

RESOLUTION NO. 82-48
of the
SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribe is the Governing Body of the Squaxin Island Tribe of Indians by the authority of the Constitution and By-laws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, the preamble to the Squaxin Island Constitution provides that a purpose of that document and of the Tribal Government itself is to administer justice on the Reservation; and

WHEREAS, the General Council of the Squaxin Island Tribe delegated to the Tribal Council the authority to enact a Tribal Law and Order Code and this delegation occurred at a meeting on October 20, 1979;

WHEREAS, the Tribal Council finds that it is necessary to add or amend the following sections to the Squaxin Island Law and Order Code;

- Child Abuse or neglect
- Unlawful Imprisonment
- Malicious Mischief in the First, Second and Third Degree
- Desecration of Religious Sites
- Cutting Timber Without a Permit
- Defacing Official Signs, Landmarks, or Navigation Markers
- Flag Desecration
- Failure to Control or Report a Fire
- Criminal Trespass in the First Degree
- Embezzlement
- Fraud
- Unauthorized Use of Tribal ID Card
- Incest
- Desertion and Nonsupport of Children
- Failure to Support Dependent Persons
- Refusing to Aid an Officer
- Flight to Avoid Prosecution
- Disturbing the Peace
- Child Molestation
- Domestic Animals - Taking, Concealing, Injuring, Killing
- Cruelty to Animals
- Firearms
- Illegal Sale, Purchase, Possession of Liquor; Illegal Transfer or Use of ID
- Maintaining a Public Nuisance

Abandoning Reprigeration Equipment
Telephone Abuse
Adulteration
Operation a Motor Vehicle While Privilege suspended
Controlled Substances
Contributing to the Delinquency of a Minor
Restitution
Deferred Prosecution
Defense to Action for being Detained on Mercantile
Establishment Premises

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Law and Order Code be amended in the manner attached; Sections 5.8, 6.4, 7, 7.7(1)(a), 7.8(1)(a), 7.9(1), 7.10, 7.11, 7.12, 7.13, 7.14, 8.7(2), 9.19, 10,2, 10.3, 10.4, 10.6, 11.2(3), 11.3, 11.4, 14.4--14.15, 14.16, 16.5, 17, 17.1--17.19, 18.2, 18.3, 19.1--19.13, 21.1, 21.2, 24, 26.1, 24.1--24.5, 26, 26.1--26.4, 27, 27.1, 27.2, 27.3, 32, 32.1, 32.2, 32.3, 28, 29, 30, 31, 33, 34, 35, 36, 6.6.

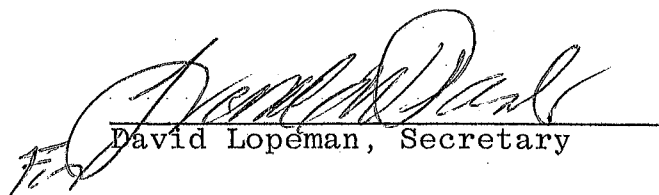
BE IT FURTHER RESOLVED, The Squaxin Island Tribal Council recommends that Section 26.5, Possession of Drug Paraphernalia and Section 21.2 (1)(e), Possession of Liquor by a Minor, be addressed in a following Law and Order Code amendment.


CERTIFICATION

The Squaxin Island Tribal Council does hereby certify that the above Resolution was adopted at a regular meeting of the Squaxin Island Tribal Council held on this 6th day or October, 1982 at which time a quorum was present and passed by a vote of 3 for, and 0 against.


David W. Whitener, Chairman

ATTESTED BY:


David Lopeman, Secretary


Evelyn Allen, Vice Chairman

Amendments to Squaxin Island Law and Order Code

Add to Section 5 Physical Harm Section 5.8 to read as follows:

5.8 Child Abuse or Neglect

(1) A person is guilty of child abuse or neglect if he commits an act of violence, abuse or neglect on a child under the age of eighteen (18) years causing harm or injury to that child.

