

Title 5 – Traffic Code

Chapter 2 – Criminal Traffic Code

Sec.	
5-01.010	Title
5-02.020	Authority
5-02.030	Definitions
5-02.040	Applicability of Criminal Procedures
	<i>Subchapter I - Traffic Offenses</i>
5-02.050	Failure to Appear/Respond
5-02.060	Obedience to Enforcement Officers
5-02.070	Refusal to Give Identification
5-02.080	Vehicular Homicide
5-02.090	Vehicular Assault
5-02.100	Reckless Driving
5-02.110	Negligent Driving
5-02.120	Willful Destruction of Vehicle
5-02.130	Attempting to Elude Pursuing Police Vehicle
5-02.140	Hit and Run Unattended
5-02.150	Hit and Run Attended
5-02.160	Drivers to be Licensed
5-02.170	Driving While License is Suspended/Revoked
	<i>Subchapter II - Alcohol and Drug Related Offenses</i>
5-02.180	Driving Under The Influence (D.U.I.)
5-02.190	Driver Under Twenty-one Consuming Alcohol - Penalties
5-02.200	Physical Control Of Vehicle Under The Influence
5-02.210	Implied Consent - License Sanctions for Test Refusal - Procedures
5-02.220	Implied Consent - Length of License Sanctions
5-02.230	Persons Under Influence of Intoxicating Liquor or Drug - Evidence - Tests - Information Concerning Tests
	<i>Subchapter III – Sentencing and Penalties</i>
5-02.240	Sentencing - Generally
5-02.250	Alcohol Violators - Penalty Schedule
	<i>Subchapter IV - Habitual Offenders</i>
5-02.260	Habitual Traffic Offender - Infractions

5-02.270 Habitual Traffic Offender - Criminal Offenses
5-02.280 Transcript of Abstract as Evidence

Subchapter V – Repealer & Severability

5-02.290 Repealer
5-02.300 Severability
5-02.310 Effective Date

Annotations

Legislative History

Enacted:

Traffic Code, Ord. 175 (9/5/03), BIA (9/12/03).

Repealed:

Amending Criminal Traffic Ordinance, Ord. 150 (11/7/01), BIA (11/23/01)
(repealing and replacing Chapter 10A.1 of Ord. 137).
Enactment of Criminal Traffic Code, Ord. 137 (6/9/99), BIA (6/22/99) (amending
Ord. 69A in its entirety without repealing Ord. 69A).
Criminal Traffic Code, Ord. 69A (2/7/90), Enacting Res. 90-2-3, BIA (2/27/90).

5-01.010 Title.

This Chapter shall be known as and may be cited as the “Swinomish Criminal Traffic Code.”

[History] Ord. 175 (9/5/03).

5-02.020 Authority.

This Chapter is enacted pursuant to authority provided by Article VI, Section 1(k) and (l) of the Swinomish Constitution.

[History] Ord. 175 (9/5/03).

5-02.030 Definitions.

Words in this Chapter shall have the meaning given to them in Section 5-01.040 of this Title unless the context clearly indicates another meaning. If the meaning of a word is not clear, the Tribal Court shall construe the meaning of the word in harmony with the purpose of this Title.

[History] Ord. 175 (9/5/03).

5-02.040 Applicability of Criminal Procedures.

The Swinomish Rules of Criminal Procedure Chapter 3-03 shall apply to the offenses enumerated in this Chapter. The Tribal Court shall have jurisdiction in criminal traffic matters over tribal members and other Indians in accordance with Federal laws. Therefore “person” as used in this Chapter shall not include anyone who is not a member of or enrolled into a federally recognized tribe. Non-Indians shall be apprehended and prosecuted in accordance with applicable Federal and State law.

[History] Ord. 175 (9/5/03); Ord. 150 (11/7/01); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

Subchapter I - Traffic Offenses

5-02.050 Failure to Appear/Respond.

