being found not guilty by reason of insanity, order of pre-trial or post-trial conditions;

(3) has previously been involuntarily committed for mental health treatment or equivalent statutes of another jurisdiction, unless his right to possess a firearm has been restored; or

(4) the firearm is a machine gun, short-barreled rifle or short-barreled shotgun, or any part designed and intended solely and exclusively for use in a machine gun, short-barreled shotgun, or short-barreled rifle.

(b) The provisions of Subsection (a)(1-3) of this Section shall not apply to any person engaging in a lawful outdoor recreational activity such as hunting or fishing, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area.

(c) Each firearm unlawfully possessed under this Section shall be a separate offense. Unlawful Possession of Firearms is a class B offense.

(d) For purposes of this Section, "convicted" whether in an adult court or juvenile court, means at such time as a plea of guilty or no contest has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in other jurisdictions.

**5.04.090 Carrying a Firearm While Under the Influence of Intoxicants**

A person who carries a firearm or other explosive device on his person while under the influence of alcohol or an illegal substance is guilty of carrying a firearm while under the influence of intoxicants. Carrying a Firearm While Under the Influence of Intoxicants is a class D offense.



## **Chapter 5.06 Offenses Involving Children**

### **5.06.010 Failure to Support Dependent Persons**

A person is guilty of the offense of failure to support dependent persons if:

- (1) the person refuses or neglects without lawful excuse to furnish food, shelter or care to those dependent on him, including any dependent children born out of wedlock; or
- (2) being lawfully charged with the support of a child under 18 years of age, the person refuses or neglects without lawful excuse to provide support for such child.

Failure to Support Dependent Persons is a class E offense.

### **5.06.020 Failure to Send Children to School**

A person who, without cause, neglects or refuses to send his children or any other children under his care to school is guilty of failure to send children to school. Failure to Send Children to School is a class F offense.

### **5.06.030 Contributing to the Delinquency of a Minor**

A person who negligently assists a minor in committing a delinquent act or in avoiding arrest, is guilty of contributing to the delinquency of a minor. Contributing to the Delinquency of a Minor is a class D offense.

### **5.06.050 Curfew**

(a) It is unlawful for any child under the age of 16 years not under the direct supervision of his parent, guardian, or other responsible adult, to be in any public place after the hour of 10:00 PM and before the hour of 6:00 AM acting in a manner likely to create a public disturbance, create a substantial risk of harm to himself or others through his activities, or pose a substantial threat to the security of private or public property. The Lummi Nation Police Department shall have the authority to take into custody any child who shall be in violation of this Section, and may place such child in juvenile detention or emergency shelter care if the department is unable to contact the parents, guardians, or other adult

person responsible for the care of such child, or if the parents, guardian, or other responsible adult is unable or unwilling to provide necessary care and supervision for the child. Nothing in this Section shall prevent the prosecution of any child taken into custody under the provisions of this Section for any other crime he may have committed.

(b) It is unlawful and punishable as hereafter provided for any unemancipated child between the ages of 16 years and 18 years not under the direct supervision of his parent, guardian, or other responsible adult to be in any public place between the following hours:

11:00 PM Monday to 6:00 AM Tuesday  
11:00 PM Tuesday to 6:00 AM Wednesday  
11:00 PM Wednesday to 6:00 AM Thursday  
11:00 PM Thursday to 6:00 AM Friday  
12:01 AM Saturday to 6:00 AM Saturday  
12:01 AM Sunday to 6:00 AM Sunday  
11:00 PM Sunday to 6:00 AM Monday

acting in a manner likely to: create a public disturbance, create a substantial risk of harm to himself or others through his actions, or pose a substantial threat to the security of private or public property. A child arrested for violation of this Subsection may be treated in the same manner as a child taken into custody under Subsection (a) of this Section, and, in addition, may be made a delinquent ward of the Lummi Tribal Juvenile Court as provided in Title 8 of this Code. If tried as an adult, a person found in violation of this Subsection shall be fined not more than \$150 and sentenced to not more than 10 days in jail.

(c) The parent, guardian, or other person legally responsible for a child who has violated either Subsection (a) or (b) of this Section at a time when the said parent, guardian, or legally responsible person knew or in the exercise of his parental responsibilities should have known that the child was violating those subsections and did not take appropriate steps to prevent the violation, shall be guilty of an offense and, upon conviction, shall be fined not more than \$150 and sentenced to not more than 30 days in jail; provided that the Court shall require that the person perform at least 40 hours of community work service in payment of the fine.

## **Chapter 5.07 Offenses Involving Tribal Government**

### **5.07.010 Bribery**

A person who knowingly promises, offers, or gives, or causes to be promised, offered or given, any money, property, services or other things of value to any officer, employee, or representative of any tribal organization, or to any person, including a juror, acting for or on behalf of any tribal organization, with intent to influence his decision or action on any question, matter, cause, or proceeding which may be brought or is pending before him in his official capacity, and a person who, being such officer, employee, representative, or person so acting, accepts any money, property, services, or other thing of value, is guilty of bribery and any tribal office held by such person shall be forfeited. Bribery is a class B offense.

### **5.07.020 Perjury**

A person who knowingly in any judicial proceeding in the Lummi Tribal Court falsely swears or affirms, falsely interprets the testimony of another, makes a sworn statement or affidavit knowing the same to be untrue, or induces or procures another person to do so, is guilty of perjury. Perjury is a class D offense.

### **5.07.025 Intimidating or Interfering with a Witness**

A person is guilty of the offense of intimidating or interfering with a witness if the person knowingly:

(1) threatens or offers an inducement to a current or prospective witness in an attempt to:

(A) influence the testimony of that person;

(B) induce that person to elude legal process summoning him to testify;

(C) induce that person to absent himself from such proceedings; or

(D) induce that person not to report information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have a crime

prosecuted, or not to give truthful or complete information relevant to a criminal investigation or to the abuse or neglect of a minor child;

(2) directs a threat to a former witness because of the witness's role in an official proceeding, a criminal investigation, or an investigation into the abuse or neglect of a minor child; or

(3) threatens or takes other action to delay or prevent a victim of, or witness to, an offense committed by the person from calling a 911 emergency communication system, obtaining medical assistance for the victim, or making a report to law enforcement.

Intimidating or Interfering with a Witness is a class D offense.

### **5.07.030 False Arrest**

A person who intentionally makes or causes to be made, the unlawful arrest, detention or imprisonment for another person is guilty of false arrest. False Arrest is a class D offense.

### **5.07.040 Resisting Lawful Arrest**

A person who knowingly, by use of physical resistance, force or violence, resists or assists another person to resist a lawful arrest is guilty of resisting lawful arrest. Resisting Lawful Arrest is a class D offense.

### **5.07.045 Disarming a Law Enforcement Officer**

(a) A person who, with intent to interfere with the performance of the officer's duties, knowingly removes a firearm or weapon from the person of a law enforcement officer or deprives a law enforcement officer of the use of a firearm or weapon, when the officer is acting within the scope of the officer's duties, does not consent to the removal, and the person has reasonable cause to know or knows that the individual is a law enforcement or corrections officer is guilty of disarming a law enforcement officer. Disarming a Law Enforcement Officer is a class B offense.

(b) If the firearm or weapon involved is discharged when the person removes the firearm, a person who violates Subsection (a) of this Section shall be sentenced to imprisonment for a period not less than 90 days.

(c) A person who commits another crime during the commission of the crime of disarming a law enforcement officer may be punished for the other crime as well as for disarming a law enforcement officer and may be prosecuted separately for each crime.

**5.07.050 Refusing to Aid an Officer**

A person who unreasonably refuses, when called upon by any police officer, to assist in the arrest of any person charged with or convicted of any offense or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement is guilty of refusing to aid an officer. Refusing to Aid an Officer is a class F offense.

**5.07.055 Obstructing a Public Servant or Law Enforcement Officer**

A person who knowingly hinders, delays, or obstructs any public servant or law enforcement officer in the discharge of his official powers or duties shall be guilty of obstructing a public servant or law enforcement officer. Obstructing a Public Servant or Law Enforcement Officer is a class D offense.

**5.07.056 Making a False Statement**

A person who knowingly makes a false or misleading material statement to any public servant or law enforcement officer shall be guilty of making a false statement. "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant or law enforcement officer in the discharge of his official powers or duties. Making a False Statement is a class D offense.

**5.07.060 Escape**

(a) A person who:

- (1) is placed under physical arrest;
- (2) is advised by a law enforcement officer that he is under arrest;

(3) is otherwise under lawful custody for any offense, or

(4) has been granted a furlough or temporary release from custody by order of the court;

and knowingly removes himself from the custody of law enforcement or other authorized custodian or fails to return to custody at a required date and time pursuant to a furlough or temporary release order is guilty of escape. Escape is a class B offense.

(b) For purposes of this Section, it is unnecessary to show that the accused was actually confined within a jail facility. Custody includes but is not limited to a jail facility, treatment center, secured transport vehicle, or any other facility used for detainment pursuant to arrest, conviction, or sentencing.

**5.07.065 Threatening a Tribal Representative**

A person who knowingly and unlawfully threatens any officer, employee, or representative of any tribal organization, or any person, including a juror, acting for or on behalf of any tribal organization, with intent to influence or retaliate against his decision or action on any question, matter, cause, proceeding which may be brought, is pending before him, or has been brought, or any action to be performed or already performed in his official capacity is guilty of threatening a tribal representative. Threatening a Tribal Representative is a class C offense.

**5.07.070 Violation of a Court Order**

(a) Disobedience of a Lawful Order of Court. A person who knowingly disobeys any order, subpoena, warrant or command duly issued, except a no contact provision, made or given by a court is guilty of disobedience of a lawful order of court. Disobedience of a Lawful Order of Court is a class D offense.

(b) Violation of a No Contact Order. A person who knowingly disobeys any court order, civil or criminal, that prohibits that person from having contact with another person(s), is guilty of violation of a no contact order. Violation of a No Contact Order is a class B offense.

(c) For purposes of this Section, the Court shall give full faith and credit to court orders of other Indian tribes, states, or federal agencies. It is a defense to the offense of disobedience of a lawful order of court and violation of a no contact order of a foreign court order if:

- (1) the issuing court did not have personal jurisdiction over the person or subject matter jurisdiction over the matter;
- (2) proper service of process under the law of the issuing jurisdiction was not made on the person or the order not issued according to the laws of that jurisdiction; or
- (3) the order violates the public policy of the Lummi Nation.

#### **5.07.075 Violation of an Exclusion Order**

A person who knowingly violates an order excluding or expelling the person from the Lummi Reservation and trust lands, or any person who knowingly assists, encourages, harbors, transports or conceals an excluded person shall be guilty of violation of an exclusion order. A person convicted of Violation of an Exclusion Order shall be sentenced to imprisonment for no less than 30 days for the first offense; 60 days for the second offense; 90 days for the third offense; 120 days for the fourth offense; 150 days for the fifth offense; 180 days for the sixth offense; 210 days for the seventh offense; 240 days for the eighth offense; 270 days for the ninth offense; 300 days for the tenth offense; 330 days for the eleventh offense and 365 days for all subsequent offenses. No part of the sentence may be suspended or served on jail alternatives programs. Nothing in this Section prohibits the Court from permitting this sentence to be served at in-patient substance abuse treatment. A conviction for Violation of an Exclusion Order shall not exceed 365 days in jail and a fine not to exceed \$5,000.

#### **5.07.080 Embezzlement from Tribe**

A person who knowingly embezzles, steals, unlawfully converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the money, funds, credits, goods, assets or any other

property belonging to the Tribe, or any tribal organization, or entrusted to the custody or care of any officer, employee or agent of the Tribe or tribal organization, or any person, knowing any such money, funds, credits, goods, assets, or other property to have been embezzled, stolen, converted, misapplied or permitted to be misapplied, who receives, conceals or retains the same with intent to convert it to his use or the use of another is guilty of embezzlement from tribe. Embezzlement from Tribe is a class B offense.

#### **5.07.090 Hunting or Fishing While Privilege Suspended or Revoked**

Notwithstanding LCL §10.02.390 and LCL §10.22.010, a person who knowingly engages in hunting or fishing, or who operates a business associated with fishing, in violation of a suspension or revocation under Title 10 of this Code, is guilty of hunting or fishing while privilege suspended or revoked. Hunting or Fishing While Privilege Suspended or Revoked is a class D offense. The Court shall also impose a suspension of privileges that is at least twice the period of the suspension of hunting or fishing privileges that the person violated. Penalties under this Section shall be in addition to penalties imposed under Title 10 of this Code.

#### **5.07.100 Illegal Sale or Purchase of Natural Resources**

(a) Illegal Sale of Natural Resources. Notwithstanding LCL §10.02.390 and LCL §10.22.010, a person is guilty of the offense of illegal sale of natural resources if the person sells natural resources harvested from natural resources reserved to the Tribe, and the person:

- (1) does not have a permit from the Tribe to harvest those resources; or
- (2) was only permitted to harvest the resources for subsistence use.

Illegal Sale of Natural Resources is a class D offense.

(b) Illegal Purchase of Natural Resources. Notwithstanding LCL §10.02.390 and LCL §10.22.010, a person who purchases natural resources from a person, knowing that the person is selling the natural resources in violation of Subsection (a) of this Section, is guilty of the offense of illegal purchase of natural resources. Illegal Purchase of Natural Resources is a class D offense. If the buyer is licensed by the Lummi Nation pursuant to Chapter 10.08 of this Code, the period of imprisonment shall be not less than 30 days.

(c) The penalties under this Section shall be in addition to any penalties imposed under Title 10 of this Code.

### **Chapter 5.08 Other Offenses**

#### **5.08.010 Violation of an Approved Tribal Ordinance**

A person who knowingly violates an ordinance or other enactment designed to preserve the health, safety, and welfare of the Tribe, which was promulgated by LIBC, is guilty of violation of an approved tribal ordinance and, upon conviction, shall be sentenced as provided in that ordinance or enactment or under LCL §5.11.010.

#### **5.08.030 Violation of Federal or State Law**

The LIBC recognizes in adopting its criminal codes that it is not addressing all the criminal offenses that harm the Tribe and members of the community. The LIBC does not wish any person to consider the Lummi Reservation and trust lands to be a safe haven to commit acts that would be unlawful off the Reservation and trust lands. Accordingly, a person who knowingly violates the criminal laws of the United States or State of Washington is guilty of an offense under this paragraph. A person found guilty of violating this Section shall be sentenced to imprisonment for a period comparable to the sentence imposed under that jurisdiction, but not to exceed 365 days and a fine not to exceed \$5,000. It is a defense under this Section that the person has been convicted for the offense by the other jurisdiction or that the criminal law of the other jurisdiction violates the public policy of the Lummi Nation.

### **Chapter 5.09A Drug and Alcohol Violations**

#### **5.09A.010 Construction**

The individual and collective sections within this Chapter shall be construed liberally in accordance with the legislative objective of addressing and deterring the manufacture, distribution and/or use of illegal substances, except that nothing in this Chapter shall be construed to make illegal an act that is otherwise legal.

A common sense interpretation of this Chapter should be made to fulfill the legislative purpose of deterring illegal alcohol use, drug use and drug transactions. The term “except that” in this Section means that the liberal construction shall be limited only to the extent that it is necessary to prevent overreaching by making an act illegal, when that act is commonly recognized to be legal. For example, the government-regulated manufacture and sale of prescription narcotics by a licensed manufacturer or licensed seller, does not become illegal under this act, since these acts are recognized to be legal.

#### **5.09A.025 Unlawful Inhalation**

A person who knowingly smells or inhales the fumes of any type of substance containing a solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors or fumes, or who induces any other person to do so, for the purpose of causing symptoms of intoxication or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes is guilty of the offense of unlawful inhalation. This Section does not apply to the inhalation of any anesthesia or other substance for legitimate medical or dental treatment. Unlawful Inhalation is a class F offense.

#### **5.09A.035 Consumption or Possession of Alcohol by a Minor**

A person under the age of 21 who knowingly consumes, acquires, or possesses (including having alcohol in the human body) any alcoholic beverage is guilty of the offense of consumption or possession of alcohol by a minor. Consumption or Possession of Alcohol by a Minor is a class F offense.

