

## **Title 4 – Criminal Code**

### **Chapter 2 – Offenses Against Persons**

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### **Legislative History**

**Enacted:**

Ordinance 413 Amending STC Title 4, Chapters 1 & 2, STC Title 7, Chapter 11 (12/15/20).

Ordinance 408 Amending STC Title 3, Chapters 1 & 3, STC Title 4, Chapters 1 & 2 and STC Title 7, Chapters 11 & 12 (9/15/20).

Ord. 329, Amending STC Title 4, Chapter 2 (12/3/13); BIA (12/13/13).

Ord. 325 Amending STC Title 4, Chapters 1, 2 & 12 and Title 7, Chapter 11 (5/7/13), BIA (5/10/13).

Ord. 184 Swinomish Criminal Code (9/30/03), BIA (10/7/03).

**Repealed or superseded:**

Ord. 143 Additional Criminal Violations (9/12/00), BIA (10/02/00) (amending Ord. 75).

Ord. 75 Swinomish Criminal Code Enacting Res. 91-4-37, (4/2/91), BIA (6/13/91)

(repealing and superseding Ord. 39 and Article XIII of Ord. 32  
Ord. 44 Amending Criminal Jurisdiction (7/11/78), BIA (8/4/78) (amending Ords.  
32, 38, 39 and 40).  
Ord. 39 Establishing Criminal Offenses (6/7/77) (superseding conflicting provisions  
of Ord. 32).  
Ord. 32 Swinomish Law and Order Code, (3/4/75), BIA (5/30/75).  
Ord. 7 Swinomish Law and Order Code, (6/1/38), BIA (3/24/38).  
Ord. 1 Adoption of Swinomish Law and Order Regulations (undated).

[Ed. Note. Ordinance 1 is undated and adopts the Law and Order Regulations approved by the Secretary of the Interior November 27, 1935 as part of the fundamental law governing the Swinomish Reservation. The referenced "regulations" are not located in tribal records.]

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#### **4-02.010 Abduction (Kidnapping).**

- (A) Any person who shall willfully restrain, detain, confine or take away another person against his or her will without lawful authority, or without the consent of the parent or other person having lawful care or charge of him or her if such person be under the age of eighteen (18) commits the crime of abduction.
- (B) For the purposes of this Section, "**restrain**" means to restrict a person's movements without consent and without legal authority in a manner that interferes substantially with his or her liberty. Restraint is "without consent" if it is accomplished by (1) physical force, intimidation or deception, or (2) any means including acquiescence of the victim, if he is a child less than sixteen (16) years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.
- (C) Abduction is a **Class A offense** when any of the following circumstances are present:
- (1) The defendant's purpose is to interfere with or obstruct a public official's performance of his or her official duties;
  - (2) A ransom or reward is demanded;
  - (3) The victim is used as a shield or hostage;
  - (4) Bodily injury or extreme mental distress is inflicted on the victim;
  - (5) The defendant's purpose is to inflict extreme mental distress on the victim or a third person;
  - (6) The defendant's intent is to facilitate the commission of another Class A offense or flight from that offense;
  - (7) The victim is under the age of eighteen (18) or is an incompetent person;

- (8) The victim is secreted or held in a place where he or she is not likely to be found; or
- (9) Deadly force is used or threatened.
- (D) Abduction is a **Class B offense** whenever physical force not amounting to deadly force, intimidation, or deception is used.
- (E) Abduction is a **Class C offense** if none of the circumstances defined above as a Class A or Class B offense is present.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**4-02.020 Assault.**

- (A) A person commits the crime of assault if the person
  - (1) willfully and without consent attempts to inflict injury upon the person of another; or
  - (2) willfully and without consent touches, strikes, cuts, shoots or poisons the person of another; or
  - (3) willfully threatens to inflict injury upon the person of another which, when coupled with an apparent present ability, causes a reasonable apprehension and fear of bodily injury even though the infliction of bodily injury was not actually intended; or
  - (4) by threatening violence causes another to harm himself.
- (B) Assault is a **Class A offense** when any of the following circumstances are present:
  - (1) use of a firearm or other dangerous weapon or any means likely to produce death or threaten life;
  - (2) intent to kill;
  - (3) intent to commit another Class A offense;
  - (4) serious or substantial bodily injury results;
  - (5) serious or substantial bodily injury is caused to an unborn child by inflicting any injury upon the mother of such child;