Any person who willfully violates his or her written and signed promise to appear in Tribal Court or his or her written and signed promise to respond to a notice of civil traffic infraction or who fails to respond to a criminal traffic citation or civil traffic infraction whether or not he or she signed the citation, is guilty of a **Class C offense**.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.060 Obedience to Enforcement Officers.

It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal, or direction of any tribal enforcement officer, and any flagger or firefighter, who has authority to direct, control, or regulate traffic. A signal under this Section includes signals by hand, voice, siren, or emergency light. Violation of this Section is a **Class C offense**.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.070 Refusal to Give Identification.

- (A) It shall be unlawful for any person while operating or in charge of a vehicle to refuse, when requested by an enforcement officer, to give his or her name and address and the name and address of the owner of the vehicle, or for such person to give false name and address.
- (B) It shall be unlawful for any person to refuse upon demand of such enforcement officer to produce:
 - (1) his or her certificate of license registration for the vehicle; and
 - (2) his or her vehicle operator’s license or his or her tribal enrollment

identification card or to refuse to permit the officer to take any such license, certificate, or card for the purpose of examination thereof, or to refuse to permit the examination of any equipment of the vehicle or the weighing of the vehicle.

- (C) It shall be unlawful for any person to refuse or neglect to produce any identification listed in this Section when requested to do so by the Tribal Court.
- (D) Violation of this section is a **Class C offense**.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.080 Vehicular Homicide.

- (A) When the death of any person ensues within three (3) years as a result of injury proximately caused by the driving of any person while under the influence of intoxicating liquor or any drug, as defined under Section 5-02.180, or by the operation of any vehicle in a reckless manner or with disregard for the safety of others, the person so operating such vehicle is guilty of vehicular homicide.
- (B) Vehicular homicide is a **Class A offense**.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.090 Vehicular Assault.

- (A) A person is guilty of vehicular assault if he or she operates any vehicle:
 - (1) In a reckless manner, and his or her conduct is the proximate cause of serious bodily injury to another; or
 - (2) While under the influence of intoxicating liquor or any drug, as defined by Section 5-02.180, and his or her conduct is the proximate cause of serious bodily injury to another.
- (B) **“Serious bodily injury”** in this Section means bodily injury that involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of any part or organ of the body.
- (C) Vehicular assault is a **Class A offense**.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.100 Reckless Driving.

- (A) A person is guilty of reckless driving if he or she operates any vehicle:
 - (1) in willful or wanton disregard for the safety of persons or property; or
 - (2) exceeds the speed limit by more than twenty (20) miles per hour.
- (B) Reckless driving is a **Class B offense**.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.110 Negligent Driving.

- (A) A person is guilty of negligent driving if he or she operates any vehicle in a manner as to endanger or be likely to endanger any person or property.
- (B) The offense of operating a vehicle in a negligent manner shall be a lesser offense than, but included in, the offense of operating a vehicle in a reckless manner, and any person charged with operating a vehicle in a reckless manner may be convicted of the lesser offense of operating a vehicle in a negligent manner.
- (C) Negligent driving is a **Class C offense**.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.120 Willful Destruction of Vehicle.

- (A) Any person who shall willfully break, injure, tamper with, or remove any part of any motor vehicle for the purpose of injuring, defacing, or destroying such vehicle, or who temporarily or permanently prevents its useful operation without the consent of the owner of such motor vehicle shall be guilty of willful destruction of a vehicle.
- (B) Willful destruction of a vehicle is a **Class C offense**.
- (C) The Tribal Court may order the defendant to pay restitution in addition to any fine or jail time imposed.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.130 Attempting to Elude Pursuing Police Vehicle.

- (A) Any driver of any vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop after being given a visual or audible signal to bring the vehicle to

a stop by an enforcement officer is guilty of attempting to elude a police vehicle.

- (B) The signal given by the enforcement officer may be by emergency light or siren.
- (C) Attempting to elude a police vehicle is a **Class B offense**.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.140 Hit and Run Unattended - Duty on Striking Unattended Car or Other Property.

