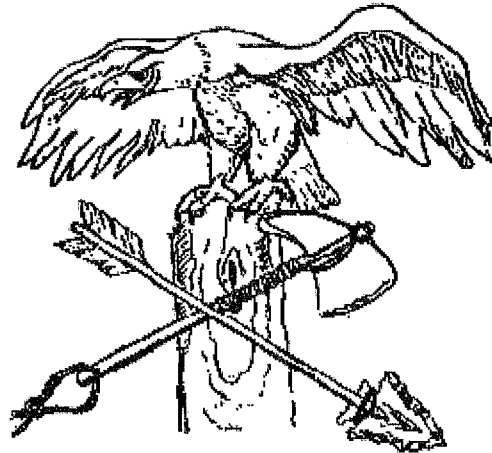


Shoalwater Bay Indian Tribe Code Of Laws



TITLE 2 LAW AND ORDER

Public Hearing June 01, 1995

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Tribal Council Resolution #08-03-88-30

Tribal Council Resolution #06-21-95-48

Shoalwater Bay Indian Tribe
Code Of Laws



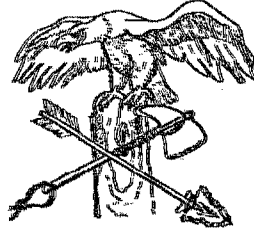
TITLE 2
LAW AND ORDER

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SHOALWATER BAY INDIAN TRIBE
CODE OF LAWS



TITLE 2
LAW AND ORDER

Chapter 2.00 Preliminary Article

2.00.01 Title, Severability and Repealer

- a) This title shall be known and may be cited as the Shoalwater Bay Indian Tribe Law and Order Code Title 2.
- b) If any provision of this code or its application to any person or circumstance is held invalid, the remainder of the code, or the application of the provision to other persons or circumstances is not affected and to this end, the provisions of this code are declared to be severable.
- c) This code repeals and supersedes Shoalwater Bay Indian Tribe Law and Order Code Title 2, adopted July 3, 1988, by Resolution No. 08-03-88-30.

2.00.02 Purpose

The general purpose of these provisions governing the definition of offenses are:

- a) To forbid and prevent conduct that inflicts or threatens substantial harm to individual or Tribal interests; and
- b) To give fair warning of the nature of the conduct declared to constitute an offense; and
- c) To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each.

2.00.03 Tribal Criminal Jurisdiction

The Tribal Court shall have criminal jurisdiction on the Reservation over:

- a) All Tribal members; and
- b) All other Indians in accordance with applicable Federal Law and U.S. Supreme Court decisions.

Non-Indians must be apprehended and prosecuted in accordance with applicable federal law and consistent with the rule stated in **Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978)**¹ so long as such rule is good law.

2.00.04 Non Waiver of Sovereign Immunity

Nothing in this code shall be deemed to constitute a waiver by the Shoalwater Bay Indian Tribe of its sovereignty, rights, powers, or privileges.

2.00.05 Custom/Other Law

- a) Where helpful to the fair and equitable disposition of criminal matters, the Tribal Court may inquire into the Tribal customs and usages of the Shoalwater Bay Indian Tribe.
- b) As to any matters which are not covered by the codes, ordinances and resolutions of the Tribe, or by the traditional custom and usages of the tribe, the Tribal Court may be guided by common law as developed by other Tribal, state, or federal courts.

2.00.06 Terms

The terms and provisions of this code shall be construed according to the fair import of their terms, but when the language is susceptible of differing construction, it shall be interpreted to further the general purposes stated in this code. Where a term is not defined herein, it shall be given its ordinary meaning.

Any reference to "he," "him" or other masculine terms shall include the male and female persons. Any reference to a singular term includes the plural.

2.00.07 Definitions

- a) "Bodily injury" or "bodily harm" – physical pain, injury or illness, or an impairment of physical condition.
- b) "Child"—any person under the age of eighteen (18) years and not emancipated.
- c) "Dangerous weapon" – any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article or substance. A "vehicle," as defined in this section, is a dangerous weapon when, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily injury.
- d) "Dwelling" – any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging.
- e) "Firearm" – a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

¹ **Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978)**
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- f) "Maliciously" – a desire to cause annoyance or harm of any kind.
- g) "Minor" – a person under the age of twenty-one (21) years and not emancipated
- h) "Position of trust or authority" – includes, but is not limited to, the special authoritative or confidential relationships relating to the provision of education, health care, any kind of counseling, coaching, religious advice, public safety services or other professional services.
- i) "Public official" – any officer, employee or representative of any Tribal or other governmental organization or agency, including Tribal or other court, or any person acting in an official capacity for or on behalf of any Tribal or other government organization, whether that official is paid to perform their official duties or not, and whether that official has a temporary or permanent position.
- j) "Recklessly" – being aware of a substantial risk and disregarding the risk when such disregard is a gross deviation from the conduct of a reasonable person.
- k) "Serious or substantial bodily injury" – bodily injury which causes serious or substantial disfigurement (temporary or permanent) or which causes a serious or substantial loss or impairment (temporary or permanent) of the function of any bodily part or organ.
- l) "Sexual intercourse" – any genital-genital, oral-genital, oral-anal or anal-genital contact, and also includes any penetration, however slight, of the anal or genital opening of another, with any object or with any part of the body.
- m) "Sexual touching" – any touching of the sexual or other intimate parts of a person done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of abusing, humiliating, harassing, or degrading another person.
- n) "Sexually explicit conduct" – actual or simulated: sexual intercourse as defined in this Code; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the sexual or other intimate parts of a person.
- o) "Threat/Threaten" – a declaration by word, action, or deed of one's intention to inflict injury to the person, property, or rights of another.
- p) "Tribal custom" – traditions and customs practiced by the Shoalwater Bay Indian Tribe.
- q) "Tribe" – the Shoalwater Bay Indian Tribe.
- r) "Unlawful force" – force that is without lawful authority (see definition "Without lawful authority").
- s) "Vehicle" – includes automobiles, cars, trucks, trailers, boats, airplanes, motorcycles and motor scooters, and other transportation devices.
- t) "Willfully" or "intentionally" – with the purpose of achieving a result that constitutes a crime.

