

Proposed Amendments to the Warm Springs Tribal Code

The Justice Team has presented the following proposed amendments to the Warm Springs Tribal Council for consideration.

The Tribal Council and the Justice Team now seek input from the community on these proposals.

The purpose of these amendments is to apply the Tribal Council's directives against trafficking, manufacturing, and use of illegal drugs, as well as for ensuring that Warm Springs is a safe place to live and raise a family.

Comments can be made in writing. Please send written comments to Warm Springs Justice Team, PO Box 850, Warm Springs, OR 97761 or bring them to the Warm Springs Tribal Court. Written comments will be accepted through May 29, 2009.

All comments will be reviewed and suggested changes to the proposed amendments will be presented to the Tribal Council in June 2009.

These proposed amendments affect Chapter 305 – Crimes and Chapter 307 Liquor Violations of the Warm Springs Tribal Code. The Rules of Court will also be amended to provide enhanced penalties for serious crimes.

The following are the proposed amendments:

A. Chapter 305 Section IV – Sex Crimes

305.35 Transmission of Sexually Transmitted Disease

Any person who recklessly, knowingly, or intentionally infects another person with a sexually transmitted disease shall be deemed guilty of an offense. In addition to any sentence imposed by the Tribal Court for a violation of this provision, a person so convicted shall be ordered and compelled to receive treatment for such disease.

B. Chapter 305 Section V – Crimes Against Public Peace and Order

305.421 Animal Fighting.

Any person commits the crime of animal fighting if he:

(1) Owns, trains, or orders the training of an animal with the intention that the animal engage in an exhibition of fighting; or

(2) Promotes, conducts, participates in or is present as a spectator at an exhibition of fighting or preparations thereto; or

(3) Keeps or uses, or in any way is connected with or interested in the management of, or receives money for the admission of any person to any place kept or used for the purpose of an exhibition of fighting; or

(4) Knowingly suffers or permits any place over which the person has possession or control to be occupied, kept or used for the purpose of an exhibition of fighting.

C. Chapter 305 Section V – Crimes Against Public Peace and Order

305.451 Unlawful Gambling.

Any person who shall participate in any gambling activity not authorized by WSTC Chapter 260, for money or other value, shall be deemed guilty of unlawful gambling. Class I gambling as defined by the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. § 2703, is not prohibited by this section.

305.452 Promotion of Unlawful Gambling.

Any person who knowingly entices or induces another to go to any places where a gambling activity is being conducted or operated in violation of WSTC 305.451, with the intent that the other person play or participate in the gambling activity, shall be deemed guilty of an offense.

305.453 Cheating.

Any person, while in the course of participating or attempting to participate in any gambling activity, who:

(1) Employs or attempts to employ any device, scheme or strategy to defraud any other participant or the Tribe or engages in any other act, practice, or course of operation that operates or would operate as a fraud or deceit upon any other participant or the Tribe; or

(2) Causes, aids, abets, colludes

or conspires with another person to violate paragraph (1) of this section 305.453; shall be deemed guilty of cheating.

D. Chapter 305 Section V – Crimes Against Public Peace and Order

Delete 305.466 Narcotics, Dangerous Drugs, Hallucinogens and Delirians

Delete 305.467 Drug Paraphernalia

E. Chapter 305 Section V – Crimes Against Public Peace and Order

(1) **305.483 Assaulting a Law Enforcement or Service Animal.** Any person who knowingly causes physical injury to or the death of a law enforcement or service animal, knowing that the animal is a law enforcement or service animal, and the injury or death occurs while the law enforcement or service animal is being used in the lawful discharge of its duties, shall be deemed guilty of assaulting a law enforcement or service animal.

(2) As used in WSTC 305.483:

(a) "Law enforcement animal" means an animal used in law enforcement work under the control of a police officer, corrections officer, or probation officer.

(b) "Service animal" means a search and rescue animal, guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

F. Chapter 305 Section VI – Drug Related Crimes

305.501 Definitions for WSTC 305.501 to WSTC 305.575.

(1) "Administer" means the direct application of a controlled substance, whether by injection, direct inhalation, ingestion or any other means, to the body of a patient by a practitioner or authorized agent thereof.

(2) "Controlled substance" or "drug" means any substance or its immediate precursor classified in Schedules I through V under the Federal Controlled Substances Act, 21 U.S.C. § 812, including future amendments of that statute as may be enacted by Congress.

(3) "Dispense" means to deliver a controlled substance to a person who lawfully possesses a controlled substance by or pursuant to the lawful order of a practitioner.