**5.09A.045 Furnishing Alcohol to a Minor**

(a) No person may knowingly furnish alcoholic beverages to a person under the age of 21 years nor permit a person under the age of 21 to consume liquor on his premises or in any area under his control.

(b) A person violating this Section shall be guilty of the offense of furnishing alcohol to a minor. Furnishing Alcohol to a Minor is a class F offense if the offender is under the age of 21 years old at the time of the event and is a class D offense if the offender is 21 years or older at the time of the event.

**5.09A.050 Illegal Substance - Definitions**

(a) For the purposes of this Title, an “illegal substance” is:

(1) any quantity of a controlled substance, which is a substance named in the schedules listed in the federal Comprehensive Drug Abuse Prevention and Control Act;

(2) any prescription drug or over-the-counter substance that has been altered in form since it was dispensed or sold so as to cause greater intoxication, euphoria, dependency, or hallucinations than the substance would cause in its original form;

(3) any substance which has the primary purpose to cause intoxication or, in any manner, to change, distort, or disturb audio, visual, or mental processes, except alcohol and those substances excepted under Subsection (a)(1) of this Section; or

(4) Any imitation of a substance that would be illegal under Subsection (a)(1) or (a)(2) of this Section that is intended to be understood by others to contain an illegal substance, although not in fact containing any illegal substance.

(b) Any substances otherwise described as an illegal substance under this Chapter shall not be considered an illegal substance while it is used in accordance with the teachings of the Native American Church or other traditional Native American religious ceremonies.

(c) Marijuana is considered an illegal substance and no prescription or authorization

from a health care professional is recognized in this jurisdiction.

**5.09A.060 Proof of Chemical Composition, Intended Usage, Nature or Design of Illegal Substance**

(a) The chemical composition, method of usage, or design of a substance may be proven by any commonly acceptable method of identification, including, but not limited to, identification by a trained officer, by field tests, or by laboratory tests.

(b) Proof of intent that an imitation substance, as defined in LCL §5.09A.050(a)(4), should be understood to be an illegal substance may be indicated by design or appearance of the substance, or any representation made by a person in control of the substance. Appearance includes but is not limited to color, shape and size. Representation includes but is not limited to representations or factors of the following nature:

(1) statements made by an owner or anyone else in control of the substance, concerning the nature of the substance or its use or effect; or

(2) the substance is or has been packaged in a manner normally used for illegal substances.

**5.09A.090 Drug Paraphernalia – Definitions**

Drug paraphernalia is any item or object created, used, or intended to be used, to ingest, inject, inhale, consume, or otherwise introduce illegal substances into the human body, and any item used to sell, distribute, deliver, import, export, manufacture, compound, convert, conceal, produce, package, analyze, process, possess, store, or transport any illegal or imitation illegal substance. In determining whether an object is drug paraphernalia, consideration should be given to all logically relevant factors, including, but not limited to, the following:

(1) statements made by an owner or anyone in control of the object concerning its use;

(2) the proximity of the object in time and space to a direct violation of this Chapter;

(3) prior convictions, if any, of an owner, or of anyone in control of the object, under the laws of any jurisdiction relating to any illegal or imitation illegal substance;

(4) the existence and scope of legitimate uses for the object in the community; and

(5) expert or lay testimony concerning its use.

### **5.09A.100 Proof of Paraphernalia Character and Purpose**

Proof of usage or purposeful design for usage of an object as drug paraphernalia may be established by any commonly acceptable method of identification, including, but not limited to, identification by a trained officer, by field tests, or by laboratory tests.

### **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.

(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.



## **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.

### **5.09B.020 Definitions**

As used in this Chapter,

(a) State of Mind:

(1) “Intentionally” has the meaning set out in LCL §5.10.010(b)(1); and

(2) “Knowledge” has the meaning set out in LCL §5.10.010(b)(2).

(b) “Illegal Substance” has the meaning set out in LCL §5.09A.050.

(c) “Illegal Activity” means 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 the attempt to do so.

(d) “User of Property” means the person who is alleged to have used property that is the subject to a forfeiture proceeding.

(e) “Claimant” means a person or entity with a legal interest in the subject property, or a person or entity who is recognized or held responsible by law as the owner of the property. A claimant need not have actual ownership of the property, but may have a legal interest due to a mortgage, leasehold, security interest, valid assignment, prior financial arrangement with the property owner, a prior court judgment against the

property owner, a lien arising from operation of law, or other commonly recognized principles of law. A claimant does not include a person with only a general claim against the assets of the user of the property or a person who is the holder of the property without a legitimate interest in the property.

(f) “Days” means calendar days.

(g) “Fair Market Value” is the value of the property as of the date of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal.

### **5.09B.030 Forfeiture of Interest**

(a) Property. The interest of any claimant to property (as defined in LCL §5.09B.040) used in a manner that facilitates an illegal activity shall be forfeited to the Lummi Nation under the provisions of this Chapter.

(b) Proceeds. The interest of any claimant to property (as defined in LCL §5.09B.040) which is the proceed of illegal activity, or is acquired from the proceeds, shall be forfeited to the Lummi Nation under the provisions of this Chapter.

(c) No provision in this Chapter precludes a claimant from waiving his interest in seized property in lieu of notice and proceedings under this Chapter.

(d) Trust property is exempt from forfeiture under this Chapter.

### **5.09B.040 Property Subject to Forfeiture**

The following property is subject to seizure and forfeiture under this Chapter:

(1) illegal substances, as defined in LCL §5.09A.050;

(2) drug paraphernalia, as defined in LCL §5.09A.090, including but not limited to all books, records, research, formulas, microfilm, tapes, and data;

(3) raw materials, plants, products, and equipment of any kind which are used, or intended for use in the manufacture, compounding, processing, delivering, importing, exporting or preparation of an illegal substance, and the products and by-products of such use;

(4) dangerous weapons (as defined in LCL §5.10.010(c)(5)) and Firearms (as defined in LCL §5.10.010(c)(9)), found in the possession or control of a person engaged in an illegal activity;

(5) property which is used, or intended for use, to facilitate the manufacture, compounding, processing, delivering, importing, exporting, preparation, sale, distribution, possession, storage, transportation, or concealment of illegal substances, including but not limited to:

(A) conveyances, including aircraft, motor vehicles, or vessels;

(B) 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;

(C) containers, equipment, and supplies; and

(D) moneys, negotiable instruments, securities, or other things of value furnished, or intended to be furnished, by any person in exchange for an illegal substance, or with the intent to obtain an illegal substance, except those funds provided by a law enforcement official, or any person acting under law enforcement direction, as part of an investigation into illegal activity; and

(6) all proceeds from the illegal activity, including property acquired from the proceeds, including but not limited to moneys, negotiable instruments, securities, and real and personal property.

#### **5.09B.050 When Property Can Be Seized**

Property subject to forfeiture under this Chapter may be seized by any law enforcement officer of the Lummi Nation as follows:

(1) The Court has entered an order permitting seizure based on probable cause that the property is subject to foreclosure or is evidence of criminal activity. Such an order may be issued ex parte;

(2) There is a prior judgment of the court, in favor of the Lummi Nation, in a civil injunction or forfeiture proceeding;

(3) The law enforcement officer has seized the property incident to an arrest, or incident to another exception to the warrant requirement; or

(4) The law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

#### **5.09B.055 Custody of Seized Property**

Property seized under this Chapter shall not be subject to replevin, but shall be deemed to be in the custody of the Lummi Nation, subject only to the orders and decrees of the Lummi Tribal Court. Prior to a final order of forfeiture, whenever property is seized under this Chapter, the Lummi Nation, by and through the Lummi Nation Police Department, may:

(1) place the property under seal;

(2) remove the property to a place designated by the Lummi Nation Police Department; or

(3) require that the Lummi Nation Police Department take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

#### **5.09B.060 Notice of Intended Forfeiture**

(a) Within 45 days of seizure under this Chapter, a petition may be filed to institute forfeiture proceedings with the Court. When property is seized, but is being held as evidence in a pending criminal proceeding, a petition may be filed to institute forfeiture proceedings with the Court within 45 days after the criminal proceeding is no longer pending.

(b) The Lummi Nation shall serve notice of seizure and intention to forfeit the property to all known claimants to the property. Notice may be served by personal service or certified mail with return receipt requested. Notice to a known claimant may be made at the address shown on the financing statement, vehicle registration or certificate of title. If the location of claimant cannot be found, service may be accomplished by publication pursuant to LCL §3.03.040 – §3.03.060.

(c) The notice shall state: 1) a description of property; 2) known claimants to the property; 3) location where property was seized; 4) a brief explanation of the legal basis for seizure of property; and 5) instructions for responding to the notice.

(d) If an additional claimant becomes known prior to final judgment, the Lummi Nation shall serve a notice on the additional claimant.

#### **5.09B.070 Claimant's Answer to Notice**

(a) Within 20 days after the date that personal service was completed, the date that certified mailing was delivered, or the date of publication of a notice of forfeiture, the claimant to the seized property may file with the Clerk of the Lummi Tribal Court a verified answer to the notice of intended forfeiture. A copy of the answer shall be provided to the Lummi Nation.

(b) The answer shall state: (1) the nature and amount of the claim to the property; (2) the time and circumstances of the claimant's acquisition of the claim; (3) a brief description of the defenses asserted by the claimant; and (4) the relief sought.

(c) The claims of any claimant who was served with notice of the forfeiture proceeding, and who failed to file an answer in accordance with this Section, are extinguished by default.

#### **5.09B.080 Defenses to Forfeiture**

(a) At a forfeiture hearing, the claimant must establish the amount and validity of his claim. A defense to forfeiture only extends to the value of that person's claim to the property.

(b) Defenses to forfeiture are:

(1) the property was not used, or intended to be used, to facilitate an illegal activity and was not the proceeds of illegal activity;

(2) the claimant is an innocent owner of the property. An "innocent owner" means that:

(A) the claimant had no knowledge of the use or intended use of the property to facilitate an illegal activity and the claimant undertook a reasonable investigation of the user's character and reputation before allowing the use or continued use of the property; or

(B) upon learning of the illegal activity, the claimant did all that could be reasonably expected under the circumstances to terminate such use of the property, which includes giving timely notice to a law enforcement agency of the illegal activity and taking timely action to revoke permission to use the property or to prevent the illegal use. An innocent owner under this Subsection is not required to take such steps that the owner reasonably believes will place the owner in physical danger;

(C) the claimant is a bona fide purchaser for value of the property, or licensed pawnbroker, who did not know at the time of the transaction that the property was the proceeds of illegal activity, or that it had been used to facilitate an illegal activity;

(D) to the extent of the community property interest, that a claimant has such an interest in real property used or attempted to be used for illegal activity, the property is not the proceeds of the illegal activity, and the claimant had no participation in the illegal activity; or

(E) the claimant is a spouse or dependent of the user of real property and acquired his interest in the real property through inheritance before the commencement of the forfeiture proceeding, the claimant had no participation in the illegal activity, and the real property is not the proceeds of the illegal activity.

(3) the claimant is a bank, trust company, credit union, licensed pawnbroker, or money lender established in accordance with the law of an Indian tribe, state, or the United States, that did not have knowledge at the time of obtaining its interests that the property was intended to be used to facilitate an illegal activity;

(4) the claimant holds a security lien as the seller of the property and did not have knowledge at the time of sale that the property was intended to be used to facilitate an illegal activity;

(5) the claimant has a claim on the property of such a nature that the claimant had no control over the use of the property at the time of the illegal activity, and the claim was not obtained as part of a transaction with intent to benefit the user of the property while knowing of the illegal activity; or

(6) the user of the property was entrapped as shown by evidence that the design for the illegal activity that resulted in the illegal use of the property originated in the mind of law enforcement officials or any person acting under law enforcement direction; and, that the user was lured or induced to commit the illegal acts which the user of the property had not otherwise intended to commit. The defense of entrapment is not established by a showing that law enforcement officials merely afforded the user of the property an opportunity to participate in the illegal activity.

#### **5.09B.090 Procedure for Hearing**

(a) If a verified answer is timely filed, the Clerk of the Court shall set a hearing for forfeiture proceeding within 30 days after the answer is filed. The proceeding shall have priority over other civil cases. Notice of the hearing may be served by regular mail or personal service.

(b) The Lummi Nation shall have the burden of proof that the user of the property conducted an illegal activity. The criminal conviction of the alleged user conclusively proves the illegal activity. However, the illegal activity may also be proved during the

civil proceeding, notwithstanding whether the user was prosecuted or convicted for the activity.

(c) For property subject to forfeiture under LCL §5.09B.030(a), the Lummi Nation shall have the burden of proof that the property was used or intended to be used as part of the illegal activity.

(d) For property subject to forfeiture under LCL §5.09B.030(b), the Lummi Nation shall have the burden of proof that the property was the proceeds of an illegal activity. There is a rebuttable presumption for which the judge shall accept as true that property acquired during the period of the illegal activity, or a reasonable period thereafter, is the proceeds of the illegal activity, unless the user of property or claimant offers compelling evidence contradicting such presumption.

(e) A claimant has the burden of proof of a defense under LCL §5.09B.080.

(f) A fact or circumstance that must be proved under this Chapter must be proved by a preponderance of the evidence.

#### **5.09B.100 Disposition of Property**

(a) Summary Forfeiture and Destruction of Contraband. All property described in LCL §5.09B.040(1)-(4) which is seized under this Chapter shall be deemed contraband and summarily forfeited to the LIBC immediately upon seizure and without further proceedings under this Chapter. A claimant has no right of action for return of such property. All such property shall be destroyed unless needed for evidentiary or official law enforcement purposes.

(b) No Valid Claimant Exists. Whenever property is forfeited under this Chapter and the Court finds that there are no other claimants to the seized property, pursuant to LCL §5.09B.080, the LIBC may:

- (1) retain the property for official use;
- (2) transfer the property to the Lummi Nation Police Department for its official use; or

(3) 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.

(A) Proceeds from any such sale and any moneys forfeit under this Title shall be used to pay all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and any remaining balance shall be transferred to the Lummi Nation Police Department for use in criminal drug investigations.

(c) Valid Claimant Exists. Whenever property is forfeited under this Chapter and the Court finds a claimant has a valid claim to seized property, pursuant to LCL §5.09B.080, the Court shall determine the nature and amount of the claims.

(1) If the amount of the claims to seized property is equal to, or more than, the fair market value of the property as of the date of seizure, the property shall be released to those claimants.

(2) If the amount of the claims to seized property is determined to be less than the fair market value of the property as of the date of the date of seizure, the Court may sever the property to allow sale as provided in this Section, or may allow an innocent owner to retain the property subject to a lien in favor of the LIBC. The property may be sold at a public auction by the Chief of the Lummi Nation Police Department, or by any other reasonable manner approved by the Court, after notice has been given to the remaining claimants.

(A) Proceeds from any such sale and any moneys forfeit under this Title shall be used to pay:

(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs;

(ii) the amount owing to the remaining claimants;

(iii) reimbursement of funds provided to the user of the property by a law enforcement official, or any person acting under law enforcement direction, as part of the investigation into the illegal activity; and

(iv) any remaining proceeds shall be paid to the Lummi Nation Police Department for use in criminal drug investigations.

(B) In lieu of such a sale and after any payments are made under Subsection (c)(2)(A)(i) – (iv) of this Section, the LIBC may retain the property for its official use.

(d) A user of the property, or any person acting in concert with him, is not eligible to acquire any seized property at any public sale.

#### **5.09B.105 Vesting of Title**

All right, title, and interest in property described in LCL §5.09B.040 shall vest in the Lummi Nation upon commission of the act giving rise to the forfeiture under this Chapter.

#### **5.09B.110 Frivolous Claim**

If the Court finds that the claimant's assertion of an interest in the property was frivolous, the Court may impose a civil penalty on the claimant of an amount equal to 10 percent of the value of the forfeited property, but in no event shall the penalty be less than \$250 or greater than \$5,000.

#### **5.09B.120 Motion to Set Aside Forfeiture**

Any person entitled to notice of forfeiture under this Chapter who does not receive such notice may file a motion to set aside a forfeiture for good cause shown with respect to that person's interest in the property. A person who has received notice of forfeiture and failed to answer may not move to set aside a default forfeiture judgment. A motion to set aside a forfeiture judgment must be brought within one year after entry of the judgment.