- u) "Without lawful authority" – that no legitimate defense justifies the conduct in question. Legitimate defenses include, but are not limited to: reasonable force and/or detention by an enforcement officer; reasonable discipline by a parent; force reasonably used in self-defense, defense of another or to prevent the commission of a crime; retrieving property when a person knows he or she has the right to it; doing an act pursuant to a lawfully issued permit or government agency, authority or court order; implied invitation by a business and by public organization for members of the public with legitimate business to be on the premises during normal working hours; exercising a protected legal or civil right. The absence of lawful authority can be inferred in appropriate circumstances unless the defendant asserts a legitimate defense.

2.00.07 General Principles

- a) Aiding and Abetting – Accomplice Liability

Any person who intentionally assists in or encourages the commission of an offense is guilty of commission of that offense. Adults who assist minors in the commission of an offense commit a separate offense defined in §2.0701 below.

- b) Attempts

Whenever some other section of this code specifically addresses an attempt to commit an offense, that more specific section shall be applied. When the issue of attempt is not specifically addressed, any person who attempts to commit an offense shall be punished under the next lower class of offense than the completed offense. If a Class C offense is attempted, the attempt is also a Class C offense.

- c) Capacity

Children under the age of six (6) years are incapable of committing a crime.

- d) Conspiracy

Any person who intentionally agrees with another to commit an offense is guilty of conspiracy to commit that offense. Conspiracy is classified at the same level of offense as the offense that is the subject of the agreement.

- e) Solicitation of an Offense

Any person who intentionally offers to pay or otherwise give a thing of value to another to encourage the commission of a crime or attempt to commit a crime commits the offense of solicitation of an offense. Solicitation is classified at the same level of offense as the offense that is the subject of the solicitation.

Chapter 2.01 Sentencing

2.01.01 General Conditions

The Tribal Court may sentence any person who has been convicted of a violation of a provision of this code to serve time in jail; to be placed under home detention; to pay a fine; to work for the benefit of the community; to treatment; to attend educational classes; and/or any other penalty as determined by the Court to be appropriate. No fine or time served shall exceed the maximum period set for the offense in this code. Any work done for the benefit of the community shall be done under the supervision of an authorized agent of the Tribe².

2.01.02 Classes of Offenses

- a) Any person convicted of a Class A offense shall be liable to a sentence of up to one (1) year in jail and/or a fine of up to Five Thousand (\$5,000) Dollars and/or community service.
- b) Any person convicted of a Class B offense shall be liable to a sentence of up to six (6) months in jail and/or a fine of up to Two Thousand Five Hundred (\$2,500) Dollars and/or community service.
- c) Any person convicted of a Class C offense shall be liable to a sentence of up to thirty (30) days in jail and/or a fine of up to Five Hundred (\$500) Dollars and/or community service.

2.01.03 Determining Factors

In determining the character and duration of the sentence which shall be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, whether the offender has attempted to make amends and the extent of the defendant's resources and the needs of his dependents and the needs of the victim's, if any. The penalties listed above are maximum penalties, which are intended to be imposed in extreme cases only.

For subsequent violations of the criminal laws of the Shoalwater Bay Tribe, the Court shall impose a sentence that is greater than the sentence previously ordered³.

2.01.04 Restitution

In addition to any other sentence, the Court may require an offender who has injured the person or property of any individual to make restitution or to compensate the party

² Cross-reference Title 21 Rules of Criminal Procedure, Chapter 21.07 Sentence, Chapter 21.08 Probation, and Chapter 21.09 Deferred Court Procedures for Alcohol and Drug Offenses.]

³ Cross-reference Title 21 Rules of Criminal Procedure, Chapter 21.07.03

injured through the surrender of property, the payment of money damages, or the performance of any other act for the benefit of the injured party.

2.01.05 Probation

Where a sentence has been imposed upon any person, the Court may in its discretion suspend the sentence imposed and allow the offender his freedom on probation upon conditions set by the Court⁴.

Chapter 2.02 Offenses Against Persons

2.02.01 Abduction (Kidnapping)

Any person who shall willfully restrain, detain, confine or take away another person against his will without lawful authority, or without the consent of the parent or other person having lawful care or charge of him if such person is under the age of eighteen (18) commits the crime of Abduction.

- (a) Abduction is a Class A offense when any of the following circumstances are present:
- when the defendant's purpose is interfering with or obstructing a public official's performance of his official duties;
 - when a ransom or reward is demanded;
 - when the victim is used as a shield or hostage;
 - when bodily injury or extreme mental distress is inflicted on the victim;
 - when the defendant's purpose is to inflict extreme mental distress on the victim or a third person;
 - when the defendant's intent is to facilitate the commission of another Class A offense or flight from that offense;
 - when the victim is under the age of eighteen (18) or is an incompetent person;
 - when the victim is secreted or held in a place where he or she is not likely to be found;
 - when deadly force is used or threatened.
- (b) Abduction is a Class B offense whenever physical force, intimidation, or deception is used.
- (c) Abduction is a Class C offense if none of the circumstances defined above as a Class A or Class B offense is present.

2.02.02 Arson

Any person who willfully causes a fire or explosion to damage any building, structure, vessel, vehicle, or other property, without lawful authority, commits the crime of Arson.

⁴ Cross-reference Title 21 Rules of Criminal Procedure Sec. 21.08.01
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- (a) Arson is a Class A offense when any of the following circumstances are present: danger to any human life, including firefighters; or substantial serious damage to any building or Tribal property.
- (b) Arson is a Class B offense when any the following circumstances are present: damage to any building or damage to any property.
- (c) Arson is Class C offense when none of the circumstances making it a Class A or B offense is present.