- (A) The operator of any vehicle which has collided with any other vehicle that is unattended shall immediately stop and shall:
 - (1) then and there either locate and notify the operator or owner of such vehicle of the name and current address of the operator and owner of the vehicle striking the unattended vehicle; or
 - (2) leave a written notice in a conspicuous place in the vehicle struck, giving the name and current address of the operator and of the owner of the vehicle striking such other vehicle.
- (B) The driver of any vehicle involved in an accident resulting only in damage to property fixed or placed upon or adjacent to any public roadway shall:
 - (1) take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the name and address of the operator and owner of the vehicle striking such property; or
 - (2) leave a written notice in a conspicuous place upon the property struck , giving the name and address of the operator and of the owner of the vehicle so striking the property.
- (C) Any person who violates the provisions of this section is guilty of hit and run unattended, a **Class C offense** punishable under Section 5-02.240

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99).

5-02.150 Hit and Run Attended - Duty in Case of Injury to or Death of Person or Damage to Attended Vehicle or Other Property.

- (A) A driver of any vehicle involved in an accident resulting in the injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to, and in every event remain

at, the scene of such accident until he or she has fulfilled the requirements of Subsection (C) of this Section; every such stop shall be made without obstructing traffic more than is necessary.

- (B) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person, or damage to other property, shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to, and in any event shall remain at, the scene of such accident until he or she has fulfilled the requirements of Subsection (C) of this Section; every such stop shall be made without obstructing traffic more than is necessary.
- (C) Unless otherwise provided in Subsection (F) of this Section, the driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person or damage to other property shall:
 - (1) give his or her name, address, insurance company, insurance policy number, and vehicle license number and shall exhibit his vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with; and
 - (2) render reasonable assistance to any person injured in such accident, including the carrying or the making of arrangement for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his behalf.
 - (3) Under no circumstances shall the rendering of assistance or other compliance with the provisions of this Subsection be evidence of the liability of any driver for such accident.
- (D) Any driver covered by the provisions of Subsection (A) of this Section failing to stop or comply with any of the requirements of Subsection (C) of this Section under said circumstances shall be guilty of hit and run attended resulting in injury and/or death, a **Class A offense** punishable under Section 5-02.240; PROVIDED, that this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying herewith.
- (E) Any driver covered by the provisions of Subsection (B) of this Section failing to stop or to comply with any of the requirements of Subsection (C) of this Section under said circumstances shall be guilty of hit and run attended/no injury, a **Class B offense** punishable under Section 5-02.240; PROVIDED, that this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically

incapable of complying herewith.

- (F) If none of the persons specified are in condition to receive the information to which they otherwise would be entitled under Subsection (C) of this Section, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of Subsections (A) and (C) of this Section insofar as possible, shall forthwith report such accident to the nearest office of the duly authorized police authority and submit thereto the information specified in Subsection (C) of this Section.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99).

5-02.160 Drivers to be Licensed.

No person shall operate a vehicle within the jurisdiction of the Tribe unless he or she has obtained a valid operator's license issued by any jurisdiction recognized by the Tribe. Any person who violates the provisions of this Section commits a **Class C offense**; PROVIDED, that the Tribal Court shall have discretion to dismiss the charges, or reduce or suspend the sentence, if the person has obtained a valid operator's license prior to the hearing.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99).

5-02.170 Driving While License is Suspended/Revoked.

No person shall operate a vehicle within the jurisdiction of the Tribe when the person's operator's license has been suspended or revoked by any jurisdiction, except in compliance with the terms of a valid occupational license. Any person who violates the provisions of this Section commits a **Class C offense**.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

Subchapter II - Alcohol and Drug Related Offenses

5-02.180 Driving Under the Influence (D.U.I.).