## **Chapter 5.09C Sexual Offenses**

### **Sub-Chapter 5.09C.01 General Provisions**

#### **5.09C.01.010 Preamble and Purpose**

Only the informed Lummi Community and its families can stop sexual abuse among its people. The laws and legal system are tools assisting the community in this effort. The purposes of the Chapter shall be as follows:

- (1) to assist in protecting the community from sexual assault and abuse, especially our precious children and other vulnerable individuals;
- (2) to provide offenders and their families with a resource for accountability, penance and restitution for their harmful actions; and
- (3) to promote healing for individuals, families and the community who have been impacted by these offenses. This includes rehabilitative treatment for offenders.

#### **5.09C.01.020 Findings-Intent; Effective Date**

(a) This act is necessary for the immediate preservation of the tribal family, public peace, health and safety, and to support tribal sovereignty, and shall take effect on August 4, 1994. It is the legislature's deliberate intent that the act be applied retroactively in cases where an offense has occurred prior to August 4, 1994. The legislature's intent is based upon unique tribal needs and cultural considerations. Testimonials at the tribal legislative proceedings further affirmed the necessity of this act. It is recognized that the incidence of sexual exploitation ordinarily fosters trauma in other aspects of the lives of sexual abuse victims, thereby disabling and delaying victims from reporting sexual offenses. Cultural factors involving the sense of privacy exacerbate the ability of many native victims to disclose intimate matters, particularly those of aggravated character. Given the inter-generational prevalence of sexual offense, there is a unique tribal need to allow effective reporting of sexual offenses within the Lummi Reservation and trust lands.

(b) The individual and collective sections within this Chapter shall be construed liberally

in accordance with the legislative objective of addressing and deterring sexual assault and abuse.

#### **5.09C.01.030 Statute of Limitations for Sexual Offenses**

(a) Prosecutions for sexual offenses shall not be commenced after the periods prescribed in this Section:

- (1) fifteen years after the victim's 30th birthday;
- (2) ten years after commission of the offense; or
- (3) ten years after the recovery of repressed memories of childhood sexual abuse, whichever time period is greater.

(b) The periods of limitation prescribed in Subsection (a) of this Section do not run during any time when the person charged is not usually and publicly residing within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location.

### **Sub-Chapter 5.09C.02 Penalties**

#### **5.09C.02.005 Sentencing Goals**

Sentencing delivered under this Chapter is specifically intended to promote public safety and facilitate healing within our families and communities. The following goals shall be considered in sentencing:

- (1) providing safety for the victims and for other potential victims shall be the highest priority considered in sentencing;
- (2) sex offender evaluation and treatment (when indicated) shall be the second priority in sentencing;
- (3) restitution to the victim or his family, fines and/or time in jail imposed in sentencing provide the offender an opportunity to take public responsibility for his offenses. It also makes a statement to the community as to the seriousness of the crime; and
- (4) significant suspended sentences can provide an incentive for the offender to complete court-ordered rehabilitative treatment and restitution.

### **5.09C.02.010 Sentencing Requirements for Sexual Offenses**

(a) Any person convicted of a class A sex offense under Sub-Chapter 5.09C.05 of this Title or any class A offense with a finding of sexual motivation under LCL §5.09C.02.020, shall be ordered to complete an evaluation from an appropriate sex offender treatment program certified by the Lummi Nation, another jurisdiction or by the Attorney General of the United States and comply with all treatment recommendations.

(b) Any conviction for a sex offense or crime with sexual motivation under LCL § 5.09C.02.020, 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 Patrol.

### **5.09C.02.020 Special Verdict; Sexual Motivation**

(a) The Tribal Prosecutor may file a special allegation of sexual motivation in any criminal case, other than sex offenses set forth in Sub-Sub-Chapter 5.09C.05 of this Title, when sufficient admissible evidence exists which would justify a finding of sexual motivation by a reasonable and objective fact finder.

(b) In a criminal case wherein there has been a sexual motivation allegation, the Nation shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The Court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had and the jury finds the defendant guilty, the jury shall find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding is not required for sex offenses set forth in Sub-Chapter 5.09C.05 of this Title.

### **Sub-Chapter 5.09C.04 Definitions, Guidance and Defenses**

#### **5.09C.04.010 Definitions**

Any term not specifically defined in this Sub-Chapter shall be given the meaning defined in other sections of Title 5 (Code of Offenses), and if not defined, shall be given its

commonly accepted meaning. The following definitions apply to this Sub-Chapter:

(a) “Abuse of a “Supervisory Position” means a direct or indirect threat or promise to use authority to the detriment or benefit of a minor.

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

(c) “Facility or Institution Primarily Used for the Care, Treatment, or Benefit of Persons Under 18 Years of Age” includes, but are not limited to, licensed day care centers, other child care facilities, youth activity facilities, or other facilities or institutions whose primary work involves contact with persons under the age of eighteen and Lummi Community events held for the benefit of children under the age of eighteen.

(d) “Forcible Compulsion” means physical force which overcomes resistance or a threat, express or implied, that places a person in fear of death or physical harm to himself or another person, animal, or damage to significant personal property, or in fear that he or another person or an animal will be kidnapped.

(e) “Immediate Family Member” means a parent, child, spouse, domestic partner, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin, by blood, marriage or adoption.

(f) “Married” means one who is legally married to another, but does not include a person who is living separate and apart from his spouse and who has filed in an appropriate court for legal separation or for dissolution of his marriage.

(g) “Mental Incapacity” is a certifiable condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse. It is presumed that a victim is considered to be incapable of giving consent if the perpetrator has reason to believe that, due to a developmental disability, the victim has a mental age of less than 16 years.

(h) "Minor" and "Juvenile" means an individual who has not attained the age of 18 years old.

(i) Person with "Supervisory Authority" for purposes of LCL §5.09C.05.020(3) and 5.09C.05.150(b)(3), means any proprietor or employee of any public or private or treatment facility who directly supervises disabled persons.

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

(k) "Reside," "Resides" or "Residence" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.

(l) "School Grounds" means:

(1) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school; or

(2) any area accessible to the public located within one thousand feet (1,000 ft.) of the real property boundary line comprising any such school or any parked automobile or other parked motor vehicle located within one thousand feet (1,000 ft.) of the real property boundary line comprising any such school. For the purposes of this Section an "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

(m) "Sexual Contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party. Sexual contact can be the victim's intimate parts being touched by the accused or the intimate parts of the accused touching the victim. The touching may be made through clothing and without direct contact between the accused and the victim.

(n) "Sexual Intercourse" has its ordinary meaning and occurs upon any penetration, however slight; and

(1) also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished solely for medically recognized treatment or diagnostic purposes; and

(2) also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(o) "Sexual Motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his sexual gratification.

(p) "Sex Offender" means a person convicted of a sex offense.

(q) "Sex Offense" means:

(1) any violation of Sub-Chapter 5.09C.05 of this Chapter;

(2) a criminal solicitation, conspiracy, attempt or accomplice to commit such crimes in Sub-Chapter 5.09C.05 of this Chapter;

(3) a Class A or B offense, as defined in LCL 5.11.015, with a finding of sexual motivation under LCL §5.09C.02.020; or

(4) any federal, state, or tribal conviction for an offense that under the laws of the jurisdiction where the offense occurred is considered a sex offense, with the exception of offenses specifically exempted within this Title.

(r) "Significant Relationship" means a situation in which the perpetrator is:

(1) a person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors; or

(2) a person who in the course of his employment supervises minors.



(s) “Work” and “Employment” includes, but is not limited to:

- (1) services performed as a permanent or temporary employee of another or while self-employed, for any compensation, monetary or otherwise;
- (2) services performed informally for any compensation, monetary or otherwise;
- (3) practical training as part of an educational or vocational course;
- (4) services provided as a volunteer, leader, coach, or other position of authority; and
- (5) services provided under a court order to complete community service.

**5.09C.04.020 Victim Testimony and Evidence**

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

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

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

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

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

(3) if the Court finds that the offer of proof is sufficient, the Court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the Court; and

(4) at the conclusion of the hearing, if the Court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim’s consent; is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant, the Court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the Court.

(d) Nothing in this Section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim’s past sexual behavior, but the Court may require a hearing pursuant to Subsection (c) of this Section concerning such evidence.

### **5.09C.04.030 Evidence of Child**

(a) With the legislative purpose in mind to find the truth while allowing a child protection from trauma to the extent that is constitutionally permitted, the Lummi Tribal Court may adopt state or federal rules of procedure regarding the admissibility of evidence, including, but not limited to, hearsay, video-taped depositions, or testimony by closed-circuit television. The LIBC declares that protection of child witnesses in sexual assault and physical abuse cases is a substantial and compelling interest of the Lummi Nation. Sexual and physical abuse cases are some of the most difficult cases to prosecute, in part because frequently no witnesses exist except the child victim. When abuse is prosecuted, a child victim may suffer serious emotional and mental trauma from exposure to the abuser or from testifying in open court. In rare cases, the child is so traumatized that the child is unable to testify at trial and is unavailable as a witness or the child's ability to communicate in front of the jury or defendant is so reduced that the truth-seeking function of trial is impaired. In other rare cases, the child is able to proceed to trial but suffers long-lasting trauma as a result of testifying in court or in front of the defendant. The creation of procedural devices designed to enhance the truth-seeking process and to shield child victims from the trauma of exposure to the abuser and the courtroom is a compelling tribal interest.

(b) A statement made by a child when under the age of 12 describing any act of sexual contact performed with or on the child by another or describing any attempted act of sexual contact with or on the child by another, or any other act of abuse or neglect against the child, not otherwise admissible by this Code, a statute, Lummi Court Rules, Federal Rules of Evidence (including hearsay exceptions), or any other set of rules agreed to by the parties or designated by the Court, is admissible as evidence in any criminal and civil proceedings, including juvenile offense adjudications, in the courts of the Lummi Nation when:

(1) the Court finds, in a hearing conducted prior to trial, or at a minimum outside the presence of the jury, that the time, content,

and circumstances of the statement provide sufficient indicia of reliability; and

(2) the child either:

(A) testifies at the proceedings; or

(B) is unavailable as a witness; provided, that when the child is unavailable as a witness, such statement may be admitted only if:

(i) there is some corroborative evidence of the act; and

(ii) the party against whom the statement is admitted has had an opportunity to cross-examine the witness.

(c) The defendant shall be given notice of the intent to use these statements no later than 10 days before trial. If defective notice under this Section is provided to the opposing party, the Court shall conduct a hearing to determine whether the opposing party has been prejudiced. If no prejudice is found, such statements may be admitted into evidence. The notice shall include:

(1) a written statement of the content of the child's statement;

(2) the time and place at which the statement was made;

(3) the circumstances surrounding the statement which indicate its reliability; and

(4) such other particulars as may be necessary to provide full disclosure of the statement.

(d) The Court shall make specific findings of fact, on the record, as to the basis for its ruling under this Subsection.

### **5.09C.04.050 Defenses Under this Chapter**

(a) The general defense afforded by LCL §5.10.070(g) requires that for the following defendants, reasonable belief be as indicated:

(1) for a defendant charged with rape of a child in the first degree, that the victim was at least 12, or was less than 24 months younger than the defendant.

(2) for a defendant charged with rape of a child in the second degree, that the victim was at least 14, or was less than 36 months younger than the defendant.

(3) for a defendant charged with rape of a child in the third degree, that the victim was at least 16, or was less than 48 months younger than the defendant.

(4) for a defendant charged with child molestation in the first degree, that the victim was at least 12, or was less than 36 months younger than the defendant.

(5) for a defendant charged with child molestation in the second degree, that the victim was at least 14, or was less than 36 months younger than the defendant.

(6) for a defendant charged with child molestation in the third degree, that the victim was at least 16, or was less than 36 months younger than the defendant.

(7) for a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least 18, or was less than 60 months younger than the defendant.

(b) Voluntary intoxication is not a defense available under this Chapter.

### **Sub-Chapter 5.09C.05 Sexual Offenses**

#### **5.09C.05.010 Rape in the First Degree**

A person is guilty of rape in the first degree when such person knowingly engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

(1) uses or threatens to use a dangerous weapon or what appears to be a dangerous weapon;

(2) kidnaps the victim;

(3) inflicts serious physical harm; or

(4) unlawfully enters into the building or motor vehicle where the victim is situated.

Rape in the First Degree is a class A offense.

#### **5.09C.05.020 Rape in the Second Degree**

A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person knowingly engages in sexual intercourse with another person:

(1) by forcible compulsion;

(2) when the victim is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(3) when the victim is developmentally disabled and the perpetrator is a person who has supervisory authority over the victim.

Rape in the Second Degree is a class A offense.

#### **5.09C.05.030 Rape in the Third Degree**

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

(1) where the victim did not consent as defined in LCL §5.09C.04.010(b), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct; or

(2) where there is threat of substantial unlawful harm to property rights of the victim.

Rape in the Third Degree is a class B offense.

#### **5.09C.05.040 Rape of a Child in the First Degree**

A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than 12 years old and not married to the perpetrator and the perpetrator is at least 24 months older than the victim.

Rape of a Child in the First Degree is a class A offense.

**5.09C.05.050 Rape of a Child in the Second Degree**

A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least 12 years old but less than 14 years old and the perpetrator is at least 36 months older than the victim.

Rape of a Child in the Second Degree is a class A offense.

**5.09C.05.060 Rape of a Child in the Third Degree**

A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least 14 years old but less than 16 years old and not married to the perpetrator and the perpetrator is at least 48 months older than the victim.

Rape of a Child in the Third Degree is a class B offense.

**5.09C.05.070 Child Molestation in the First Degree**

A person is guilty of child molestation in the first degree when the person has sexual contact with another who is less than 12 years old and the perpetrator is at least 36 months older than the victim.

Child Molestation in the First Degree is a class A offense.

**5.09C.05.080 Child Molestation in the Second Degree**

A person is guilty of child molestation in the second degree when the person has sexual contact with another who is at least 12 years old but less than 14 years old and the perpetrator is at least 36 months older than the victim.

Child Molestation in the Second Degree is a class B offense.

**5.09C.05.090 Child Molestation in the Third Degree**

A person is guilty of child molestation in the third degree when the person has sexual contact with another who is at least 14 years old but less than 16 years old and not married to the perpetrator and the perpetrator is at least

48 months older than the victim.

Child Molestation in the Third Degree is a class B offense.

**5.09C.05.100 Sexual Misconduct with a Minor in the First Degree**

A person is guilty of sexual misconduct with a minor in the first degree when the person has sexual intercourse with another person who is at least 16 years old but less than 18 years old and not married to the perpetrator, if the perpetrator is at least 60 months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in sexual intercourse with the victim.

Sexual Misconduct with a Minor in the First Degree is a class B offense.

**5.09C.05.110 Sexual Misconduct with a Minor in the Second Degree**

A person is guilty of sexual misconduct with a minor in the second degree when the person has sexual contact with another person who is at least 16 years old but less than 18 years old and not married to the perpetrator, if the perpetrator is at least 60 months older than the victim, is in a significant relationship to the victim and abuses a supervisory position within that relationship in order to engage in sexual contact with the victim.

Sexual Misconduct with a Minor in the Second Degree is a class C offense.

**5.09C.05.120 Indecent Exposure**

A person is guilty of indecent exposure if:

- (1) a person, with sexual motivation, exposes his genitals, buttocks or female breasts under circumstances in which that person knows or should know that person's conduct is likely to annoy, offend or alarm another person; or
- (2) a person masturbates, even though covered, while observed by a child less than sixteen years old or while observed by any person knowing that such conduct is likely to annoy, offend or alarm another person.

Indecent Exposure is a class C offense.

**5.09C.05.130 Incest in the First Degree**

A person is guilty of incest in the first degree when he engages in sexual intercourse with a person he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother or sister of either whole or half, nephew, or niece. This includes stepchildren and adopted children under 18 years of age.

Incest in the First Degree is a class A offense.

**5.09C.05.140 Incest in the Second Degree**

A person is guilty of incest in the second degree when he engages in sexual contact with a person he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendent, brother or sister of either whole or half. This includes stepchildren and adopted children under age 18.

Incest in the Second Degree is a class B offense.

