

PUBLIC NOTICE OF PROPOSED AMENDMENTS TO RSLOC CHAPTER 8 AND REQUEST FOR COMMUNITY COMMENT

I. REQUEST FOR COMMUNITY COMMENT

Tribal Council would like community feedback and comment on proposed amendments to Chapter 8, Offenses Against the Person, prior to Council action on those proposed amendments.

II. WHAT WOULD THE PROPOSED AMENDMENTS ACCOMPLISH?

Updates the current language of Chapter 8 to be more consistent between sections and with other RSLOC chapters, correct typographical errors, and for clarity.

Clarifies the intent of mandatory minimum sentences and the Tribal Court's discretion.

Adds definition sections to various sections, such as "Communicating Threats" to better inform the public of prohibited conduct.

Increases the maximum penalty for all crimes to the maximum allowed by law: One year of confinement, \$5,000 fine, or both.

Modifies the mandatory minimum sentences for various crimes throughout Chapter 8. This includes adding mandatory minimum sentence requirements to certain sections that previously did not have any.

Codifies additional crimes to close perceived gaps in the RSLOC. For example, added new language which criminalizes Aggravated Communicating Threats, Third Degree Assault and Battery, Assault on a Public Servant, Sexual Assault, and others.

Adds language to further clarify "consent" with respect to Sexual Violence by identifying individuals who cannot provide consent under any circumstances, including individuals under age 16, individuals deemed mentally incapable or giving consent, and individuals who under correctional supervision.

Moves and renumbers various sections to improve readability and accommodate newly added language.

Renames and renumbers current Section 8-9 "Electronic Harassment" as Section 8-10 "Harassment" which codifies the crimes of Harassment, Stalking, Malicious Harassment, and Disclosure of Intimate Images.

Creates a new Section 8-13 "Endangerment" which codifies the crimes of Negligent Endangerment and Reckless Endangerment.

III. HOW TO PROVIDE WRITTEN COMMENT AND DEADLINE

Written comments can be provided to Bre Brigman in the Alfred McCoy Administration Building or you can email comments to bre.brigman@SpokaneTribe.com. **The community comment period closes March 25, 2022.**

A "redline" copy of RSLOC Chapter 8 – Offenses Against the Person which reflects all proposed changes can be accessed at www.spokanetribe.com. Hard copies have been posted at the Alfred McCoy Administration Building and the Spokane Tribal Court.

CHAPTER 8 — OFFENSES AGAINST THE PERSON

- Section 8-1 ~~Simple Assault~~ Mandatory Sentence and Fine**
- Section 8-2 ~~First Degree~~ Communicating Threats**
- Section 8-3 Assault and Battery ~~Section 8-3 Abduction~~**
- Section 8-4 Abduction and Unlawful Imprisonment**
- Section 8-5 Sexual Violence ~~Section 8-5 Assisting Suicide~~**
- Section 8-6 Suicide**
- Section 8-7 Criminal Libel**
- ~~Section 8-7~~ Section 8-8 Criminal Slander**
- Section ~~8-8~~ 8-9 Offenses Against Senior Citizens and Vulnerable Adults**
- Section ~~8-9~~ 8-10 Electronic Harassment**
- Section 8-11 Criminal Homicide**
- Section 8-12 Robbery**
- Section 8-13 Endangerment**

Section 8-1 ~~Simple Assault~~ Mandatory Sentence and Fine

8-1.01 ~~Assault/~~ Mandatory Sentence and Fine.

- (a) The minimum sentences provided for in this Chapter are mandatory and may not be suspended or reduced.**
- (b) Each sentence for conviction of such offenses shall include both the confinement and the fine and neither may be suspended or reduced.**
- (c) Any sentence of confinement for shall be given without consideration for work release or other such programs.**

Adopted XX/XX/XX, Resolu. 20XX-XXX.

Section 8-2 Communicating Threats

8-2.01 Definitions.

- (a) “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; or**
 - (2) To cause bodily injury in the future to the person threatened or to any other person; or**
 - (3) To cause physical damage to the property of any other person; or**
 - (4) To subject the person threatened or any other person to physical confinement or restraint; or**
 - (5) To falsely accuse any person of a crime or cause criminal charges to be instituted against any person; or**
 - (6) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or**

(7) To do any other act which is intended to substantially harm the person threatened or another with respect to his or her health, safety, business, financial condition, or personal relationships.

(b) “Public Servant” as used in this section means:

(1) Any Tribal officer, or officer of a Tribal enterprise or corporation, or employee of the Tribe or a Tribal enterprise or corporation, including Tribal Council members, other elected or appointed Tribal officials, or Tribal enterprise Board members; and any person contracted by the Tribe, including, by example, Tribal Judges, Tribal Attorneys, federal employees performing Tribal functions, and any other Tribal employee or person contracted by the Tribe, who is performing a Tribal governmental function; or

(2) Any person holding office under a tribe, city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officers and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer; or

(c) “Dangerous or Deadly Weapon” as used in this section 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.

(d) “Sexual Assault” as used in this Section means any act which is defined as a sexual assault under any Tribal, State, or Federal law.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

8-2.02 Communicating Threats. A person is guilty of ~~e~~Communicating ~~t~~Threats if, without lawful authority:

- (a) The person willfully threatens to inflict bodily harm~~or death~~ upon ~~a~~another person, or to damage the property of another; and
- (b) The threat is communicated to the other person~~7~~, orally, in writing, or by any other means; and
- (c) The threat is made in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out.
- (d) ~~A violation of this section~~Penalties. Upon conviction for Communicating Threats an individual shall be punishable by a sentence to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$2500, or imprisonment of not more than 6 months5,000.00, or both, and costs.

Legislative History-Amended 7/05/06, Resolu. 2006-478; Readopted 8/01/06, Resolu. 2006-524; Previously codified as 8-1.01, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-1.02 Assault

8-2.03 Aggravated Communicating Threats. A person is guilty of Aggravated Communicating Threats if, without lawful authority:

- (a) The person willfully threatens to commit a Sexual Assault or inflict death upon another person; and
- (b) The threat is communicated to the other person orally, in writing, or by any other means; and
- (c) The threat is made in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out.
- (d) Penalties. Penalties. Upon conviction for Aggravated Communicating Threats an individual shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however, that there shall be a mandatory minimum of four (4) days of confinement.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

8-2.04 Threats with a Dangerous or Deadly Weapon. Any A person who shall attempt or threaten is guilty of Threats with a Dangerous or Deadly Weapon if, without lawful authority:

- (a) The person willfully attempts or threatens to inflict bodily harm, Sexual Assault, or death upon another person by use of a dangerous Dangerous or deadly weapon shall be deemed guilty of assault with a dangerous or deadly weapon and upon Deadly Weapon; and
- (b) The threat is communicated to the other person orally, in writing, or by any other means; and
- (c) The threat is made in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out.
- (d) Penalties. Upon conviction for Threats with a Dangerous or Deadly Weapon an individual shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however, that there shall be a mandatory minimum of fourteen (14) days of confinement.

Readopted 8/01/06, Resolu. 2006-524; Previously codified as 8-1.02, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-2.05 Offenses Against Public Servants: Minimum Sentence Enhancements.

- (a) Any person who is convicted of an offense of "Communicating Threats" against a Public Servant acting within their role as a Public Servant shall be sentenced to a mandatory minimum of five (5) days confinement rather than the mandatory minimum sentence otherwise required under 8-2.02.
- (b) Any person who is convicted of an offense of "Aggravated Communicating Threats" against a Public Servant acting within their role as a Public Servant shall be sentenced to a mandatory minimum of ten (10) days confinement rather than the mandatory minimum sentence otherwise required under 8-2.03.
- (c) Any person who is convicted of an offense of "Threats with a Dangerous or Deadly Weapon" against a Public Servant acting within their role as a Public Servant shall be sentenced to a mandatory minimum of twenty (20) days confinement rather than the mandatory minimum sentence otherwise required under 8-2.04.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

8-2.06 Intimidating a Public Servant.