(2) Child abuse or neglect is a gross misdemeanor and upon conviction thereof, the offender may be required by the Court to undergo medical evaluation and treatment, in addition to or instead of any other sentence imposed by the Court.

Amend Section 6.4 Unlawful Imprisonment to read as follows:

6.4 (1) A person is guilty of unlawful imprisonment if he knowingly restrains another person without lawful authority.

Amend Section 7 to read Arson, Reckless Burning, Malicious Mischief and Damage to Property.

Amend Section 7.7 Malicious Mischief in the First Degree, (1)(a) to read as follows:

7.7 (1)...

(a) Causes physical damage to public property or to the property of another in an amount exceeding one thousand five hundred dollars;

Amend Section 7.8 Malicious Mischief in the Second Degree, (1)(a) and (1)(b) to read as follows:

7.8 (1)...

(a) Causes physical damage to public property or to the property of another in an amount exceeding two hundred and fifty dollars; or

(b) Creates a substantial risk of interruption or impairment of service rendered to the public, by physically damaging or tampering with an emergency vehicle or property of the Squaxin Island Tribe, the federal government, the state, a political subdivision thereof, or a public utility or mode of public transportation, power or communication.

Amend Section 7.9 Malicious Mischief in the Third Degree, (1) to read as follows:

7.9 (1) A person is guilty of malicious mischief in the third degree if he knowingly and maliciously causes physical damage to public property or the property of another, under circumstances not amounting to malicious mischief in the first or second degree.

Add Section 7.10 to read as follows:

7.10 Desecration of Religious Sites

(1) A person is guilty of desecration of religious sites if he removes artifacts or other items from any burial grounds or from any traditional, sacred or religious area of the Squaxin Island Tribe, or otherwise desecrates in any fashion such grounds or areas.

(2) Desecration of religious sites is a gross misdemeanor.

Add Section 7.11 to read as follows:

7.11 Cutting Timber Without a Permit

(1) A person is guilty of cutting timber without a permit if he cuts timber, standing or fallen, on tribal property without first obtaining a permit from the Squaxin Island Tribal Council or if he cuts timber, standing or fallen, on the property of another person without first obtaining the owner's permission.

(2) Cutting timber without a permit is a gross misdemeanor.

Add Section 7.12 to read as follows:

7.12 Defacing Official Signs, Landmarks or Navigation Markers.

(1) A person is guilty of defacing official signs if he removes, alters or defaces any official sign, landmark or navigation marker of the Squaxin Island Tribe, the state of Washington or the federal government.

(2) Defacing official signs is a misdemeanor.

Add Section 7.13 to read as follows:

7.13 Flag Desecration

(1) A person is guilty of flag desecration if he publicly mutilates, defaces or defiles an official flag, color or design of the Squaxin Island Tribe or of the United States.

(2) Flag desecration is a misdemeanor.

Add Section 7.14 to read as follows:

7.14 Failure to Control or Report a Fire

(1) A person is guilty of failure to control or report a fire if he knows that a fire is endangering a human life or property and he

(a) fails to give a prompt fire alarm; or

(b) fails to take a reasonable measure to control the fire without danger to himself when he knows he is under an official duty to combat or prevent the fire.

(2) Failure to control or report fire is a misdemeanor.

Amend Section 8.7 Criminal Trespass in the First Degree, (2) to read as follows:

8.7 (2) A person is guilty of criminal trespass in the first degree if he enters or remains unlawfully in a building or on real property owned by the Squaxin Island Tribe, in fee or as the holder of a beneficial interest in land held in trust by the federal government, without the permission of the Squaxin Island Tribal Council; PROVIDED that as a consequence of their affiliation with the Tribe, all enrolled Squaxin Island tribal members and their children may enter any tribal building or real property not locked or fenced (or otherwise enclosed) and secured in a manner designed to exclude intruders and they may remain in such building or on such real property unless they are reasonably requested to leave by a Squaxin Island tribal law enforcement officer.

Add to Section 9. Theft and Robbery Section 9.19 to read as follows:

9.19 Embezzlement

(1) A person is guilty of embezzlement if he has lawful custody of property not his own and he appropriates that property to his own use or for the use of another person not the owner with intent to deprive the owner thereof.

