

Title 4 – Criminal Code

Chapter 10 – Offenses Involving Controlled Substances

Sec.

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Legislative History

Enacted:

Ordinance 370 Establishing STC Title 15, Chapter 8 and Amending STC Title 4, Chapters 6, 7, and 10 (8/9/17).

Ordinance 324 Amending STC Title 4, Chapter 10 (5/7/13), BIA (5/10/13).

Ordinance 206 Amending STC 4-10.050 and Ordinance 184, (12/18/03), BIA (12/30/03).

Ordinance 184 Establishing The Swinomish Criminal Code and Repealing and Superseding Ordinance Nos. 156, 154, 143, and 75, (9/30/03), BIA (10/7/03).

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

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

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

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

Ordinance 1 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 located in tribal records.]

4-10.010 Definitions.

All terms used in this Chapter shall be given their commonly accepted meaning or as defined in Section 4-01.040. If there is any doubt as to the meaning of a term, the court shall be guided by the definitions contained in RCW 69.50, *et. seq.*, as currently in effect (copy attached) or as later amended. Nothing in this Chapter shall be construed to make illegal an act that is legal under the Uniform Controlled Substances Act.

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

4-10.020 Controlled Substances That Are Illegal Without a Valid Prescription.

- (A) Any substance that contains any quantity of a chemical that falls within the following categories is illegal to possess without a valid prescription:
- (1) Opiates including but not limited to substances commonly known as opium, heroin, morphine, methadone and codeine;
 - (2) Hallucinogenic substances including but not limited to substances commonly known as DMA, LSD, PCP, mescaline, peyote, and psilocybin;
 - (3) Cocaine in any form including but not limited to the powder and the rock or “crack” form;
 - (4) Depressants including but not limited to methaqualone, diazepam (Valium), secobarbital and pentobarbital; and
 - (5) Stimulants including but not limited to any form of amphetamine.
- (B) If there is any doubt as to whether a substance is illegal or not, the court shall be guided by the provisions of RCW 69.50, Schedule I through V, attached hereto.

[History] Ord. 370 (8/9/17); Ord. 184 (9/30/03); Ord. 75 (4/2/91).

4-10.030 Proof of Chemical Composition.

The chemical composition of a substance may be proven by any acceptable method of identification, including, but not limited to, identification by a trained officer, by certified field tests or by certified laboratory tests.

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

4-10.040 Elements of Offense and Penalties.

- (A) Possession of any amount of a substance listed in Section 4-10.020 is a **Class B offense**.
- (B) Any person who manufactures, delivers, or possesses with intent to deliver or manufacture any of the substances listed in Section 4-10.020 shall be found guilty of and sentenced for a **Class A offense**.

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

4-10.041 Cannabis.

- (A) In this section, the terms “cannabis,” “qualifying patient,” “valid authorization,” and “Tribal Enterprise” have the same meaning as that term defined in STC Title 15, Chapter 8.
- (B) **Individuals Under 21.** Any person under twenty-one (21) years of age who possesses, grows, produces, processes, packages, manufactures, delivers, sells, or distributes cannabis shall be found guilty and sentenced for a **Class C** offense. This does not include qualifying patients with a valid authorization.
- (C) Adults.
 - (1) The possession, by a person twenty-one (21) years of age or older, of cannabis in amounts that do not exceed those set forth in STC 15-08.060(D) is not a violation of this section, this Title, or any other provision of Tribal law.
 - (2) Any person twenty-one (21) years of age or older who grows, produces, processes, packages, manufactures, delivers, sells, or distributes cannabis in a manner that violates STC Title 15, Chapter 8 shall be found guilty and sentenced under STC 4-10.040 as if cannabis were a controlled substance under STC 4-10.020.
- (D) **Swinomish Tribe.** The possession, growing, production, processing, packaging, manufacture, delivery, sale, or distribution of cannabis by the Swinomish Tribe or a Tribal Enterprise or its employees acting in compliance with STC Title 15, Chapter 8 shall not constitute a violation of this section, this Title, or any other provision of Tribal law.

[History] Ord. 370 (8/9/17).

4-10.045 Medical Assistance for Drug-Related Overdose.

- (A) A person acting in good faith who seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to STC 4-10.040(A) if the evidence for the charge of possession of a controlled substance was obtained as a result of the person seeking medical assistance.
- (B) A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to STC 4-10.040(A) if the evidence for the charge of possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.

- (C) A person acting in good faith may receive a naloxone prescription, possess naloxone, and administer naloxone to an individual suffering from an apparent opiate-related overdose.
- (D) For the purposes of this section, “drug-related overdose” means an acute medical condition that is the result of the ingestion or use by an individual of one or more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury.
- (E) The protection in this section from prosecution for possession of a controlled substance under STC 4-10.040(A) shall not be grounds for suppression of evidence in other criminal charges.

[History] Ord. 324 (5/7/13).

4-10.050 Seizure of Vehicles Used in Controlled Substance Violations.