- (a) A person is guilty of Intimidating a Public Servant if, by use of a threat, he or she attempts to influence a Public Servant's vote, opinion, decision, or other official duty or action as a Public Servant; and
- (b) The threat is communicated to the other person orally, in writing, or by any other means; and
- (c) The threat is made in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out.
- (d) Penalties. Upon conviction thereof for Intimidating a Public Servant an individual shall be sentenced to confinement for a maximum period of not more than 90 days but not less than 2 days, and to one (1) year, pay a maximum fine of not more than \$300 but not less than \$505,000.00, or both, and costs, provided however, that there shall be a mandatory minimum of two (2) days of confinement.

~~Readopted 8/01/06~~ Adopted XX/XX/XX, Resolu. 2006-52420XX-XXX.

Section ~~8-2 First Degree~~ 8-3 Assault and Battery

~~8-2.01 First Degree Assault and Battery.~~

- ~~(a) Any person who shall intentionally or knowingly use force or violence on another person shall be guilty of assault and battery in the first degree when he:~~

8-3.01 Definitions.

- (a) "Serious Bodily Injury" as used in this section means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.
- (b) "Assault" as used in this section means any of the following:
 - (1) An assault is an intentional touching, striking, cutting, or shooting of another person, with unlawful force, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching, striking, cutting, or shooting is offensive if the touching, striking, cutting, or shooting would offend an ordinary person who is not unduly sensitive.
 - (2) An assault is also an act, with unlawful force, done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.
 - (3) An assault is also an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.
 - (4) An act is not an assault, if it is done with the consent of the person alleged to be assaulted.

(5) An assault is also an act, with unlawful force, done with intent to strangle, suffocate, or attempting to strangle or suffocate another person.

(c) "Strangle" or "Strangling" means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(d) "Suffocate" or "Suffocating" means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

Adopted XX/XX/XX, Resolu. 20XX-XXX

8-3.02 First Degree Assault and Battery.

(a) A person is guilty of First Degree Assault and Battery if he or she willfully:

(1) ~~Shall use~~Uses force or violence upon the person or body of another with a firearm or any other deadly or dangerous weapon;

(2) ~~Shall administer or~~

(2) Administers to or ~~cause~~causes to be taken by another, poison or any other noxious or destructive thing so as to endanger the life of another person-; or

(3) ~~(b)Any person convicted thereof~~Uses force or violence upon the person or body of another and causes Serious Bodily Injury.

(b) Penalties. Upon conviction for First Degree Assault and Battery an individual shall be sentenced to confinement for a maximum period of not more than ~~6 months but not less than 30 days and to one~~ (1) year, pay a maximum fine of not more than ~~\$500 but not less than \$150~~5,000.00, or both, and costs, provided however, that there shall be a mandatory minimum of six (6) months confinement. The minimum sentence is mandatory and may not be suspended or reduced.

Readopted 8/01/06, Resolu. 2006-524; Previously codified as 8-2.01, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-2-028-3.03 Second Degree Assault and Battery.

(a) A person is guilty of Second Degree Assault and Battery if he or she willfully assaults another person, which results in harm or injury to the other person.

(b) Penalties. A violation of this section shall be punishable by a fine or not more than \$5,000.00, or imprisonment of not more than one (1) year, or both, and costs, provided however, that there shall be a mandatory minimum of two (2) days confinement.

Readopted 8/01/06, Resolu. 2006-524; Previously codified as 8-2.02, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-3.04 Third Degree Assault and Battery.

(a) A person is guilty of Third Degree Assault and Battery if he or she willfully and unlawfully touches or strikes the person or body of another.

- (b) Penalties. A violation of this section shall be punishable by a fine or not more than \$5,000.00, or imprisonment of not more than one (1) year, or both, and costs.

Readopted 8/01/06, Resolu. 2006-524; Previously codified as 8-2.02, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-3.05 Assault on a Public Servant.

- (a) A person is guilty of Assault on a Public Servant if he or she willfully and unlawfully touches or strikes the person or body of a Public Servant.
- (d) Penalties. A violation of this section shall be punishable by a fine or not more than \$5,000.00, or imprisonment of not more than one (1) year, or both, and costs, provided however, that there shall be a mandatory minimum of fifteen (15) days confinement.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

Section 8-4 Abduction and Unlawful Imprisonment

8-4.01 Abduction.

- (a) A person is guilty of Abduction if he or she willfully and unlawfully:
- (1) Takes away another person against that person's will; or
- (2) Takes away a person under the age of eighteen (18) years without the consent of the person's parent or other lawful custodian.

~~(a) Any person who shall willfully and knowingly use force or violence on another person shall be guilty of assault and battery in the second degree when he willfully and unlawfully touches, strikes or otherwise harms the person or body of another.~~

~~(b) Any person~~ Penalties. A person who is convicted thereof Abduction shall be sentenced to confinement for a maximum period of not more than 90 days but not less than 2 days and to one (1) year, pay a maximum fine of not more than \$350 but not less than \$200.

~~Readopted 8/01/06, Resolu. 2006-524.~~

~~Mandatory Sentence and Fine:~~

- ~~(a) The minimum sentences provided for in this Chapter are mandatory.~~
- ~~(b) Each sentence for conviction of such offenses shall include both the confinement and the fine and neither may be suspended or reduced. Furthermore, any sentence of confinement for first-degree assault and battery shall be given without consideration for work release or other such programs.~~ 5,000.00, or both, and costs, provided however, that there shall be a mandatory minimum of two (2) days of confinement. The minimum sentence is mandatory and may not be suspended or reduced.

~~Readopted 8/01/06, Resolu. 2006-524. Previously codified as 8-3.01, Moved and Amended XX/XX/20, Resolu 20XX-XXX.~~

Section 8-3 Abduction

~~8-3.01 Abduction.~~

8-4.02 Unlawful Imprisonment.

- (a) ~~Any A person who shall~~ is guilty of Unlawful Imprisonment if her or she willfully detain and unlawfully:
- (1) Detains or take away imprisons another person against that person's will, or if such

(2) Detain or imprisons a person ~~be~~ under the age of eighteen years, without the consent of the person's parent ~~or~~ other lawful custodians ~~shall be deemed guilty of abduction and upon conviction thereof.~~

(b) Penalties. A person who is convicted of Abduction shall be sentenced to a confinement for a maximum period of ~~confinement~~ ~~not to exceed 6 months or ordered to more than one (1) year,~~ pay a maximum fine of not ~~to exceed \$500~~ more than \$5,000.00, or both ~~the jail, and costs, provided however, that there shall be a mandatory minimum of two (2) days of confinement. The minimum sentence is mandatory and fine, and costs may not be suspended or reduced.~~

~~Readopted 8/01/06~~ Adopted XX/XX/XX, Resolu. 2006-52420XX-XXX.

Section 8-48-5 Sexual Violence

8-4.018-5.01 Definitions:

When a term is not defined in any provision of ~~the code~~ this Section 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 Chapters of the RSLOC, or definitions utilized in other jurisdictions. Any reference to "he", "she" or other gender pronouns includes both male and female persons.

(a) "Consent"

(1) means actual words or actions by a person indicating a voluntary and freely given agreement to engage in sexual intercourse, sexual penetration, or sexual contact.

(2) The following cannot provide Consent under any circumstances:

~~(i) Any individual under the age of sixteen (16);~~

~~(ii) Any individual who has been found mentally incapable of giving Consent by any court, department, or agency with competent jurisdiction;~~

~~(iii) Any individual who is a resident of a tribal, state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision.~~

(b) "Forcible compulsion—where" means physical force which overcomes resistance or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person or in fear that he or another person will be kidnapped.