2.02.03 Assault

Any person who (a) attempts with unlawful force to inflict bodily injury upon another, OR (b) without consent touches, strikes, cuts, shoots or poisons the person or body of another, OR (c) intentionally, with unlawful force, creates in another a reasonable apprehension and fear of bodily injury even though the infliction of bodily injury was not actually intended, OR (d) by threatening violence causes another to harm himself, commits the crime of Assault.

- (a) Assault is a Class A offense when any of the following circumstances are present:
 - use of a firearm or other dangerous weapon or any means likely to produce death or threaten life;
 - intent to kill;
 - intent to commit another Class A offense;
 - serious or substantial bodily injury results;
 - serious or substantial bodily injury is caused to an unborn child by inflicting any injury upon the mother of such child;
 - severe pain or agony is inflicted;
 - use of poison or any other destructive or noxious substance with intent to inflict serious or substantial bodily harm.
- (b) Assault is a Class B offense when any of the following circumstances are present:
 - Intent to prevent or resist the execution of any lawful Tribal or Court order.
 - intent to prevent or resist a lawful arrest or detention by a law enforcement officer;
 - the assault was committed upon ay public-official, including an enforcement officer, who was performing his or her official duties at the time of the assault;
 - any bodily harm accompanied by substantial pain is inflicted; use of poison or any other destructive or noxious substance with intent to inflict bodily harm;
 - use of a weapon or other instrument or thing likely to produce bodily harm;
 - intent to commit another Class B offense.
- (c) 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.

2.02.04 Custodial Interference

Any person who, with intent to deny access to a child or to an incompetent adult by a person having the lawful right of physical or legal custody to that child or incompetent adult, detains or conceals the child or incompetent adult, commits the offense of Custodial Interference.

- (a) Custodial Interference is a Class A offense if physical injury or extreme mental distress results or is risked from the offense; or if a threat of injury or deadly force is used; or if permanent deprivation of the child or incompetent adult is intended.
- (b) In all other circumstances, the commission of Custodial Interference is a Class B offense.
- (c) A threat to commit Custodial Interference is a Class C offense.

2.02.05 Harassment

Any person who without lawful authority knowingly threatens to cause bodily injury in the future to any person; or to cause damage to property; or to subject a person to confinement or restraint; or to take any action intended to threaten the physical or mental health or safety of a person; AND who by words or conduct places the person threatened in reasonable fear that the threat will be carried out, commits the offense of Harassment.

Harassment is a Class B offense.

2.02.06 Manslaughter

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 actions, or during the commission of or in attempt to commit or in flight from commission of a Class C offense, commits the offense of Manslaughter.

Manslaughter is a Class A offense.

2.02.07 Murder

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

Murder is a Class A offense.

2.02.08 Reckless Endangerment

Any person who recklessly engages in conduct which creates a substantial risk of death or bodily injury to a person commits the offense of Reckless Endangerment.

- (a) Reckless Endangerment is a Class A offense if it involves the use of a firearm or other dangerous weapon, or if serious injury or death to a person results.
- (b) Reckless Endangerment is a Class B offense if a child or incompetent adult is endangered or if injury to a person results.
- (c) Reckless Endangerment is a Class C offense when none of the circumstances making it a Class A or Class B offense are present.

2.02.09 Reckless Endangerment of a Fetus

Any woman who, knows or should have known she is pregnant, consumes an alcoholic beverage or a controlled substance thereby creating a substantial risk of injury to her fetus commits the offense of Reckless Endangerment of a Fetus.

A "fetus," for purposes of this Section, is a human embryo as it develops from the point of conception through to birth.

A woman convicted of Reckless Endangerment of a Fetus may be placed under house arrest for up to one (1) year, ordered to treatment, or required to attend pre-natal care classes or other counseling.

Chapter 2.03 Sexual Offenses

2.03.01 Abusive Sexual Intercourse (Rape)

Any person who knowingly engages in, causes, or attempts to cause, another person to engage in sexual intercourse, as defined in this Code, in any one of the following circumstances commits the offense of Abusive Sexual Intercourse:

- by using force against the other person;
- by threatening or placing the other person in fear; when the other person is a child under the age of eighteen (18) and not married to the defendant;
- when the other person is rendered unconscious or physically or mentally incapable of declining participation or communicating unwillingness to engage in sexual intercourse for any reason including physical handicap, mental disease, mental disability, alcohol or drug intoxication;
- when the defendant is in a position of trust or authority with respect to the other person, and takes advantage of that position to cause sexual intercourse;
- when the defendant is related to the victim in a familial relationship in which sexual intercourse is prohibited (incest).

Abusive Sexual Intercourse is a Class A offense.

2.03.02 Abusive Sexual Touching

Any person who knowingly engages in, causes or attempts sexual touching, as defined in this Code, with or by another person in any one of the following circumstances commits the offense of Abusive Sexual Touching:

- by using force against the other person;
- by threatening or placing the other person in fear;
- when the other person is a child under the age of eighteen (18);
- when the other person is rendered unconscious or physically or mentally incapable of declining participation or communicating unwillingness to engage in sexual touching for any reason including physical handicap, mental disease, mental disability, alcohol or drug intoxication;
- when the defendant is in a position of trust or authority with respect to the other person, and takes advantage of that position to cause sexual touching;
- when the defendant is related to the victim as an ancestor, descendant, or sibling.

Abusive Sexual Touching is a Class A offense.

2.03.03 Defense to Abusive Sexual Intercourse and Abusive Sexual Touching

Consent is a defense to Abusive Sexual Intercourse and Abusive Sexual Touching. All persons under the age of eighteen (18) years shall be deemed incapable of consenting to sexual intercourse or sexual touching. Persons of any age may be considered incapable of consent due to physical or mental disability whether temporary or permanent.

