

Title 4 – Criminal Code

Chapter 3 – Sexual Offenses

Sec.

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Legislative History

Enacted:

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

Amended:

Swinomish Criminal Code, Ord. 245 (03/07/06), BIA (04/07/06).

Repealed or superseded:

Swinomish Criminal Code, Ord. 75 (4/2/91), Enacting Res. 91-4-37, BIA (6/13/91).
(repealing and superseding Ord. 39 and Article XIII of Ord. 32).

Prohibiting child molestation, Ord. 63 (7/12/89), Enacting Res. 89-7-66 (amending Ord. 39).

Establishing Criminal Offenses, Ord. 39 (6/7/77) (superseding conflicting provisions of Ord. 32).

Swinomish Law and Order Code, Ord. 32 (3/4/75), BIA (5/30/75).

Swinomish Law and Order Code, Ord. 7 (6/1/38), BIA (3/24/38).

Adoption of Swinomish Law and Order Regulations, Ord. 1 (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 in tribal records.]

4-03.010 Abusive Sexual Intercourse (Rape).

- (A) Any person who knowingly engages in, causes, or attempts to cause, another person (including a child) to engage in sexual intercourse, as defined in Section 4-01.0340(F), in any one of the following circumstances commits the crime of abusive sexual intercourse:

- (1) by using force against the other person;
- (2) by threatening or placing the other person in fear;
- (3) when the other person is a child under the age of sixteen (16) and not married to the defendant;
- (4) when the other person is rendered unconscious or physically or mentally incapable of declining participation or communicating unwillingness to engage in sexual intercourse for any reason including physical handicap, mental disease, mental disability, alcohol or drug intoxication;
- (5) when the defendant is in a position of trust or authority with respect to the other person, and takes advantage of that position to cause sexual intercourse;
- (6) when the defendant is related to the victim as an ancestor, descendant, or sibling; or
- (7) when the defendant is related to the victim in a familial relationship defined by tribal custom as one in which sexual intercourse is prohibited;.
- (8) Where the victim did not consent to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct,; or
- (9) Where the person threatens substantial unlawful harm to the property rights of the victim.

(B) Abusive sexual intercourse is a **Class A offense**.

[History] Ord. 245 (4/7/06); Ord. 184 (9/30/03); Ord. 75 (4/2/91).

4-03.020 Abusive Sexual Touching.

- (A) Any person who knowingly engages in, causes or attempts sexual touching, as defined in Section 4-01.0430(G), with or by another person in any one of the following circumstances commits the crime of abusive sexual touching:
- (1) by using force against the other person;
 - (2) by threatening or placing the other person in fear;
 - (3) when the other person is a child under the age of sixteen (16);

- (4) when the other person is rendered unconscious or physically or mentally incapable of declining participation or communicating unwillingness to engage in sexual intercourse for any reason including physical handicap, mental disease, mental disability, alcohol or drug intoxication;
 - (5) when the defendant is in a position of trust or authority with respect to the other person, and takes advantage of that position to cause sexual touching; or
 - (6) when the defendant is related to the victim as an ancestor, descendant, or sibling.
- (B) Abusive sexual touching is a **Class A offense**.

[History] Ord. 245 (4/7/06); Ord. 184 (9/30/03); Ord. 75 (4/2/91)

4-03.030 Defense to Abusive Sexual Intercourse and Abusive Sexual Touching.

- (A) Consent is a defense to abusive sexual intercourse and abusive sexual touching.
- (B) All persons under the age of sixteen (16) years shall be deemed incapable of consenting to sexual intercourse or sexual touching.
- (C) Persons of any age may be considered incapable of consent due to physical or mental disability, whether temporary or permanent.
- (D) Where age is the only basis on which the conduct giving rise to these charges is considered nonconsensual, the defendant may assert as a defense that the offense is of a lower class or non-criminal based on either:
 - (1) the closeness in age between the victim and defendant; or
 - (2) on the defendant's reasonable belief in the closeness of age between the victim and defendant, considering the circumstances as a whole.

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

4-03.040 Indecent Exposure.

- (A) Any person who intentionally indecently exposes himself or herself to another knowing that such conduct is likely to cause reasonable affront or alarm commits the offense of indecent exposure.
- (B) Indecent exposure is a **Class B offense** if the victim is under age fourteen (14); otherwise, it is a **Class C offense**.

