

Title 4 – Criminal Code
Chapter 4 – Offenses Involving Property

Sec.

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Legislative History

Enacted:

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

Repealed or Superseded:

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

Prohibiting Unlawful Cutting of Timber, Ord. 49 (3/24/82) (amending Ord. 39).

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

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

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

Adoption of Swinomish Law and Order Regulations, Ord. 1 (undated).

[Ed. Note. Ordinance 1 is undated and adopts the Law and Order Regulations approved by the Secretary of the Interior November 27, 1935 as part of the fundamental law governing the Swinomish Reservation. The referenced "regulations" have not been located.]

4-04.010 Burglary.

(A) Any person who without lawful authority and with intent to commit a crime enters or remains in any of the following: a dwelling; a building; a fenced area; any structure used for lodging of persons or for carrying on business therein; any structure used to contain, sell or deposit goods; any cargo container or railway car; a boat; an airplane; any motor vehicle, commits the crime of burglary.

(B) Burglary is a **Class A offense** whenever any of the following circumstances exist:

- (1) a dwelling or tribal property is involved;
 - (2) if the area or structure is occupied by other people at the time of the offense involved;
 - (3) if a dangerous weapon is involved;
 - (4) if assault or attempted assault occurs during the offense; or
 - (5) if \$1,500.00 damage or more to property is involved.
- (C) Burglary is a **Class B offense** whenever circumstances for **Class A offense** are not present.

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

4-04.020 Theft (includes crimes of embezzlement and fraud).

- (A) A person commits the crime of theft if the person does any of the following:
- (1) wrongfully obtains or exerts unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services;
 - (2) by color or aid of deception obtains control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
 - (3) appropriates lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.
- (B) Theft is a **Class A offense** when either of the following circumstances are present:
- (1) the value of the property or services involved is \$1,500.00 or more; or
 - (2) property is taken directly from the person of another.
- (C) Theft is a **Class B offense** when none of the circumstances defined above as a Class A offense are present and any of the following circumstances are present:
- (1) theft of an access card or credit card is involved;
 - (2) theft of a vehicle or boat is involved;
 - (3) the value of the property or services involved is \$250.00 or more, but less than the value required for a **Class A** theft;

- (4) theft of a firearm is involved;
 - (5) theft of tribal or other public property is involved; or
 - (6) theft of livestock is involved.
- (D) Theft is a **Class C offense** when none of the circumstances defined above as a Class A or Class B offense are present.

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

4-04.030 Forgery.

- (A) Any person who, with intent to defraud, falsely signs, executes, completes, makes or alters any written instrument, or in any way represents as true a written instrument that he or she knows to be forged, commits the crime of forgery. It is not necessary that any thing of value be actually obtained.
- (B) Forgery is a **Class B offense**.

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

4-04.040 Extortion.

- (A) Any person who willfully obtains or attempts to obtain monies, goods, property or any thing else of value, or services, or sexual favors by threat against another person, under circumstances not constituting the offense of robbery, commits the offense of extortion. Threat includes the making of false charges against another person.
- (B) Extortion is a **Class B offense**.

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

4-04.050 Robbery.

- (A) Any person who by force or violence or fear or intimidation takes from the person or presence of another anything of value commits the crime of robbery. It is not necessary that the person robbed knew of the taking if such knowledge was prevented by the use of force or fear.
- (B) Robbery is a **Class A offense** if any of the following circumstances are present:
 - (1) a dangerous weapon;
 - (2) the infliction of any bodily injury or substantial emotional distress; or
 - (3) the destruction of property valued at more than \$1,500.00.

(C) In all other circumstances, robbery is a **Class B offense**.

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

4-04.060 Possession of Stolen Property.

- (A) Any person who receives, retains, possesses, conceals, sells or disposes of stolen property, or aids in such conduct, knowing that the property is obtained by theft, robbery, extortion, forgery or burglary, commits the offense of possession of stolen property.
- (B) Possession of stolen property is a **Class A offense** when the value of the property involved is over \$1,500.00.
- (C) Possession of stolen property is a **Class B offense** when the value of the property involved is over \$500.00, or when a stolen credit card, access device, vehicle, firearm, or tribal property is involved.
- (D) If none of the factors set out in Section (B) or (C) are present possession of stolen property is a **Class C offense**.

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

4-04.070 Trespass.

- (A) Any person who, without lawful authority knowingly enters, goes upon, passes over, or remains on any land, premises, or other property belonging to another, or who knowingly allows livestock to occupy or graze on property of another, commits the offense of trespass.
- (B) Property of another includes, but is not limited to, property belonging to any private or public person, group, organization, corporation, governmental body, agency, or business.
- (C) Trespass is a **Class C offense** but is a **Class B offense** for conduct involving a dwelling.

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

4-04.080 Malicious Mischief.

- (A) Any person who maliciously disturbs, damages, injures, or destroys any property belonging to another commits the offense of malicious mischief.
- (B) Malicious mischief is a **Class B offense** when the amount of damage caused is over \$250.00, or animals or tribal property are involved, or damage to special religious or cultural property or gravesites is involved.

- (C) If none of the factors set out in Section (B) are present, malicious mischief is a **Class C offense**.

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

4-04.090 Taking a Vehicle without Permission.

Any person who, without permission of the owner or person entitled to possession thereof, intentionally takes or drives or rides in or otherwise participates in moving any vehicle commits the **Class B offense** of taking a vehicle without permission.

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

4-04.100 Bad Checks.

- (A) Any person who with intent to defraud makes, draws or delivers to another person any check or draft, on a bank or other depository for the payment of money, knowing that he or she has insufficient funds in or credit with such bank or depository, to meet the check or draft in full upon its presentation, commits the offense of writing a bad check.

- (B) Writing a bad check is a **Class B offense**.

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

4-04.110 Arson.

- (A) Any person who willfully causes a fire or explosion that damages any building, structure, vessel, vehicle or other property, without lawful authority, commits the crime of arson.

- (B) Arson is a **Class A offense** when any of the following circumstances are present: danger to any human life, including firemen, or causes \$1,500.00 damage or more to any building or tribal property.

- (C) Arson is a **Class B offense** when any of the following circumstances are present: damage to any building or damage to any property.

- (D) Arson is a **Class C offense** when none of the circumstances making it a Class A or B offense are present.

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

Annotations

STC 4-04.080

NOTES OF DECISIONS

Elements – Dollar amount of damage 1

Actions that fall within offense 2

1. Elements- Dollar Amount of Damage

A specific dollar amount of damage is not an element of a Class B offense where tribal property is involved; complaint was not defective for failure to allege dollar amount of damage caused by defendant spitting on tribal police vehicle. *Edge v. SITC*, Cr-5/94-071, Cr-10/96-400 (Swinomish Ct.App. December 3, 1996).

2. Actions that Fall within Offense

Trial court's finding that spitting on tribal police vehicle constituted crime of malicious mischief was upheld where there was sufficient evidence presented at trial for the trial court to make said finding. *Edge v. SITC*, Cr-5/94-071, Cr-10/96-400 (Swinomish Ct.App. December 3, 1996).