Where age is the only basis on which the conduct giving rise to these charges is considered nonconsensual, the defendant may assert the defense that the offense is of a lower class or non-criminal, if 1) the defendant is no more than 36 months older than the victim, or b) is based on the defendant's reasonable belief in the closeness of age between the victim and defendant, considering the circumstances as a whole.

2.03.04 Indecent Exposure

Any person who intentionally indecently exposes himself to another knowing that such conduct is likely to cause reasonable affront or alarm commits the offense of Indecent Exposure.

Indecent Exposure is a Class B offense if the victim is under age fourteen (14); otherwise, it is a Class C offense.

2.03.05 Patronizing a Prostitute

Any person who solicits or requests another person to engage in sexually explicit conduct or sexual touching with him or her in return for a fee or other benefit commits the offense of Patronizing a Prostitute. The fact that the solicitation, request, or payment was directed to a third party is irrelevant.

Patronizing a Prostitute is a Class B offense.

2.03.06 Possession of Child Pornography

Any person possessing material which is considered obscene child pornography under prevailing community standards commits the offense of Possession of Child Pornography.

Possession of Child Pornography is a Class B offense.

2.03.07 Prostitution and Profiting from Prostitution

Any person who engages in, agrees, or offers to engage in sexual conduct with another person in return for a fee or other benefit commits the offense of Prostitution. "Sexual conduct" means sexually explicit conduct or sexual touching as defined in this Code.

Prostitution is a Class B offense.

- (a) Any person who encourages a child under the age of eighteen (18) years to engage in prostitution commits a Class A offense.
- (b) Any person who profits from or attempts to profit from the commission of prostitution by another commits a Class B offense.

2.03.08 Sexual Exploitation of Children

Any person who employs, uses, persuades, induces, entices, or coerces any person under age eighteen (18) to engage in sexually explicit conduct or sexual touching, or has a person under eighteen (18) assist any other person to engage in sexually explicit conduct or sexual touching, or in any way willfully aids a person under eighteen (18) to engage in sexually explicit conduct or sexual touching, for the purpose of producing any visual depiction of such conduct or for the purpose of sexual gratification under circumstances in which the person under eighteen (18) is being exploited commits the Class A offense of Sexual Exploitation of Children.

Sexual Exploitation of Children is a Class A offense.

Any person who willfully assists in the production or distribution of a visual depiction of sexually explicit conduct or sexual touching by a minor also commits the Class A offense of Sexual Exploitation of Children.

2.03.09 Sexually Transmitting a Disease

Any person who, knowing that he or she is infected with a sexually transmitted disease, engages in conduct likely to transmit the disease to others, commits the offense of Sexually Transmitting a Disease.

Sexually Transmitting a Disease is a Class C offense, unless the disease is life-threatening, in which case a Class A offense is committed.

Chapter 2.04 Offenses Involving Property

2.04.01 Bad Checks

Any person who with intent to defraud makes, draws or delivers to another person any check or draft, on a bank or other depository for the payment of money, knowing that he or she has not sufficient funds in or credit with such bank or depository, to meet the check or draft in full upon its presentation or upon learning of such lack of sufficient funds refuses to reimburse, commits the offense of Writing a Bad Check.

Writing a Bad Check is a Class B offense.

2.04.02 Burglary

Any person who without lawful authority and with intent to commit a crime enters or remains in any of the following: a dwelling; a building; a fenced area; any structure used for lodging of persons or for carrying on business therein; any structure used to contain, sell or deposit goods; a cargo container; a boat; an airplane; a motor vehicle, commits the offense of Burglary.

- (a) Burglary is a Class A offense whenever a dwelling or Tribal property is involved, or if an area or structure occupied by other people at the time of the offense is involved, or if a dangerous weapon is involved, or if assault or attempted assault occurs during the offense, or if significant damage to property is involved.
- (b) Burglary is a Class B offense whenever circumstances for Class A offense are not present.

2.04.03 Computer Trespass

Any person who, without authorization, intentionally gains access to a computer system or electronic database of another commits the offense of Computer Trespass. Computer Trespass is a Class C offense unless the access is made with the intent to commit another crime or the violation involves a computer or database maintained by the Tribe, in which case it is a Class A offense.

2.04.04 Computer Trespass – Commission of Other Crime

Any person who, in the commission of a computer trespass, commits any other crime may be punished for that other crime as well as for the computer trespass and may be prosecuted for each crime separately.

2.04.05 Desecration of Religious Sites

Any person who, without Tribal Council approval, excavates or removes artifacts or other items excavated from any traditional sacred, or religious areas of the Shoalwater Bay Tribe or otherwise damages in any fashion such grounds, commits the offense of Desecration of Religious Sites.

Desecration of Religious Sites is a Class A offense.

2.04.06 Extortion

Any person who willfully obtains or attempts to obtain monies, goods, property or anything else of value, or services, or sexual favors by threat against another person, under circumstances not constituting the offense of robbery, commits the offense of Extortion. Threat includes the making of false charges against another person.

Extortion is a Class B offense.

2.04.07 Forgery

Any person who, with intent to defraud, falsely signs, executes, completes, makes or alters any written instrument, or in any way represents as true a written instrument which he or she knows to be forged, commits the offense of Forgery. It is not necessary that anything of value be actually obtained.

Forgery is a Class B offense.

2.04.08 Malicious Mischief

Any person who maliciously disturbs, injures, destroys, or physically damages any property belonging to another commits the offense of Malicious Mischief.

For the purposes of this Section, "physically damages" includes the total or partial alteration, damage, obliteration, or erasure of records, information, data, computer programs, or their computer representations, which are recorded for use in computers or the impairment, interruption, or interference with the use of such records, information, data, or computer programs, or the impairment, interruption, or interference with the use of any computer or services provided by computers. "Physical damage" also includes any diminution in the value of any property as the consequence of an act.