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

4-03.050 Possession of Child Pornography.

Any person possessing visual or printed material depicting a minor engaged in sexually explicit conduct commits a **Class B offense**.

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

4-03.060 Prostitution and Profiting from Prostitution.

- (A) Any person who engages in or agrees or offers to engage in sexual conduct with another person in return for a fee or other benefit commits the offense of prostitution. “Sexual conduct” means sexual intercourse or sexual touching as defined in Section 4-01.040.
- (B) Prostitution is a **Class C offense**.
- (C) Any person who encourages a child under the age of eighteen (18) to engage in prostitution commits a **Class A offense**.
- (D) Any person who knowingly profits from or attempts to profit from the commission of prostitution by another commits a **Class B offense**.

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

4-03.070 Sexual Exploitation of Minors.

- (A) A person is guilty of sexual exploitation of minors if the person, for the purpose of producing any visual depiction of sexually explicit conduct or for the purpose of sexual gratification:
 - (1) employs, uses, persuades, induces, entices, or coerces any person under age eighteen (18) to engage in sexually explicit conduct;
 - (2) causes a person under eighteen (18) to assist any other person to engage in sexually explicit conduct; or
 - (3) in any way willfully aids a person under eighteen (18) to engage in sexually explicit conduct.
- (B) Sexual exploitation of a minor is a **Class A offense**.
- (C) Any person who willfully assists in the production or distribution of a visual depiction of sexually explicit conduct by a minor also commits the **Class A offense** of sexual exploitation of children.

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

4-03.080 Sexually Transmitted Diseases.

- (A) Any person who, knowing that he or she is infected with a sexually transmitted disease, engages in conduct likely to transmit the disease to others without the knowledge and consent of the other person, commits a **Class C offense**, unless the disease is life-threatening in which case a **Class A offense** is committed.
- (B) For purposes of this Section “**sexually transmitted disease**” means a bacterial, viral, fungal, or parasitic disease, determined by accepted medical practice to be sexually transmitted. This shall include, but not be limited to chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), trachomitis, genital human papilloma virus infection, syphilis, acquired immunodeficiency syndrome (AIDS), and human immunodeficiency virus (HIV) infection.

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

4-03.090 Rape of a Child.

- (A) A person is guilty of rape of a child when the person has sexual intercourse, as defined in Section 4-01.040, with another who is less than twelve (12) years old and not married to the perpetrator and the perpetrator is at least twenty-four (24) months older than the victim;
- (B) A person is guilty of rape of a child when the person has sexual intercourse, as defined in Section 4-01.040, with another who is at least twelve (12) years old but less than fourteen (14) years old and not married to the perpetrator and the perpetrator is at least thirty-six (36) months older than the victim; or
- (C) A person is guilty of rape of a child when the person has sexual intercourse, as defined in Section 4-01.040, with another who is at least fourteen (14) years old but less than sixteen (16) years old and not married to the perpetrator and the perpetrator is at least forty-eight (48) months older than the victim.
- (D) Rape of a child is a **Class A offense**.

[History] Ord. 245 (4/7/06)

4-03.100 Child Molestation.

- (A) A person is guilty of child molestation when the person engages in, or knowingly causes another person under the age of eighteen (18) to engage in, sexual touching, as defined in Section 4-01.040, with another who is less than twelve (12) years old and

not married to the perpetrator and the perpetrator is at least thirty-six (36) months older than the victim.

- (B) A person is guilty of child molestation when the person engages in, or knowingly causes another person under the age of eighteen (18) to engage in, sexual touching as defined in Section 4-01.040, with another who is at least twelve (12) years old but less than fourteen (14) years old and not married to the perpetrator and the perpetrator is at least thirty-six (36) months older than the victim.
- (C) A person is guilty of child molestation when the person engages in, or knowingly causes another person under the age of eighteen (18) to engage in, sexual touching as defined in Section 4-01.040, with another who is at least fourteen (14) years old but less than sixteen (16) years old and not married to the perpetrator and the perpetrator is at least forty-eight (48) months older than the victim.
- (D) Child molestation is a **Class A offense**.

[History] Ord. 245 (4/7/06)