(2) Embezzlement is a gross misdemeanor.

Amend Section 10.2 to read 10.3.

Amend Section 10.3 to read 10.4.

Amend Section 10.4 to read 10.5.

Add to Section 10 Fraud Section 10.2 and 10.6 to read as follows:

10.2 Fraud

(1) A person is guilty of fraud if he obtains something of value by willful misrepresentation or deceit or by the intentional use of false weights or measures.

(2) Fraud is a gross misdemeanor.

10.6 Unauthorized Use of Tribal Identification Card

(1) A person is guilty of unauthorized use of tribal ID card if

(a) he is an enrolled member of the Squaxin Island Tribe and he loans his tribal ID card to another person not legally entitled to the benefits of Squaxin Island tribal membership; or

(b) he is not legally entitled to the benefits of Squaxin Island tribal membership and he uses the ID card of a member of the Squaxin Island Tribe.

(2) Unauthorized use of tribal ID card is a gross misdemeanor.

Add to Section 11 Family Offenses Sections 11.2(3), 11.3 and 11.4 to read as follows:

11.2 Incest

(3) Incest is a gross misdemeanor and upon conviction thereof, the offender may be required by the Court to undergo medical evaluation and treatment in addition to or instead of any other sentence imposed by the Court.

11.3 Desertion and Non-Support of Children

(1) A person is guilty of desertion and non-support of children if he deserts or willfully neglects or refuses to provide for the support or maintenance of his child, or of a child in his custody, when he is financially able to provide therefore.

(2) Desertion and non-support of children is a gross misdemeanor and upon conviction thereof, the offender may be required by the Court to provide for support and maintenance in addition to or instead of any other sentence imposed by the Court.

11.4 Failure to Support Dependent Persons

(1) A person is guilty of failure to support dependent persons if he, without reasonable excuse, refuses or neglects to furnish food, shelter or care to those dependent upon him under the laws or customs and usages of the Squaxin Island Tribe, or if he fails to make proper use of funds or property of a dependent person for the benefit of the dependent.

(2) Failure to support dependent persons is a misdemeanor and upon conviction thereof, the offender may be required by the Court to provide adequate and proper support, in addition to or instead of any other sentence imposed by the Court.

Amend Section 14.4 to read 14.5.

Amend Section 14.5 to read 14.6.

Amend Section 14.6 to read 14.7.

Amend Section 14.7 to read 14.8.

Amend Section 14.8 to read 14.9.

Amend Section 14.9 to read 14.10.

Amend Section 14.10 to read 14.11.

Amend Section 14.11 to read 14.12.

Amend Section 14.12 to read 14.13.

Amend Section 14.13 to read 14.14.

Amend Section 14.14 to read 14.15.

Amend Section 14.15 to read 14.17.

Add to Section 14 Obstructing Government Operation Sections 14.4 and 14.16 to read as follows:

14.4 Refusing to Aid an Officer

(1) A person is guilty of refusing to aid an officer if he neglects or refuses, when called upon by a law enforcement officer of the Squaxin Island Tribe, to assist that officer or any other law enforcement officer in the lawful arrest of any person charged or convicted of any offense or to assist in conveying the offender to the nearest place of confinement. It shall be a defense to this offense that the person refused to aid an officer because he had a reasonable belief that he would be physically endangered by assisting the officer.

(2) Refusing to aid an officer is a gross misdemeanor.

14.16 Flight to Avoid Prosecution

(1) A person is guilty of flight to avoid prosecution if he willfully and knowingly flees from the jurisdiction of the Squaxin Island Tribe or the Squaxin Island Tribal Court to avoid prosecution in any case pending before the Tribal Court.

(2) Flight to avoid prosecution is a gross misdemeanor.

Add to Section 16 Public Disturbance Section 16.5 to read as follows:

16.5 Disturbing the Peace

(1) A person is guilty of disturbing the peace if he, by means of a loud noise or disruptive act, endangers or disrupts the peace, tranquility, health, or welfare of any person or natural wildlife community.