Malicious Mischief is a Class B offense when the amount of damage caused is over Two Hundred Fifty Dollars (\$250) and is a Class A offense if animals or Tribal property is damaged or damage to special religious or cultural property or gravesites is involved; otherwise it is a Class C offense.

[Cross-reference: to § 2.04.03 Desecration of Religious Sites.]

2.04.09 Possession of Stolen Property

Any person who receives, retains, possesses, conceals, sells or disposes of stolen property, or aids in such conduct, knowing that the property was obtained by theft, robbery, extortion, forgery or burglary, commits the offense of Possession of Stolen Property.

Possession of Stolen Property is a Class B offense when the value of the property involved is over Five Hundred Dollars (\$500) or when a stolen credit card, bankcard, vehicle, firearm, or Tribal property is involved; and otherwise it is a Class C offense.

2.04.10 Robbery

Any person who by force, violence, fear, or intimidation takes from a person, or which is in the presence of another, anything of value commits the offense of Robbery. It is not necessary that the person robbed knew of the taking if such knowledge was prevented by the use of force or fear.

Robbery is a Class A offense if any of the following circumstances are present: a dangerous weapon, the infliction of any bodily injury or substantial emotional distress, the significant destruction of property. In all other circumstances, Robbery is a Class B offense.

2.04.11 Taking a Vehicle Without Permission

Any person who without permission of the owner or person entitled to possession thereof, intentionally takes or drives the vehicle and any person who rides in or otherwise participates in moving any vehicle he or she knows or should have known was not authorized by the owner or person entitled to possession thereof, commits the offense of Taking a Vehicle Without Permission.

Taking Vehicle Without Permission is A Class B offense.

2.04.12 Theft (including crimes of embezzlement and fraud)

Any person who wrongfully obtains or exerts unauthorized control over the property or services of another or the value thereof, with intent to deprive him of such property or services; OR who by color or aid of deception obtains control over the property or services of another or the value thereof, with intent to deprive him of such property or services; OR appropriates lost or misdelivered property or services of another, or the value thereof, with intent to deprive him of such property or services, commits the offense of Theft.

- (a) Theft is a Class A offense when any of the following circumstances are present: the value of the property or services involved is One Thousand Five Hundred Dollars (\$1,500) or more; property is taken directly from the person of another; property has cultural, religious, or spiritual significance; theft of Tribal or other public property is involved.

- (b) Theft is a Class B offense when any of the following circumstances are present: theft of an access card or credit card is involved; theft of a vehicle or boat is involved; the value of the property or services involved is Two Hundred Fifty Dollars (\$250) or more, but less than the value required for a Class A theft; theft of a firearm is involved; theft of livestock is involved.
- (c) Theft is a Class C offense when none of the circumstances defined above as a Class A or Class B offense is present.

2.04.13 Trespass

Any person who without lawful authority knowingly enters, goes upon, passes over, or remains on the premises, or property of another, or who knowingly allows livestock to occupy or graze on property of another, commits the offense of Trespass. Property of another includes but is not limited to property belonging to any private or public person, group, organization, corporation, governmental body, agency, or business.

Trespass is a Class C offense but is a Class B offense for conduct involving a dwelling.

Chapter 2.05 Weapons Offenses

A "weapon" for purposes of this Chapter shall be any revolver, pistol or other firearm, whether loaded or unloaded, any knife, other than an ordinary pocket knife, or any dirk, dagger, sling shot, metal knuckles, explosive or incendiary devices, martial arts weapon, or any instrument by the use of which injury could be inflicted upon the person or property of any other person

2.05.01 Carrying a Concealed Weapon

Any person who goes about in public places armed with a dangerous weapon or firearm concealed upon his person, without having a current valid concealed weapons permit issued to him by the Chief of Police, commits the offense of Carrying a Concealed Weapon.

Carrying a Concealed Weapon is a Class B offense.

Law Enforcement Officers and Fish and Game Officers are exempt from this Section.

2.05.02 Carrying a Firearm While Under the Influence of Alcohol or Drugs

Any person, whether he or she has a concealed weapons permit or not, who carries a firearm on his person while under the influence of alcohol or drugs commits the offense of Carrying a Firearm While Under the Influence of Alcohol or Drugs.

Carrying a Firearm While Under the Influence of Alcohol or Drugs is a Class B offense.

2.05.03 Leaving a Weapon Unattended in Vehicle

Any person who knowingly leaves a firearms, whether loaded or unloaded, or other dangerous weapon in an unlocked, unattended vehicle where it is visible from the outside of the vehicle commits the offense of Leaving a Weapon Unattended in Vehicle.

Leaving a Weapon Unattended in Vehicle is a Class C offense.

Any person found guilty of the offense of Leaving a Weapon Unattended in Vehicle who had been convicted of this offense in the past shall be sentenced at the Class B level.

2.05.04 Unlawful Display or Discharge of a Weapon

Any person who carries, exhibits, displays, discharges or draws any firearm or other weapon which appears to be capable of producing bodily harm, in a manner, and under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of others commits the offense of Unlawful Display or Discharge of a Weapon.

Unlawful Display or Discharge of a Weapon is a Class B offense.

2.05.05 Unlawful Possession of a Firearm

Any person who possesses a firearm and:

- (a) has one or more outstanding warrants for a crime of violence from a court of any jurisdiction;
- (b) has been convicted in the past five years by a court in any jurisdiction of an attempt or commission of a crime of violence;
- (c) has been charged with or is awaiting sentencing for or on appeal from, conviction of a crime of violence in a court of any jurisdiction;
- (d) has been ruled mentally incompetent by a court of any jurisdiction; or
- (e) is under fourteen (14) years of age and not under the direct supervision an adult;

commits the offense of Unlawful Possession of a Firearm. Unlawful Possession of a Firearm is a Class B offense.