(4) "Practitioner" means a physician, dentist, veterinarian, certified nurse practitioner, physician assistant or other person licensed, registered or otherwise permitted by law to dispense or administer a controlled substance in the course of professional practice but does not include a pharmacist.

(5) "Prescription" means a written, oral, or electronically transmitted direction, given by a practitioner for the preparation and use of a drug. Registration cards issued pursuant to the Oregon Medical Marijuana Act are not considered prescriptions for the purposes of this Section.

305.505 Unlawful Manufacture of a Controlled Substance.

Any person who unlawfully cultivates or manufactures a controlled substance shall be deemed guilty of an offense. Cultivating marijuana on the Warm Springs Reservation pursuant to a registration card issued under the Oregon Medical Marijuana Act shall be considered unlawful for the purposes of this provision.

305.510 Unlawful Use or Possession of a Controlled Substance.

Any person, who knowingly uses, consumes, possesses, or causes another person to possess a controlled substance without a valid prescription issued by a practitioner shall be deemed guilty of an offense. This provision excludes pharmacists, practitioners, law enforcement officials, and any authorized agents thereof acting in the course of his or her professional duties.

305.515 Unlawful Delivery of a Controlled Substance.

Any person who delivers, transfers, distributes or sells a controlled substance to another person shall be deemed guilty of an offense. This provision excludes the delivery of a controlled substance by a pharmacist, practitioner, or any authorized agents thereof pursuant to a valid prescription issued by a practitioner.

305.520 Sale of Drug Paraphernalia.

Any person who sells, transfers, or offers to sell or transfer any drug paraphernalia including marijuana and hash pipes, bongs, roach holders and any other containers and devices commonly used in connection with the consumption or processing of any controlled substance on the Warm Springs Reservation shall be deemed guilty of an offense. Any such drug paraphernalia found on the Reservation shall be immediately seized by tribal law enforcement authorities without compensation to its owner and shall be held by the tribal police department until it is no longer needed as evidence or other lawful purposes, at which time it shall be destroyed or otherwise disposed of as ordered by the Tribal Court in accordance with WSTC 200.750.

305.525 Possession of Drug Paraphernalia.

Any person who possesses any drug paraphernalia including marijuana and hash pipes, bongs, roach holders and any other containers and devices commonly used in connection with the consumption or processing of any controlled substance on the Warm Springs Reservation shall be deemed guilty of an offense. Any such drug paraphernalia found on the Reservation shall be immediately seized by tribal law enforcement authorities without compensation to its owner and shall be held by the tribal police department until it is no longer needed as evidence or other lawful purposes, at which time it shall be destroyed or otherwise disposed of as ordered by the Tribal Court in accordance with WSTC 200.750.

305.530 Causing Another Person to Ingest a Controlled Substance.

Any person who knowingly or intentionally causes another person to ingest, other than by administering or dispensing, a controlled substance without the consent of the person shall be deemed guilty of an offense. For the purposes of this provision, a person "causes another person to ingest" a controlled substance if he either causes the person to orally consume the controlled substance, or if he otherwise delivers the controlled substance into the body of the other person.

305.535 Delivery of a Counterfeit Controlled Substance.

Any person who knowingly delivers a substance that is not a controlled substance upon the express or implied representation that the substance is a controlled substance, or delivers a substance that is not a controlled substance upon the express or implied representation that the substance is of such nature or appearance that the recipient of the delivery will be able to distribute the substance as a controlled substance, shall be deemed guilty of an offense.

305.540 Frequenting a Place Where Controlled Substances are Present.

(1) Any person, who keeps, maintains, frequents, or remains at a place, while knowingly permitting persons to unlawfully use controlled substances in such place or to keep, sell, manufacture, cultivate, or deliver them in violation of WSTC 305.505 to WSTC 305.515, shall be deemed guilty of an offense.

(2) As used in WSTC 305.540:

(a) "Frequents" means repeatedly or habitually visits, goes to or resorts to.

(b) "Permitting" means that a person must have authority to forbid the unlawful drug activity involved. For the purposes of this provision, tenants of Tribal Housing, as that term is defined in WSTC Chapter 400, are deemed to have the authority to forbid unlawful drug activity.

305.545 Intoxication by Inhalation.

Any person who intentionally inhales, for the purpose of becoming intoxicated, any gasoline, lighter fluid, glue, cement, spray paint, paint thinner, or any similar product shall be deemed guilty of an offense.