**5.09C.05.150 Indecent Liberties**

(a) Indecent Liberties. A person is guilty of indecent liberties when he knowingly has sexual contact with another person who is not his spouse without that person’s consent. Indecent Liberties is a class C offense.

(b) Aggravated Indecent Liberties. A person is guilty of aggravated indecent liberties when he knowingly has sexual contact with another:

- (1) by forcible compulsion;
- (2) when the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless; or
- (3) when the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim.

Aggravated Indecent Liberties is a class B offense.

**5.09C.05.160 Patronizing Juvenile Prostitute**

A person is guilty of patronizing a juvenile prostitute when he engages in or agrees or offers to engage in sexual conduct with a minor under 18 years old in return for money

or other compensation.

Patronizing a Juvenile Prostitute is a class A offense when the juvenile prostitute is under 16 years of age. Patronizing a Juvenile Prostitute is a class B offense when the juvenile prostitute is 16 years of age or older.

**5.09C.05.170 Communicating with a Minor for Immoral Purposes**

A person is guilty of communicating with a minor for immoral purposes when he directs communication with a person under 18 years old expressing sexual intent for the purpose of sexual gratification, a type of sexual exploitation.

Communicating with a Minor for Immoral Purposes is a class C offense unless that person has been previously convicted of a felony sexual offense, or any other felony in this jurisdiction. If convicted previously for one of the latter offenses, the offense shall be a class B offense.

**5.09C.05.180 Sexual Exploitation of a Minor**

A person is guilty of sexual exploitation of a minor if the person:

- (1) compels a minor by threat or force to engage in sexually explicit conduct, knowing the conduct will be photographed or part of a live performance;
- (2) aids or causes the minor to engage in sexually explicit conduct, knowing the conduct will be photographed or part of a live performance; or
- (3) being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing the conduct will be photographed or part of a live performance.

Sexual Exploitation of a Minor shall be a class A offense if the victim is less than 16 years old; and shall be a class B offense if the victim is 16 years of age or older, but less than 18 years old.

**5.09C.05.190 Depictions of a Minor Engaged in Sexually Explicit Conduct**

(a) It is unlawful to possess, import, or deal in depictions of a minor engaged in sexually explicit conduct.

(b) Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct. A person is guilty of the offense of dealing in depictions of a minor engaged in sexually explicit conduct if the person possesses with the intent to, or knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, or attempts to finance, any visual or printed matter that depicts a minor engaged in sexually explicit conduct. Dealing in depictions of a minor under 16 years of age engaged in sexually explicit conduct is a class B offense. Dealing in depictions of a minor 16 years of age or older, but less than 18 years of age, is a class C offense.

(c) Importing Depictions of a Minor Engaged in Sexually Explicit Conduct. A person is guilty of the offense of importing depictions of a minor engaged in sexually explicit conduct if the person knowingly sends or causes to be sent, or brings or causes to be brought, into this jurisdiction for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct. Sending or bringing into the Lummi jurisdiction depictions of a minor under 16 years of age engaged in sexually explicit conduct is a class B offense. Sending or bringing into the Lummi jurisdiction depictions of a minor 16 years of age or older, but less than 18 years of age, engaged in sexually explicit conduct is a class C offense.

(d) Possessing Depictions of a Minor Engaged in Sexually Explicit Conduct. A person is guilty of the offense of possessing depictions of a minor engaged in sexually explicit conduct if the person knowingly possesses visual or printed matter depicting a minor under 16 years old engaged in sexually explicit conduct. Possessing Depictions of a Minor Engaged in Sexually Explicit Conduct is a class C offense.

**5.09C.05.200 Failure to Register as a Sex Offender**

(a) A person who fails to register as required by Sub-Chapter 5.09C.06 of this Chapter is

guilty of:

(1) a class B offense if the crime for which the individual was adjudicated was a class A offense or would be a class A offense if committed in this jurisdiction; or

(2) a class C offense if the crime for which the individual was adjudicated was a class B offense, a class C offense, or is a sex offense in another jurisdiction but is not described in Chapter 5.09C of this Title.

(b) An arrest on charges of failure to register, service of information, or a complaint for a violation of this Section, or arraignment on charges for a violation of this Section, constitutes actual notice of the duty to register. A person charged with the crime of Failure to Register under this Section who asserts as a defense the lack of notice of the duty to register shall register within 24 hours of receiving a citation or charging document (if not incarcerated), or within 24 hours of being released from incarceration. Failure to register constitutes grounds for filing another charge of failing to register. Registration following arrest, service, or arraignment on charges shall not relieve the offender from civil or criminal liability for failure to register prior to the filing of the original charge.

**5.09C.05.210 Prohibited Employment of Sex Offenders**

(a) Prohibited Employment of Sex Offender. No sex offender may knowingly work on any school grounds or any other facility or institution primarily used for the care, treatment, or benefit of persons under 18 years of age. A person who violates this Subsection shall be guilty of prohibited employment of sex offenders. Prohibited Employment of Sex Offenders is a class D offense.

(b) It is not a defense to Subsection (a) of this Section that the sex offender did not have actual contact with a child under 18 years of age. Work performed, in any capacity, on any school grounds, or any other facility or institution primarily used for the care, treatment, or benefit of persons under 18 years of age, is a violation of this Section.

**5.09C.05.220 Employer Liability for Employing Sex Offender**

(a) Civil Employer Liability. Any employer who employs a sex offender to work on any school grounds or any other facility or institution primarily used for the care, treatment, or benefit of persons under 18 years of age within the exterior boundaries of the Lummi Reservation and trust lands has committed a civil infraction with a civil penalty not to exceed \$5,000.

(b) Any fine imposed by the Court for violation of this Section shall be deposited into a crime victim compensation fund to support Lummi Victims of Crime and its clients.

(c) Title 3 of this Code shall govern any proceeding for a violation of this Section.

(d) It is a defense to this Section that the employer conducted a FBI background check, or its equivalent, and a Lummi background check and no registerable sex offense was discovered.

**5.09C.05.230 Prohibited Areas for Sex Offenders**

(a) Prohibited Entrance. No sex offender shall knowingly enter into, be upon, or remain on any school grounds, or any other facility or institution primarily used for the care, treatment, or benefit of persons under 18 years of age while one or more of such persons under 18 years of age are present, except as provided in Subsection (c) of this Section. No sex offender shall stand, sit idly, whether or not the person is in a motor vehicle, or remain within five hundred feet (500 ft.) of any school grounds or any other facility or institution primarily used for the care, treatment, or benefit of persons under 18 years of age while one or more of such persons under 18 years of age are present, except as provided in Subsection (c) of this Section.

(b) Entrance into Prohibited Areas for Sex Offenders. A person who violates Subsection (a) of this Section shall be guilty of entrance into prohibited areas for sex offenders. Entrance into Prohibited Areas for Sex Offenders is a class D offense.

(c) In accordance with any court order prohibiting a sex offender to have contact with

children, when a sex offender is a registered student, participant, contractor, or employee of such facility or institution or has an immediate family member enrolled in such facility or institution, such sex offender may, with written authorization of the Court and the superintendent or chief administrator of such facility, institution or grounds, enter such facility, institution or grounds for the limited purposes authorized. As part of such authorization, the superintendent or chief administrator may require that such sex offender be escorted at all times by an employee of such facility or institution as designated by the superintendent or chief administrator.

(d) Residential Restrictions.

(1) No sex offender shall knowingly establish a primary or secondary residence or any other living accommodation, within one thousand feet (1,000 ft.) of the property line of any school grounds, or any other facility or institution primarily used for the care, treatment or benefit of persons under 18 years of age, public park, playground, recreation center or public athletic field available for use by the general public.

(2) No sex offender shall knowingly reside within one thousand feet (1,000 ft.) of the property line on which the offender's former victim(s) reside.

(3) No sex offender whose victim(s) was a minor shall knowingly reside with a minor. Notwithstanding this Subsection, the offender may reside with a minor, if the offender is the parent or legal guardian of the minor, unless one of the following conditions applies:

(i) the offender's parental rights have been or are in the process of being terminated as provided by law; or

(ii) any minor or adult child of the offender was a victim of a sexual offense committed by the offender.

(e) Prohibited Residence of Sex Offenders. A person who violates Subsection (d) of this Section shall be guilty of prohibited residence of sex offenders. Prohibited Residence of Sex Offenders is a class D offense.

**Sub-Chapter 5.09C.06 Sex Offender  
Registration and Notification**

**5.09C.06.005 Findings and Intent**

(a) The Lummi Nation finds that sex offender registration has assisted law enforcement agencies in protecting their communities. The Lummi Nation finds that sex offenders often pose a high risk of re-offense, and that law enforcement efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, the Lummi Nation's policy is to assist local law enforcement agencies' efforts to protect all communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in this Sub-Chapter.

(b) The intent of this Sub-Chapter is to implement, or exceed, the national standards of the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248, 42 USC §16901 et seq) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

**5.09C.06.010 Creation of Registries**

(a) Sex Offender Registry. There is hereby established a sex offender registry program, the Lummi Nation Sex Offender Registry, which the Lummi Nation Police Department shall maintain and operate pursuant to the provisions of this Sub-Chapter, as amended.

(b) Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, the "Lummi Nation Sex Offender Registry Website, which the Lummi Nation Police Department shall maintain and operate pursuant to the provisions of this Sub-Chapter, as amended.

**5.09C.06.020 Rules and Regulations**

The Lummi Nation Police Department shall have the authority to implement rules and regulations necessary for enforcing and carrying out the requirements of this Sub-

Chapter. These rules and regulations shall ensure that the policies and protocols by which registration requirements are implemented protect public safety, protect the rights of registrants and create efficient administration of this Sub-Chapter's requirements.

**5.09C.06.030 Definitions**

Any term not specifically defined in this Sub-Chapter shall be given the meaning defined in other sections of Title 5 (Code of Offenses), and if not defined, shall be given its commonly accepted meaning. The following definitions apply to this Sub-Chapter:

(a) "Convicted" and "Conviction" including any solicitation, conspiracy, attempt or accomplice to commit, shall mean:

(1) an adult sex offender is "convicted" for the purposes of this Sub-Chapter if the adult sex offender has been subject to the penal consequences based on the conviction, however the conviction may be styled; and

(2) a juvenile offender is "convicted" for purposes of this Sub-Chapter if the juvenile sex offender is either:

(A) prosecuted and found guilty as an adult for a sex offense; or

(B) is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in (a) or (b) of 18 U.S.C. §2241, or was an attempt or conspiracy to commit such an offense.

(b) "Dru Sjodin National Sex Offender Public Website" (NSOPW) means the public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16920.

(c) "FBI" means the Federal Bureau of Investigation.

(d) "Foreign Conviction" means a conviction obtained outside the United States.

(e) "Immediate" and "Immediately" means within three business days.



(f) “Imprisonment” means incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state “prison” as well as in federal, military, foreign, BIA, private or contract facility, and local or tribal “jail.” Persons under “house arrest,” including but not limited to, “electronic home monitoring,” and “global positioning system monitoring,” following conviction of a registerable sex offense are required to register pursuant to the provisions and timeframes of this Sub-Chapter during their period of “house arrest.”

(g) “Minor” and “Juvenile” has the same meaning as LCL 5.09C.04.010(h).

(h) “NCIC” means the National Crime Information Center, the national computerized database maintained by the FBI.

(i) “NSOR” means the National Sex Offender Registry, the national database maintained by the FBI pursuant to 42 U.S.C. §16919.

(j) “Registerable Sex Offense” is any offense listed in LCL 5.09C.06.050.

(k) “Reside,” “Resides,” and “Residence” have the same meaning as LCL 5.09C.04.010(k).

(l) “Sexual Act” means:

(1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

(2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(4) the intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(m) “Sexual Contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

(n) “Sex Offender” means any person convicted of a registerable sex offense.

(o) “SORNA Jurisdiction” and “Jurisdiction” refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian Tribe that elects to function as a SORNA registration and notification jurisdiction pursuant to PL 109-248 Section 127 (42 US §16972).

(p) “Student” means a person enrolled in or attending either a private or public education institution, including secondary school, trade or professional school, or an institution of higher education, including volunteers, interns, externs, and apprentices.

(q) “Transient” and “Homeless” means a condition where an individual lacks a residence and may live or sleep at a supervised, publicly or privately operated shelter designed to provide temporary living accommodations, a public or private place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings, or a private residence where the individual stays as a transient invitee.

(r) “Work,” and “Employment,” have the same meaning as LCL 5.09C.04.010(s).

#### **5.09C.06.040 Individuals Required to Register**

Any person who resides, attends school, or works within the exterior boundaries of the Lummi Reservation or on any property owned by the tribe held in fee or trust regardless of location, that has been convicted of any registerable sex offense is subject to the registration requirements of this Sub-Chapter.

### **5.09C.06.050 Registerable Sex Offenses**

A conviction for any of the following offenses or to any solicitation, conspiracy, attempt or accomplice to commit any of the following offenses, are subject to the registration requirements of this Sub-Chapter:

(a) Violations of the Lummi Code of Laws. A conviction for any sex offense, as defined in LCL 5.09C.04.010(q), as it now exists or is hereafter amended.

(b) Violations of Federal Law. A conviction, for or a conviction for an attempt or conspiracy to commit any of the following, and any other offense hereafter included in the definition of “sex offense” at 42 U.S.C. §16911(5): Including any offense prosecuted under the Assimilative Crimes Act (18 U.S.C. §1152 or §1153):

- (1) 18 U.S.C. §1591 (sex trafficking of children);
- (2) 18 U.S.C. §1801 (video voyeurism of minor);
- (3) 18 U.S.C. §2241 (aggravated sexual abuse);
- (4) 18 U.S.C. §2242 (sexual abuse);
- (5) 18 U.S.C. §2243 (sexual abuse of a minor or ward);
- (6) 18 U.S.C. §2244 (abusive sexual contact);
- (7) 18 U.S.C. §2245 (offenses resulting in death);
- (8) 18 U.S.C. §2251 (sexual exploitation of children);
- (9) 18 U.S.C. §2251A (selling or buying of children);
- (10) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor);
- (11) 18 U.S.C. §2252A (material containing child pornography);
- (12) 18 U.S.C. §2252B (misleading domain names on the internet);
- (13) 18 U.S.C. §2252C (misleading words or digital images on the internet);

(14) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States);

(15) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity);

(16) 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity);

(17) 18 U.S.C. §2423 (transportation of minors for illegal sexually activity, travel with the intent to engage in illicit sexual conduct with a minor, engaging in illicit sexual conduct in foreign places);

(18) 18 U.S.C. §2424 (failure to file factual statement about an alien individual); and

(19) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

(c) Foreign Offenses. Any conviction for a sex offense involving any conduct listed in this Title that was obtained under the laws of any federally recognized Indian tribe or Native Village, Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country for which the United States Department of State has concluded in its “Country Reports on Human Rights Practices” that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

(d) Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951).

(e) Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in sections (a) and (b) of 18 U.S.C. §2241) and committed by a minor who is 14 years of age or older at the time of the offense, including an adult who is subsequently prosecuted for such sex offense committed while 14 years or age or older. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

(f) Any Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including the Lummi Nation, that involves:

- (1) any type or degree of genital, oral or anal penetration;
- (2) any sexual touching of or contact with a person's body, either directly or through the clothing;
- (3) kidnapping of a minor;
- (4) false imprisonment of minor;
- (5) solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement minor to engage in sexual contact;
- (6) use of minor in a sexual performance;
- (7) solicitation of a minor to practice prostitution;
- (8) possession, production or distribution of child pornography;
- (9) criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense;
- (10) any conduct that by its nature is a sex offense against a minor; or
- (11) any offense similar to those outlined in:
  - (A) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion);
  - (B) 18 U.S.C. §1801 (video voyeurism of a minor);
  - (C) 18 U.S.C. §2241 (aggravated sexual abuse);
  - (D) 18 U.S.C. §2242 (sexual abuse);
  - (E) 18 U.S.C. §2244 (abusive sexual contact);
  - (F) 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution); or
  - (G) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

(g) Registration Exemption. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense or if the victim was at least thirteen years old and the offender was not more than four years older than the victim.