The Shoalwater Bay Tribal Council may provide an exemption from this restriction to persons who, under Section (b) above, would ordinarily be unable to legally possess a firearm.

A "crime of violence" for purposes of this Section has its ordinary meaning and includes domestic violence, child abuse, any crimes where a firearm is displayed and any crime involving the unlawful use of force.

Chapter 2.06 Offenses Involving Controlled Substances & Alcohol

2.06.01 Controlled Substances Which Are Illegal Without a Valid Prescription

Any substance that contains any quantity of a chemical that falls within the following categories is illegal to possess without a valid prescription:

- (a) Opiates including but not limited to substances commonly known as opium, heroin, morphine, methadone and codeine;
- (b) Hallucinogenic substances including but not limited to substances commonly known as MDA, LSD, PCP, mescaline, and psilocybin;
- (c) Marijuana;
- (d) Cocaine in any form including but not limited to powder and rock or "crack" form;
- (e) Depressants including but not limited to methaqualone, diazepam (Valium), secobarbital and pentobarbital; and
- (f) Stimulants including but not limited to any form of amphetamine.

2.06.02 Delivery of Alcohol to a Person Under Twenty-One Years of Age

Any person who gives, sells, or provides any alcoholic beverage to a person under the age of twenty-one (21) years, or allows such person to consume alcoholic beverages in a vehicle or building that person owns or is in control of, commits the offense of Delivery of Alcohol to a Person Under Twenty-One Years of Age.

Delivery of Alcohol to a Person Under Twenty-One Years of Age is a Class A offense.

21.06.03 Delivery of Alcohol to a Pregnant Woman

Any person who gives, sells or provides any alcoholic beverage to a woman that he or she knows or should have known is pregnant, or allows the woman to consume alcoholic beverages in a vehicle or building that person owns or is in control of, commits the offense of Delivery of Alcohol to a Pregnant Woman.

Delivery of Alcohol to a Pregnant Woman is a Class A offense.

2.06.04 Inhaling Toxic Fumes

Any person who intentionally smells or inhales the fumes of any type of substance containing a solvent having the property of releasing toxic vapors or fumes, or who induces any other person to do so, for the purpose of causing a condition of, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses of the central nervous

system, or for the purpose of changing, distorting, or disturbing the audio, visual, or mental processes, commits the offense of Inhaling Toxic Fumes.

“Substance containing a solvent having the property of releasing toxic vapors or fumes: means any substance containing one or more of the following chemical compounds: Acetone; Amylacetate; Benzol or benzene; Butyl acetate; Butyl alcohol; Carbon tetrachloride; Chloroform; Cyclohexanone; Ethanol or ethyl alcohol; Ethyl acetate; Hexane; Isopropanol or isopropyl alcohol; Isopropyl acetate; Methyl “cellosolve” acetate; Methyl ethyl ketone; Methyl isobutyl ketone; Toluol or toluene; Trichloroethylene; Tricresyl phosphate; Xylol or xylene; or any other solvent, material substance, chemical or combination thereof, having the property of releasing toxic vapors.

Inhaling Toxic Fumes is a Class A offense.

2.06.05 Manufacture or Delivery of a Controlled Substance

Any person who manufactures, delivers, or possesses with intent to deliver or manufacture any of the substances listed in §2.06.01 commits the offense of Manufacture or Delivery of a Controlled Substance.

Manufacture or Delivery of a Controlled Substance is a Class A offense.

2.06.06 Minor in Possession of Alcohol

Any person under the age of twenty-one (21) years who shall purchase, obtain, possess, consume, or sell any alcoholic beverage commits the offense of Minor in Possession of Alcohol.

Minor in Possession of Alcohol is a Class C offense for the first conviction, a Class B offense for the second conviction and a Class A for the third conviction.

All minors convicted of this offense must be referred to the Tribe’s or other alcohol or drug programs for diagnostic investigation and evaluation.

2.06.07 Minor Under the Influence of Alcohol

Any person under the age of twenty-one (21) years who consumes or has in his or her possession any alcoholic beverage, or who appears to have consumed alcohol as evidenced by the person’s speech, appearance, odor, behavior, or motor abilities, so that it is reasonable to infer recent consumption commits the offense of Minor Under the Influence of Alcohol.

Minor Under the Influence of Alcohol is a Class C offense for the first conviction, a Class B offense for the second conviction and a Class A for the third conviction.

All minors convicted of this offense must be referred to the Tribe’s or other alcohol or drug programs for diagnostic investigation and evaluation.

2.06.08 Possession of a Controlled Substance

Any person who possesses of any amount of a substance listed in §2.06.01 commits the offense of Possession of a Controlled Substance.

Possession of a Controlled Substance is a Class A offense.

2.06.09 Proof of Chemical Composition

The chemical composition of a substance may be proved by any acceptable method of identification, including but not limited to identification by a trained officer, by certified field tests or by certified laboratory tests.

Chapter 2.07 Offenses Involving Children and Minors

2.07.01 Contributing to the Commission of an Offense by a Minor

Any adult who intentionally assists in or encourages the commission of an offense by a minor, or who recruits, solicits, conspires with, or enlists the participation of, a minor with regard to obtaining the minor's participation in an offense, commits a separate offense in addition to being liable for the commission of all crimes committed by the adult's accomplice.

The adult commits a Class A "contributing" offense if the minor's offense is a Class A or Class B offense. The adult commits a Class B "Contributing" offense if the minor's offense is a Class C offense. The adult commits a Class C "contributing" offense if the minor's conduct is a civil infraction.

2.07.02 Criminal Neglect

Any person who refuses or neglects to furnish food, shelter, supervision or care to a child for whose care he or she is responsible, or who otherwise neglects a child, as determined in the Family Code, commits the offense of Criminal Neglect.

"Care" includes sending a child to school when school attendance is legally required.

The definition of "neglect" shall be interpreted broadly to protect the best interest of the child.

