

**SKOKOMISH CRIMINAL CODE
SEX CRIMES**

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9.02A.005 Prior Sections Repealed

- (a) The following sections of Title 9 of the Skokomish Tribal Code are hereby repealed:
- (1) Definition provisions contained in section 9.01.070 regarding “Sexual Contact” (m) and “Sexual Intercourse” (n) and (o);
 - (2) Section 9.02.020 (Rape);
 - (3) Section 9.02.090 (Indecent Liberty);
 - (4) Section 9.05.090 (Public Indecency);
 - (5) Section 9.05.160 (Prostitution); and
 - (6) Section 9.06.010 (Incest).
- (b) The provisions of S.T.C. 9.02A are intended to be interpreted consistent with all other sections of the Skokomish Tribal Code. Any conflict between the provisions of S.T.C. 9.02A and existing tribal law shall be resolved in favor of S.T.C. 9.02A.

9.02A.010 Definitions

As used in S.T.C. 9.02A:

- (a) "Sexual intercourse"
 - (1) Has its ordinary meaning and occurs upon any penetration, however slight, and
 - (2) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and
 - (3) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.
- (b) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.
- (c) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage; or one who under tribal custom and tradition, as defined by the Tribal Council, would be considered a spouse to another and who reside together.
- (d) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse or sexual contact whether that condition is produced by illness, defect, the influence of a substance or from some other cause.
- (e) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- (f) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.
- (g) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.
- (h) "Significant relationship" means a situation in which the perpetrator is:

- (1) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors; or
 - (2) A person who in the course of his or her employment supervises minors.
- (i) "Tribal Community Standards" means the standards of conduct as defined by the Tribal Council.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.020 Testimony - Evidence - Written Motion - Admissibility

- (a) In order to convict a person of any crime defined in S.T.C. 9.02A it shall not be necessary that the testimony of the alleged victim be corroborated.
- (b) Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to tribal community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (c) of this section, but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.
- (c) In any prosecution for the crime of rape or for an attempt to commit or an assault with an intent to commit any such crime, evidence of the victim's past sexual behavior including but not limited to the victim's marital behavior, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to tribal community standards is not admissible if offered to attack the credibility of the victim and is admissible on the issue of consent only pursuant to the following procedure:
 - (1) A written pretrial motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim.
 - (2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.
 - (3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.

(4) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent, and the evidence is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice and that the exclusion of the evidence would result in denial of substantial justice to the defendant, then the court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(d) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing pursuant to subsection (c) of this section concerning such evidence.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.030 Defenses to Prosecution Under S.T.C. 9.02A

- (a) In any prosecution under S.T.C. 9.02A in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.
- (b) In any prosecution under S.T.C. 9.02A in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be: PROVIDED, that it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be the age identified in subsection (c) of this section based upon declarations as to age by the alleged victim.
- (c) The defense afforded by subsection (b) of this section requires that for the following defendants, the reasonable belief be as indicated:
- (1) For a defendant charged with rape of a child in the first degree, that the victim was at least twelve, or was less than twenty-four months younger than the defendant;
 - (2) For a defendant charged with rape of a child in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

- (3) For a defendant charged with rape of a child in the third degree, that the victim was at least sixteen, or was less than forty-eight months younger than the defendant;
- (4) For a defendant charged with sexual misconduct with a minor in the first degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant;
- (5) For a defendant charged with child molestation in the first degree, that the victim was at least twelve, or was less than thirty-six months younger than the defendant;
- (6) For a defendant charged with child molestation in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;
- (7) For a defendant charged with child molestation in the third degree, that the victim was at least sixteen, or was less than thirty-six months younger than the defendant;
- (8) For a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.040 Rape in the First Degree

- (a) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:
 - (1) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or
 - (2) Kidnaps the victim; or
 - (3) Inflicts serious physical injury; or
 - (4) Unlawfully enters into the building or vehicle where the victim is situated.
- (b) Rape in the first degree is a class A offense and the Tribal Court shall impose a penalty of one (1) year jail time and \$5,000 fine.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.041 Rape in the Second Degree