- (6) severe pain or agony equivalent to torture is inflicted; or
  - (7) use of poison or any other destructive or noxious substance with intent to inflict serious or substantial bodily harm.
- (C) Assault is a **Class B offense** when any of the following circumstances are present:
- (1) intent to prevent or resist the execution of any lawful tribal court order;
  - (2) intent to prevent or resist a lawful arrest or detention by a law enforcement officer;
  - (3) the assault was committed upon any public official, including an enforcement officer, who was performing his or her official duties at the time of the assault;
  - (4) any bodily harm accompanied by substantial pain is inflicted;
  - (5) use of poison or any other destructive or noxious substance with intent to inflict bodily harm;
  - (6) use of a weapon or other instrument or thing likely to produce bodily harm;
  - (7) intent to commit a Class B offense; or
  - (8) the assault is in violation of a domestic violence protection order issued pursuant to STC Chapter 7-11.
- (D) Assault is a **Class C offense** whenever an assault is committed and none of the circumstances making it a Class A or B offense as defined above are present, or whenever the offense does not constitute harassment.

[History] Ord. 408\_(9/15/20); Ord. 184 (9/30/03); Ord. 142 (9/12/00); Ord. 75 (4/2/91).

**4-02.030 Custodial Interference.**

- (A) Any person who, with intent to deny access to a child or to an incompetent adult by a person having the lawful right of custody to that child or incompetent adult, detains or conceals the child or incompetent adult, commits the offense of custodial interference.
- (B) Custodial interference is a **Class A offense** if any of the following circumstances are present:
- (1) physical injury or extreme mental distress results or is risked from the offense;
  - (2) if a threat of injury or deadly force is used; or

- (3) if permanent deprivation of the child or incompetent adult is intended.
- (C) Commission of custodial interference is a **Class B offense** when none of the circumstances making it a Class A offense as defined in Subsection (B) are present.
- (D) A threat to commit custodial interference is a **Class C offense**.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**4-02.040 Harassment.**

- (A) A person commits the crime of harassment if that person:
  - (1) without lawful authority knowingly threatens any of the following:
    - (a) to cause bodily injury in the future to any person;
    - (b) to cause damage to property;
    - (c) to subject a person to confinement or restraint; or
    - (d) to take any action intended to threaten the physical or mental health or safety of a person; and
  - (2) by words or conduct places the person threatened in reasonable fear that the threat will be carried out.
- (B) Harassment is a **Class B offense**.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**4-02.041 Telephone Harassment.**

- (A) A person commits the crime of telephone harassment if that person:
  - (1) makes a telephone call and does any of the following:
    - (a) Uses any lewd, lascivious, profane, indecent, or obscene words or language, or suggests the commission of any lewd or lascivious act; or
    - (b) Calls anonymously or repeatedly or at an unreasonable hour (that is, before 7:00 a.m. and after 10:00 p.m.), whether or not conversation ensues; or
    - (c) Threatens to inflict injury on the person or property of any person; and

- (2) the person making the telephone call does so with an intent to harass, annoy, intimidate, torment, or embarrass any other person or the person receiving the telephone call reasonably feels harassed, annoyed, intimidated, tormented, or embarrassed.
- (B) The offense of Telephone Harassment may be deemed committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received.
- (C) Telephone Harassment is a Class B offense.

[History] Ord. 329 (12/3/13).

**4-02.042 Electronic Harassment.**

- (A) A person commits the crime of electronic harassment if that person:
  - (1) makes an electronic communication to another person and does any of the following:
    - (a) Uses any lewd, lascivious, profane, indecent, or obscene words, images, or language, or suggests the commission of any lewd or lascivious act; or
    - (b) Transmits the communication anonymously or repeatedly whether or not a response occurs; or
    - (c) Threatens to inflict injury on the person or property of any person; and
  - (2) the person making the electronic communication does so with an intent to harass, annoy, intimidate, torment, or embarrass any other person or the person receiving the electronic communication reasonably feels harassed, annoyed, intimidated, tormented, or embarrassed.
- (B) For purposes of this section, “electronic communication” means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. “Electronic communication” includes, but is not limited to, electronic mail, internet-based communications, and electronic text messaging.
- (C) The offense of Electronic Harassment may be deemed committed either at the place from which the communication or communications were initiated or at the place where the communication or communications were received.

