

## **Title 4 – Criminal Code**

### **Chapter 12 – Sentencing**

**Sec.**

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*Annotations*

#### **Legislative History**

**Enacted:**

- Ordinance 359 Amending STC Title 4, Chapter 12 (5/3/16), BIA (5/11/16).
- Ordinance 325 Amending STC Title 4, Chapters 1, 2 & 12 and Title 7, Chapter 11 (5/7/13), BIA (5/10/13).
- Ordinance 184 Swinomish Criminal Code (9/30/03), BIA (10/7/03).

**Repealed or superseded:**

- Ord. 156 Allowing electronic home monitoring (7/2/02), BIA (7/26/02) (amending Ord. 75).
- Res. 98-4-69 Authorizing recovery of jail costs (4/8/98).
- Ord. 75 Swinomish Criminal Code Enacting Res. 91-4-37, (4/2/91); BIA (6/13/91) (repealing and superseding Ord. 39 and Article XIII of Ord. 32).
- Eliminating jail sentences for criminal offenses, Res. 77-11-48 (11/3/77) (amending Ords. 31, 32, 38, 39 and 40); rescinded by Res. 82-8-949 (8/6/82).
- Ord. 39 Establishing Criminal Offenses (6/7/77) (superseding conflicting provisions of Ord. 32).
- Ord. 32 Swinomish Law and Order Code (3/4/75), BIA (5/30/75).
- Ord. 7 Swinomish Law and Order Code (6/1/38), BIA (3/24/38).
- Ord. 1 Adoption of Swinomish Law and Order Regulations (undated).

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

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**4-12.010 General Conditions.**

- (A) Any person who has been convicted by the Tribal Court of a violation of a provision of this Title for which a penalty may be imposed, may be fined and/or sentenced by the court to serve time in jail and/or sentenced to work for the benefit of the community.
- (B) No fine or time served shall exceed the maximum period set for the offense in this Title or elsewhere in the Swinomish Tribal Code.
- (C) Any work done for the benefit of the community shall be done under the supervision of an authorized agent of the Tribe.

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

**4-12.020 Classes of Offenses.**

- (A) Any person convicted of a **Class A offense** shall be subject to a sentence of up to one (1) year in jail and/or a fine up to \$5,000.00 and/or community service.
- (B) Any person convicted of a **Class B offense** shall be subject to a sentence of up to six (6) months in jail and/or a fine of up to \$2,500.00 and/or community service.
- (C) Any person convicted of a **Class C offense** shall be subject to a sentence of up to thirty (30) days in jail and/or a fine of up to \$500.00 and/or community service.

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

**4-12.021 Designation of Offenses.**

- (A) Crimes punishable as a Class A and Class B offense are designated felony crimes.
- (B) Crimes punishable as a Class C offense are designated misdemeanor crimes.

[History] Ord. 359 (5/3/16).

**4-12.030 Determining Factors.**

- (A) **All Crimes.** In determining the character and duration of the sentence to be imposed, the Tribal Court shall take into consideration the following factors:
  - (1) the previous conduct of the defendant;
  - (2) the circumstances under which the offense was committed;
  - (3) whether the offense was malicious or willful; and

- (4) whether the offender has attempted to make amends and the extent of the defendant's resources and the needs of his or her dependents and the needs of the victims, if any.
- (B) **Crimes of Domestic Violence.** In addition to the sentence provisions in STC 4-12.020 and 4-12.030(A), the Tribal Court shall take into consideration the values expressed in STC 7-11.020 in determining the character and duration of the sentence to be imposed for a crime of domestic violence.

[History] Ord. 325 (5/7/13); Ord. 184 (9/30/03); Ord. 75 (4/2/91).

**4-12.040 Restitution.**

In addition to any other sentence, the Tribal Court may require an offender who has injured the person or property of any individual, including any natural person, corporation, trust, unincorporated association, partnership, and federal, state, local or tribal government, agencies or subdivisions thereof, to make restitution or to compensate the party injured through the surrender of property, the payment of money damages or the performance of any other act for the benefit of the injured party.

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

**4-12.050 Recovery of Costs of Jail.**

- (A) The court shall assess all individuals sentenced to jail a fee for the costs of their incarceration.
- (B) In the event such costs are not reimbursed to the Tribe in either money or agreed upon community service, the costs shall become a civil money judgment in favor of the Tribe and may be executed as any other outstanding judgment including, but not limited to, garnishment of wages and seizure of property.

[History] Ord. 184 (9/30/03); Res. 98-4-69 (4/8/98).

**4-12.060 Probation.**

Where a sentence has been imposed upon any person, the Tribal Court may in its discretion suspend the sentence and place the offender on probation pursuant to conditions set by the Court and agreed to by the offender.

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

#### **4-12.070 Violation of Probation.**

Any person who violates any conditions of probation may be required to serve the original sentence.

[History] Ord. 205 (12/1/03); Ord. 184 (9/30/03); Ord. 75 (4/2/91).

#### **Annotations**

#### **STC 4-12.070**

#### NOTES OF DECISIONS

Lack of Notice 1

Diluted UAs 2

Therapeutic Justice 3

#### 1. Lack of Notice

Arrest warrant quashed and case closed where there was no evidence that defendant received notice of attempts to revoke probation. *SITC v. Grove-Kile*, Cr-11/99-230 (Swinomish Tribal Ct. March 28, 2007).

#### 2. Diluted UAs

Although diluted results for UA samples are not proof of drug use, they are not valid samples and do not comply with requirements of a treatment plan. As a result, may be considered as a violation of probation. *SITC v. James*, CrCo-2006-0213 (Swinomish Tribal Ct. July 13, 2007).

#### 3. Therapeutic Justice

Allowing court discretion in sentencing and probation review is consistent with tribal law and better services the interests of therapeutic justice to which the Tribal Court subscribes. *SITC v. James*, CrCo-2006-0213 (Swinomish Tribal Ct. July 13, 2007).