(c) "Penetration" means any intrusion, however slight with any part of a person's body or of any object into the genital ~~or,~~ anal, oral, or other openings of any other person's body.

(d) "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 desire of ~~any~~ another person, including but not limited to;

~~(e) "Sexual Act" means:~~

~~(1) contact between the penis and the mouth, vulva, or anus;~~

- (2) contact between the mouth and the penis, vulva, scrotum, or 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;
 - (5) ~~(1)any intentional display of the genitals, anus, or breasts for the purpose of arousal or sexual gratification;~~
~~(2)any intentional touching or fondling of the genitals, anus, breasts, directly or indirectly, including through clothing that one person is forced to perform by another person~~
 - (6) ~~(3)any forced display of the alleged victim's genitals, anus, or breasts for the purpose of arousal or sexual gratification of self or others;~~
 - (7) ~~(4)any intentional or knowing touching of the clothed or unclothed body of a child under the age of thirteen (13), if done for the purpose of sexual gratification or arousal of self or of others;~~
 - (8) ~~(5)any coerced or forced touching or fondling by forcing a child under the age of thirteen (13) to touch, directly or indirectly, including through clothing, of the genitals, anus, breasts of self or others; or~~
 - (9) any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.
- (f) ~~(e)"Sexual Intercourse—" means conduct~~ any of the following:
- (1) Its ordinary meaning and occurs upon any penetration, however slight;
 - (2) Conduct between persons consisting of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the penis and persons of the vulva, the penis and same or opposite sex,
 - (3) Any penetration of the genitals or anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person's body or any object into an object, when committed on one person by another, whether such persons are of the genital same or anal opening opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes; or
 - (4) 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.
- (g) "Sexual Deviancy Evaluation" means a sex offender risk assessment, or other similar assessment as approved by the Tribal Court.

8-4.028-5.02 Victim Testimony and Evidence.

- (a) In order to convict a person of any crime defined in this ~~chapter~~Section 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) The defendant shall make a written pretrial motion to the Court and the 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 direct interest in the case or in the work of the Court,
 - (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; that the probative value of the evidence is not substantially outweighed by the danger of unfair 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.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.02, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.038-5.03 Evidence ~~off~~from a Child.

~~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 Spokane Tribe of Indians~~The Spokane Tribal Court may ~~[issue]~~ rules of procedure regarding the admissibility of evidence ~~for the purpose of finding the truth of a matter while also protecting a child from trauma, to the extent permitted by law.~~

- (a) A statement made by a child ~~when~~ under the age of ~~10~~sixteen (16) describing any act of sexual contact or sexual intercourse performed with or on the child by another, not otherwise admissible by statute or court rule, is admissible ~~in~~as evidence in dependency proceedings and criminal proceedings, including juvenile offense adjudications, in the ~~courts of the~~Spokane ~~Nation~~Tribal Court when:
- (1) the Court finds, in a hearing conducted 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:
 - (i) ~~(A)~~testifies at the proceedings; or
 - (ii) ~~(B)~~is unavailable as a witness; provided, that when the child is unavailable as a witness, such statement may be admitted only if these is corroborative evidence of the act.
- (b) A statement may not be admitted under (b) of this section unless the proponent of the statement makes known to the adverse party his intention to offer the statement and particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.03, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.048-5.04 Defenses to Prosecution Under this ChapterSection.

- (a) In any prosecution under this ~~chapter~~Section in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, 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 that the victim was not mentally incapacitated and/or physically helpless.
- (b) In any prosecution under this ~~chapter~~Section 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 ~~the age identified in subsection~~at least sixteen (e16) years of ~~this section~~age based upon actual declarations ~~as to age by~~from the alleged victim regarding the victim's age.

~~The defense afforded by subsection (b) of this section requires that for the following defendants, the 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 twelve, or was less than twenty four 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 fourteen, or was less than thirty six 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 sixteen, or was less than forty eight months younger than the defendant;~~

~~(4) For a defendant charged with sexual misconduct with a minor in the first degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant;~~

~~(5) For a defendant charged with child molestation in the first degree, that the victim was at least twelve, or was less than thirty six months younger than the defendant;~~

~~(6) For a defendant charged with child molestation in the second degree, that the victim was at least fourteen, or was less than thirty six months younger than the defendant;~~

~~(7) For a defendant charged with child molestation in the third degree, that the victim was at least sixteen, or was less than thirty six months younger than the defendant;~~

~~(8) For a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant.~~

~~(d) Voluntary intoxication is not a defense available under this Chapter. In any prosecution under this Section, it is no defense that the perpetrator was intoxicated or under the influence of any substance, whether that substance be legal or illegal.~~

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.04, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.058-5.05 Rape in the First Degree.

(a) A person is guilty of ~~rape~~Rape in the ~~first degree~~First Degree when such person engages in sexual intercourse ~~or a sexual act with another person by forcible compulsion, resulting in penetration of either person, without consent of the victim,~~ where:

(1) the perpetrator or an accessory:

(i) ~~(1)~~ uses or threatens to use a deadly weapon or what appears to be a deadly weapon;

(ii) ~~(2)~~ kidnaps the victim;

(iii) ~~(3)~~ inflicts serious physical injury; ~~or~~

(iv) ~~(4)~~ unlawfully enters into the building or vehicle where the victim is situated;

~~(b) Rape in the first degree is a Class A offense~~

~~Legislative History: Enacted 11/2/2010; Resolu. 2011-069; OR~~

8-4.06 Rape in the Second Degree

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

~~(v)~~ ~~(1)~~ by uses forcible compulsion;

~~(2)~~ when or

(2) the victim;

- (i) is incapable of consent by reason of being physically helpless ~~or~~ or mentally ~~incapacitate[d]~~ incapacitated; ~~or~~
- (ii) ~~(3)when the victim is~~ developmentally disabled and the perpetrator is a person who has supervisory authority over the victim; or
- (iii) is a Vulnerable Adult or Senior Citizen as defined by this Chapter.

(b) Penalties.

- (1) ~~(b) Rape in the second degree is a Class A offense. Any person convicted of Rape in the First Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of nine (9) months of confinement.~~
- (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.
- (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.
- (4) All periods of confinement must be served consecutive to any other charges or other convictions.
- (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.
- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.01, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.07 Rape in the ~~Third~~ Second Degree.

- (a) A person is guilty of ~~rape~~ Rape in the ~~third-degree~~ Second Degree when, under circumstances not constituting ~~rape~~ Rape in the ~~first or second degrees~~ First Degree, such person engages in sexual intercourse or a sexual act with another person: ~~(1)when the victim did not consent as defined in 8-4.01 (a), to sexual Intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct; or, resulting in penetration of either person, without consent of the victim.~~

(b) Penalties.

- (1) Any person convicted of Rape in the Second Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum

fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of six (6) months of confinement.

- (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.
- (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.
- (4) All periods of confinement must be served consecutive to any other charges or other convictions.
- (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.
- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.06, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-5.06 Sexual Assault.

(a) A person is guilty of Sexual Assault when such person commits a sexual act upon another person by:

- (1) threatening or placing that other person in fear;
- (2) where there is threat of substantial unlawful harm to property rights of the victims causing bodily harm to that other person;
- (3) making a fraudulent representation that the sexual act serves a professional purpose;
- (4) inducing a belief by any artifice, pretense, or concealment that the person is another person;
- (5) committing a sexual act upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring;
- (3) committing a sexual act upon another person when the other person is incapable of consenting to the sexual act due to, but not limited to, the following:
 - (i) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or

(ii) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person.