(D) Electronic Harassment is a Class B offense.

[History] Ord. 329 (12/13/13).

**4-02.050 Manslaughter.**

(A) Any person who kills another human being upon a sudden quarrel or in the heat of passion, or with reckless disregard for the consequences of his or her actions, or during the commission of or in attempt to commit or in flight from commission of a Class C offense, commits the crime of manslaughter.

(B) Manslaughter is a **Class A offense**.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**4-02.060 Murder.**

(A) Any person who intentionally and without lawful justification kills another human being, or with extreme indifference to the consequences of his or her actions kills another human being, or kills another human being during the commissions of or in an attempt to commit or in flight from commission of another Class A or Class B offense, commits the crime of murder.

(B) Murder is a **Class A offense**.

[History] Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**4-02.070 Reckless Endangerment.**

(A) Any person who recklessly engages in conduct that creates a substantial risk of death or bodily injury to a person commits the crime of reckless endangerment.

(B) Reckless endangerment is a **Class A offense** if it involves the use of a firearm or other dangerous weapon, or if serious bodily injury or death to a person results.

(C) Reckless endangerment is a **Class B offense** if a child or incompetent adult is endangered or if bodily injury to a person results.

(D) Reckless endangerment is a **Class C offense** when none of the circumstances making it a Class A or Class B offense are present.

[History] Ord. 408 (9/15/20); Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**4-02.080 Drive-by Shooting.**

(A) A person is guilty of drive-by shooting when he or she recklessly discharges a firearm in a manner that creates a substantial risk of death or serious physical injury to

another person and the firearm is discharged either from a vehicle or from the immediate area of a vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge.

- (B) A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.
- (C) Drive-by shooting is a **Class B offense**.

[History] Ord. 184 (9/30/03); Ord. 143 (9/12/00).

**4-02.090 Coercion.**

- (A) A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct that the latter has a legal right to abstain from, or to abstain from conduct that he or she has a legal right to engage in.
- (B) **“Threat”**, as used in this Section, means to communicate, directly or indirectly, the intent:
  - (1) to immediately use force against any person who is present at the time;
  - (2) to cause bodily injury in the future to the person threatened or to any other person;
  - (3) to cause physical damage to the property of a person other than the person making the threat; or
  - (4) to subject the person threatened or any other person to physical confinement or restraint.
- (C) Coercion is a **Class C offense**.

[History] Ord. 184 (9/30/03); Ord. 143 (9/12/00).

**4-02.100 Stalking.**

- (A) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to an attempt to commit any Class A offense:
  - (1) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

- (2) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person would experience under all the same circumstances; and
  - (3) The stalker either:
    - (a) Intends to frighten, intimidate, or harass the person; or
    - (b) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.
- (B) It is not a defense to the crime of stalking:
- (1) Under Subsection (A)(3)(a) of this Section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and
  - (2) Under Subsection (A)(3)(b) of this Section that the stalker did not intend to frighten, intimidate, or harass the person.
- (C) It shall be a defense to the crime of stalking that the defendant is a licensed private detective acting within the capacity of his or her license as provided by RCW 18.165.
- (D) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person.
- (E) A person who stalks another person is guilty of a **Class C offense** except that the person is guilty of a **Class B offense** if any of the following applies:
- (1) the stalker has previously been convicted in the Tribal Court, in Washington State or any other state of any crime of harassment, as defined in STC Section 4-02.050 or RCW 9A.46.060 or similar statute of another jurisdiction, of the same victim or members of the victim's family or household or any person specifically named in a protection order;
  - (2) the stalking violates any protection order protecting the person being stalked;
  - (3) the stalker has previously been convicted of a Class B or C offense under this Section or of a gross misdemeanor or felony stalking offense under Washington State law for stalking another person;
  - (4) the stalker was armed with a dangerous weapon, while stalking the person;
  - (5) the stalker's victim is or was a law enforcement officer, judge, juror, attorney,

victim advocate, legislator, or community corrections officer, 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; or