- (A) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within the boundaries of the Swinomish Indian Reservation and:
- (1) The person has, within two (2) hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under Section 5-02.210;

- (2) While the person is under the influence of or affected by intoxicating liquor or any drug; or
 - (3) While the person is under the combined influence of or affected by intoxicating liquor and any drug.
- (B) The fact that a person charged with a violation of this Section is or has been entitled to use a drug under the laws of a state shall not constitute a defense against a charge of violating this Section.
- (C) It is an affirmative defense to a violation of Subsection (A)(1) of this Section that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two (2) hours after driving. The defendant must prove the defense by a preponderance of the evidence. The Court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the pretrial hearing in the case of the defendant's intent to assert the affirmative defense.
- (D) Analyses of blood or breath samples obtained more than two (2) hours after the alleged driving may be used as evidence that within two (2) hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of Subsection (A)(1) of this Section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of Subsection (A) (2) or (3) of this Section.
- (E) Any person who violates this section shall, when convicted, be subject to the penalties of Section 5-02.250.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.190 Driver Under Twenty-one Consuming Alcohol – Penalties.

- (A) Notwithstanding any other provisions of this Chapter, a person is guilty of driving a motor vehicle after consuming alcohol if the person operates a motor vehicle within the boundaries of the Swinomish Indian Reservation and the person:
- (1) Is under the age of twenty-one (21); and
 - (2) Has, within two (2) hours after operating the motor vehicle, an alcohol concentration of 0.02 or more, as shown by analysis of the person's breath or blood made under Section 5-02.230.

- (B) It is an affirmative defense to a violation of Subsection (A) of this Section that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.02 or more within two (2) hours after driving. The defendant must prove the defense by a preponderance of the evidence. The Court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of: (1) seven (7) days prior to trial; or (2) the pretrial hearing in the case of the defendant's intent to assert the affirmative defense.
- (C) Analyses of blood or breath samples obtained more than two (2) hours after the alleged driving may be used as evidence that within two (2) hours of the alleged driving, a person had an alcohol concentration of 0.02 or more in violation of Subsection (A) of this Section.
- (D) A violation of this Section is a **Class C offense**.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99).

5-02.200 Physical Control Of Vehicle While Under The Influence.

- (A) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle with the boundaries of the Swinomish Indian Reservation and:
 - (1) The person has, within two (2) hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under Section 5-02.210, or
 - (2) While the person is under the influence of or affected by intoxicating liquor or any drug; or
 - (3) While the person is under the combined influence of or affected by intoxicating liquor and any drug.
- (B) The fact that a person charged with a violation of this Section is or has been entitled to use a drug under the laws of a state does not constitute a defense against any charge of violating this Section.
- (C) No person may be convicted under this Section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.
- (D) It is an affirmative defense to a violation of Subsection (A)(1) of this Section that the defendant consumed a sufficient quantity of alcohol after the time of being in actual

physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two (2) hours after being in such control. The defendant must prove the defense by a preponderance of the evidence. The Court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

- (E) Analyses of blood or breath samples obtained more than two (2) hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two (2) hours of the alleged being in such control, a person had an alcohol concentration of 0.00 or more in violation of Subsection (A)(1) of this Section, and in any case in which the analysis shows an alcohol concentration above 0.08 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of Subsection (A) (2) or (3) of this Section.
- (F) Any person who violates this Section shall, when convicted, be subject to the penalties in Section 5-02.250.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.210 Implied Consent – License Sanctions for Test Refusal – Procedures.