Criminal Neglect is a Class C offense, unless the neglect risks or causes serious injury or illness, in which case a Class B offense is committed, or unless the neglect is life threatening, in which case a Class A offense is committed.

2.07.03 Criminal Abuse of Children and Abuse of Dependent or Developmentally Disabled Adults

Any person who inflicts abuse as defined in the Family Code upon a child for whom he or she is responsible, or upon a dependent, or developmentally disabled adult for whom he or she is responsible, under circumstances not constituting an assault, commits the offense of Criminal Abuse of Children and Abuse of Dependent or Developmentally Disabled Adults.

“Abuse” for purposes of this Section includes non-accidental bodily injury, cruel mental distress, and sexual abuse and exploitation.

Criminal Abuse of Children and Abuse of Dependent or Developmentally Disabled Adults is a Class C offense.

2.07.04 Special Considerations for Offenses Involving Minors

If the defendant is a minor, the Shoalwater Bay Indian Tribe Family Code should be referred to for other applicable penalties and procedures. Dependency proceedings and other proceedings for temporary or permanent removal and custody of the minor may be concurrent to any proceedings involving offenses under this Chapter.

Chapter 2.08 Offenses Involving Tribal Government Including Tribal Courts

2.08.01 Bail Jumping

Any person who has been released by court order (including release on personal recognizance) or allowed to post bail but is required to make a subsequent personal appearance in court, and who willfully fails to make that subsequent court appearance as required, commits the offense of Bail Jumping.

Bail Jumping is a Class B offense.

2.08.02 Bribery

Any person who EITHER: with intent to secure a particular result in a particular matter involving the exercise of any public official's vote, opinion, judgment, exercise of discretion, or other action in his official capacity, offers, confers, agrees to confer, or promises anything of value to such public official; OR being a public official, requests, accepts, or agrees to accept anything of value, pursuant to an agreement, promise or understanding that his vote, opinion, an agreement, promise or understanding that his vote, opinion, judgment, exercise of discretion, or other official action as a public official will be used to secure or attempt to secure a particular result in a particular matter, commits the offense of Bribery.

Bribery is a Class B offense.

2.08.03 Criminal Contempt of Court

Any person who willfully disobeys any order, subpoena, summons, warrant, or command duly issued, made or given by the Tribal Court or any authorized officer thereof, commits the offense of Criminal Contempt of Court.

Contempt of Court shall include committing violence in the courtroom, appearing in Court while under the influence to any degree of alcohol or drugs, or repeatedly using insulting or vulgar language in the presence of the Court. Such courtroom conduct may be punished summarily, whereby the Court shall prepare a written order stating the contemptuous act, adjudging the guilt of the offender and the punishment imposed.

Criminal Contempt of Court is a Class C offense.

2.08.04 Escape

Any person who is in lawful government custody following an arrest for an offense, either prior to trial, while attending court proceedings, or while being punished for an offense, who escapes from such custody or who willfully attempts, assists or permits such escape, commits the offense of Escape.

For the purposes of this Section, "arrest" occurs when a Law Enforcement Officer deprives a person of his liberty, by physical force, threat of force, or conduct implying force will be used, and the Law Enforcement Officer intends to make an arrest.

Escape is a Class B offense.

2.08.05 False Reports

Any person who intentionally submits a false report to any Tribal or other governmental agency, including a law enforcement agency, commits the offense of False Reports.

False Reports is a Class C offense.

2.08.06 Intimidation of Witnesses, Jurors, Judges and Public Officials

Any person who by use of a threat, without lawful authority, intentionally attempts to influence the conduct of a witness, juror, judge or any public official, commits the offense of Intimidation of Witnesses, Jurors, Judges and Public Officials.

Intimidation of Witnesses, Jurors, Judges, and Public Officials is a Class B offense.

2.08.07 Obstruction of Public Officials Including Enforcement Officers

Any person who willfully hinders, delays or obstructs any public official including a Tribal Law Enforcement Officer, in the performance of his official duties or powers, or willfully fails to comply with or refuses to comply with the lawful order of a public official,

including any enforcement officer, commits the offense of Obstruction of Public Official s Including Enforcement Officers.

Obstruction of Public Officials Including Enforcement Officers is a Class B offense.

2.08.08 Perjury

Any person who in any official Tribal matter, including Tribal Court proceedings, after having sworn to tell the truth or otherwise being under oath, intentionally makes a materially false statement, orally or in writing, commits the offense of Perjury.

Perjury is a Class B offense.

2.08.09 Refusing to Aid an Officer

Any person who, when requested by a Tribal Law Enforcement Officer to assist a law enforcement officer, fire fighter or medic in any other official duty including summoning aid, intentionally refuses or neglects such assistance commits the offense of Refusing to Aid an Officer.

Refusing to Aid an officer is a Class C offense, unless serious bodily injury or death results, in which case a Class A offense is committed.

2.08.10 Resisting Lawful Arrest

Any person who intentionally prevents or attempts to prevent a Tribal Law Enforcement Officer from lawfully arresting him, or who intentionally flees from a Tribal Law Enforcement Officer with intent to prevent a lawful arrest or detention, commits the offense of Resisting Lawful Arrest.

Resisting Lawful Arrest is a Class C offense.

Chapter 2.09 Offenses Involving the Public Peace and Health

2.09.01 Disorderly Conduct

Any person, whether in a public or private location (including his or her own residence) who:

- 1) intentionally uses words or conduct in an effort to provoke another person to assault or batter anyone; or
- 2) encourages or assists in provoking a dog or other animal to attack another person, unless in lawful protection of any person or property; or
- 3) without lawful authority, intentionally interferes with the participation or enjoyment by another person of a funeral, religious or fraternal gathering, sporting event,

bingo or other Tribal business activity, Tribal Court proceeding, Tribal Days event, or any other public and lawful community gathering or meeting; or

- 4) repeatedly screams, yells or otherwise makes loud noises at anytime of the day to the point where the peace and tranquility of the public is disrupted; or
- 5) between the hours of 10 p.m. to 7 a.m. makes or allows any loud noises, voices or music to come from his or her residence or vehicle to the point there neighbors are unable to sleep; or
- 6) operates a motor vehicle so as to allow the vehicle's tires to squeal or needlessly spray debris, unless attempting to free the vehicle from a stuck position; or
- 7) repeatedly revs the engine of a motor vehicle, unless necessary for the purposes of warming the engine or repairing the vehicle;

commits the offense of Disorderly Conduct.