(b) Penalties.

- (1) Any person convicted of Sexual Assault shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, and pay all applicable restitution.
- (2) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the sexual assault.
- (3) Any person convicted under this Section shall be required to register as a Sex Offender, if applicable, as per Chapter 8A.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

(b) Rape in the third degree is a Class B offense 8-5.08 Rape of a Child in the First Degree.

(a) A person is guilty of Rape of a Child in the First Degree when the person has sexual intercourse with a person who is less than twelve (12) years old, and the perpetrator is at least twenty-four (24) months older than the victim.

(b) Penalties.

- (1) Any person convicted of Rape of a Child in the First Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of nine (9) months of confinement.
- (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.
- (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.
- (4) All periods of confinement must be served consecutive to any other charges or other convictions.
- (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.
- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.08, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-5.09 Rape of a Child in the ~~First~~Second Degree.

(a) A person is guilty of ~~rape~~Rape of a ~~child~~Child in the ~~first-degree~~Second Degree when the person has sexual intercourse with another who is at least twelve (12) years old but less than ~~12~~fourteen (14) years old and ~~not married to the perpetrator and~~the perpetrator is at least ~~24~~thirty-six (36) months older than the victim.

(b) Penalties.

(1) ~~(b)Rape of a child in the first degree is a Class A offense. Any person convicted of Rape of a Child in the Second Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of six (6) months of confinement.~~

(2) ~~The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.~~

(3) ~~Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.~~

(4) ~~All periods of confinement must be served consecutive to any other charges or other convictions.~~

(5) ~~Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.~~

(6) ~~Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.~~

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.09, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-5.10 Rape of a Child in the ~~Second~~Third Degree.

(a) A person is guilty of ~~rape~~Rape of a ~~child~~Child in the ~~second-degree~~Third Degree when the person has sexual intercourse with another who is at least ~~12~~fourteen (14) years old but less than ~~14~~sixteen (16) years old and ~~not married to the perpetrator and~~the perpetrator is at least ~~36~~forty-eight (48) months older than the victim.

(b) Penalties.

- (1) ~~(b) Rape of a child in the second degree is a Class A offense. Any person convicted of Rape of a Child in the Third Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of ninety (90) days of confinement.~~
- (2) ~~The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.~~
- (3) ~~Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.~~
- (4) ~~All periods of confinement must be served consecutive to any other charges or other convictions.~~
- (5) ~~Restitution which shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.~~
- (6) ~~Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.~~

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. ~~Previously codified as 8-4.10 Rape of, Moved and Amended XX/XX/20, Resolu 20XX-XXX.~~

8-5.11 Child Molestation in the ~~Third~~First Degree.

- (a) A person is guilty of ~~rape of a child~~Child Molestation in the ~~third-degree~~First Degree when the person has sexual ~~intercourse~~contact with another who is ~~at least 14 years old but less than 16~~12 years old and ~~not married to the perpetrator and~~the perpetrator is at least ~~48~~36 months older than the victim.

(b) Penalties.

- (1) ~~(b) Rape of a child in the third degree is a Class B offense. Any person convicted of Child Molestation in the First Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of nine (9) months of confinement.~~
- (2) ~~The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.~~

- (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.
- (4) All periods of confinement must be served consecutive to any other charges or other convictions.
- (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.
- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.11, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-5.12 Child Molestation in the ~~First~~Second Degree.

- (a) A person is guilty of child molestation in the ~~first~~second degree when the person has sexual contact with another who is at least twelve (12) years old but less than ~~12~~fourteen (14) years old and the perpetrator is at least thirty-six (36) months older than the victim.
- (b) Penalties.
 - (1) ~~(b)Child Molestation in the first degree is a Class A offense.~~Any person convicted of Child Molestation in the Second Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of six (6) months of confinement.
 - (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.
 - (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.
 - (4) All periods of confinement must be served consecutive to any other charges or other convictions.
 - (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.

(6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.12, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-5.13 Child Molestation in the ~~Second~~Third Degree.

(a) A person is guilty of ~~child molestation~~Child Molestation in the ~~second-degree~~Third Degree when the person has sexual contact with another who is at least ~~12~~fourteen (14) years old but less than ~~14~~sixteen (16) years old and not married to the perpetrator and the perpetrator is at least 36~~forty-eight (48)~~ months older than the victim.

(b) Penalties.

(1) ~~(b)Child molestation in the second degree is a Class B offense. Any person convicted of Child Molestation in the Third Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of ninety (90) days of confinement.~~

(2) ~~The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.~~

(2) ~~Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.~~

(3) ~~All periods of confinement must be served consecutive to any other charges or other convictions.~~

(4) ~~Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.~~

(5) ~~Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.~~

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.13, Moved and Amended XX/XX/20, Resolu 20XX-XXX. Child Molestation in the Third Degree

~~(a)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.~~

~~(b)Child molestation in the third degree is a Class B offense.~~

~~Legislative History: Enacted 11/2/2010; Resolu. 2011-069~~

8-4.14

8-5.14 Sexual Misconduct with a Minor in the First Degree.

~~(a)~~ (a) A person is guilty of ~~sexual misconduct~~Sexual Misconduct with a ~~minor~~Minor in the ~~first degree~~First Degree when ~~the~~:

- (1) the person has, or knowingly causes another person under the age of eighteen (18) to have, sexual intercourse with another person who is at least sixteen (16) years old but not less than eighteen (18) years old and not married to the perpetrator, if the perpetrator is at least sixty (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 or cause another person under the age of eighteen to engage in sexual intercourse with the victim;
- (2) the person is a school employee who has, or knowingly causes another person under the age of eighteen (18) to have, sexual intercourse with an enrolled student of the school who is at least sixteen (16) years old and not more than twenty-one (21) years old and not married to the employee, if the employee is at least sixty (60) months older than the student; or
- (3) the person has, or knowingly causes another person under the age of eighteen (18) to have, sexual intercourse with a minor who is at least sixteen (16), and the person has a significant relationship with the minor victim. For purposes of this section, "significant relationship" means the person has a responsibility to educate, supervise, or care for the child, either as a professional, volunteer, or family member.

(b) Penalties.

- (1) (b)Sexual misconduct with a minor in the first degree is a Class B offense. Any person convicted of Sexual Misconduct with a Minor in the First Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of six (6) months of confinement.
- (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.
- (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.
- (4) All periods of confinement must be served consecutive to any other charges or other convictions.
- (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.

- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.14, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.158-5.15 Sexual Misconduct with a Minor in the Second Degree.

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

(b) Penalties.

- (1) ~~(b)Sexual misconduct with a minor in the second degree is a Class C offense. Any person convicted of Sexual Misconduct with a Minor in the Second Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of ninety (90) days of confinement.~~
- (2) ~~The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.~~
- (3) ~~Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.~~
- (4) ~~All periods of confinement must be served consecutive to any other charges or other convictions.~~
- (5) ~~Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.~~
- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.15, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.168-5.16 Indecent Exposure.

- (a) A person is guilty of ~~indecent exposure~~Indecent Exposure when a person:~~(1) makes any open or obscene exposure of genitals, or buttocks or female breasts knowing that such exposure is likely to cause reasonable affront or alarm; or,~~
~~(2) masturbates, even though covered, while observed by a child less than 16 years old or while observed by any person knowing that such conduct is likely to cause reasonable affront or alarm.~~
- (b) ~~Indecent exposure is a Class C offense.~~Penalties. Any person convicted of Indecent Exposure shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.16, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.178-5.17 Incest in the First Degree.

- (a) A person is guilty of ~~incest~~Incest in the ~~first degrees~~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 ~~eighteen (18)~~ years of age.

(b) Penalties.