- (A) Any person who operates a motor vehicle within the boundaries of the Reservation is deemed to have given consent, subject to the provisions of Section 5-02.230, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of Section 5-02.190.
- (B) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle within the boundaries of the Swinomish Indian Reservation while under the influence of intoxicating liquor or the person was driving or in actual physical control of a motor vehicle while having alcohol in a concentration of 0.02 or more in his or her system and being under the age of twenty-one (21). However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing instrument is not present or where the officer has reasonable grounds to believe the

- person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in Section 5-02.230(E). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in Section 5-02.230. The officer shall warn the driver that:
- (1) His or her license, permit, or privilege to drive may be revoked or denied if he or she refuses to submit to the test;
 - (2) His or her license, permit, or privilege to drive may be suspended, revoked, denied, or placed in probationary status if the test is administered and the test indicates the alcohol concentration of the person's breath or blood is 0.08 or more, in the case of a person age twenty-one (21) or over, or 0.02 or more in the case of a person under age twenty-one (21); and
 - (3) His or her refusal to take the test may be used in a criminal trial.
- (C) Except as provided in this Section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in Section 5-02.080 or vehicular assault as provided in Section 5-02.090, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided under Section 5-02.180, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.
- (D) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by Subsection (A) of this Section and the test or tests may be administered, subject to the provisions of Section 5-02.230, and the person shall be deemed to have received the warnings required under Subsection (B) of this Section.
- (E) If, following his or her arrest and receipt of warnings under Subsection (B) of this Section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under Subsections (C) or (D) of this Section.
- (F) If, after arrest and after the other applicable conditions and requirements of this Section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one (21) or over, or is 0.02 or more if the person is under twenty-one (21), or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose

direction any test has been given (or the department, where applicable, if the arrest results in a test of the person's blood) may:

- (1) Serve notice in writing on the person on behalf of the Tribe of its intention to request that the Washington Department of Licensing suspend, revoke, deny, or place in probationary status the person's license, permit, or privilege to drive;
- (2) Serve notice in writing on the person on behalf of the Washington Department of Licensing of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing;
- (3) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the Washington Department of Licensing;
- (4) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty (60) days from the date of arrest or from the date notice has been given in the event notice is given following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and
- (5) Immediately notify the Washington Department of Licensing of the arrest and transmit to the department within seventy-two (72) hours, except as delayed as the result of a blood test, a sworn report or report that states:
 - (a) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within the Reservation while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one (21) years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration of 0.02 or more;
 - (b) That after receipt of the warnings required by Subsection (B) of this Section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one (21) or over, or was 0.02 or more if the person is under the age of twenty-one (21); and

- (c) Any other information that the director of the Washington Department of Licensing may require by rule.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.220 Implied Consent – Length of License Sanctions.

Pursuant to Section 5-02.210, the Tribe may request that the Washington State Department of Licensing suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

- (A) In the case of a person who has refused a test or tests:
 - (1) For a first refusal within five (5) years, where there has not been a previous incident within five (5) years that resulted in a conviction under this section, revocation or denial for one (1) year.
 - (2) For a second or subsequent refusal within five (5) years, or for a first refusal where there has been one or more previous incidents within five (5) years that have resulted in a conviction under this Section, revocation or denial for two (2) years or until the person reaches age twenty-one (21), whichever is longer.
 - (3) A revocation imposed under this Subsection (A)(2) shall run consecutively to the period of any suspension, revocation, or denial imposed pursuant to a criminal conviction arising out of the same incident.
- (B) In the case of an incident where a person over the age of twenty-one (21) has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.08 or more:
 - (1) For a first incident within five (5) years, where there has not been a previous incident within five (5) years that resulted in a conviction under this Section, placement in probationary status;
 - (2) For a second or subsequent incident within five (5) years, revocation or denial for two (2) years.
- (C) In the case of an incident where a person under age twenty-one (21) has submitted to or been administered a test or test indicating that the alcohol concentration of the person's breath or blood was 0.02 or more:

- (1) For a first incident within five (5) years, suspension or denial for ninety (90) days; or
- (2) For a second or subsequent incident within five (5) years, revocation or denial for one (1) year or until the person reaches age twenty-one (21), whichever is longer.

[History] Ord. 175 (9/5/03); Ord. 150 (11/7/01); Ord. 137 (6/9/99).

5-02.230 Persons Under Influence of Intoxicating Liquor or Drug – Evidence – Tests – Information Concerning Tests.

