

Title 8 – Juveniles
Chapter 12 – Criminal and Other Court
Proceedings Involving Youths

Sec.

8-12.010	Criminal and Other Law Apply to Youths
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Legislative History

Enacted:

Ordinance 427 Amending STC Title 8, Chapter 12 (2/15/22).
Juvenile Code, Ord. 170 (6/30/03), BIA (7/3/03).

Repealed or Superseded:

Juvenile Code, Ord. 68 (12/89), Enacting Res. 89-12-98 (repealing Ord. 40 and all other previous youth ordinances).
Youth Code, Ord. 40 (2/8/83), Enacting Res. 83-2-20, BIA (rescinded 5/5/83, approved 6/25/83) (repealing all previous youth ordinances).

8-12.010 Criminal and Other Laws Apply to Youths.

The criminal and other laws of the Tribe shall apply to youths, subject to the procedures in this Chapter.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-12.020 Rights of Youths.

- (A) In addition to the rights set forth under Subsection (B) of this Section, youths appearing before the Swinomish Tribal Court shall have the same rights as adults appearing before the Court with the exception of trial by jury.
- (B) Except as provided in Subsection (E) of this Section, law enforcement shall provide a youth with access to an attorney for consultation, which may be provided in person, by telephone, or by video conference, before the youth

waives any rights protected by the Indian Civil Rights Act if a law enforcement officer:

- (1) Questions a youth during a custodial interrogation;
 - (2) Detains a youth based on probable cause of involvement in criminal activity; or
 - (3) Requests that the youth provide consent to an evidentiary search of the youth or the youth's property, dwellings, or vehicles under the youth's control.
- (C) The consultation required by Subsection (B) of this Section may not be waived.
- (D) Statements made by a youth after the youth is contacted by a law enforcement officer in a manner described under Subsection (B) of this Section are not admissible in a youth offender or adult criminal court proceeding, unless:
- (1) The youth has been provided with access to an attorney for consultation; and the youth provides an express waiver knowingly, intelligently, and voluntarily made by the youth after the youth has been fully informed of the rights being waived as required under this Section;
 - (2) The statement is for impeachment purposes; or
 - (3) The statement was made spontaneously.
- (E) A law enforcement officer may question a youth without following the requirement in Subsection (B) of this Section if:
- (1) The law enforcement officer believes the youth is a victim of trafficking as defined in the Revised Code of Washington 9A.40.100; however, any information obtained from the youth by law enforcement pursuant to this Subsection cannot be used in any prosecution of that youth; or
 - (2) The following circumstances exist:
 - (a) The law enforcement officer believes that the information sought is necessary to protect an individual's life from an imminent threat;

- (b) A delay to allow legal consultation would impeded the protection of an individual's life from an imminent threat; and
 - (c) Questioning by the law enforcement officer is limited to matters reasonably expected to obtain information necessary to protect an individual's life from an imminent threat.
- (F) After the youth has consulted with legal counsel, the youth may advise, direct a parent or guardian to advise, or direct legal counsel to advise the law enforcement officer that the youth chooses to assert a constitutional right. Any assertion of constitutional rights by the youth through legal counsel must be treated by a law enforcement officer as though it came from the youth. The waiver of any constitutional rights of the youth may only be made through an express waiver intelligently made by youth after the youth has been fully informed of the right being waived.

[History] Ord. 427 (2/15/22); Ord. 170 (6/30/03); Ord. 68 (12/89).

8-12.030 Notice to Youth and Parents.

In all proceedings before the Swinomish Tribal Court, both civil and criminal, notice of the proceedings shall be given to the youth; his or her parent(s), guardian(s), or custodian(s); and their attorneys or spokespersons, if any; within the time limits set for a particular proceeding.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-12.040 Age of Capacity in Criminal Cases.

Children under the age of eight (8) years of age are incapable of committing a crime. This Section does not apply to children as witnesses in civil or criminal matters.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-12.050 Concurrent Proceedings - Criminal and Youth in Need of Care.

The Tribal Prosecutor may cause a youth in need of care action to be filed in lieu of, or concurrent with, any criminal action involving a youth.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-12.060 Sentencing of Youth Offenders.

In sentencing a youth offender, the Court may impose any of the following sanctions in lieu of all or part of the fine and/or jail time specified for a particular offense: community service hours, restitution, counseling, treatment, or other alternatives the Court determines are just. The burden of the sanction should fall primarily on the youth rather than on the parent.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).