- (6) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(F) As used in the Section:

- (1) **“Follows”** means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.
- (2) **“Harasses”** means engaging in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the victim, or, when the course of conduct is contact by a person over age eighteen (18) that would cause a reasonable parent to fear for the well-being of their child.
- (3) **“Protection order”** means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person, including, but not limited to a Domestic Violence Protection Order issued pursuant to STC Chapter 7-08.
- (4) **“Repeatedly”** means on two (2) or more separate occasions.

[History] Ord. 408\_(9/15/20); Ord. 184 (9/30/03); Ord. 143 (9/12/00).

#### **4-02.110 Interfering with the Reporting of Domestic Violence.**

- (A) A person commits the crime of interfering with the reporting of domestic violence if the person prevents or attempts to prevent the victim of or a witness to a domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.

(B) Interference with the reporting of domestic violence is a **Class C offense**.

[History] Ord. 408(9/15/20); Ord. 325 (5/7/13); Ord. 184 (9/30/03); Ord. 143 (9/12/00).

**4-02.120 Violation of a Domestic Violence Protection Order.**

(A) A person commits the crime of Violation of a Domestic Violence Protection Order if:

- (1) there exists an injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
- (2) the person knows of the existence of the order; and
- (3) the person intentionally violates the order.

(B) Violation of a Domestic Violence Protection Order is a **Class C offense**, except as provided in subsections (C) and (D).

Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring and be responsible for the costs of such monitoring.

(C) Violation of a Domestic Violence Protection Order may be classified as a Class B offense if at least one of the following additional elements are proven beyond a reasonable doubt:

- (1) The violation created a substantial risk of death or serious bodily injury; or
- (2) The person has at least two (2) prior convictions for Violation of Domestic Violence Protection Order. A prior conviction in another tribal, state, or federal jurisdiction for an offense comparable to Violation of Domestic Violence Protection Order shall also constitute a prior offense under this subsection. A prior conviction may involve the same victim or another victim specifically protected by a protection order that the offender violated.

(D) A Violation of a Domestic Violence Protection Order may be classified as a Class A offense if the following additional element is proven beyond a reasonable doubt; the conduct resulting in a violation of a protection order may also be classified as a Class A Assault, as the offense is defined in this Chapter.

[History] Ord. 413 (12/15/20); Ord. 408 (9/15/20); Ord. 184 (9/30/03); Ord. 142 (9/12/00).

**4-02.130 Elder Abuse, Exploitation or Neglect.**

- (A) Definitions. For purposes of this section, terms such as “Abuse”; “Caregiver”; “Elder”; “Exploitation” and “Neglect” shall be defined pursuant to STC 7-12.060.
- (B) A person commits the crime of Elder Abuse if the person intentionally abuses an elder. Elder Abuse is a Class A offense.
- (C) A person commits the crime of Elder Exploitation if the person intentionally commits exploitation against an elder. Elder Exploitation is a Class A offense.
- (D) A person commits the crime of Elder Neglect if
  - (1) the person is a caregiver or fiduciary to an elder;
  - (2) the person acts recklessly; and
  - (3) the person neglects an elder.

Elder Neglect is a Class B offense.

- (E) Elder Abuse, Elder Neglect or Elder Exploitation may be based on repeated conduct or on a single incident or omission.

[History] Ord. 408 (9/15/20 ),

**4-02.140 Crimes of Domestic Violence.**

Any crime may be classified a crime of domestic violence when there is proof beyond a reasonable doubt that the crime was committed by one family or household member against another family or household member.

[History] Ord. 408 (9/15/20).

*Subchapter II: VAWA Offenses*

**4-02.210 Purpose and Findings.**

- (A) The Swinomish Tribe affirms and exerts jurisdiction over criminal offenses occurring within its jurisdiction to the maximum extent permitted by law to address any issues of domestic violence or family violence affecting those under the jurisdiction of the Tribe.
- (B) The Swinomish Tribe exerts criminal jurisdiction over Non-Natives for certain criminal offenses by the exercise of its sovereignty and powers of self-government.
- (C) The Swinomish Tribe finds that every resident of the Swinomish reservation is entitled to live free from violence and it is the responsibility of the Tribal Government

to provide laws and government services to promote public safety and healthy families.