(2) Disturbing the peace is a misdemeanor.

Amend Section 17 to read Rape - Public Indecency - Prostitution - Sex Crimes

Amend Section 17.1 to read 17.11.

Amend Section 17.2 to read 17.12.

Amend Section 17.3 to read 17.13.

Amend Section 17.4 to read 17.14.

Amend Section 17.5 to read 17.15.

Amend Section 17.6 to read 17.16.

Amend Section 17.7 to read 17.17.

Amend Section 17.8 to read 17.18.

Amend Section 17.9 to read 17.19.

Amend Section 24.1 to read 17.1.

Amend Section 24.2 to read 17.2.

Amend Section 24.3 to read 17.3.

Amend Section 24.4 to read 17.4.
Amend Section 24.5 to read 17.5.
Amend Section 24.6 to read 17.6.
Amend Section 24.7 to read 17.7.
Amend Section 24.8 to read 17.8.
Amend Section 24.9 to read 17.9.
Amend Section 17.12 to read as follows:
17.12 Child Molestation

(1) A person is guilty of child molestation if he:

(a) entices or persuades a child under the age of 18 years to enter a building, vehicle, room, boat, or any other place with intent to commit sexual intercourse, as defined in Section 17.1 (1) or sexual contact as defined in Section 17.19(2); or

(b) has possession of a child under the age of 18 years in any such place with intent to commit sexual intercourse or sexual contact.

(2) Child molestation is a gross misdemeanor unless the offender has previously been convicted of a felony sexual offense or has previously been convicted under this Section in which case child molestation is a felony. Upon conviction of child molestation, the offender may be required by the Court to undergo medical evaluation and treatment, in addition to or instead of any other sentence imposed by the Court.

Add 17.10 Reserved.

Amend Section 18.2 to read as follows:

18.2 Domestic Animals - Taking, Concealing, Injuring, Killing, etc.
Any person who, with intent to deprive or defraud the owner thereof:

(1) Takes, leads away or confines any domestic animals; or

(2) Conceals the identity of any domestic animal or its owner by obscuring or removing from the animal any collar, tag, license, tattoo or other identifying device or mark; or

(3) Willfully kills or injures any domestic animal, unless excused by law, custom or usage of the Squaxin Island Tribe, shall be guilty of a gross misdemeanor.

Add Section 18.3 to read as follows:

18.3 Cruelty to Animals

(1) A person is guilty of cruelty to animals if he tortures, mistreats, mutilates, abandons, or unreasonably deprives of food or drink an animal which he owns or which is in his custody or if he causes or procures the same.

(2) Cruelty to animals is a gross misdemeanor.

Amend Section 19.1 to read 19.2.
Amend Section 19.2 to read 19.3.
Amend Section 19.3 to read 19.4.

Add to Section 19 Firearms Section 19.1 to read as follows:

19.1 Definitions: as used in this Section:

(1) "Dangerous weapon" means any slung shot, sand club, metal knuckles, spring blade knife, knife the blade of which is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity or by an outward, downward or centrifugal movement.

(2) "Machine gun" shall be defined as in RCW 9.41.200.

(3) "Firearm" shall be defined as in 44USC 921 and shall include "destructive devices" as defined in that section. B-B guns shall be considered firearms.

Add Sections 19.5 through 19.12 to read as follows:

19.5 Sale, Possession or Use of Certain Weapons

(1) No person shall:

(a) sell, dispose of or have in possession a dangerous weapon;

(b) use a device for suppressing the noise of any firearm;

(c) carry with intent to conceal a dagger or dangerous weapon, or;

(d) carry a concealed pistol without a license from the Squaxin Island Tribe, if required, and the State of Washington.

(2) Any violation of this section shall be a gross misdemeanor.

19.6 Loaded Firearms in Vehicles.

(1) No person shall carry a loaded firearm in any vehicle without a license from the Squaxin Island Tribe, if required, and the State of Washington.