#### **5.09C.06.060 Conviction-Based Sex Offender Level Ratings**

All sex offenders required to register under this Sub-Chapter will be assigned a minimum rating (Level 1, 2 or 3) based on their sex offense conviction(s) in jurisdictions whose judgments are recognized under this Sub-Chapter. The Lummi Nation Police Department shall evaluate convictions and assign minimum rating levels. Under the procedures of the Rating Elevation Committee, LCL §5.09C.06.070, a sex offender's rating may be raised, but not lowered. The minimum ratings based on conviction are as follows:

(a) Level 1. Level 1 represents the lowest level of threat to the community and includes the following offenses:

(1) Lummi Tribal Offenses. Convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any offense classified as Class C under Sub-Chapter 5.09C.05 of this Title, and any other federal, state or tribal jurisdictions recognized by this Title that involve analogous conduct and where under the laws of that jurisdiction the offense is considered a sex offense, including:

- (A) LCL §5.09C.05.110 (sexual misconduct with a minor in the second degree);
- (B) LCL §5.09C.05.120 (indecent exposure);
- (C) LCL §5.09C.05.150(a) (indecent liberties);
- (D) LCL §5.09C.05.170 (communicating with a minor for immoral purposes);

(E) LCL §5.09C.05.190(b) (dealing in depictions of a minor engaged in sexually explicit conduct – victim is at least 16 years old but less than 18 years old);

(F) LCL §5.09C.05.190(c) (importing depictions of a minor engaged in sexually explicit conduct – victim is at least 16 years old but less than 18 years old);

(G) LCL §5.09C.05.190(d) (possessing depictions of a minor engaged in sexually explicit conduct);

(H) LCL §5.09C.05.200(a)(2) (failure to register as a sex offender – predicate offense was a Class B or C, or a sex offense in another jurisdiction);

(2) Convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any sex offense for which a person has been convicted that is not a Level 2 or Level 3 offense under this Sub-Chapter.

(3) Convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any offense involving the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography, in any jurisdiction, local government, or qualifying foreign country pursuant to LCL §5.09C.06.050(c).

(4) Federal Offenses. Convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any of the following federal offenses or offenses from other jurisdictions recognized by this Title that involve analogous conduct:

(A) 18 U.S.C. §1801 (video voyeurism of a minor);

(B) 18 U.S.C. §2252 (receipt or possession of child pornography);

(C) 18 U.S.C. §2252A (receipt or possession of child pornography);

(D) 18 U.S.C. §2252B (misleading domain names on the internet);

(E) 18 U.S.C. §2252C (misleading words or digital images on the internet);

(F) 18 U.S.C. §2422(a) (coercion to engage in prostitution);

(G) 18 U.S.C. §2423(b) (travel with the intent to engage in illicit conduct);

(H) 18 U.S.C. §2423(c) (engaging in illicit conduct in foreign places);

(I) 18 U.S.C. §2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain);

(J) 18 U.S.C. §2424 (failure to file factual statement about an alien individual); and

(K) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

(5) Military Offenses. Convictions for certain military offenses specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of the Public Law 105-119 (codified at 10 U.S.C. §951) that are similar to those outlined above as Level 1 offenses.

(b) Level 2. Level 2 represents the intermediate level of threat to the community and includes the following offenses:

(1) Lummi Tribal Offenses. Convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any offense classified as Class B under Sub-Chapter 5.09C.05 of this Title and any other federal, state or tribal jurisdictions recognized by this Title that involve analogous conduct and where under the laws of that jurisdiction the offense is considered a sex offense, including:

(A) LCL §5.09C.05.030 (rape in the third degree);

(B) LCL §5.09C.05.060 (rape of a child in the third degree);

(C) LCL §5.09C.05.080 (child molestation in the second degree);

(D) LCL §5.09C.05.090 (child molestation in the third degree);

(E) LCL §5.09C.05.100 (sexual misconduct with a minor in the first degree);

(F) LCL §5.09C.05.140 (incest in the second degree);

(G) LCL §5.09C.05.150(b) (indecent liberties – aggravated);

(H) LCL §5.09C.05.160 (patronizing a juvenile prostitute - victim is at least 16 years old but less than 18 years old);

(I) LCL §5.09C.05.170 (communicating with a minor for immoral purposes – offender has been convicted of a felony sexual offense or any other felony within the jurisdiction of the Lummi Nation);

(J) LCL §5.09C.05.180 (sexual exploitation of a minor - victim is at least 16 years old but less than 18 years old);

(K) LCL §5.09C.05.190(b) (dealing in depictions of a minor engaged in sexually explicit conduct – victim under 16 years old);

(L) LCL §5.09C.05.190(c) (importing depictions of a minor engaged in sexually explicit conduct – victim under 16 years old); and

(M) LCL §5.09C.05.200(a)(1) (failure to register as a sex offender – predicate offense was Class A).

(2) Class B Sexual Motivation Conviction. Convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any Class B offense under Title 5 (Code of Offenses) containing a finding of sexual motivation under LCL §5.09C.02.020, including:

(A) LCL §5.01.010(a) (assault in the first degree);

(B) LCL §5.01.020(b) (assault and battery in the second degree);

(C) LCL §5.01.030(b) (unlawful imprisonment – aggravated);

(D) LCL §5.01.060(b) (intentional endangerment);

(E) LCL §5.01.070(b) (stalking – aggravated);

(F) LCL §5.02.085(b) (residential burglary);

(G) LCL §5.03.030(a)(1) (intentionally harming a law enforcement animal);

(H) LCL §5.04.040(c) (promoting prostitution – aggravated);

(I) LCL §5.04.085 (unlawful possession of firearms);

(J) LCL §5.07.010 (bribery);

(K) LCL §5.07.045 (disarming a law enforcement officer);

(L) LCL §5.07.060 (escape);

(M) LCL §5.07.070(b) (violation of a no contact order);

(N) LCL §5.07.080 (embezzlement from the tribe);

(O) LCL §5.09A.110(b)(1) (delivery of an illegal substance);

(P) LCL §5.09A.110(e)(2) (possession of paraphernalia – aggravated);

(3) Prior Sex Offense Conviction. Unless otherwise defined as a Level 3 offense, convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any sex offense that is punishable by more than one year in jail where the offender has at least one prior sex offense conviction arising from a separate set of facts and circumstances. If the subsequent conviction is from a tribal court, an offense shall be treated as if it is punishable by more than one year in jail if a substantially similar Washington State or federal offense is punishable by more than one year imprisonment.

(4) Offenses Involving Minors. Convictions for any sex offense against a minor for which a person has been convicted, including any solicitation, conspiracy, attempt or accomplice to commit, for any conduct involving the following:

(A) The use of minors in prostitution, including solicitations;

(B) Enticing a minor to engage in criminal sexual activity;

(C) A non-forcible sexual act with a minor 16 or 17 years old;

(D) Sexual contact with a minor 13 years of age or older, whether direct or through the clothing, that involves the intimate parts of the body;

(E) The use of a minor in a sexual performance; and

(F) Production or distribution of child pornography.

(5) Federal Offenses. Convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any of the following federal offenses or offenses from other jurisdictions recognized by this Title that involve analogous conduct:

(A) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion);

(B) 18 U.S.C. §2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain);

(C) 18 U.S.C. §2244 (abusive sexual contact where the victim is 13 years of age or older);

(D) 18 U.S.C. §2251 (sexual exploitation of children);

(E) 18 U.S.C. §2251A (selling or buying of children);

(F) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor);

(G) 18 U.S.C. §2252A (production or distribution of material containing child pornography);

(H) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States);

(I) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity);

(J) 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution); and

(K) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

(6) Military Offenses. Convictions for any military offenses specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of

the Public Law 105-119 (codified at 10 U.S.C. §951) that are similar to those outlined above as Level 2 offenses.

(c) Level 3. Level 3 represents the highest level of threat to the community and includes the following offenses:

(1) Lummi Tribal Offenses. Convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any offense classified as Class A offenses under Sub-Chapter 5.09C.05 of this Title and any other federal, state or tribal jurisdictions recognized by this Title that involve analogous conduct and where under the laws of that jurisdiction the offense is considered a sex offense, including:

(A) LCL §5.09C.05.010 (rape in the first degree);

(B) LCL §5.09C.05.020 (rape in the second degree);

(C) LCL §5.09C.05.040 (rape of a child in the first degree);

(D) LCL §5.09C.05.050 (rape of a child in the second degree);

(E) LCL §5.09C.05.070 (child molestation in the first degree);

(F) LCL §5.09C.05.130 (incest in the first degree);

(G) LCL §5.09C.05.160 (patronizing a juvenile prostitute – juvenile under 16 years old);

(H) LCL §5.09C.05.180 (sexual exploitation of a minor – victim is under 16 years old);

(2) Class A Sexual Motivation Conviction. Convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any Class A offense under Title 5 (Code of Offenses) containing a finding of sexual motivation under LCL 5.09C.02.020, including:

(A) LCL §5.01.020(a) (assault and battery in the first degree);

(B) LCL §5.01.025 (robbery);

(C) LCL 5.02.095(b) (arson – aggravated);

(D) LCL §5.09A.110(a) (manufacture of an illegal substance);

(E) LCL §5.09A.110(b)(2) (delivery of an illegal substance – aggravated);

(F) LCL §5.09A.110(c) (possession of an illegal substance with intent to deliver); and

(G) LCL §5.09A.110(d)(4) (possession of illegal substance – over 25 grams).

(3) **Prior Sex Offense Conviction.** Convictions, including any solicitation, conspiracy, attempt or accomplice to commit, for any sex offense that is punishable by more than one year in jail where the offender has at least one prior Level 2 sex offense conviction arising from a separate set of facts and circumstances or has previously become a Level 2 offender.

(4) **General Offenses.** Convictions, including but not limited to any solicitation, conspiracy, attempt or accomplice to commit, for any conduct involving the following:

(A) Non-parental kidnapping of a minor;

(B) A sexual act with another by force or threat;

(C) A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate; and

(D) Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

(5) **Federal Offenses.** Convictions, including but not limited to any solicitation, conspiracy, attempt or accomplice to commit, for any of the following federal offenses or offenses from other jurisdictions recognized by this Title that involve analogous conduct:

(A) 18 U.S.C. §2241(aggravated sexual abuse);

(B) 18 U.S.C. §2242 (sexual abuse);

(C) 18 U.S.C. §2243 (sexual abuse of a minor or ward); and

(D) 18 U.S.C. §2244 (abusive sexual contact where the victim is 12 years of age or younger).

(6) **Military Offenses.** Convictions for any military offenses specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of the Public Law 105-119 (codified at 10 U.S.C. §951) that are similar to those outlined above as Level 3 offenses.

#### **5.09C.06.070 Rating Elevation Committee**

(a) The Rating Elevation Committee shall be comprised of:

(1) the Chief and a Detective of the Lummi Nation Police Department;

(2) an Adult Probation Officer of the Lummi Probation Department;

(3) the Coordinator of the Lummi Victims of Crime Office;

(4) the Director of the Lummi Tribal Health Center,

(5) the Director of Lummi Children's Services,

(6) the Chair of the Law and Justice Commission; and

(7) a councilmember of the LIBC selected by the Council.

(b) The purpose of the Committee is to review the minimum rating of all sex offenders and determine if the minimum rating should be elevated based on the threat they present to the community and to direct the Lummi Nation Police Department to provide additional sex offender notifications to the community pursuant to LCL §5.09C.06.180(c).

(c) The Chief of the Lummi Nation Police Department shall call Committee meetings on a regular basis and provide notice to all committee members. Committee members may not participate in any determination where they cannot be impartial or when the member is directly related to the sex offender as that term is defined in LCL §29.01.020(b)(1).

(d) After a sex offender's minimum rating has been established by the Lummi Nation Police Department pursuant to LCL §5.09C.06.060, the sex offender's history shall be examined by a Committee. Factors to be reviewed and considered by the Committee shall include:

- (1) the nature and seriousness of the sex offense(s) committed;
- (2) whether the offender admitted guilt for the offense or was convicted by judge or jury;
- (3) the relationship of the sex offender to the victim(s);
- (4) any progress made by the sex offender in rehabilitative treatment, including, but not limited to, diagnostic evaluations, treatment recommendations, and compliance reports made by a an appropriate sex offender treatment program certified by the Lummi Nation, another jurisdiction or by the Attorney General of the United States;
- (5) the likelihood of and the degree of unsupervised exposure to potential victims as a result of the sex offender's family or employment circumstances; and
- (6) any other factors which reasonably relate to the likelihood of recidivism.

(e) The Committee shall document their determination of whether to elevate a sex offender's minimum rating and include their rationale based on the factors set forth in subsection (d) above. This document shall be put in writing and placed in the sex offender's registration file.

#### **5.09C.06.080 Sex Offender Registration Requirements**

(a) Duties. A sex offender who is required to register with the Lummi Nation pursuant to this Sub-Chapter shall provide all of the information detailed in this section to the Lummi Nation Police Department. The Lummi Nation Police Department shall obtain all of the information detailed in this section from sex offenders required to register with the Lummi Nation in accordance with this Sub-Chapter and ensure that all sex offenders who are required to register pursuant to this Sub-Chapter are registered.

(b) Digitization. All information collected by the Lummi Nation Police Department shall be digitized and maintained in a digitized format.

(c) Electronic Database. A sex offender registry shall be maintained in an electronic database by the Lummi Nation Police Department and shall be in a form capable of electronic transmission.

(d) Information To Be Obtained. The Lummi Nation Police Department shall obtain, and the sex offender shall provide, the following information:

(1) Criminal History.

- (A) the date of all arrests in any jurisdiction;
- (B) the date of all convictions in any jurisdiction;
- (C) the text of each provision of law defining the criminal offense for which the sex offender is registered;
- (D) the sex offender's status on parole, probation or any other form of supervised release;
- (E) the sex offender's registration status; and
- (F) any outstanding arrest warrants or orders to appear in court.

(2) Date of Birth.

- (A) the sex offender's actual date of birth; and
- (B) any other date of birth used by the sex offender.

(3) DNA Sample.

- (A) if the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Lummi Nation Police Department or their designee a sample of his DNA; and
- (B) any DNA sample collected under this Sub-Chapter shall be submitted to the FBI Laboratory for submission in CODIS, in accordance with the rules and instructions for submission by the laboratory.



(4) Driver's Licenses, Identification Cards, Passports and Immigration Documents.

(A) all driver's licenses, identification cards (including tribal identification cards), passports and immigration documents issued by any jurisdiction in the possession of the sex offender (whether valid or not);

(B) the Lummi Nation Police Department shall make a photocopy of any such licenses, cards or documents listed in subsection (A) above.

(5) Employment Information. Any and all places where the sex offender is employed in any means including volunteer and unpaid positions to include:

(A) the name of the employer;

(B) the address of the employer; and

(C) similar information related to any transient or day labor employment by the sex offender.

(6) Finger and Palm Prints.

(A) finger and palm prints of the sex offender; and

(B) finger prints collected under this Chapter must be submitted to Integrated Automated Fingerprint Identification System (IAFIS) and palm prints must be submitted the FBI Next Generation Identification Program.

(7) Internet Identifiers.

(A) any and all e-mail addresses used by the sex offender;

(B) any and all instant message addresses and identifiers; and

(C) any and all other designations or monikers used by the sex offender for routing or self-identification in internet communications or postings, including but not limited to social network identifications, blog accounts, twitter accounts, and video or photograph posting site identifications.

(8) Name.

(A) full primary given name;

(B) any and all nicknames, aliases and pseudonyms regardless of the context in which they are used; and

(C) any and all ethnic or tribal names by which the offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

(9) Phone Numbers.

(A) any and all land line telephone numbers;

(B) any and all cellular or internet based telephone numbers; and

(C) Any and all Voice over IP (VOIP) telephone numbers; and

(D) any and all designations used by the sex offender for routing or self-identification in telephonic communication.

(10) Photograph.

(A) a digital photograph.

(11) Physical Description.

(A) an accurate physical description;

(B) a general description of the sex offender's physical appearance and characteristics; and

(C) any identifying marks, such as, but not limited to scars, moles, birthmarks, tattoos or piercings.

(12) Professional Licenses.

(A) all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

(13) Residential Address.