- (A) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.
- (B) The breath analysis shall be based upon grams of alcohol per two hundred ten (210) liters of breath.
- (C) The foregoing provisions of this Section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.
- (D) Analysis of the person's blood or breath to be considered valid under the provisions of this Section or Sections 5-02.180 or 5-02.190 or 5-02.200 shall have been performed according to methods approved by the Washington State toxicologist and by an individual possessing a valid permit issued by the Washington State toxicologist for this purpose.
- (E) When a blood test is administered under the provisions of Section 5-02.210, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.
- (F) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

- (G) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99).

Subchapter III – Sentencing and Penalties

5-02.240 Sentencing – Generally.

Except as otherwise provided in Section 5-02.250, traffic offenses under this Chapter shall be sentenced in accordance with this Section based upon the class of offense. The Tribal Court, in its discretion, may suspend all or part of a sentence, including minimum sentences, upon the performance of conditions imposed on the defendant. The following sentences shall be imposed for each class:

- (A) **Class C offense:** No more than thirty (30) days in jail; or a fine not to exceed \$250.00; or both a fine and jail time.
- (B) **Class B offense:** No fewer than thirty (30) days in jail, not to exceed ninety (90) days in jail; or a minimum fine of \$250.00, not to exceed a fine of \$500.00; or both a fine and jail time.
- (C) **Class A offense:** No fewer than ninety (90) days in jail, not to exceed one (1) year in jail; or a minimum fine of \$500.00, not to exceed a fine of \$5,000.00; or both a fine and jail time.

[History] Ord. 175 (9/5/03); Ord. 150 (11/7/01); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.250 Alcohol Violators - Penalty Schedule.

- (A) A person who is convicted under Sections 5-02.180 or 5-02.200 and who has no prior offense within five (5) years shall be punished as follows:
 - (1) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reason other than the person's refusal to take a test offered pursuant to Section 5-02.210, there is no test result indicating the person's alcohol concentration:
 - (a) Imprisonment for not less than one (1) day or more than one (1) year. Whenever the minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based;

- (b) A fine of not less than \$350.00 or more than \$5,000.00; and
 - (c) Suspension of the offender's license or permit to drive within the Reservation, for a period of ninety (90) days. The Court may notify the Washington Department of Licensing of the conviction; or
 - (2) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to Section 5-02.210 there is no test result indicating the person's alcohol concentration:
 - (a) Imprisonment for not less than two (2) days or more than one (1) year. Whenever the minimum sentence is suspended or deferred, the Court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based;
 - (b) A fine of not less than \$500.00 or more than \$5,000.00; and
 - (c) Revocation of the offender's license or permit to drive within the Reservation for a period of one (1) year. The court may notify the Washington Department of Licensing of the conviction.
- (B) A person who is convicted of a violation of Sections 5-02.180 or 5-02.200 and who has one (1) prior offense within five (5) years shall be punished as follows:
 - (1) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reason other than the person's refusal to take a test offered pursuant to Section 5-02.210 there is no test result indicating the person's alcohol concentration:
 - (a) Imprisonment for not less than thirty (30) days or more than one (1) year. Whenever the minimum sentence is suspended or deferred, the Court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based;
 - (b) A fine of not less than \$500.00 or more than \$5,000.00; and
 - (c) Revocation of the offender's license or permit to drive within the Reservation, for a period of two (2) years. The Court may notify the Washington Department of Licensing of the conviction; or
 - (2) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to 5-

02.210 there is no test result indicating the person's alcohol concentration:

- (a) Imprisonment for not less than forty-five (45) days or more than one (1) year. Whenever the minimum sentence is suspended or deferred, the Court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral and the facts upon which the suspension or deferral is based;
- (b) A fine of not less than \$750.00 or more than \$5,000.00; and
- (c) Revocation of the offender's license or permit to drive within the Reservation, for a period of nine hundred (900) days. The Court may notify the Washington Department of Licensing of the conviction.