- (D) Through the enactment of this subchapter, the Tribe signals its commitment to fostering a safe environment and providing a means of intervention if acts of violence threaten the safety and security of our community.

[History] Ord. 408 (9/15/20).

**4-02.220 Definitions.**

Notwithstanding the applicability of STC 4-01.040 to any terms used in this subchapter, the following terms carry the specific meanings defined herein when used in the application of this subchapter.

- (A) “Act of violence” shall be construed broadly and may include but is not limited to the following attempted or completed actions:
  - (1) use of intimidation, manipulation, isolation, coercion, fear or violence when used as a tactic of power and control to establish and maintain a relationship of dominance.
  - (2) any criminal offense enumerated in STC Title 4, Chapters 2 or 3;
  - (3) violation of a protection order that is consistent with Section 2265(b) of Title 18, United States Code and violation of a portion of the protection order that prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
  - (4) destruction of property or threats of physical harm causing a reasonable fear of physical harm.
- (B) “Native person” means a person that is an enrolled member of a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 5123).
- (C) “Native resident” means a Native person that resides within the Reservation.
- (D) “Non-Native person” means a person that is not a member of a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 5123).
- (E) “Ties to the community” means that a Non-Native person:
  - (1) Resides on the Reservation;

- (2) Is employed within the Reservation; or
- (3) Is a domestic partner, intimate partner, or dating partner of:
  - (a) an enrolled member of the Swinomish Indian Tribal Community; or
  - (b) a Native resident.

[History] Ord. 408 (9/15/20).

**4-02.230 Jurisdiction for Criminal Code Offenses.**

- (A) The Tribe hereby exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as these terms are defined within 25 U.S.C. 1301-1304. Any offense charged under this subchapter is charged through the exercise of special domestic violence criminal jurisdiction.
- (B) In all proceedings in which the Tribal Court is exercising special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by STC 4-01.110 shall apply in addition to those enumerated in 25 U.S.C. 1301-1304. In the event of inconsistency between STC 4-01.110 and 25 U.S.C. 1301-1304, those of 25 U.S.C. 1301- 1304 shall control.
- (C) Jurisdiction pursuant to special domestic violence criminal jurisdiction arises over a Non-Native person with ties to the community who commits an act of violence against a domestic partner, intimate partner, or dating partner.

[History] Ord. 408 (9/15/20).

**4-02.240 Challenging Jurisdiction.**

- (A) Jurisdiction established pursuant to this subchapter is a question of law to be decided by the Tribal Judge as a matter of law. A motion to dismiss for lack of jurisdiction is timely filed in Tribal Court at any time.
- (B) The prosecution has the burden of proving by a preponderance of the evidence that the Tribe has jurisdiction over a non-Native Defendant pursuant to STC 4-01.230(C).
- (C) Filing a pretrial motion challenging jurisdiction in Tribal Court shall not preclude or restrict a Defendant’s right to challenge tribal jurisdiction by filing a habeas petition in a court in the United States at any time.

[History] Ord. 408 (9/15/20).

**4-02.250 Sentencing Considerations.**

Native and Non-Native persons shall be subject to the same penalties, fines and sanctions available under Swinomish law. Political status as a Native or Non-Native may not be a basis for enhancement of a criminal sentence lawfully imposed under Swinomish law. The Tribal Court shall endeavor to apply sentences consistently without regard to the political status of the Defendant.

[History] Ord. 408 (9/15/20).

**4-02.260 Habeas Corpus.**

- (A) Every defendant charged under this subchapter retains the privilege of the writ of habeas corpus to test the legality of one's detention by order of the Tribe in a court in the United States. A defendant may also petition the Tribal Court to stay further detention pending the habeas proceeding.
- (B) The Tribal Court shall grant a stay pending the habeas proceeding if the Tribal Court:
  - (1) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
  - (2) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

[History] Ord. 408 (9/15/20).