(A) the physical address of each residence at which the sex offender resides or will reside; and

(B) any location or description of a location at which the sex offender habitually resides regardless of whether is has a physical address or location otherwise identifiable by a street or address.

(14) School.

(A) the name and address of each school where the sex offender is or will be a student.

(15) Social Security Number.

(A) a valid social security number for the sex offender; and

(B) any social security number the sex offender has used in the past, valid or otherwise.

(16) Temporary Address. When the sex offender will be absent from his residence for more than three (3) consecutive days:

(A) identifying information of the temporary lodging locations including addresses and names; and

(B) the dates the sex offender will be staying at each temporary lodging location.

(17) Travel. When the sex offender intends to travel outside of the United States:

(A) identifying information of the lodging locations outside the United States including addresses and names; and

(B) the dates the sex offender will be staying at each lodging location outside the United States.

(18) Vehicle Information. Identifying information for all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

(A) license plate numbers;

(B) registration numbers or identifiers;

(C) general description of the vehicle to include make, model, color, year and any distinguishing features of the vehicle; and

(D) any permanent, frequent or common location where the vehicle is kept.

**5.09C.06.090 In-Person Reporting Required**

(a) Initial Registration. All sex offenders required to initially register, pursuant to LCL §5.09C.06.130 and LCL §5.09C.06.140, shall report in-person to the Lummi Nation Police Department.

(b) Regular Registration Updates – Minimum Frequency. All sex offenders required to register pursuant to this Sub-Chapter shall, at a minimum, report in-person to the Lummi Nation Police Department in accordance with the following time frames:

(1) Level 1 Offenders: at least once every 12 months for a minimum of 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense;

(2) Level 2 Offenders: at least once every 180 days for a minimum of 25 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense; and

(3) Level 3 Offenders: at least once every 90 days for the rest of their lives.

(4) The duty to register does not automatically terminate at the expiration of the time frames set forth in subsections (1) – (3) above. The duty to register only ends upon order of the Lummi Tribal Court pursuant to the requirements of LCL §5.09C.06.120.

(c) Transient Sex Offenders. In addition to the time frames set forth in section (a) above, all sex offenders who are transient or homeless shall check-in and update their information, by telephone or in-person, with the Lummi Nation Police Department at least one time per week while homeless and shall immediately report in-person to the Lummi Nation Police Department to update their registration information if they establish a residence.

(d) Substantial Changes to Registration Information. All sex offenders required to register pursuant to this Sub-Chapter shall immediately report in-person to notify the Lummi Nation Police Department of any changes to the following registration information of the offender:

- (1) name;
- (2) residence;
- (3) employment;
- (4) school attendance;
- (5) termination of residence, school or employment; or
- (6) substantial change to the sex offender's physical appearance.

(e) Temporary Lodging and International Travel. All sex offenders required to register pursuant to this Sub-Chapter shall report in-person to the Lummi Nation Police Department, to provide all registration information for temporary lodging and international travel. The offender shall report no later than:

- (1) three business days before any scheduled temporary lodging absence; and
- (2) 21 days before any scheduled travel outside of the United States.

#### **5.09C.06.100 Requirements for In-Person Reporting**

(a) Whenever a sex offender is required to report in-person to the Lummi Nation Police Department, as set forth in LCL §5.09C.06.090, the following shall occur:

- (1) **Business Hours.** All in-person reporting shall occur during the regular business hours of the Lummi Nation Police Department;
- (2) **Photographs.** All sex offenders shall permit the Lummi Nation Police Department to take their photograph at each in-person reporting;
- (3) **Review of Information.** All sex offenders shall review existing registration information for accuracy at each in-person reporting; and

(4) **Notification.** If any new information or change in information is obtained at an in-person reporting, the Lummi Nation Police Department shall immediately:

- (A) notify all jurisdictions in which the sex offender is required to register, or was required to register prior to the updated information being given, of the updated information;
- (B) notify all jurisdictions where the sex offender intends to use temporary lodging;
- (C) notify the U.S. Marshal Service of the sex offender's intent to travel outside the United States;
- (D) update the Lummi Nation Sex Offender Registry website, if applicable; and
- (E) update information on NCIC/NSOR.

#### **5.09C.06.110 When In-Person Reporting Not Required**

Unless otherwise required to appear in person, as set forth in LCL §5.09C.06.090, all sex offenders shall immediately report any other changes to registration information collected, by telephone or in person to the Lummi Nation Police Department. The Lummi Nation Police Department shall provide notifications in accordance with LCL §5.09C.06.100(4).

#### **5.09C.06.120 Termination of Duty to Register**

(a) Sex Offenders may petition the Lummi Tribal Court to terminate the duty to register in accordance with the following time frames:

- (1) Level 1 sex offenders may petition the Court only after a minimum of 15 years has elapsed from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense;

(2) Level 2 sex offenders may petition the Court only after a minimum of 25 years has elapsed from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense; and

(3) Level 3 sex offenders may never petition the Court to terminate the duty to register except after a minimum of 25 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense if the sex offender was adjudicated delinquent of an offense as a juvenile that required Level 3 registration and he has maintained a clean record for 25 consecutive years.

(b) Clean Record. Such petition shall only be granted by the Court upon a showing by the sex offender by clear and convincing evidence that the sex offender has maintained a clean record. A sex offender has a clean record if, at the time the petition is filed and the time the Court grants the petition, the sex offender has:

(1) successfully complied with all recommendations of an appropriate sex offender treatment program certified by the Lummi Nation, another jurisdiction or by the Attorney General of the United States;

(2) successfully passed a polygraph examination arranged through the Lummi Nation Police Department immediately prior to the filing of the petition to assure that there have been no additional victims;

(3) successfully (without revocation) completed all terms of probation, parole or supervised release;

(4) had no new convictions in any jurisdiction for any felony, sex offense, or any offense for which imprisonment for more than 1 year may be imposed; and

(5) no pending sex offense charges in any jurisdiction.

(c) Unless relieved of the duty to register pursuant to this section, a violation of this Sub-Chapter is an ongoing offense for purposes of the statute of limitations.

(d) Nothing in the totality of Title 5 of this Code relating to discharge of an offender shall be construed as operating to relieve the offender of his duty to register pursuant to this Sub-Chapter.

### **5.09C.06.130 Where Registration is Required**

(a) Jurisdiction of Conviction. A sex offender must initially register with the Lummi Nation Police Department if the sex offender was convicted by the Lummi Tribal Court of a registerable sex offense regardless of the sex offender's actual or intended residency.

(b) Jurisdiction of Incarceration. A sex offender must register with the Lummi Nation Police Department if the sex offender is incarcerated by the Lummi Nation while completing any sentence for a registerable sex offense regardless of whether it is the same jurisdiction as the jurisdiction of the conviction or residence.

(c) Jurisdiction of Residence. A sex offender must register with the Lummi Nation Police Department if the sex offender resides within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location.

(d) Jurisdiction of Employment. A sex offender must register with the Lummi Nation Police Department if he is employed by the tribe in any capacity or otherwise is employed within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location.

(e) Jurisdiction of School Attendance. A sex offender must register with the Lummi Nation Police Department if the sex offender is a student in any capacity within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location.

**5.09C.06.140 Initial Registration Timing and Duties**

(a) Timing. Sex offenders required to register pursuant to this Sub-Chapter must initially register in-person with the Lummi Nation Police Department within the following timeframe:

- (1) If convicted in the Lummi Tribal Court for a registerable sex offense and incarcerated, the sex offender must register before being released from incarceration;
- (2) If convicted in the Lummi Tribal Court for a registerable sex offense but not incarcerated, the sex offender must register immediately upon conviction;
- (3) When an offender is convicted and/or sentenced in another state, territory, tribe or country, or in a federal or military court, and chooses to reside, work, or attend school within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location, the sex offender must register immediately upon establishing such place of residence, work, or school; or
- (4) within 24 hours of the third consecutive day the sex offender is within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location.

(b) Duties of the Lummi Nation Police Department. The Lummi Nation Police Department shall have policies and procedures in place to ensure the following:

- (1) That sex offenders incarcerated or sentenced by the Lummi Tribal Court for a registerable sex offense completes their initial registration with the Lummi Nation;
- (2) That sex offenders are informed and explained their registration duties and read, or have read to them, and sign a Sex Offender Acknowledgement Form stating that the duty to register has been explained to them, and that they understand the registration requirement. The form shall be signed and dated by the sex offender and the Lummi Nation Police Department personnel registering the sex offender. This statement shall be uploaded

immediately into the Lummi Nation Sex Offender Registry website;

- (3) That sex offenders are registered and added to the public website if applicable;
- (4) that upon entry of the sex offender’s information into the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender’s residency, employment, or student status; and
- (5) That all information is entered and updated in NCIC/NSOR.

**5.09C.06.150 Retroactive Registration**

(a) Retroactive Registration. The Lummi Nation Police Department shall have in place policies and procedures in ensure the following three categories of sex offenders are subject to the registration and updating requirements of this Sub-Chapter:

- (1) sex offenders incarcerated by or under the supervision of the Lummi Nation, whether for a registerable sex offense or other crime;
- (2) sex offenders already registered or subject to the Lummi Nation’s pre-existing sex offender registration requirements; and
- (3) sex offenders reentering the Lummi Nation criminal justice system due to a conviction for any crime.

(b) Timing of Recapture. The Lummi Nation Police Department shall ensure retroactive registration of sex offenders described in subsection (a) above within the following timeframe to be calculated from the date of passage of this Title:

- (1) for Level 1 sex offenders, 1 year;
- (2) for Level 2 sex offenders, 180 days; and
- (3) for Level 3 sex offenders, 90 days.

**5.09C.06.160 Failure to Appear for Registration and Absconding**

(a) Failure to Appear. In the event a sex offender fails to register with the Lummi Nation as required by this Sub-Chapter, the Lummi Nation Police Department shall, immediately inform the jurisdiction that provided the notification that the sex offender was to commence residency, employment, or school attendance within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location, that the sex offender failed to appear for registration.

(b) Absconded Sex Offenders. If the Lummi Nation Police Department receives information that a sex offender has absconded and the offender resides, works or attends school within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location, it shall make an effort to determine if the sex offender has actually absconded.

(1) In the event that no determination can be made, the Lummi Nation Police Department shall ensure that all tribal and any other appropriate law enforcement agencies are notified.

(2) if the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.

(3) If an absconded sex offender cannot be located, the Lummi Nation Police Department shall take the following steps:

(A) update the public registry website to reflect the sex offender has absconded or is otherwise not capable of being located;

(B) notify the U.S. Marshals Service;

(C) seek a warrant for the offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest;

(D) Update the NCIC/NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located; and

(E) enter the offender into the National Crime Information Center Wanted Person File.

(c) Failure to Register. In the event a sex offender who is required to register due to his residency, employment or school attendance fails to do so, or otherwise violations a registration requirement of this Sub-Chapter, the Lummi Nation Police Department shall take all appropriate follow-up measures including those outlined in sub-section (3) above. The Lummi Nation Police Department shall first make an effort to determine if the sex offender actually resides, is employed or is attending school within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location.

**5.09C.06.170 Lummi Nation Sex Offender Registry Public Website**

(a) Public Sex Offender Registry Website. The Lummi Nation Police Department shall use and maintain a public sex offender registry website utilizing the Tribe and Territory Sex Offender Registry System (TTSORS) to be known as the "Lummi Nation Sex Offender Registry."

(b) The Lummi Nation Sex Offender Registry website design shall include:

(1) links and/or references to sex offender safety and education resources;

(2) instructions on how a person can seek correction of information that the individual believes to be erroneous;

(3) warnings that information contained on the website should not be used to unlawfully injure, harass, or otherwise commit any crimes against any individual named in the registry or residing, working, or attending school at any reported addresses and that any such action could result in civil or criminal penalties; and

(4) search capabilities that allow searches by:

- (A) name;
- (B) county, city and/or town;
- (C) zip code and/or geographic radius; and
- (D) all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and the Lummi Nation Police Department shall participate in that website as provided by the Attorney General of the United States.

(c) Required Information. The Lummi Nation Sex Offender Registry website shall make the following information made available to the public:

- (1) notice that an offender is in violation of his registration requirements or cannot be located if the sex offender has absconded;
- (2) all sex offenses for which the sex offender has been convicted;
- (3) the sex offense(s) for which the sex offender is currently registered;
- (4) the address of the sex offender's employer(s);
- (5) the true name and all aliases of the sex offender;
- (6) a current photograph of the sex offender;
- (7) a physical description of the sex offender;
- (8) the residential address and, if relevant, a description of a habitual residence of the sex offender;
- (9) the names and addresses of all schools attended by the sex offender; and
- (10) a vehicle license plate number and description for all vehicles (land, water or air) regularly used by the sex offender.

(d) Prohibited Information. The Lummi Nation Sex Offender Registry website shall not make available to the public the following information:

- (1) any arrest(s) that did not result in conviction;
- (2) the sex offender's social security number;
- (3) any travel or immigration documents;
- (4) the identity of any victim; and
- (5) internet identifiers.

(e) Witness Protection. For sex offenders who are under a witness protection program, the Lummi Nation Police Department may honor the request of the U.S. Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

#### **5.09C.06.180 Notice to Community**

(a) Law Enforcement Notification. Whenever a sex offender registers or updates his information with the Lummi Nation Police Department, the Department:

- (1) monitor and utilize the SORNA Exchange Portal for inter-jurisdictional changes of residence, employment or student status;
- (2) immediately update NCIC/NSOR;
- (3) immediately notify any agency, department, or program within the Lummi Nation that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to police, whether tribal, state, or federal, tribal prosecutor, and tribal probation;
- (4) immediately notify any and all other registration jurisdictions where the sex offender is registered due the sex offender's residency, school attendance, or employment;
- (5) immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a) when a sex offender registers or updates registration;

(6) enter or update information posted on the Lummi Nation Sex Offender Registry public website.

(b) Community Notification via Website. The Lummi Nation Police Department shall ensure that the Lummi Nation Sex Offender Registry public website contains an automated community notification process to ensure the following:

(1) Upon a sex offender's registration or update of information with the Lummi Nation, the website is immediately updated; and

(2) the website has a function that enables the general public to request an email notice that will notify them when a sex offender commences residence, employment, or school attendance within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.

(c) Additional Community Notification by Level. In addition to community information and notification functions available on the Lummi Nation Sex Offender Registry website, the Lummi Nation Police Department shall provide additional notice as follows:

(1) Level 1 Offenders.

(A) to individuals living in the same residence as the sex offender. Notice shall be in paper format and delivered by personal delivery or first class mail; and

(B) at the discretion of the Rating Elevation Committee, to those within a half-mile radius of the sex offender's place of residence, employment, and school if the committee determines there is a clear likelihood that the person will re-offend. Notice shall be in paper format and delivered by personal delivery or first class mail

(2) Level 2 Offenders.

(A) to individuals living in the same residence as the sex offender. Notice shall be in paper format and delivered by personal delivery or first class mail;

(B) to all residences and businesses within a half-mile radius of the sex offender's place of residence, employment and school. Notice shall be in paper format and delivered by personal delivery or first class mail;

(C) to those belonging to the class of potential victims who will likely make contact with the sex offender in a setting which is potentially unsupervised. Notice shall be in paper format and delivered by personal delivery or first class mail; and

(D) at the discretion of the Rating Elevation Committee, to the Lummi Community in areas populated with members of the class of potential victims. Notice may be made through community postings, publication, social media, radio, telephone, television broadcast, flyers and any other medium which would reasonably benefit the community's awareness of the risk posed by the offender.

(3) Level 3 Offenders.

(A) to individuals living in the same residence as the sex offender. Notice shall be in paper format and delivered by personal delivery or first class mail;

(B) to all residences and businesses within a half-mile radius of the sex offender's place of residence, employment and school. Notice shall be in paper format and delivered by personal delivery or first class mail,

(C) to those belonging to the class of potential victims who will likely make contact with the sex offender in a setting which is potentially unsupervised. Notice shall be in paper format and delivered by personal delivery or first class mail; and



(D) to all schools, child care facilities, recreation centers, and other areas within the exterior boundaries of the Lummi Nation or on any property held in fee or trust by the Lummi Nation regardless of location where the offender may seek potential victims. Notice shall be in paper format and delivered by personal delivery or first class mail;

(E) at the discretion of the Rating Elevation Committee, to the Lummi Community in areas populated with members of the class of potential victims. Notice may also be given through community postings, publication, social media, radio, telephone, television broadcast, flyers and any other medium which would reasonably benefit the community's awareness of the risk posed by the offender; and

(F) At the discretion of the Rating Elevation Committee, notice may also be provided to the Whatcom County Community.