- (1) ~~Incest in the first degree is a Class B offense.~~Any person convicted of Incest in the First Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of nine (9) months of confinement.
- (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.
- (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.
- (4) All periods of confinement must be served consecutive to any other charges or other convictions.
- (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.
- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.17, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.18 Incest in the Second Degree.

(a) A person is guilty of ~~incest~~Incest in the ~~second-degree~~Second Degree when he engages in sexual contact or other sexual act 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 eighteen ~~(18)~~ years of age.

(b) Penalties.

(1) ~~(b) Incest in the second degree is a Class C offense. Any person convicted of Incest in the Second Degree shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of six (6) months of confinement.~~

(2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.

(3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.

(4) All periods of confinement must be served consecutive to any other charges or other convictions.

(5) Restitution which shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.

(6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. ~~Previously codified as 8-4.18, Moved and Amended XX/XX/20, Resolu 20XX-XXX.~~

8-4.198-5.19 Indecent Liberties.

(a) A person is guilty of ~~indecent liberties~~Indecent Liberties when he knowingly has sexual contact with another person without that person's consent.

(d) Penalties.

(1) Any person convicted of Indecent Liberties shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs.

- (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.
- (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.
- (4) All periods of confinement must be served consecutive to any other charges or other convictions.
- (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.
- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.19, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-5.20 Aggravated Indecent Liberties.

- (b) A person is guilty of ~~aggravated indecent liberties~~Aggravated Indecent Liberties when he knowingly :
- (1) causes another person to have sexual contact with him or another:
 - ~~(i)~~ (i) by forcible compulsion;
 - (ii) ~~(2)~~ when the other person is incapable of consent by reason of being mentally incapacitated, or physically helpless; or
 - (iii) ~~(3)~~ when ~~at the~~ victim is ~~developmentally disabled~~a Senior Citizen or Vulnerable Adult as defined in this Chapter and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim; ~~or~~
 - (2) masturbates, even though covered, while observed by a child less than sixteen (16) years old or while observed by any person knowing that such conduct is likely to cause reasonable affront or alarm.

(d) Penalties.

- (1) ~~(c)~~Indecent Liberties is a Class C offense. Aggravated Indecent Liberties is a Class B offense. Any person convicted of Indecent Liberties shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs; provided however that there shall be a mandatory minimum of six (6) months of confinement.

(2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069

(3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.

(4) All periods of confinement must be served consecutive to any other charges or other convictions.

(5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.

(6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

8-4-208-5.21 Sexual Exploitation of a Minor.

(a) (a) A person is guilty of ~~sexual exploitation~~ Sexual Exploitation of a ~~minor~~ Minor if the person:

- (1) compels a minor, by threat or force, to engage in sexually explicit conduct, knowing the conduct will be photographed, video-recorded, or part of a live performance, regardless of the medium;
- (2) aids or causes the minor to engage in sexually explicit conduct, knowing the conduct will be photographed, video-recorded, or part of a live performance, regardless of the medium; or
- (3) being a parent or 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, video-recorded, or part of a live performance, regardless of the medium.

(b) Penalties.

(1) ~~(b) 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. Any person convicted of Sexual Exploitation of a Minor shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of nine (9) months of confinement.~~

- (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.
- (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.
- (4) All periods of confinement must be served consecutive to any other charges or other convictions.
- (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.
- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.20, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.21 Crimes Involving the Depiction8-5.22 Dealing in Depictions of a Minor engaged in Sexually Explicit Conduct.

- (a) A person is guilty of ~~a the offense of dealing in depictions~~Dealing in Depictions of a ~~minor engaged in sexually explicit conduct~~Minor Engaged in Sexually Explicit Conduct when the person possesses such material with the intent to sell or distribute such material, 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 a depiction of a minor less than 16 years of age engaged in sexually explicit conduct is a Class A offense. Dealing in a depiction of a minor 16 years of age or older, but less than 18 years of age, is a Class B offense.~~

(b) Penalties.

- (1) Any person convicted of Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of nine (9) months of confinement.
- (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.
- (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.

- (4) All periods of confinement must be served consecutive to any other charges or other convictions.
- (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and any resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.
- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.21, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-5.23 Importing Depictions of Minors Engaged in Sexually Explicit Conduct

- (a) ~~(b) A person is guilty of the offense of importing depictions of minors engaged in sexually explicit conduct~~ Importing Depictions of Minors Engaged in Sexually Explicit Conduct when 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 Spokane Tribe jurisdiction a depiction of a minor less than 16 years of age engaged in sexually explicit conduct is a Class A offense. Sending or bringing into the Spokane Tribe jurisdiction a depiction of a minor 16 years of age or older, but less than 18 years of age, engaged in sexually explicit conduct is a Class B offense.~~
- (b) Penalties.

 - (1) Any person convicted of Importing Depictions of Minors Engaged in Sexually Explicit Conduct shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of nine (9) months of confinement.
 - (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.
 - (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.
 - (4) All periods of confinement must be served consecutive to any other charges or other convictions.
 - (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result

of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.

- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.21(b), Moved and Amended XX/XX/20, Resolu 20XX-XXX..

8-5.24 Possession of a Depiction of a Minor Engaged in Sexually Explicit Conduct.

- (a) ~~(c)~~ A person is guilty of a ~~Class C offense~~ Possession of possession of a depiction Depiction of a minor engaged in sexually explicit conduct Minor Engaged in Sexually Explicit Conduct when the person knowingly possesses visual or printed matter depicting a minor less than sixteen (16) years old engaged in sexually explicit conduct.

- (b) Penalties.

- (1) Any person convicted of Possession of a Depiction of a Minor Engaged in Sexually Explicit Conduct shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however that there shall be a mandatory minimum of six (6) months of confinement and shall submit to a sex offender risk assessment, sometimes referred to as a sexual deviancy evaluation.

- (2) The convicted person shall also be sentenced to pay all applicable restitution, submit to a Sexual Deviancy Evaluation, and follow all treatment recommendations; failure to do so shall be a valid basis for a probation violation or show cause finding which may result in revocation of the entire suspended sentence, to be served immediately.

- (3) Mandatory probation for a period of two years and the Tribal Court shall have authority to extend probation, if needed, up to the maximum allowed under federal law.

- (4) All periods of confinement must be served consecutive to any other charges or other convictions.

- (5) Restitution shall include: (a) All of the victim's medical and mental health expenses that are associated with the rape and resulting pregnancy, including abortion at the sole option of the victim; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child.

- (6) Any person convicted under this Section shall be required to register as a Sex Offender as per Chapter 8A.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.21(c), Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.228-5.25 Findings-Intent; ~~effective date~~Effective Date.

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 the date the Spokane Tribal Council adopts this

Section by Resolution. The intent is based upon unique tribal needs and cultural considerations. 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, and the ever-increasing number of Murdered & Missing Indigenous Women, including Spokane Tribal Members, there is a unique tribal need to allow effective reporting of sexual offenses ~~with the Spokane Tribe of Indians territory.~~

Legislative History: Enacted 11/2/2010; Resolu. 2011-069

8-4.23 Statute of Limitations for Sexual Offenses

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

~~(1) ten years after commission of the offense; or~~

~~(2) 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 a resident within the territory of the Spokane Tribe of Indians Nation territory.~~

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.22, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-4.248-5.26 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:

- (a) Providing safety for the victims and for other potential victims shall be the highest priority considered in sentencing;
- (b) Sex offender evaluation and treatment (when indicated applicable or available) shall be the second priority in sentencing;
- (c) 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. They also make a statement to the community as to the seriousness of the crime; and
- (d) Significant suspended sentences can provide an incentive for the offender to complete Court ordered rehabilitative treatment and restitution.

