

## **CHAPTER 8 – OFFENSES AGAINST THE PERSON**

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### **Section 8-1 Simple Assault**

**8-1.01 Assault/Communicating Threats.** A person is guilty of communicating threats if, without lawful authority:

- (a) The person willfully threatens to inflict bodily harm or death upon a person, or to damage the property of another; 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) A violation of this section shall be punishable by a fine of not more than \$2500, or imprisonment of not more than 6 months, or both.

Legislative History-Amended 7/05/06, Resolu. 2006-478; Readopted 8/01/06, Resolu. 2006-524.

**8-1.02 Assault with a Dangerous or Deadly Weapon.** Any person who shall attempt or threaten bodily harm to another person by use of a dangerous or deadly weapon shall be deemed guilty of assault with a dangerous or deadly weapon and upon conviction thereof shall be sentenced to confinement of not more than 90 days but not less than 2 days, and to pay a fine of not more than \$300 but not less than \$50.

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

### **Section 8-2 First Degree 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:
  - (1) Shall use force or violence upon the person or body of another with a firearm or any other deadly or dangerous weapon;
  - (2) Shall administer to or cause to be taken by another, poison or any other noxious or destructive thing so as to endanger the life of another person.
- (b) Any person convicted thereof shall be sentenced to confinement for not more than 6 months but not less than 30 days and to pay a fine of not more than \$500 but not less than \$150.

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

**8-2.02 Second Degree Assault and Battery.**

- (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 convicted thereof shall be sentenced to confinement of not more than 90 days but not less than 2 days and to pay a 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.

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

### **Section 8-3 Abduction**

**8-3.01 Abduction.** Any person who shall willfully detain or take away another person against that person's will, or if such person be under the age of eighteen years, without the consent of the parent or other lawful custodian shall be deemed guilty of abduction and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both the jail sentence and fine, and costs.

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

### **Section 8-4 Sexual Violence**

**8-4.01 Definitions:** When a term is not defined in any provision of the code establishing a criminal offense, it shall be given its commonly accepted meaning. If there is any doubt as to the meaning of a term, the Court may refer to definitions utilized in other jurisdictions. Any reference to "he", "she" or other gender pronouns includes both male and female persons.

- (a) Consent- means words or actions by a person indicating a voluntary agreement to engage in sexual intercourse, sexual penetration, or sexual contact.
- (b) Forcible compulsion – where 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 - any intrusion, however slight with any part of a person's body or of any object into the genital or anal openings of any other person's body.
- (d) Sexual Contact- 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 person, including but not limited to;
- (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
  - (3) any forced display of the alleged victim's genitals, anus, breasts for the purpose of arousal or sexual gratification of self or others
  - (4) any intentional or knowing touching of the clothed or unclothed body of a child under the age of 13, if done for the purpose of sexual gratification or arousal of self or of others
  - (5) any coerced or forced touching or fondling by a child under the age of 13, directly or indirectly, including through clothing, of the genitals, anus, breasts of self or others.

(e) Sexual Intercourse – means conduct between persons consisting of contact between the penis and the vulva, the penis and the 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 the genital or anal opening of another.

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

#### 8-4.02 Victim Testimony and Evidence

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

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

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

(1) 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

#### 8-4.03 Evidence of Child

(a) With the legislative purpose in mind to find the truth while allowing a child protection from trauma to the extent that is constitutionally permitted, the Spokane Tribe of Indians Tribal Court may [issue] rules of procedure regarding the admissibility of evidence

(b) A statement made by a child when under the age of 10 describing any act of sexual contact performed with or on the child by another, not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings and criminal proceedings, including juvenile offense adjudications, in the courts of the Spokane Nation 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:

(A) testifies at the proceedings; or

(B) is unavailable as a witness; provided, that when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

(c) 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

#### 8-4.04 Defenses to Prosecution Under this Chapter

(a) In any prosecution under this chapter 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 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 (c) of this section based upon declarations as to age by the alleged victim.

(c) 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.

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

#### 8-4.05 Rape in the First Degree

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

- (1) uses or threatens to use a deadly weapon or what appears to be a deadly weapon;
- (2) kidnaps the victim;
- (3) inflicts serious physical injury; or
- (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

#### 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:

- (1) by forcible compulsion;
- (2) when the victim is incapable of consent by reason of being physically helpless or [r] mentally incapacitate[d]; or
- (3) when the victim is developmentally disabled and the perpetrator is a person who has supervisory authority over the victim

(b) Rape in the second degree is a Class A offense.

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

#### 8-4.07 Rape in the Third Degree

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

- (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
- (2) where there is threat of substantial unlawful harm to property rights of the victims

(b) Rape in the third degree is a Class B offense

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

#### 8-4.08 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 another who is less than 12 years old and not married to the perpetrator and the perpetrator is at least 24 months older than the victim.

(b) Rape of a child in the first degree is a Class A offense.

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

#### 8-4.09 Rape of a Child in the Second Degree

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

(b) Rape of a child in the second degree is a Class A offense.

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

#### 8-4.10 Rape of Child in the Third Degree

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

(b) Rape of a child in the third degree is a Class B offense.