(2) Any violation of this Section shall be a misdemeanor.

19.7 Sale or Possession of Machine Guns.

(1) No person shall sell, furnish or have in possession any machine gun or any part thereof capable of use or assembling or repairing any machine gun. No person shall set a spring gun.

(2) Any violation of this Section shall be a felony.

19.8 Aiming or Discharging Firearms

(1) No person shall willfully discharge any firearm or airgun or throw any destructive device within a settled community, along or across any public road or highway or any other place where any person might be endangered by it, although no injury results.

(2) No person shall aim a firearm, whether loaded or not, at or toward any person.

(3) Any violation of this Section shall be a misdemeanor.

19.9 Intimidation by Use of Certain Weapons

(1) No person shall carry, exhibit, display or draw any firearm, dagger, sword, knife, or club, or any other weapon apparently capable of producing bodily harm in a manner, under circumstances and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of another.

(2) Violation of this Section shall be a gross misdemeanor.

19.10 Exceptions to Sections 19.8(2) and 19.9. Sections 19.8(2) and 19.9 shall not apply to the following:

(1) Any person vested by law with a duty to preserve public safety, maintain public order, or make arrests for offenses, while performing such duty;

(2) Any person acting to protect himself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;

(3) Any person making or assisting in making a lawful arrest of a felony; or

(4) Any person engaged in military activities sponsored by the federal government.

19.11 Possession of Firearms by a Minor

(1) No minor under 14 years shall have in possession any firearm for hunting, target practice or any other purpose except;

(a) while accompanied by or under the immediate charge of his parent or guardian or other adult approved for the purpose of this Section by the parent or guardian; or

(b) while under the supervision of a certified safety instructor at an established gun range or firearm training class.

(2) Any person violating this Section or aiding or knowingly permitting any minor to violate it, shall be guilty of a misdemeanor.

19.13 Delivery of Pistol to Certain Persons

(1) No person shall deliver a pistol to any person under the age of 21 years, or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind.

(2) Any violation of this section is a misdemeanor.

Amend Section 21.1 to read as follows:

21.1 Reference. In addition to the offenses set forth in this Section, activities related to liquor within the jurisdiction of the Squaxin Island Tribe shall be controlled pursuant to the Squaxin Island Liquor Code.

Add Section 21.2 to read as follows:

21.2 Illegal Sale, Purchase, Possession of Liquor; Illegal Transfer or Use of I.D.

(1) No person shall:

(a) sell or offer for sale by the drink or bottle, or keep or possess with intent to sell any liquor, except as authorized by the Squaxin Island Liquor Code of January 27, 1981;

(b) purchase liquor from any person other than at a duly authorized tribal liquor store;

(c) transfer an identification of age to a minor for the purpose of permitting such minor to obtain liquor; provided that corroborative testimony of a witness other than a minor shall be a requirement of conviction; or

(d) attempt to purchase liquor through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years.

(2) Any violation of this Section shall be a gross misdemeanor.

Amend Section 24 Sex Crimes to read Section 24 Miscellaneous Offenses.

Amend Section 26.1 Littering to read Section 24.1 Littering.

Amend Section 24.2 through 24.5 to read as follows:

24.2 Maintaining a Public Nuisance

(1) A person is guilty of maintaining a public nuisance if he maintains or allows his personal or real property to be in a state which poses a substantial threat to the health or safety of others.

(2) Maintaining a public nuisance is a misdemeanor.

24.3 Abandoning Refrigeration Equipment

(1) A person is guilty of abandoning refrigeration equipment if he discards, abandons or leaves in any place accessible to children any refrigerator, icebox, or deep-freeze locker having a capacity of one and one-half cubic feet or more, which is no longer in use and which has not had the door removed or secured to prevent opening or a portion of the latch mechanism removed to prevent latching or locking of the door.

(2) Abandoning refrigeration equipment is a gross misdemeanor.