Legislative History: Enacted 11/2/2010; Resolu. 2011-069

8-4.25 Sentencing Schedule for Sexual Offenses

~~(a) The sentence for a Class A offense shall be imprisonment in jail for the maximum time allowed under the current federal law; and a minimum fine of \$2,500 and the maximum fine not to exceed the then maximum fine allowed under federal law; completion of a Sexual Deviancy Evaluation and any treatment, if recommended, is mandatory.~~

~~(b) The sentence for a Class B offense shall be imprisonment for not less than 365 days and not more than 730 days in jail; and a minimum fine of \$1,500 and a maximum fine of \$3,000.~~

~~(c) The sentence for a Class C offense shall be imprisonment for not less than 120 days but not more than 365 days in jail; and a minimum fine of \$500 and a maximum fine of \$2,000.~~

Legislative History: Enacted 11/2/2010; Resolu. 2011-069. Previously codified as 8-4.24, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

Section ~~8-5~~ 8-6 Suicide

~~8-5.018-6.01~~ 8-6.018-6.01 Assisting Suicide.

- (a) Any person who shall purposely or recklessly aid another to commit suicide shall be guilty of an offense ~~and upon conviction thereof.~~
- (b) Penalties. A person who is convicted of Assisting Suicide shall be sentenced to ~~a period of confinement not to exceed 6 months or ordered to for a maximum period of not more than one (1) year,~~ pay a maximum fine of not ~~to exceed \$500~~ more than \$5,000.00, or both ~~the jail sentence and fine,~~ and costs.

Readopted 8/01/06, Resolu. 2006-524. Previously codified as 8-5.01, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

Section ~~8-68-7~~ 8-7 Criminal Libel

~~8-6.018-7.01~~ 8-7.018-7.01 Criminal Libel.

- (a) Any person who shall maliciously publish by means of any writing, including electronic or digital writing, sign, picture, effigy, or other representation, ~~which shall include radio and television broadcasting,~~ any falsehood intending to expose another person to disrepute, hatred, contempt, or ridicule shall be deemed guilty of criminal libel ~~and upon conviction thereof.~~
- (b) Penalties. A person who is convicted of Criminal Libel shall be sentenced to ~~a period of confinement not to exceed 90 days or ordered to for a maximum period of not more than one (1) year,~~ pay a maximum fine of ~~\$300~~ not more than \$5,000.00, or both ~~jail sentence and fine,~~ and costs.

Readopted 8/01/06, Resolu. 2006-524. Previously codified as 8-6.01, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

Section ~~8-78-8~~ 8-8 Criminal Slander

~~8-7.018-8.01~~ 8-8.018-8.01 Criminal Slander.

- (a) Any person who shall maliciously utter any falsehood to a third party, including radio and television broadcasting, designed and intended to bring another person into disrepute, hatred, contempt, or ridicule shall be deemed guilty of criminal slander ~~and upon conviction thereof.~~
- (b) Penalties. A person who is convicted of Criminal Slander shall be sentenced to ~~a period of confinement not to exceed 90 days or ordered to for a maximum period of not more than one (1) year,~~ pay a maximum fine of ~~\$300~~ not more than \$5,000.00, or both ~~jail sentence and fine,~~ and costs.

Readopted 8/01/06, Resolu. 2006-524. Previously codified as 8-7.01, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

Section ~~8-88-9~~ 8-9 Offenses Against Senior Citizens and Vulnerable Adults

8-8.01

8-9.01 Legislative Intent.

The Spokane Tribe of Indians ("Tribe") treats its Senior Citizens and Vulnerable Adults with the highest respect. The Tribe declares that Senior Citizens and Vulnerable Adults are deserving of special consideration and protection.

Senior Citizens are a valuable resource to the Tribe because they are repositories and custodians of Tribal history, language, culture, and tradition. Senior Citizens are the best hope of the Tribe to pass on this Tribal knowledge to children of the Tribe. Abuse of Senior Citizens and Vulnerable Adults is a serious human rights issue. It can include physical, psychological, social, or sexual assault, neglect, and financial exploitation. The harm is most often caused by someone in a trusted or ongoing relationship like a spouse, partner, family member, or caregiver.

The Tribe expects everyone to honor and respect its Senior Citizens and Vulnerable Adults. Thus, the interests of the Spokane Tribe, now and in the future, are advanced when Senior Citizens and Vulnerable Adults are protected from abuse, neglect, and exploitation and are free to fully participate in the activities and proceedings of the Spokane Tribe.

The Tribe recognizes and continues this traditional respect for Senior Citizens, and extends this same respect and protection to Vulnerable Adults, and enacts it into law under this section for the protection of such persons. This Section of the Code shall be liberally construed to meet the Tribe's goal of protecting its Senior Citizens and Vulnerable Adults from abuse, exploitation, and neglect.

Adopted 7/05/06, Resolu. 2006-478; Readopted 8/01/06, Resolu. 2006-524; Amended 11/7/2018, Resolu. 2019-049. [Previously codified as 8-8.01, Moved and Amended XX/XX/20, Resolu 20XX-XXX.](#)

8-8.028-9.02 Definitions.

- (a) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a Senior Citizen or Vulnerable Adult. In instances of abuse of a Senior Citizen or Vulnerable Adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a Senior Citizen or Vulnerable Adult, and improper use of restraint against a Senior Citizen or Vulnerable Adult, which have the following meanings:
- (1) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;
 - (2) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints except as used by qualified medical professionals for necessary medical care;
 - (3) "Sexual abuse" means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

- (4) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that: (i) Is inconsistent with tribal, federal, or state licensing or certification requirements for facilities, hospitals, or other authorized programs; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section;
 - (5) As used in this definition of abuse, the term "Willful" means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.
- (b) "Caregiver" means:
- (1) All persons who provide paid, hands-on personal care services for Senior Citizens or Vulnerable Adults, or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care agencies to persons with developmental disabilities, all direct care workers in state-licensed or tribal-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities; or
 - (2) Any person who is required by RSLOC, or any applicable State or Federal law, to provide services or resources to a Senior Citizen or Vulnerable Adult;
 - (3) An institution or agency and any employee of an institution or agency who is required by the RSLOC, any applicable State or Federal law, or who is required under any other agreement, to provide services or resources to a Senior Citizen or Vulnerable Adult; and
 - (4) Any person who holds oneself out to the community or the Senior Citizen or Vulnerable Adult's family as assuming the responsibility of caring for the Senior Citizen or Vulnerable Adult.
- (c) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a Senior Citizen or Vulnerable Adult, causing the Senior Citizen or Vulnerable Adult to act in a way that results in the conversion or misuse of a Senior Citizen or Vulnerable Adult's property, medication, money or other assets, is inconsistent with relevant past behavior, or causing the Senior Citizen or Vulnerable Adult to perform services for the benefit of another. Exploitation also includes taking or misusing a Senior Citizen or Vulnerable Adult's property, medication, money, or other assets without their full consent.
- (d) "Neglect" means:
- (1) The deprivation by an individual, including a caregiver, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being, or;
 - (2) Deserting a person an individual is responsible for, where responsibility may be determined through a Court order, or through holding oneself out to the

community or person's family as assuming the responsibility of caring for the person.

- (e) "Senior Citizen" means any individual who is at least 60 years of age.
- (f) "Vulnerable Adult" means:
 - (1) A person 60 years of age or older with functional, physical, or mental inability to care for self; or
 - (2) An adult 18 years of age or older who:
 - i. Has a developmental disability; or
 - ii. Has a guardian as per RCW 11.88 or the RSLOC; or
 - iii. Lives in a nursing facility, boarding home, adult family home, or soldier's home, residential habilitation center, or any facility licensed or required to be licensed by the Washington State Department of Social and Health Services; or
 - iv. Receives in-home services through a licensed home care agency, licensed home care services, licensed health care agency, hospice, or individual provider; or
 - v. Self-directs his/her own care to a paid personal aide in the performance of a health care task.