Disorderly Conduct is a Class C offense.

2.09.02 False Alarm

Any person who intentionally and without reasonable grounds to believe an emergency exists, sends, gives, transmits or sound s any false alarm by means of any public or private alarm signal or system or by telephone commits the offense of False Alarm.

False Alarm is a Class C offense.

2.09.03 Product Tampering

Any person who without lawful authority, with intent or reckless disregard, tampers with a product intend for human or animal use, in a manner which threatens public health or is likely to cause bodily injury, bodily harm or illness, commits the offense of Product Tampering.

Product Tampering is a Class B offense, unless the injury, harm or illness involved is life-threatening in which case a Class A offense is committed.

Chapter 2.10 Offenses Involving Animals⁵

2.10.01 Cruelty to Animals

Any person who tortures, cruelly mistreats, or neglects any animal commits the offense of Cruelty to Animals. Cruelty to Animals is a Class B offense if a risk of serious injury to the animal is involved otherwise it is a Class C offense.

2.10.02 Damage by Animals

Any person who knowingly fails to reasonably control an animal belonging to him or in his care and custody and as a result the animal causes damage to property of another commits the offense of Damage by Animals.

The first offense of Damage by Animals is a Class C offense, but repeated conduct of this type involving the same animal constitutes a Class B offense.

2.10.03 Failure to Restrain Sick Animal

Any person who fails to reasonably control an animal belonging to him or her or is in his or her care and custody which he or she knows has a contagious disease, and that animal infects or harms another animal with the disease commits the offense of Failure to Restrain Sick Animal.

The first offense of Failure of Restrain Sick Animal is a Class C offense, but repeated conduct of this type involving the same animal constitutes a Class B offense.

2.10.04 Menacing Animals

Any person who knowingly permits an animal belonging to him or in his care and custody to menace other persons by causing them reasonable fear of harm or actual harm commits the Class C offense of Menacing by Animals.

The first offense of Menacing Animals is a Class C offense, but repeated conduct of this type involving the same animal constitutes a Class B offense.



SHOALWATER BAY INDIAN TRIBE

Tokeland, Washington 98590

Telephone 267-6765

SHOALWATER BAY INDIAN TRIBE

RESOLUTION NO. 08-03-88-30

WHEREAS, the Shoalwater Bay Tribe is a federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe according to its Constitution; and

WHEREAS, the Shoalwater Bay Tribal Council has the power to enact laws governing the conduct of all persons and defining offenses against the Shoalwater Bay Indian Tribe; and

WHEREAS, The Shoalwater Bay Tribe is in need of fair and efficient laws to govern people within the jurisdiction of the Tribe; and

WHEREAS, a Law and Order Code will provide procedures for enforcement of Law and Order to members and non-members within the jurisdiction of the Shoalwater Bay Tribe; and

WHEREAS, that the TITLE 2 LAW AND ORDER CODE is hereby adopted with provisions to amend or delete the Law and Order as needed; and

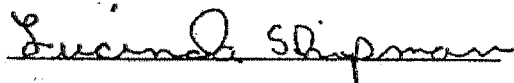
NOW THEREFORE BE IT RESOLVED, that the attached TITLE 2 LAW AND ORDER CODE of the SHOALWATER BAY TRIBE CODE OF LAWS is hereby adopted effective on the date of this resolution.

C E R T I F I C A T I O N

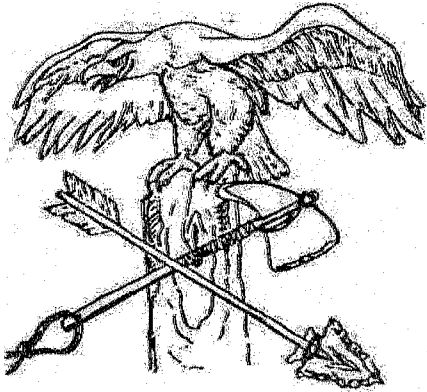
The above resolution was passed at a regular Tribal Council meeting held on the 3 day of July, 1988 at the Shoalwater Bay Tribal Center at which a quorum was present by a vote of 4 FOR, 0 AGAINST, AND 0 ABSTAIN.



ELIZABETH FANNING, CHAIRPERSON
SHOALWATER BAY INDIAN TRIBE



LUCINDA SHIPMAN, SECRETARY
SHOALWATER BAY INDIAN TRIBE



SHOALWATER BAY INDIAN TRIBE

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SHOALWATER BAY INDIAN TRIBE RESOLUTION #06-21-95-48

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance to their Constitution and By-Laws; and

WHEREAS, The Shoalwater Bay Tribe has revamped the TITLE 2: LAW & ORDER CODE and has gone before a Public Hearing on June 1, 1995.

THEREFORE BE IT RESOLVED, That the Shoalwater Bay Tribal Council does hereby adopt the revised TITLE 2: LAW AND ORDER CODE.

C E R T I F I C A T I O N

The above Resolution was enacted at a Regular Meeting of the Shoalwater Bay Tribal Council at which a quorum was present on the 21st day of June, 1995 by a vote of: 3 FOR AND 0 AGAINST AND 0 ABSTENTION.

Herbert Mark Whitish, Chairman
Shoalwater Bay Tribal Council

Lynn Clark, Secretary
Shoalwater Bay Tribal Council