24.4 Telephone Abuse

(1) A person is guilty of telephone abuse if he makes a telephone call without purpose of legitimate communication and with intent to annoy, alarm, insult or taunt another or if he refuses to surrender the use of a party line when the telephone is needed for an emergency.

(2) Telephone abuse is a misdemeanor.

24.5 Adulteration

(1) A person is guilty of adulteration if he manufactures, knowingly sells, or offers for sale, or intentionally keeps any food, drug, or drink which is adulterated with a harmful substance, or which, because of a defect in its manufacturing process, is harmful when ingested.

(2) Adulteration is a gross misdemeanor.

Add to Section 25 Driving a Motor Vehicle, Section 25.5, to read as follows:

25.5 Operating a Motor Vehicle while Privilege Suspended

(1) A person is guilty of operating a motor vehicle while privilege suspended if he operates a motor vehicle within the Squaxin Island reservation while the privilege to do so has been suspended by the Tribal Court because the person failed to respond to a notice of civil traffic violation.

(2) Operating a motor vehicle while privilege suspended is a misdemeanor.

Amend Section 26 Littering to read Section 26 Controlled Substances.

Add Sections 26.1 through 26.4 to read as follows:

26.1 Possession of Marijuana or Controlled Substances

(1) A person is guilty of possession of marijuana or controlled substances if he plants, grows, manufactures, keeps for sale, distributes, sells, barter, gives, has possession of, or uses marijuana or other narcotic drugs or any controlled substance.

(2) Possession of marijuana or controlled substances is a gross misdemeanor.

26.2 Practice of Sniffing

(1) A person is guilty of the practice of sniffing if he sniffs or inhales gas, glue or other like substance determined by the Court to be harmful to the physical and mental health of a user.

(2) Practice of sniffing is a misdemeanor.

26.3 Distribution of Alcohol, Marijuana or Drugs to Children

(1) A person is guilty of distribution of alcohol, marijuana or drugs to children if he sells, barter or gives to a child under the age of 18 years any alcoholic beverage, marijuana, narcotic drugs, or any controlled substance, or if he allows a child under the age of 18 years to use such substance on his property.

(2) Distribution of alcohol, marijuana or drugs to children is a gross misdemeanor.

26.4 Definition of Controlled Substances

The Uniform Controlled Substances Act of the State of Washington may be referred to by the Court to determine which substances are controlled substances under this section

Amend Section 27 Sentencing to read Section 27 Contributing to the Delinquency of a Minor.

Add Section 32 Sentencing.

Amend Section 27.1 to read 32.1.

Amend Section 27.3 to read 32.3.

Add Section 27.1 to read as follows:

27.1 Contributing to the Delinquency of a Minor

(1) In a case where a child is a youth-in-need-of-care or a youth offender under the Squaxin Island Youth Code, or dependant

or delinquent under the Revised Code of Washington, the parent or legal guardian, or person having custody of the child, or any other person who, by an act or omission, encourages, causes, or contributes to the child's dependency or delinquency shall be guilty of a gross misdemeanor.

(2) The court may suspend sentence for a violation of the provisions of this section and impose conditions as to conduct in the premises of any person so convicted and make suspension depend upon fulfillment by that person of the conditions. In case of a breach of any of the conditions the court may impose sentence as though there had been no suspension.

Amend Section 27.2 Restitution to Section 32.2 Restitution to read as follows:

32.2 Restitution. If a person has gained money, or property, or caused a victim to lose money or property through the commission of a crime, upon conviction thereof the court, in lieu of imposing the fine authorized for the offense, may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss to provide restitution to the victim. In the event that restitution is ordered, a separate hearing must be held to determine the amount of the defendant's gain or victim's loss.

Amend Section 28 Juveniles to read Section 33 Juveniles.

Amend Section 29 Construction to read Section 34 Construction.

Amend Section 30 Effective Date to read Section 35 Effective Date.

Amend Section 31 Amendments to read Section 36 Amendments.

Add Section 31 Deferred Prosecution to read as follows:

31.1 Deferred Prosecution: Minor First Offenses

(1) The Tribal Prosecutor may enter a deferred prosecution agreement with a person charged for the first time with a misdemeanor, gross misdemeanor or fishing violation where no violence occurred in connection with the offense.