Adopted ~~11/7/2018~~11/07/18, Resolu. 2019-049.

~~8-8.03~~ Previously codified as 8-8.02, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-9.03 Abuse of a Senior Citizen or Vulnerable Adult.

- (a) A person is guilty of the crime of Abuse of a Senior Citizen or Vulnerable Adult if:
 - (1) The person knows or should reasonably know that a person is a Senior Citizen or Vulnerable Adult; and
 - (2) The person willfully causes or permits any act of Abuse against a Senior Citizen or Vulnerable Adult; or
 - (3) The person, having the care or custody of a Senior Citizen or Vulnerable Adult, willfully causes or permits the Senior Citizen or Vulnerable Adult to be placed in a situation in which his or her person or health is endangered.
- (c) Abuse is defined in RSLOC Section ~~8-8.02~~8-9.02(a).
- (d) Penalties. A person who is convicted of Abuse of a Senior Citizen or Vulnerable Adult shall be sentenced to confinement for a period of not more than one (1) year, pay a fine of not more than \$5,000.00, or both, and costs, provided however, that there shall be a mandatory minimum of forty (40) days of confinement and a \$1000.00 fine.

Adopted ~~11/7/2018~~11/07/18, Resolu. 2019-049.

~~8-8.04~~ Previously codified as 8-8.03, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

8-9.04 Neglect of a Senior Citizen or Vulnerable Adult.

- (a) A person is guilty of the crime of Neglect of a Senior Citizen or Vulnerable Adult if:

- (1) The person is a person entrusted with the physical custody of the Senior Citizen or Vulnerable Adult, is a caregiver as defined by this section, or has otherwise assumed the responsibility to provide to a Senior Citizen or Vulnerable Adult the basic necessities of life; and
 - (2) The person willfully neglects the Senior Citizen or Vulnerable Adult.
- (c) Neglect is defined in RSLOC Section ~~8-8.028-9.02~~(d).
- (d) Penalties. A person who is convicted of Neglect of a Senior Citizen or Vulnerable Adult shall be sentenced to confinement for a period of not more than one (1) year, pay a fine of not more than \$5,000.00, or both, and costs, provided however, that there shall be a mandatory minimum of forty (40) days of confinement and a \$1000.00 fine.
- (e) Defense. In any prosecution for Neglect of a Senior Citizen or Vulnerable Adult, it shall be a defense that the withholding of the basic necessities of life is due to financial inability only if the person charged has made a reasonable effort to obtain adequate assistance. This defense is available to a person employed to provide the basic necessities of life only when the agreed-upon payment has not been made.

Adopted ~~11/7/2018~~11/07/18, Resolu. 2019-049. Previously codified as 8-8.04, Moved and Amended XX/XX/20, Resolu 20XX-XXX.
~~8-8.05~~

8-9.05 Exploitation of a Senior Citizen or Vulnerable Adult.

- (a) A person is guilty of the crime of Exploitation of a Senior Citizen or Vulnerable Adult if:
- (1) The person knows or should reasonably know that a person is a Senior Citizen or Vulnerable Adult, and
 - (2) Knowingly exploits, or endeavors to exploit, a Senior Citizen or Vulnerable Adult with the intent to temporarily or permanently deprive the Senior Citizen or Vulnerable Adult of the use, benefit, or possession of the Senior Citizen or Vulnerable Adult's funds, assets, or property, or to benefit someone other than the Senior Citizen or Vulnerable Adult.
- (c) Exploitation is defined in RSLOC Section ~~8-8.028-9.02~~(c).
- (d) Penalties. A person who is convicted of Exploitation of a Senior Citizen or Vulnerable Adult shall be sentenced to confinement for a period of not more than one (1) year, pay a fine of not more than \$5,000.00, or both, and costs, provided however, that there shall be a mandatory minimum of forty (40) days of confinement, a \$1000.00 fine, and the individual shall pay restitution in the full amount of the financial damage done to the victim.
- (e) Defense. It is a defense to an offense committed under subsection 8-8.05 if the accused person has been granted a durable power of attorney or has been appointed as legal guardian to manage the affairs of a Senior Citizen or Vulnerable Adult, and was acting within the scope of the accused person's fiduciary responsibility.

Adopted ~~11/7/2018~~11/07/18, Resolu. 2019-049. Previously codified as 8-8.05, Moved and Amended XX/XX/20, Resolu 20XX-XXX.
~~8-8.06~~

8-9.06 Offenses Against Senior Citizens - Minimum Sentence and Fine.

- (a) Any person convicted of any RSLOC offense against a Senior Citizen shall be sentenced to no less than 30 days in jail and fined no less than \$500, in addition to payment of any applicable restitution as determined by the Spokane Tribal Court.
- (b) No deferral, reduction, suspension, parole or probation of the sentence shall be permitted.

Adopted ~~11/7/2018~~ 11/07/18, Resolu. 2019-049. Previously codified as 8-8.06, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

Section ~~8-9~~ 8-10 Harassment

8-9.01

8-10.01 Definitions.

- (a) "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.
- (b) "Course of Conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of Conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication.
- (c) "Harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, or is unwanted contact, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would either (1) cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, (2) cause a reasonable parent to fear for the well-being of their child.
- (c) "Sexual Orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth, and includes but is not limited to gender fluidity, gender nonconforming, gender non-binary, and transgender.
- (d) "Threat" means to communicate, directly or indirectly, the intent to:
 - (1) Cause bodily injury immediately or in the future to the person threatened or to any other person; or
 - (2) Cause physical damage immediately or in the future to the property of a person threatened or that of any other person.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

8-10.02 Stalking.

- (a) A person is guilty of the crime of Stalking if, without lawful authority:
 - (1) He 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 in the same situation would experience under all the circumstances; and

- (3) The stalker either:
- (i) Intends to frighten, intimidate, or harass the person; or
 - (ii) 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) Defense. It is not a defense to the crime of stalking that the stalker:

- (1) was not given actual notice that the person did not want the stalker to contact or follow the person; or
- (2) did not intend to frighten, intimidate, or harass the person.

(c) Any and all 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.

(d) Penalties.

- (1) A person who is convicted of Stalking shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however, that the following mandatory minimums apply for offenses occurring within a two-year period with the same victim:
 - (i) a \$25.00 fine for a first offense;
 - (ii) two (2) days confinement and a \$50.00 fine for a second offense;
 - (iii) five (5) days confinement and a \$100.00 fine for a third offense.
- (2) The penalties provided in this section do not preclude the victim from seeking any other remedy otherwise available under law.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

8-10.02 Electronic Harassment.

~~(a)~~ (a) A person is guilty of the offense of electronic harassment if the person: ~~communicates~~

- (1) Communicates by telephone or any other electronic device and:
 - (i) ~~(1)~~ Willfully uses profane, vulgar, lewd, or lascivious language that a reasonable person would find offensive; or
 - (ii) ~~(2)~~ ~~Telephones or communicates electronically~~ Communicates with another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person ~~at the called number~~; or
 - (iii) ~~(3)~~ Threatens to inflict bodily harm or death to any person, or physical injury to the property of any person, or for any other purpose unlawful under the code, and the threat is made in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out; or

(2) ~~(4)~~ Knowingly permits any telephone or electronic device under the person's control to be used for any purposes prohibited by this section.

(b) ~~A violation of this section~~ Penalties. A person who is convicted of Stalking shall be punishable by a fine of not more than \$5000.00 or imprisonment sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs.

(c) The penalties provided in this section do not preclude the victim from seeking any other remedy otherwise available under law.