(C) A person who is convicted of a violation of Sections 5-02.180 or 5-02.200 and who has two (2) or more prior offenses within five (5) years shall be punished as follows:

(1) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to Section 5-02.210 there is no test result indicating the person's alcohol concentration:

- (a) Imprisonment for not less than ninety (90) days or more than one (1) year. Whenever the minimum sentence is suspended or deferred, the Court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based;
- (b) A fine of not than \$1,000.00 or more than \$5,000.00; and
- (c) Revocation of the offender's license or permit to drive within the Reservation, for a period of three (3) years. The Court may notify the Washington Department of Licensing of the conviction; or

(2) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to Section 5-02.210 there is no test result indicating the person's alcohol concentration:

- (a) Imprisonment for not less than one hundred twenty (120) days or more than one (1) year. Whenever the minimum sentence is suspended or deferred, the Court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based;

- (b) A fine of not less than \$1,500.00 or more than \$5,000.00; and
 - (c) Revocation of the offender's license or permit to drive within the Reservation, for a period of four (4) years. The Court may notify the Washington Department of Licensing of the conviction.
- (D) In exercising its discretion in setting penalties within the limits allowed in this Section, the Court shall particularly consider whether the person's driving at the time at the time of the offense was responsible for injury or damage to another or another's property.
- (E) An offender punishable under this Section may be required by the Court to undergo alcohol assessment and treatment.
- (F) **Conditions of Probation.**
 - (1) The Court may impose conditions of probation that prevent the offender from:
 - (a) driving a motor vehicle within the Reservation without a valid license to drive and proof of financial responsibility for the future;
 - (b) driving a motor vehicle within the Reservation while having an alcohol concentration of 0.08 or more within two (2) hours after driving; and
 - (c) refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within the Reservation while under the influence of intoxicating liquor.
 - (2) The Court may impose conditions of probation that include:
 - (a) nonrepetition of the offense;
 - (b) installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle;
 - (c) alcohol or drug treatment;
 - (d) supervised probation; or
 - (e) other conditions that may be appropriate.

- (3) The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.
 - (a) For each violation of a condition of probation under (A)(1) and (2) or (A)(1) and (3) of this Subsection, the Court may order the convicted person to be confined for thirty (30) days.
 - (b) For each incident involving a violation of a mandatory condition of probation imposed under this Subsection, the license, permit or privilege to drive of the person may be suspended by the Court for thirty (30) days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty (30) days. The Court may notify the Washington Department of Licensing of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this Subsection.

(G) **Definitions.** For the purposes of sentencing under this Section the following definitions shall apply.

- (1) A “**prior offense**” means any of the following:
 - (a) A conviction for a violation of Section 5-02.180 or an equivalent local ordinance;
 - (b) A conviction for a violation of Section 5-02.200 or an equivalent local ordinance;
 - (c) A conviction for a violation of Section 5-02.080 committed while under the influence of intoxicating liquor or any drug;
 - (d) A conviction for a violation of Section 5-02.090 committed while under the influence of intoxicating liquor or any drug;
 - (e) A conviction for a violation of Section 5-02.110 with alcohol in system or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of Section 5-02.180 or Section 5-02.200, or an equivalent local ordinance, or of Section 5-02.080 or 5-02.090;
 - (f) An off-Reservation conviction for a violation that would have been a violation of (1)(a), (b), (c), (d), or (e) of this Subsection if committed

within the Reservation;

- (g) A deferred prosecution granted in a prosecution for a violation of Sections 5-02.180, 5-02.200, or an equivalent local ordinance; or
 - (h) A deferred prosecution granted in a prosecution for a violation Section 5-02.110 with alcohol in system, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of Section 5-02.180 or 5-02.200, or an equivalent local ordinance, or of Section 5-02.080 or 5-02.090.
- (2) **“Within five (5) years”** means that the arrest for a prior offense occurred within five (5) years of the arrest for the current offense.