- (a) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:
 - (1) By forcible compulsion; or
 - (2) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;
- (b) Rape in the second degree is a class A offense and the Tribal Court shall impose a minimum penalty of nine (9) months jail time and \$5,000 fine. One-half of such fine may be reduced by the performance of community service.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.042 Rape in the Third Degree

- (a) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator:
 - (1) Where the victim did not consent to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or
 - (2) Where there is threat of substantial unlawful harm to property rights of the victim.
- (b) Rape in the third degree is a class A offense and the Tribal Court shall impose a minimum penalty of six months jail time and \$2,500 fine. One-half of such fine may be reduced by the performance of community service.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.050 Rape of a Child in the First Degree

- (a) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.
- (b) Rape of a child in the first degree is a class A offense and the Tribal Court shall impose a minimum penalty of one (1) year jail time and \$5,000 fine.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.051 Rape of a Child in the Second Degree

- (a) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.
- (b) Rape of a child in the second degree is a class A offense and the Tribal Court shall impose a minimum penalty of nine (9) months jail time and \$5,000 fine. One-half of such fine may be reduced by the performance of community service.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.052 Rape of a Child in the Third Degree

- (a) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.
- (b) Rape of a child in the third degree is a class A offense and the Tribal Court shall impose a minimum penalty of six (6) months jail time and \$2,500 fine. One-half of such fine may be reduced by the performance of community service.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.060 Child Molestation in the First Degree

- (a) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.
- (b) Child molestation in the first degree is a class A offense and the Tribal Court shall impose a minimum penalty of nine (9) months jail time and \$5,000 fine. One-half of such fine may be reduced by the performance of community service.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.061 Child Molestation in the Second Degree

- (a) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

- (b) Child molestation in the second degree is a class A offense and the Tribal Court shall impose a minimum penalty of six (6) months jail time and \$2,500 fine. One-half of such fine may be reduced by the performance of community service.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.062 Child Molestation in the Third Degree

- (a) A person is guilty of child molestation in the third degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.
- (b) Child molestation in the third degree is a class B offense. The Tribal Court shall impose a minimum penalty of three (3) months jail time and \$2,500 fine. One-half of such fine may be reduced by the performance of community service.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.070 Sexual Misconduct With a Minor in the First Degree

- (a) A person is guilty of sexual misconduct with a minor in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim.
- (b) Sexual misconduct with a minor in the first degree is a class A offense and the Tribal Court shall impose a minimum penalty of six (6) months jail time and \$2,500 fine. One-half of such fine may be reduced by the performance of community service.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.071 Sexual Misconduct With a Minor in the Second Degree

- (a) A person is guilty of sexual misconduct with a minor in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses that relationship in order to

engage in or cause another person under the age of eighteen to engage in sexual contact with the victim.

- (b) Sexual misconduct with a minor in the second degree is a class B offense and the Tribal Court shall impose a minimum penalty of three (3) months jail time and \$2,500 fine. One-half of such fine may be reduced by the performance of community service.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.080 Indecent Liberties

- (a) A person is guilty of indecent liberties when he knowingly causes another person who is not his spouse to have sexual contact with him or another:

- (1) By forcible compulsion; or

- (2) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless.

- (b) Indecent liberties is a class B offense.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.090 Public Indecency

- (a) A person is guilty of public indecency when he knowingly exposes his genitalia, or gestures in a manner that is likely to cause reasonable affront or alarm, to another person who is not his spouse:

- (1) Without the other person's consent; or

- (2) When the other person is under the age of sixteen (16) years, whether there is consent or not.

- (b) Public indecency is a Class C offense.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

9.02A.100 Prostitution

- (a) A person is guilty of prostitution when the person shall offer or agree to engage in sexual intercourse or sexual contact with another person for money or other consideration, or procures another person to offer or agree to engage in sexual intercourse or sexual contact with another person for money or other consideration.

- (b) Prostitution is a Class B offense.

Reaffirmed by Resolution No. 17-100 (July 5, 2017)

Legislative History prior to July 5, 2017

+Adopted by Resolution No. 95-57 (June 7, 1995)
+Amended by Resolution No. 98-12 (March 19, 1998)
+Amended by Resolution No. 04-112 (September 8, 2004)
Reaffirmed by Resolution No. 17-100 (July 5, 2017)

+Ordinance and/or amendments not attached to the resolution in the Skokomish Tribal Archives