Adopted 7/05/06, Resolu. 2006-478; Readopted 8/01/06, Resolu. 2006-524. Previously codified as 8-8.06, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

Section 8-10 [blank]

8-10.03 Malicious Harassment.

(a) A person is guilty of Malicious Harassment if he or she maliciously and intentionally commits one of the following acts because of his or her perception, belief, or opinion of the victim's race, color, religion, ancestry, national origin, tribal enrollment status, tribal blood quantum, gender or sex, sexual orientation, or mental, physical, or sensory handicap, or other disability:

(1) Causes physical injury to the victim or another person;

(2) Causes physical damage to or destruction of the property of the victim or another person; or

(3) Threatens a specific person or specific group of persons and places that person or group of persons in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under all the circumstances.

(i) For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender or sex, or sexual orientation, or who has the same mental, physical, sensory handicap, or other disability, or who has the same tribal enrollment status or tribal blood quantum as the victim.

(ii) Words alone do not constitute Malicious Harassment unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute Malicious Harassment if it is apparent to the victim that the person does not have the ability to carry out the threat.

(b) It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender or sex, or sexual orientation, or had a mental, physical, or sensory handicap, or had a certain tribal enrollment status or tribal blood quantum.

(c) Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this chapter shall affect the rules of evidence governing impeachment of a witness.

(d) Penalties. A person who is convicted of Malicious Harassment shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however, that there shall be the following minimum mandatory penalties for offenses occurring within two (2) years:

- (1) a \$50.00 fine for a first offense;
- (2) five (5) days confinement and a \$100.00 fine for a second offense;
- (3) fifteen (15) days confinement and a \$200.00 fine for a third offense.

(e) The penalties provided in this section do not preclude the victims from seeking any other remedies otherwise available under law.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

8-10.04 Disclosure of Intimate Images.

(a) A person commits the crime of Disclosing Intimate Images when the person knowingly discloses an intimate image of another person and the person disclosing the image:

- (1) Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private;
- (2) Knows or should have known that the depicted person has not consented to the disclosure; and
- (3) Knows or reasonably should know that disclosure would cause financial, emotional, physical, or actual reputational harm to the depicted person.

(b) A person who is under the age of eighteen (18) is not guilty of the crime of disclosing intimate images unless the person:

- (1) Intentionally, and without a reasonable excuse, disclosed an intimate image of another person;
- (2) Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private; and
- (3) Knows or should have known that the depicted person has not consented to the disclosure.

(c) This section does not apply to:

- (1) Images involving voluntary exposure in public or commercial settings; or
- (2) Disclosures made in the public interest including, but not limited to, the reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.

(d) This section 8-10.04 does not impose liability upon the following entities solely as a result of content provided by another person:

- (1) An interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2);
- (2) A mobile telecommunications service provider; or
- (3) A telecommunications network or broadband provider.

(e) It shall be an affirmative defense to a violation of this section if the defendant:

- (1) is a family member of a minor; and

(2) did not intend any harm or harassment in disclosing the images of the minor to family members or friends; and

(3) a reasonably objective person, applying contemporary community standards, would find that the images do not appeal to prurient interest.

(f) For purposes of this section:

(1) "Disclosing" includes transferring, publishing, or disseminating, as well as making a digital depiction available for distribution or downloading through the facilities of a telecommunications network or through any other means of transferring computer programs or data to a computer;

(2) "Intimate Image" means any photograph, motion picture film, videotape, digital image, or any other recording or transmission, including audio only, of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts:

(i) Sexual activity, including sexual intercourse as defined by Section 8-5.01 and masturbation; or

{blank}

(ii) A person's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or postpubescent female nipple.

(g) Penalties. The penalties provided in this section do not preclude the victims from seeking any other remedies otherwise available under law. A person who is convicted of Disclosure of Intimate Images shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however, that there shall be the following minimum mandatory penalties for offenses occurring within two years:

(1) fifteen (15) days confinement for a first offense;

(2) thirty (30) days confinement and a \$100.00 fine for a second offense;

(3) forty-five (45) days confinement and a \$200.00 fine for a third offense.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

Section 8-11 Criminal Homicide

8-11.01 Criminal Homicide.

(a) A person ~~commits criminal homicide~~is guilty of Criminal Homicide if, without lawful justification or excuse, the person intentionally, knowingly, through omission, recklessly, through procurement, or with criminal negligence causes the death at any time of another human being.

(1) "Human being" means a person, including an unborn child at any state of its development, who ~~has been born and~~was alive at the time of the criminal act.

(b) ~~Any person who commits the act described in (a) shall be guilty of criminal homicide, unless;~~ Defenses. It shall be an affirmative defense to a violation of this section if the defendant:

- (1) Committed the offense by accident or misfortune in doing any lawful act and by lawful means, without criminal negligence, ~~or without~~ any unlawful intent; or
 - (2) Committed the offense in the lawful defense of the accused, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to do some great personal injury to the accused or to any such person, and there is imminent danger of such design being accomplished.
- (c) ~~Sentencing—the Penalties.~~ The Court shall consider all the facts and circumstances of the conviction while deciding the sentence.
- (1) The minimum sentence for a conviction of criminal homicide is one (1) year in jail and a ~~\$5000~~5000.00 fine, and costs.
 - (2) The maximum sentence for a conviction of ~~criminal homicide~~Criminal Homicide is the maximum punishment allowed under federal law at the time of the conviction ~~and any~~.

(b) of the following;

~~(A)The Court~~ If the convicted individual is an enrolled member of another Federally-recognized tribe, the Prosecutor may recommend to the Spokane Tribal Business Council ~~disenrollment of the convicted member; and~~

~~(B)Banishment~~immediate exclusion of the convicted individual from the Reservation and all Tribal properties.

Legislative History: Enacted 11/2/2010, Resolu. 2011-068. Previously codified as 8-11.01, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

Section 8-12 Robbery

8-12.01 Robbery.

~~A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the 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. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.~~

~~(b)Sentencing—the Court shall consider all the facts and circumstances of the conviction while deciding the sentence.~~

~~(1)The minimum sentence for a conviction of robbery is 6 months in jail and a \$500 fine.~~

~~(2)The maximum sentence for a conviction of robbery is the maximum punishment allowed under federal law at the time of the conviction and any~~

of the following. Any person who, in the course of committing a theft, inflicts serious bodily injury upon another person, or threatens another with serious bodily injury, or purposely put another in fear of immediate serious bodily injury, shall be guilty of Robbery.

- (a) Penalties. Upon conviction of Robbery an individual shall be sentenced to confinement for a maximum period of one (1) year and pay a maximum fine of \$5,000.00 or both, and costs, and shall be required pay restitution to the victim(s) in a reasonable amount as determined by the Court, provided however, that there shall be a mandatory minimum forty-five (45) days confinement and restitution, if applicable.

Legislative History: Enacted 11/2/2010, Resolu. 2011-067. Previously codified as 8-12.01, Moved and Amended XX/XX/20, Resolu 20XX-XXX.

Section 8-13 Endangerment

8-13.01 Negligent Endangerment.

- (a) A person is guilty of Negligent Endangerment when he or she negligently engages in conduct that creates a substantial risk of death or serious physical injury to another person.
- (b) Penalties. Upon conviction of Negligent Endangerment an individual shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs.

Adopted XX/XX/XX, Resolu. 20XX-XXX.

8-13.02 Reckless Endangerment.

- (a) A person is guilty of Reckless Endangerment when he or she recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person.
- (b) Penalties. Upon conviction of Reckless Endangerment an individual shall be sentenced to confinement for a maximum period of not more than one (1) year, pay a maximum fine of not more than \$5,000.00, or both, and costs, provided however, that there shall be a mandatory minimum sentence of five (5) days confinement.

Adopted XX/XX/XX, Resolu. 20XX-XXX.