(d) Notice. Information contained in the notice shall include:

(1) the name and any aliases of the offender; pictures of and physical description of the offender; former modus operandi, if known, of the offender; description of the charges for which the offender was convicted; information as to how to contact the proper authority if this person is suspected of stalking or re-offending; and any other information reasonably necessary to protect potential victims, provided that such information is not designed with the intent of harassing the offender.

(2) information on whether the offender is receiving sex offender treatment and whether the individual has been cooperative and compliant with other court orders, particularly those requiring him to refrain from unsupervised contact with those of the victim class or from areas where unsupervised contact with those of the victim class may be readily attainable.

## Chapter 5.10 General Provisions

### 5.10.010 Definitions

(a) When a term is not defined in any provision of this Title establishing a criminal offense, it shall be given its commonly accepted meaning. If there is any doubt as to the meaning of a term, the Court may refer to definitions utilized in other jurisdictions. Any reference to "he", "she" or other gender pronouns include both male and female persons.

(b) State of Mind. In determining the state of mind of a person as required under this Code, the following definitions apply. It is not necessary to establish that the defendant knew that his act was a violation of the law. When this Code provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(1) A person acts with "intent" or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime.

(2) A person acts with "knowledge" or acts knowingly when he is aware of a fact, circumstances, or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance, or result is a crime. The finder of fact may find that the person acted with knowledge if the person has information that would lead a reasonable person in the same situation to believe that the fact, circumstance, or result exists. A requirement that an offense be committed "willfully" is satisfied if the person acts knowingly.

(3) A person acts "recklessly" if that person acts carelessly and heedlessly in a willful and wanton disregard of the rights, safety, or property of another.

(4) A person acts "maliciously" if that person acts with evil intent, wish, or design

to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(5) Direct evidence of a person's state of mind is seldom available, but can be established through circumstantial evidence.

(c) For purposes of this Title,

(1) "Assault" occurs when a person knowingly makes threats by words or conduct to cause physical harm to another person or to otherwise harm another person's physical or mental health or safety so that the other person is put in reasonable apprehension of an imminent physical harm. In order to show a crime of assault, there is no requirement that there be any form of touching;

(2) "Assault and Battery" means directly or indirectly touching another with intent to harm that person or to cause offense, or by offering violence causing another to harm himself. In order to show an assault and battery, there is no requirement that the touching result in pain, bruises, or breaking of the skin;

(3) "Building" in addition to its ordinary meaning, includes any structure other than a residential dwelling, abandoned or in use, any fenced area, cargo container, or any other structure used for carrying on business therein, or for the use, sale or deposit of goods;

(4) "Contact" includes any form of physical contact; any form of oral communication, whether face-to-face or by telephone; any form of written communication, including electronic communication; and any form of indirect communication with the intent that the intermediate recipient of the communication pass it on to the intended recipient;

(5) "Dangerous Weapon" means any explosive; any loaded or unloaded firearm; knife or blade and any other weapon, device, instrument, article, or substance,

including a motor vehicle, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical harm;

(6) "Developmentally Disabled" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age 18, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual;

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

(8) "Enters or Remains Unlawfully" means a person "enters or remains unlawfully" in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain;

(9) "Firearm" means any explosive or other device or weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, and further:

(A) "Short-Barreled Rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches;

(B) "Short-Barreled Shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches; and

(C)“Machine Gun” means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second;

(10) “Grave Physical Harm” means bodily injury which creates a probability of death, or which causes substantial serious permanent disfigurement, or which causes a substantial permanent loss or impairment of the function of any bodily part or organ;

(11) “Law Enforcement Animal” means any animal used or kept for use by a law enforcement officer in discharging any legal duty or power of his office, including but not limited to, aiding in the detection of criminal activity, enforcement of laws and apprehension of offenders, aiding in the detection of illegal drugs, aiding in the detection of flammable materials or the investigation of fires, and aiding in the detection of missing, lost, or trapped persons;

(12) “Law Enforcement Officer” means any police officer, emergency health care provider, fire fighter, transport officer, probation officer or court security officer working for any tribe, municipality, state, or federal government who is acting within the scope of his employment;

(13) “LIBC” means the governing body of the Lummi Nation, the Lummi Indian Business Council;

(14) “Motor Vehicle” means any “vehicle” or “motor vehicle” as defined in LCL §6.02.010(j) and (v), and any aircraft, watercraft, or any other vessel equipped for propulsion by mechanical means or by sail;

(15) “Physical Harm” means physical pain or injury, illness, or an impairment of physical condition;

(16) “Public” means affecting or likely to affect persons in a place to which the public

or a substantial group of the public has access and includes, but is not limited to, public buildings, streets, highways, the common areas of schools, hospitals, apartment houses, trailer parks, and office buildings, transport facilities, businesses open to the public, and places of entertainment or amusement;

(17) “Residential Dwelling” means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging, permanent or temporary; and

(18) “Serious Physical Harm” means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part, or strangulation.

(19) “Trust Land” means all lands held in trust for the Lummi Nation by the United States regardless of location.

#### **5.10.020 Standard of Proof**

No person may be convicted of a criminal offense unless each element of the offense is proved by competent evidence beyond a reasonable doubt.

#### **5.10.025 Place Where Committed**

Any stalking, harassment, or violation of a no contact order offense committed as set forth in LCL §5.01.070, LCL §5.01.080 or LCL §5.07.070(b), may be deemed to have been committed where the conduct occurred, at the place from which the conduct or threat(s) was made, or at the place where the conduct or threat(s) was received.

#### **5.10.030 Criminal Solicitation**

A person who, with intention to promote or facilitate the commission of an offense, urges or requests another to engage in specific conduct that constitutes a criminal offense under this Code shall be guilty of criminal solicitation. For purposes of sentencing, criminal solicitation is classified at the same level of offense as the offense that is the subject of the solicitation and carries the same sentence.

#### **5.10.040 Conspiracy**

(a) A person who intentionally agrees with another to commit a criminal offense under this Code is guilty of conspiracy to commit that offense. For purposes of sentencing, conspiracy is classified at the same level of offense as the offense that is the subject of the agreement and carries the same sentence.

(b) It shall not be a defense to conspiracy that the person(s) with whom the accused is alleged to have conspired has not been prosecuted or convicted; is not amenable to justice; has been convicted of a different offense; or has been acquitted or lacks legal capacity to commit the offense.

(c) A person may be found guilty of conspiracy although the other participant is an undercover law enforcement officer or agent.

#### **5.10.050 Attempt**

(a) A person who intends to commit a specific offense and performs any act that is a substantial step toward the commission of that offense shall be found guilty of attempt to commit that offense. A "substantial step" is conduct of the defendant which strongly indicates a criminal purpose. For purposes of sentencing, attempt is classified at the same level of offense as the offense that was attempted and carries the same sentence.

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

#### **5.10.060 Accomplice Liability; Aid and Abet**

A person who intentionally assists in or encourages the commission of an offense is guilty of commission of that offense. Any adult who intentionally assists in or encourages the commission of an offense by a minor or a person who is developmentally disabled as the latter is defined in LCL §5.10.010(c)(6), commits a separate offense under this Code, in addition to being liable for the commission of all offenses committed by the adult's accomplice. A person shall not be

found guilty as an accomplice to an offense committed by another person if he terminates his complicity prior to the commission of the crime and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.

#### **5.10.070 Defenses**

(a) Capacity. Children under the age of eight years of age are incapable of committing a criminal offense under this Title. Persons who are developmentally disabled to the extent that the required state of mind for a particular offense could not have been present at the time of the alleged offense, are not capable of committing a criminal offense under this Title.

(b) Duress. To establish this defense, it must be shown that the person charged had participated in the criminal offense under compulsion by another who, by threat or use of force, created a reasonable apprehension in the mind of the person that if he were to refuse to participate, he or an immediate family member would be subject to immediate death or serious physical harm.

(c) Entrapment. To establish this defense, it must be shown that the criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and that the person charged was lured or induced to commit a crime which he had not otherwise intended to commit. The defense of entrapment is not established by a showing that law enforcement officials merely afforded the charged person an opportunity to commit a criminal offense.

(d) Self Defense. To establish this defense, it must be shown that the person charged reasonably believed that he or another was about to be injured and that the person acted to prevent or attempt to prevent the injury. The person charged may only use the force and means than a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of the incident.

(e) Voluntary Intoxication is Not a Defense. No act committed by a person while in a state of voluntary intoxication will be deemed less criminal by reason of his condition; but whenever the actual existence of any particular mental state (i.e., knowledge or intent) is a necessary element to constitute a particular offense, the fact of his intoxication may be taken into consideration in determining whether the requisite mental state existed at the time of the alleged offense.

(f) Mental Incapacity of Victim. In any prosecution under this Code in which lack of consent is based solely upon the victim's mental incapacity, developmental disability, or upon the victim's being physically helpless, it is a defense that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated, developmentally disabled and/or physically helpless.

(g) Age of Victim. In any prosecution under this Code in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be; PROVIDED, that it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be older than the age specified in the offense or degree of the offense based upon the alleged victim's declarations as to age.

#### **5.10.080 Lesser Included Offenses**

A person may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged.

#### **5.10.090 Felony Offenses**

(a) Based on the gravity of the offense and the harm to the fabric of the community, the Lummi Nation designates the following offenses under this Code to be felonies:

(1) Homicide (LCL §5.01.005);

(2) Assault and Battery in the First Degree and Second Degree (LCL §5.01.020(a) and (b)) and Assault in the First Degree (LCL §5.01.010(a));

(3) Robbery (LCL §5.01.025);

(4) Aggravated Unlawful Imprisonment (LCL §5.01.030(b));

(5) Intentional Endangerment (LCL §5.01.060(b));

(6) Aggravated Stalking (LCL §5.01.070(b)) and Aggravated Harassment (LCL §5.01.080(b));

(7) Extortion (LCL §5.02.050);

(8) Residential Burglary (LCL §5.02.085(b));

(9) Aggravated Arson (LCL §5.02.095(b));

(10) Harming a Law Enforcement Animal (LCL §5.03.030(1));

(11) Unlawful Possession of Firearms (LCL §5.04.085);

(12) Threatening a Tribal Representative (LCL §5.07.065);

(13) Embezzlement from the Tribe (LCL §5.07.080); Embezzlement from the Tribe (LCL §5.07.080);

(14) Violation of Federal or State Law (LCL §5.08.030) if the offense is a felony in the other jurisdiction.

(15) Class A and B offenses under Chapter 5.09A of this Title - Drug and Alcohol Violations;

(16) Class A and B offenses under Chapter 5.09C of this Title - Sexual Offenses; and

(17) Class A offenses under Title 6A of this Code.

(b) Upon amendment to the Tribal Law and Order Act or the Indian Civil Rights Act, Title II of Public Law 90-284 to authorize increased sentences, the maximum sentence for a felony offense as defined in this Section shall be the maximum allowed under the amendment.

**5.10.095 Misdemeanor Offenses**

(a) Any criminal offense that is not specifically classified as a felony offense in LCL §5.10.090 is classified as a misdemeanor offense.

(b) The maximum sentence for a misdemeanor offense shall not exceed 365 days imprisonment and a fine of \$5,000, or by both such imprisonment and fine.

**5.10.100 Severability; Savings**

If any provision of this Title or its application to any person or circumstance is held invalid, the remainder of the Title, or the application of the provision to other persons or circumstances, is not affected.

**Chapter 5.11 Sentencing**

**5.11.010 Penalty for Violations Where No Penalty Imposed**

Whenever by this Code, or by other ordinances or enactments of the LIBC, an act or omission is made or deemed an offense but no specific penalty is imposed, upon conviction, the person guilty of such offense shall be sentenced to imprisonment for a period not to exceed 180 days and to pay a fine not to exceed \$2,500.

**5.11.015 Classification of Crimes**

Unless otherwise defined by subsections in this Title, Every person convicted of a classified offense shall be sentenced as follows:

- (1) for a class A offense, the sentence shall be imprisonment for a period not less than 90 days and not to exceed 3 years and a fine of \$15,000., or by both such imprisonment and fine;
- (2) for a class B offense, the sentence shall be imprisonment for a period not less than 60 days and not to exceed 365 days and a fine of \$5,000., or by both such imprisonment and fine;
- (3) for a class C offense, the sentence shall be imprisonment for a period not less than 30 days and not to exceed 270 days and a fine of \$4,000., or by both such imprisonment and fine;

(4) for a class D offense, the sentence shall be imprisonment for a period not to exceed 180 days and a fine of \$2,500., or by both such imprisonment and fine;

(5) for a class E offense, the sentence shall be imprisonment for a period not to exceed 90 days and a fine of \$1,250., or by both such imprisonment and fine; and

(6) for a class F offense, the sentence shall be imprisonment for a period not to exceed 30 days and a fine of \$500., or by both such imprisonment and fine.

**5.11.020 Sentencing Guidelines**

(a) This Title shall be construed to the end that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities. The Court is directed to consider the defendant’s amenability to corrective treatment, the gravity of the conduct constituting the crime, the defendant's past record of criminal conduct, protection of the public, upholding community standards, deterrence of future violations, and the welfare of the individual and the Tribe.

(b) The Court shall give primary weight to restorative, traditional and corrective sentencing whenever practicable so that the defendant may become a productive and law-abiding member of the community, except that the Court shall give primary weight to the protection of the community and deterrence from future criminal acts of the same nature when sentencing for the following offenses which are deemed to cause the most serious injury to victims and devastation to the community:

- (1) a Class A or B drug offense;
- (2) a Class A or B sexual offense;
- (3) a crime of violence in which the victim receives serious physical harm;
- (4) a crime of violence involving use of a firearm; or
- (5) a crime involving conduct that presents a serious threat to the health, safety, and welfare of the community.

(c) The Court shall adopt sentencing guidelines consistent with this Title and restorative and traditional practices that further the purposes of this Title. The Sentencing Guidelines shall be approved by the Law and Justice Commission prior to adoption by the Court. The Sentencing Guidelines shall include restorative and traditional practices such as:

- (1) Alternative Dispute Resolution
- (2) Circle Sentencing
- (3) Community Service and Projects
- (4) Community Reparative Boards
- (5) Deferred Prosecutions
- (6) Deferred Sentences
- (7) Dialogue and Mediation
- (8) Electronic Home Monitoring (EHM)
- (9) Family or Group Counseling
- (10) Financial Restitution
- (11) Global Positioning System (GPS)
- (12) Hold Open Diversions
- (13) Substance Abuse Treatment
- (14) Traditional Advisement
- (15) Transitional Clean and Sober Housing
- (16) Victim Impact Panels

#### **5.11.030 Suspension of Sentence**

(a) The Court has the discretion to suspend all or part of a sentence under this Code for a stated period of time under the terms and conditions that the Court determines and shall place the person on probation under the charge and supervision of the probation office.

(b) Unless otherwise provided, the Court has the discretion to suspend part of the minimum required sentence, in accordance with this Section.

(c) A period of suspension may not exceed five years for each count on which the defendant is sentenced. The Court may order that the period of suspension run from the time the person completes any period of incarceration.

#### **5.11.040 Fines**

(a) The Court may require that all or part of a fine it imposes under this Code be paid through hours of community work service.

(b) The Court has the discretion to credit against a fine imposed some or all of the amount paid by the defendant in obtaining court-ordered evaluations and treatment.

#### **5.11.050 Special Verdict; Armed with a Dangerous Weapon**

A person who is found guilty of any criminal offense under this Code that is committed by a person while armed with a dangerous weapon shall receive an increased sentence unless the definition of the crime already includes use of a weapon. The maximum sentence for the criminal offense shall be increased by imprisonment for a period not to exceed 90 days and a, \$1,250 fine. The total period of imprisonment imposed on a person receiving a sentence that contains a sentence enhancement under this Section may not be less than 90 days.