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

#### 8-4.11 Child Molestation in the First Degree

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

(b) Child Molestation in the first degree is a Class A offense.

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

#### 8-4.12 Child Molestation in the Second Degree

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

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

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

#### 8-4.13 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 Sexual Misconduct with a Minor in the First Degree

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

(b) Sexual misconduct with a minor in the first degree is a Class B offense.

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

#### 8-4.15 Sexual Misconduct with a Minor in the Second Degree

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

(b) Sexual misconduct with a minor in the second degree is a Class C offense.

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

#### 8-4.16 Indecent Exposure

(a) A person is guilty of indecent exposure when a person:  
(1) makes any open or obscene exposure of genitals, 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.

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

#### 8-4.17 Incest in the First Degree

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

(b) Incest in the first degree is a Class B offense.

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

#### 8-4.18 Incest in the Second Degree

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

(b) Incest in the second degree is a Class C offense.

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

#### 8-4.19 Indecent Liberties

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

(b) A person is guilty of aggravated indecent liberties when he knowingly causes another person to have sexual contact with him or another:

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

victim.

(c) Indecent Liberties is a Class C offense. Aggravated Indecent Liberties is a Class B offense.

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

#### 8-4.20 Sexual Exploitation of a Minor

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

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

(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.

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

#### 8-4.21 Crimes Involving the Depiction of Minor engaged in Sexually Explicit Conduct

(a) A person is guilty of a the offense of dealing in depictions of a 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) A person is guilty of the offense of 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.

(c) A person is guilty of a Class C offense of possession of a depiction of a minor engaged in sexually explicit conduct when the person knowingly possesses visual or printed matter depicting a minor less than 16 years old engaged in sexually explicit conduct.

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



#### 8-4.22 Findings-Intent; 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, 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.

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

#### 8-4.24 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) 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 730days 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

### **Section 8-5 Assisting Suicide**

**8-5.01 Assisting Suicide.** Any person who shall purposely or recklessly aid another to commit suicide shall be guilty of an offense and upon conviction thereof shall be sentenced to a period of confinement not to exceed 6 months or ordered to pay a fine of not to exceed \$500, or both the jail sentence and fine, and costs.

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

### **Section 8-6 Criminal Libel**

**8-6.01 Criminal Libel.** Any person who shall maliciously publish by means of any writing, sign, picture, effigy, or other representation, which shall include radio and television broadcasting, any falsehood intending to expose another person to hatred, contempt, or ridicule shall be deemed guilty of criminal libel and upon conviction thereof shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of \$300, or both jail sentence and fine, and costs.

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

### **Section 8-7 Criminal Slander**

**8-7.01 Criminal Slander.** Any person who shall maliciously utter any falsehood to a third party designed and intended to bring another person into disrepute, hatred, contempt, or ridicule shall be deemed guilty of criminal slander and upon conviction thereof shall be sentenced to a period of confinement not to exceed 90 days or ordered to pay a fine of \$300, or both jail sentence and fine, and costs.

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

## **Section 8-8 Offenses Against Senior Citizens and Vulnerable Adults**

### **8-8.01 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.

8-8.02 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.

8-8.03 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.
- (d) Abuse is defined in RSLOC Section 8-8.02(a).
- (e) 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, provided however, that there shall be a mandatory minimum of forty (40) days of confinement and a \$1000.00 fine.

Adopted 11/7/2018, Resolu. 2019-049.

8-8.04 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 8-8.02(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, 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, Resolu. 2019-049.

8-8.05 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 8-8.02(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, 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, Resolu. 2019-049.

#### 8-8.06 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, Resolu. 2019-049.

### **Section 8-9 Electronic Harassment**

#### 8-9.01 Electronic Harassment.

- (a) A person is guilty of the offense of electronic harassment if the person communicates by telephone or other electronic device and:
  - (1) Willfully uses profane, vulgar, lewd, or lascivious language that a reasonable person would find offensive; or
  - (2) Telephones or communicates electronically 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
  - (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
  - (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 shall be punishable by a fine of not more than \$5000.00 or imprisonment of not more than one year, or both.

Adopted 7/05/06, Resolu. 2006-478; Readopted 8/01/06, Resolu. 2006-524.

## **Section 8-10 [blank]**

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### **Section 8-11 Criminal Homicide**

#### **8-11.01 Criminal Homicide**

- (a) A person commits criminal homicide if, without 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 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;
- (1) Committed by accident or misfortune in doing any lawful act by lawful means, without criminal negligence, or without any unlawful intent; or
- (2) Committed 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 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 1 year in jail and a \$5000 fine.
- (2) The maximum sentence for a conviction of criminal homicide is the maximum punishment allowed under federal law at the time of the conviction and any of the following;
- (A) The Court may recommend to the Spokane Tribal Business Council disenrollment of the convicted member; and
- (B) Banishment of the convicted individual from the Reservation and all Tribal properties.

Legislative History: Enacted 11/2/2010, Resolu. 2011-068

### **Section 8-12 Robbery**

#### **8-12.01 Robbery**

- (a) 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.

Legislative History: Enacted 11/2/2010, Resolu. 2011-067