(2) The agreement shall be signed by the Tribal Court Judge and it shall set forth the following conditions:

(a) The defendant shall refrain from engaging in any unlawful activity for a specified period of time up to one year;

(b) delay in bringing the case to trial shall not be grounds for dismissal;

(c) the prosecutor shall defer prosecution of the defendant during the specified period of time if the defendant is not charged with any criminal or fisheries offenses during that time; and

(d) the court shall dismiss with prejudice the charges against the defendant at the end of the specified period of time if the defendant has not been charged with any criminal or fisheries offense during that time.

(3) If the defendant is charged with any criminal or fisheries offense during the specified period of time, the prosecutor may terminate the deferred prosecution agreement and the defendant shall be arraigned on the original charges.

31.2 Deferred Prosecution: Offenses Caused by Alcohol or Drug Abuse

(1) A person charged with a misdemeanor or gross misdemeanor may request the Tribal Court to be considered for a deferred prosecution program under this subsection. The request shall be made at arraignment or before trial.

(2) The person's request must state the following:

(a) the offense charged is the result of or caused by alcohol problems or drug problems for which the person is in need of treatment;

(b) without treatment, there is a great probability of future reoccurrence of similar misconduct; and

(c) a case history of the person's alcohol or drug problems.

(3) Upon consideration of the request, the court may continue the arraignment and refer the person to the Tribe's alcoholism or drug abuse counselor for a diagnostic investigation and evaluation. The counsellor shall conduct an investigation and examination and shall make a written report to the court with a copy to the defendant including the following findings:

- (a) whether the person suffers from the problem alleged;
- (b) whether there is a probability that similar misconduct will reoccur in the future if the problem is not treated;
- (c) whether extensive treatment is required;
- (d) whether effective treatment for the person's problem is available; and
- (e) if treatment is recommended, a treatment plan specifying the location, nature, length, treatment time schedule and cost of the plan.

(4) If the report recommends treatment, the court shall examine the plan. If it approves the plan and the defendant agrees to comply with the terms and conditions of the plan and agrees to pay the cost thereof or arrange for the treatment, the court shall order that the defendant be accepted for deferred prosecution.

If treatment is not recommended or not approved or the defendant declines to accept the treatment plan, the defendant shall be arraigned on the charges.

(5) Evidence pertaining to or resulting from the defendant's request and/or the investigation or report is inadmissible in any trial on the charges but may be used after conviction in determining a sentence.

(6) If a defendant in a deferred prosecution program fails or neglects to fulfill any term or condition of the treatment plan, the facility or agency administering the treatment shall immediately report the breach to the court. Upon receiving such a report, the court shall hold a hearing to determine whether the defendant should be removed from the deferred prosecution program. If removed from deferred prosecution, the defendant shall be arraigned on the original charge.

(7) If a defendant is convicted in any court of an offense similar to and committed after the one for which he is in a deferred prosecution program, the Tribal Court shall remove the defendant from deferred prosecution and he shall be arraigned on the original charge.

(8) Two (2) years from the date of the court's approval of deferred prosecution for an individual defendant, the charges against the defendant shall be dismissed with prejudice and the records relating to the defendant shall be destroyed.

(9) Delay in bringing a case to trial caused by a defendant requesting deferred prosecution shall not be grounds for dismissal.

Add to Section 6 Kidnapping Section 6.6 to read as follows:

6.6 Defense to Action for being detained on mercantile establishment premises.

In any criminal action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigating or questioning as to the ownership of any merchandise, it shall be a defense to the action that:

(1) The person was detained in a reasonable manner and for not more than a reasonable time to permit the investigation or questioning by a law enforcement officer, by the owner of the mercantile establishment, or by the owner's authorized employee or agent; and

(2) The person conducting the investigation or questioning had reasonable grounds to believe that the person detained was committing or attempting to commit theft or shoplifting of the merchandise on the premises.