#### **5.11.060 Restitution**

(a) In addition to any other penalties permitted under this Title, the Court may order the defendant to pay restitution to the persons who incur costs as a result of the crime in order to, in whole or in part, reimburse those persons for those costs. Restitution may also be ordered if the defendant pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the defendant be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(b) When restitution is ordered, the Court shall determine the amount of restitution due at the time of sentencing or within one hundred eighty days thereof. The Court may continue the hearing beyond the one hundred eighty days for good cause. The Court shall then set a minimum monthly payment that the defendant is required to make towards the restitution that is ordered. The Court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(c) Unless otherwise provided in this Code, restitution ordered by the Court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. The Court shall base calculations for damages on the replacement value if the fair market value or cost to repair property is impractical, impossible to ascertain, or greater than the replacement value.

(d) During the period of probation supervision, the probation officer may examine the defendant's ability to pay to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The probation officer may recommend a change to the schedule of payment and shall inform the Court of the recommended change and the reasons for the change. The Court may then reset the monthly minimum payments based on the report from the probation officer of the change in circumstances.

(e) For the purpose of collection of restitution only, the defendant shall remain under the Court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. Lummi Probation is responsible for supervision of restitution only during the authorized probationary period. The Clerk of the Court is authorized to collect unpaid restitution at any time the defendant remains under the jurisdiction of the Court for purposes of his legal financial obligations.

(f) This Section does not limit civil remedies available to the victim. The victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action under Title 3 of this Code.

#### **5.11.070 Forfeiture**

In addition to penalties set out in this Code, the Court may order the defendant to forfeit property obtained through an act constituting a crime or property subsequently acquired from proceeds of an act constituting a crime. The Court shall use the standards and procedures set out for forfeiture in Chapter 5.09B of this Title.

#### **5.11.075 Destruction of Evidence**

(a) Whenever any personal property shall come into the possession of the Lummi Nation Police Department in connection with the official performance of its duties or its lost property and safekeeping function, and such personal property remains unclaimed or not taken away for a period of sixty (60) days from the date of written notice to the purported owner, if known, unless such property has been held as evidence in any court, then, in that event, after sixty (60) days from date when said case has been disposed of and said property released as evidence by the Court, the Lummi Nation Police Department may:

- (1) at any time thereafter sell such personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;
- (2) retain the property for the use of the police department;
- (3) destroy an item of personal property at the discretion of the police department if the police department determines that one of the following circumstances has occurred:
  - (A) the property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;
  - (B) the item has been unclaimed by any person after notice procedures have been met, as prescribed in this Section; or
  - (C) the police department has determined that the item is unsafe or illegal to possess.



(b) Notice to the owner shall be made by first class mail to the last known address of the purported owner and shall inform the purported owner of the disposition which may be made of the property under this Section and the time that the owner has to claim the property. If the owner is unknown or the police department has no knowledge of the owner's last known address, notice shall be made by publication in the Squol Quol newspaper.

#### **5.11.080 Prior Convictions**

When proof of a prior conviction is required under this Code, adequate proof of prior conviction may be established by a court or law enforcement record, unless the person convicted asserts that such report is incorrect. In that instance, a copy of the conviction from the jurisdiction originating the prior conviction shall be obtained and produced to the Lummi Tribal Court.

#### **5.11.090 Pre-Sentence Report**

(a) The Court may order the Lummi Probation Department to conduct a pre-sentence investigation prepare a report to assist the Court in imposing sentence. The report shall be provided at least seven days before sentencing to the Court, the prosecutor, and the defense.

(b) The pre-sentence report shall contain the defendant's criminal history; information about the defendant's characteristics, financial condition, any history of substance abuse and treatment, education and training, and other circumstances affecting the defendant's behavior as may be relevant in imposing sentence; information about the impact on the victim; and such other information as may be required by the Court. The person preparing the report shall, at a minimum, contact the defendant, victim or victim's representative, and the Lummi Nation Police Department to provide each with an opportunity to present information.

(c) If either the defendant or the prosecutor contest any factual portion of the report and wish to produce evidence to contest the report, they must notify opposing counsel and the Court at least three days before the sentencing hearing.

(d) The defendant, victim or a representative of the victim, and the prosecutor may submit a separate report and may make an argument at the sentencing as to the appropriate sentence to be imposed.

(e) The report prepared under this Section shall be sealed from the general public, except that the Court may order the report to be released upon good cause shown.

#### **5.11.100 Exclusion**

(a) The Court has the discretion to temporarily exclude from the Lummi Reservation and trust lands a person from whom the community needs to be protected pending the outcome of a criminal case for any crime under LCL §5.11.020(b). Such temporary exclusion shall be ordered in pre-trial release conditions and shall expire on the date the case is disposed.

(b) A person who is charged with a criminal offense in the Lummi Tribal Court, may agree to an exclusion, pursuant to the procedures in Title 12 of this Code, as part of a criminal sentence or other resolution of the criminal matter. Such an agreed exclusion may only be entered with the approval of the Exclusion Committee, as defined in LCL §12.03.020.

## **Chapter 5.12 Ch'qi'n'txw an Offender's Record of Conviction (Expungement)**

### **5.12.010 Purpose of Ch'qi'n'txw an Offender's Record of Conviction**

The Lummi Nation recognizes the power that people hold within themselves to change their lives. The strength of the Lummi Nation is due in part to our People continuing to live by many commonly held values, including forgiveness for those who have earned it and that people who have changed their ways deserve a second chance. The purpose of this Chapter is to provide an opportunity for people who truly have changed, and now live their lives in a manner consistent with our Lummi Sche'lang'en, to have a second chance to restore their standing in the community and serve the Lummi Nation to their full potential.

Once a Criminal Judgment of Conviction has been ch'qi'n'txw under this Chapter, the person shall be released from all penalties and disabilities resulting from the conviction. The fact that the person has been convicted of the offense shall not be included in the person's criminal history.

For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been ch'qi'n'txw under this Chapter may state that he has never been convicted of that crime. For purposes of this Chapter, the term "ch'qi'n'txw" is intended to have the same meaning and legal affect as the term "expungement." The final order shall be called an "Order of Ch'qi'n'txw and Expungement".

The cloak of secrecy over the ch'qi'n'txw conviction does not extend to the acts that were the basis of the offense. Those events still occurred, but the community forgives the offender by ch'qi'n'txw the criminal conviction.

### **5.12.020 Eligibility Requirements for Ch'qi'n'txw an Offender's Record of Conviction**

(a) Eligibility Requirements. A person who has been convicted in the Lummi Tribal Court may petition to have one or more judgments of conviction ch'qi'n'txw after successfully completing all of the terms of the sentence,

including incarceration, probation, treatment requirements, and payment of fines and court costs. A ch'qi'n'txw of a judgment of conviction will generally include all criminal offenses for which the person was found guilty under the judgment. If an offense listed on the judgment is not eligible for ch'qi'n'txw under this Chapter, the offense can be omitted from the Petition and Order of Ch'qi'n'txw and Expungement. The following time limits and restrictions apply:

(1) Except as otherwise provided in this Sub-Chapter, a misdemeanor conviction shall be eligible for ch'qi'n'txw beginning five years after the petitioner has successfully completed all of the terms of the sentence.

(2) Except as otherwise provided in this Sub-Chapter, a felony conviction shall be eligible for ch'qi'n'txw beginning ten years after the petitioner has successfully completed all of the terms of the sentence.

(3) A conviction for a Sexual Offense or Offense with Sexual Motivation, that received a rating of Level 1 or Level 2 pursuant to Sub-Chapter 5.09C of this Title, shall be eligible for ch'qi'n'txw beginning after the petitioner has successfully terminated the duty to register as a sex offender.

(4) If a Judgment of Conviction includes convictions for different levels of offenses, the time frame for ch'qi'n'txw eligibility shall be individually determined for each offense, as outlined in Subsections (a)(1) – (3) of this Section.

#### **(b) Disqualifications for Ch'qi'n'txw.**

(1) The following offenses may not be ch'qi'n'txw:

(A) Homicide, Assault and Battery in the First Degree, Robbery, Aggravated Unlawful Imprisonment, Aggravated Stalking, Aggravated Harassment, Aggravated Arson, Intentional Endangerment, and Vehicular Homicide, or their equivalent (including conspiracy, attempt and accomplice)

(B) Sexual Offenses and Offenses with a finding of Sexual Motivation that received a rating of Level 3 pursuant to Sub-Chapter 5.09C of this Title; and

(C) A Domestic Violence designated conviction if the petitioner has more than one previous conviction for domestic violence in any court; or the petitioner is currently restrained, or has been restrained within the previous five years of the petition, by a domestic violence protection order, a no-contact order, or any other restraining order.

(2) A petitioner is not eligible to ch'qi'n'txw a judgment if the petitioner has been convicted in any court of a new crime within five years prior to the Petition for Ch'qi'n'txw being filed.

(3) The ch'qi'n'txw cannot take place if there are any criminal charges pending against the petitioner in any court.

(c) Maximum Ch'qi'n'txw Petitions Allowed.

A person who has ch'qi'n'txw a conviction or convictions under a single judgment of conviction shall be eligible to ch'qi'n'txw a conviction or convictions under a single judgment of conviction a second time so long as the second petition does not seek ch'qi'n'txw of crime(s) of the same type (e.g. "crime against a person," "crime against property.") There shall be no further petitions for ch'qi'n'txw permitted after the second petition. Additionally, individuals who have ch'qi'n'txw convictions from multiple judgments of conviction shall not be permitted to file a second Petition for ch'qi'n'txw.

**5.12.030 Petition for Ch'qi'n'txw an Offender's Record of Conviction**

(a) A Petition for Ch'qi'n'txw must include, at a minimum:

(1) A statement that the petitioner meets the eligibility requirements in LCL §5.12.020;

(2) A brief statement of facts showing the basis why the Petition for Ch'qi'n'txw should be granted;

(3) A copy of the criminal judgment(s) of conviction that the petitioner is seeking to have ch'qi'n'txw. If the petitioner does

not seek to have every offense in the judgment expunged, a statement of which offenses expungement is requested shall be included;

(4) An affidavit from the Lummi Probation Department (if probation was ordered as part of the criminal judgment) demonstrating successful completion of probation and treatment requirements, and which shall also include discussion of any probation violations;

(5) A list of all the states and Indian reservations and reserves where the petitioner has lived since the judgment of conviction;

(6) A physical address and a valid mailing address where the petitioner can receive U.S. mail and be contacted for purposes of receiving documents related to the petition; and

(7) A statement signed by the petitioner, affirming under penalty of perjury that the contents of the petition are true and correct.

(b) Criminal Background Check. After receipt of the Petition for Ch'qi'n'txw, the Court shall order the Lummi Nation Police Department to conduct a nationwide criminal background check on the petitioner, specifically including (whenever possible) the states and Indian reservations and reserves where the petitioner has lived since the judgment of conviction, and submit a summary of convictions to the Court.

**5.12.040 Notice of Petition for Ch'qi'n'txw and Request for Community Comments**

Following the filing of a petition, the Court shall provide notice of the petition in the first possible Squol Quol publication. The Notice shall advise community members that they may submit comments on the petition with the Court for consideration by the Judgment Ch'qi'n'txw Panel.

**5.12.050 Ch'qi'n'txw Pool**

A pool of at least 12 persons shall be created to be the Judgment Ch'qi'n'txw Pool. The pool shall contain three members of the Cultural Committee, three members of the Law and Justice Commission, three members of the Health and Family Services Commission, and at least three additional Elders from the community selected by the LIBC. Each commission or committee shall select their respective representatives for the pool. Each of the committees, commissions and the LIBC shall inform the Court in writing of the selected pool members.

**5.12.060 Ch'qi'n'txw an Offender's Record of Conviction**

(a) Determination of Eligibility. The Court shall determine if the Petition is complete and meets the eligibility requirements of this Chapter.

(1) If it does not, the Court shall issue an order denying the petition. The order shall state the cause or causes for denial.

(2) If the Court determines that the petition is complete and meets the eligibility requirements, it shall convene a Judgment Ch'qi'n'txw Panel and set a panel hearing date within 45 days. The Court shall provide each panel member with a copy of the petition and the criminal background summary.

(b) Ch'qi'n'txw Panel.

(1) If the Court determines that a petitioner is eligible under this Chapter to have a conviction expunged, it shall convene a four person panel from the pool to make a community determination as to whether the Petition for Ch'qi'n'txw should be granted. The Court shall randomly select from the pool one person from each of the committees and commissions represented and one of the LIBC-appointed elders.

(2) The Court shall provide written notice of the selection to each selected panel member and to the petitioner. While the Petition for Ch'qi'n'txw is pending, the petitioner and selected panel members may not communicate, either directly or indirectly, outside of official court proceedings.

(3) No person may participate as a Ch'qi'n'txw Panel member involving a Petition for Ch'qi'n'txw:

(A) If the person is directly related to the petitioner, as that term is defined in LCL §29.01.020(b)(1);

(B) If the person is living, or has lived within the past, in the same household as the petitioner; or

(C) If for other reasons, the person cannot be fair and impartial in considering the particular matter.

(4) If a panel member or the petitioner believes that a panel member is subject to disqualification under this Section, the person must give written notice to the Court of the basis within two weeks of receiving the notice of selection. The Court shall determine whether a conflict exists and issue a written order.

(5) If a selected panel member cannot serve for good cause as determined by the Court, or is otherwise disqualified, the Court shall select a replacement from the pool.

(c) Ch'qi'n'txw Panel Hearing.

(1) The petitioner may present written documentation to the panel. The petitioner may also verbally present to the panel his story and reasons for filing the petition. Panel members may ask questions of the petitioner and may request additional information which may be brought back to the panel at a later hearing. The panel may allow other persons to present documents and statements, in particular persons who have been victims of the criminal offense. Written documentation from the petitioner and from other persons must be provided to the Court at least five working days prior to the hearing at which the panel considers the petition. In advance of the hearing, the Court shall provide to the petitioner a copy of all the materials submitted by others.

(2) The panel's guiding principle in determining whether the petitioner is an appropriate candidate shall be "whether the petitioner has truly changed his life and made amends to the community for his mistakes." The panel may consider any progress the petitioner has made in leading his life in a manner consistent with the following examples of Lummi values as well as other information pertinent to the petitioner and his crime(s):

(A) *We Take Care of Each Other.* How does the petitioner participate in the community and how will ch'qi'n'twx of his crime help further his efforts to serve or give back to the community?

(B) *We are Clean and Sober.* What treatment program(s) did the petitioner complete and how long has the petitioner been clean and sober?

(C) *We have a Sacred Duty to our Children.* Is the petitioner actively parenting or involved with his child or children? Is the petitioner current and/or paying any court ordered child support?

(D) *We are Honest.* How has the petitioner accepted responsibility for his actions and attempted to make amends?

(E) *We Practice Forgiveness.* What has the petitioner done to earn the forgiveness of the community and any victim(s) of his crime? and

(F) *We Learn from our Elders.* How has the petitioner sought the counsel of his elders or other Lummi elders for guidance back to a healthier life?

(3) The determination of the panel to grant a petition shall be made by unanimous decision. The deliberations of the panel shall be closed. If the panel cannot reach a unanimous decision, the petition shall be denied. If the panel is considering multiple convictions for ch'qi'n'twx, the panel must unanimously agree to erase all convictions. The panel may not grant ch'qi'n'twx for one conviction but not another. The panel shall communicate its action on the petition in writing to the Court. The decision of the panel is binding on the Court and is not appealable.

(d) Court Order. If the Judgment Ch'qi'n'twx Panel denies the petition, the Court shall issue an order dismissing the petition. If the Judgment Ch'qi'n'twx Panel decides to grant the petition, the Court shall issue an Order of Ch'qi'n'twx and Expungement in accordance with the panel decision. The Court shall order that the court records of the erased conviction be sealed. The Court shall direct the Clerk of the Court to immediately transmit the order to the Lummi Nation Police Department and the Lummi Prosecutor's Office, and any other entity which holds criminal history information regarding the petitioner.

(e) Prohibition on Further Disclosure. Once a conviction has been expunged, LIBC agencies are prohibited from disseminating or disclosing that conviction. The erased conviction may only be considered in relation to a future Petition for Ch'qi'n'twx filed by the same person.

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