- (A) **Forfeiture of interest.** The interest of the legal owner or owners of record of any vehicle used to transport unlawfully a controlled substance, or in which a controlled substance is unlawfully kept, deposited, used, or concealed, or in which a narcotic is unlawfully possessed by an occupant, shall be forfeited to the Swinomish Indian Tribal Community.
- (B) **Police officer to seize vehicle.** Any peace officer making or attempting to make an arrest for a violation of this Chapter may seize the vehicle used to transport unlawfully a controlled substance, or in which a controlled substance is unlawfully kept, deposited, used, or concealed, or unlawfully possessed by an occupant and shall immediately deliver the vehicle to the tribal police chief, to be held as evidence until forfeiture is declared or a release ordered.
- (C) **Police officer to file notice of seizure.** A peace officer who seizes a vehicle under the provisions of this Section shall file notice of seizure and intention to institute forfeiture proceedings with the clerk of the Tribal Court and the clerk shall serve notice thereof on all owners of the vehicle, by one of the following methods:
 - (1) Upon an owner or claimant whose right, title or interest is of record in the division of motor vehicles of the state in which the automobile is licensed, by mailing a copy of the notice by registered mail to the address on the records of the division of motor vehicles of said state;
 - (2) Upon an owner or claimant whose name and address are known, by mailing a copy of the notice by registered mail to his last known address; or
 - (3) Upon an owner or claimant, whose address is unknown but who is believed to have an interest in the vehicle, by publication in one issue of a local newspaper of suitable size and general circulation.

- (D) **Owner's answer to notice.** Within twenty (20) days after the mailing or publication of a notice of seizure, as provided by Subsection (C) hereof, the owner of the seized vehicle may file a verified answer to the allegation of the use of the vehicle contained in the notice of seizure and of the intended forfeiture proceedings.
- (E) **Procedure for hearing.**
- (1) If a verified answer to the notice given as prescribed by this Section is not filed within twenty (20) days after the mailing or publication thereof, the court shall hear evidence upon the charge of unlawful use of the vehicle, and upon motion shall order the vehicle forfeited to the Swinomish Indian Tribal Community.
 - (2) If a verified answer is filed, the forfeiture proceedings shall be set for a hearing on a day not less than thirty (30) days after the answer is filed, and the proceedings shall have priority over other civil cases. Notice of the hearing shall be given in the manner provided for service of the notice of seizure.
 - (3) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the vehicle was not used to transport controlled substances illegally, or that a controlled substance was not unlawfully possessed by an occupant of the vehicle, or that the vehicle was not used as a depository or place of concealment for a controlled substance.
 - (4) A claimant of any right, title or interest in the vehicle may prove his or her lien, mortgage or conditional sales contract to be bona fide, and that his or her right, title, or interest was created after a reasonable investigation of the moral responsibility, character and reputation of the purchaser, and without knowledge that the vehicle was being, or was to be used for the purpose charged; but no person who has the lien dependent upon possession for the compensation to which he or she is legally entitled for making repairs or performing labor upon and furnishing supplies and materials for, and for the storage, repairs, safekeeping of any vehicle, and no person doing business under any law of any state or the United States relating to banks, trust companies, credit unions or licensed pawnbrokers or money lenders or regularly engaged in the business of selling vehicles shall be required to prove that his or her right, title or interest was created after a reasonable investigation of the moral responsibility, character and reputation of the owner, purchaser, or person in possession of the vehicle when it was brought to the claimant.

(F) **Judgment.**

- (1) If proper proof is presented at the hearing, the Tribal Court shall order the vehicle released to the bona fide owner, lien holder, mortgagee or vendor, if the amount due him or her is equal to or in excess of the value of the vehicle as of the date of seizure, it being the purpose of this Section to forfeit only the right, title or interest of the purchaser.
- (2) If the amount due a claimant or claimants is less than the value of the vehicle, the vehicle shall be sold at public auction by the tribal police chief after due and proper notice has been given.
- (3) If no such claimant exists, and the confiscating agency wishes to retain the vehicle for its official use, it may do so. If such vehicle is not to be retained, it shall be disposed of as provided in Subsection 4-10.050(F)(2) of this Section.

[History] Ord. 206 (12/18/03); Ord. 184 (9/30/03); Ord. 75 (4/2/91).

Annotations

STC 4-10.050

NOTES OF DECISIONS

Return of vehicle 1

1. Return of Vehicle

Although the vehicle was seized pursuant to an arrest that involved possession of illegal drugs, the Court ordered the return of the vehicle to the owner because he was out of town when the arrest for possession and the vehicle seizure occurred, he did not give permission for use of the vehicle, and he was unaware that the occupants possessed illegal drugs during the time of the arrest. *In re: 1973 Black Chevy 2-Door Ell 2T*, Ci-8/95-041 (Swinomish Tribal Ct. November 8, 1995).

2. Burden of Proof

STC 4-10.050(E)(3) places the burden of proof on the vehicle owner or claimant to show that the grounds for forfeiture have not been met. *In Re: 1999 Ford Escort 500-VEX*, CVFF-2011-0013 (Swinomish Tribal Ct. July 18, 2011).

3. No Innocent Owner Defense

STC 4-10.050 does not provide for an innocent owner defense, and a vehicle owner is not able to escape vehicle forfeiture by claiming that he did not know the vehicle was being used to illegally transport, possess, deposit, or conceal a controlled substance. Although STC 4-10.050(E)(4) references a lack of knowledge, this section only applies to third party lien holders such as banks and financial institutions, and was designed to preserve their economic interest in seized vehicles. STC 4-10.050(E)(4) does not apply to vehicle owners who do not have a third party lien holder interest in the seized vehicle. *In Re: 1999 Ford Escort 500-VEX*, CVFF-2011-0013 (Swinomish Tribal Ct. July 18, 2011).