[History] Ord. 175 (9/5/03); Ord. 150 (11/7/01); Ord. 137 (6/9/99).

Subchapter IV – Habitual Offenders

5-02.260 Habitual Traffic Offender – Infractions.

- (A) Any person who has been found to have committed twelve (12) or more traffic infractions within a two (2) year period shall be declared by the Court to be a habitual offender and his or her driving privilege shall be revoked for a period of no less than one (1) year and or more than five (5) years.
- (B) Traffic infractions under this Section shall include those provided under Chapter 1 of this Title and traffic infractions under the law of any state, county, town or city or any federal law.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.270 Habitual Traffic Offender - Criminal Offenses.

- (A) Any person who has three (3) or more convictions, within a five (5) year period, of the following offenses shall be declared by the Court to be a habitual offender:
 - (1) vehicular homicide (Section 5-02.080);
 - (2) vehicular assault (Section 5-02.090);
 - (3) reckless driving (Section 5-02.100);
 - (4) driving while under the influence (Section 5-02.180);

- (5) actual physical control (Section 5-02.200); or
 - (6) attempting to elude pursuing police vehicle (Section 5-02.130).
- (B) The Court shall revoke the driving privilege of a person declared to be a habitual offender under this Section for a period of no less than one (1) year and no more than five (5) years.
- (C) In computing the number of convictions, multiple convictions arising from the same incident shall count as a single conviction.
- (D) Traffic offenses under this Section shall include the Sections from this Chapter specified above and corresponding offenses under the laws of any state, county, town, or city or any federal law.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

5-02.280 Transcript of Abstract as Evidence.

A transcript or abstract kept by the Tribe or obtained by the Tribe from another jurisdiction may be admitted as evidence in any hearing before the Tribal Court and shall be prima facie evidence that the person committed the infractions or offenses. If the person denies that he or she committed the infraction or offenses, he or she shall have the burden of proving that such fact is untrue.

[History] Ord. 175 (9/5/03); Ord. 137 (6/9/99); Ord. 69A (2/7/90).

Subchapter V – Repealer & Severability

5-02.290 Repealer.

This Ordinance repeals and supersedes all prior criminal traffic ordinances and laws, including Ordinances 150, 137 and 69A.

[History] Ord. 175 (9/5/03).

5-02.300 Severability.

If any provision of this Chapter or its applicability to any person or circumstance is held invalid, the remainder of this Chapter or its application to other persons or circumstances is not affected.

[History] Ord. 175 (9/5/03).

5-02.310 Effective Date.

This Chapter shall become effective thirty (30) days after approval by Secretary of the Interior or the Secretary's designated representative.

[History] Ord. 175 (9/5/03).

Annotations

STC 5-02.230

NOTES OF DECISIONS

Field Sobriety Tests 1

Horizontal Gaze Nystagmus 2

Portable Breath Test 3

1. Field Sobriety Tests

Field sobriety test is not a search; therefore, federal and Swinomish statutory protections against unreasonable searches do not apply. *SITC v. George*, CR-CO-2005-0015 (Swinomish Tribal Ct. April 13, 2006).

A police officers failure to check an appropriate box on a DUI arrest report form is not sufficient, per se, to warrant suppression of field sobriety test results. *SITC v. George*, CR-CO-2005-0015 (Swinomish Tribal Ct. April 13, 2006).

2. Horizontal Gaze Nystagmus

Horizontal Gaze Nystagmus testing is sufficiently reliable to meet the threshold requirements for admissibility. *SITC v. George*, CR-CO-2005-0015 (Swinomish Tribal Ct. April 13, 2006).

3. Portable Breath Test

Portable Breath Test results are not admissible as evidence of intoxication at trial, but may be utilized, under proper procedures, to establish probable cause for arrest. *SITC v. George*, CR-CO-2005-0015 (Swinomish Tribal Ct. April 13, 2006).