305.550 Tampering with Drug Records.

Any person who alters, defaces, or removes a controlled substance label affixed by a manufacturer or pharmacist; affixes a false or forged label to a package containing controlled substances; or makes or uses a false or forged prescription for a controlled substance shall be

deemed guilty of an offense.

305.555 Falsifying Drug Test Results.

Any person commits the crime of falsifying drug test results if he:

(1) Uses, or possesses with the intent to use, any substance or device designed to falsify the results of a lawfully administered test designed to detect the presence of a controlled substance; or

(2) Induces another person to submit to a lawfully administered test designed to detect the presence of a controlled substance on his behalf.

305.560 Providing Drug Test Falsification Equipment.

Any person, who intentionally delivers, possesses with the intent to deliver, or manufactures with the intent to deliver a substance or device designed to enable a person to falsify the results of a drug test shall be deemed guilty of an offense.

305.565 Furnishing a Controlled Substance to a Minor.

Any adult, parent or guardian who either aids, causes or permits a minor child to obtain, possess or use any controlled substance not specifically prescribed for said minor child by a practitioner shall be deemed guilty of Contributing to the Delinquency of a Minor in accordance with WSTC 305.145.

305.570 Penalties for Drug Related Offenses.

The Tribal Court shall adhere to the drug offense guidelines set forth in the Rules of Court when making sentencing determinations pursuant to WSTC 305.715 for the drug related offenses enumerated in this Section VI.

305.575 Ceremonial Use of Peyote.

It is an affirmative defense to a charge of violating WSTC 305.510 or WSTC 305.515 for the possession, use, or delivery of peyote that the peyote is being used or is intended for use by an Indian in connection with bona fide religious practices, sacraments or services in a manner that is not dangerous to public health or safety.

G. Chapter 305 Section VII – Gang Enforcement

305.601 Definitions for WSTC 305.601 to WSTC 305.615.

(1) "Criminal street gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.

(2) "Pattern of criminal street gang activity" means the commission or attempted commission of, or solicitation or conspiracy to commit any combination of the following, on separate occasions within a three-year period:

(a) Two or more felonies defined under the laws of the tribe or state in which they occur or offenses defined under the Major Crimes Act, 18 U.S.C. § 1153; or

(b) Three or more misdemeanors defined under the laws of the tribe or state in which they occur or offenses defined in the Warm Springs Tribal Code; or

(c) A combination of one felony or Major Crimes Act offense and two misdemeanor or Warm Springs Tribal Code offenses; or

(d) The comparable number of delinquent acts or violations of law committed by a juvenile which would be classified as above if committed by an adult.

305.605 Criminal Street Gang Activity; Enhancement of Penalties.

Upon a finding in the Warm Springs Tribal Court at sentencing that the defendant committed an offense in violation of the Warm Springs Tribal Code, or any delinquent act or violation of law which would be a violation of the Warm Springs Tribal Code if committed by an adult, for the benefit of, at the direction of, or in association with any criminal street gang, the penalty for the offense, delinquent act, or violation may be enhanced. The burden of proof required for such findings allowing sen-

tence enhancement shall be a "preponderance of the evidence," however, the burden of proof for a conviction of the underlying criminal offense remains "beyond a reasonable doubt." The enhancement will be sentencing at the maximum punishment for adults as set forth in WSTC 305.715. Any fine imposed under WSTC 305.715 or WSTC 305.720 shall be used by the Tribe to fund gang prevention or enforcement programs. In the case of juvenile offenders the disposition may include, but is not limited to:

(3) Probation for a period of six months to one year;

(4) Performance of community service hours;

(5) Restitution to victims/community members;

(6) Placement in behavior management facilities until completion/graduation from school or a court ordered program;

(7) Counseling; and,

(8) Placement in detention facilities for a period of time to be determined by the presiding judge.

305.610 Soliciting, or Recruiting Criminal Street Gang Membership.

Any person who intentionally causes, encourages, solicits, or recruits another person to join a criminal street gang that requires as a condition of membership or continued membership the commission of any crime shall be deemed guilty of an offense. Any fine imposed under WSTC 305.715 or WSTC 305.720 shall be used by the Tribe to fund gang prevention or enforcement programs. In the case of juvenile offenders the disposition may include, but is not limited to:

(9) Probation for a period of six months to one year;

(10) Performance of community service hours;

(11) Restitution to victims/community members;

(12) Placement in behavior management facilities until completion/graduation from school or a court ordered program;

(13) Counseling; and,

(14) Placement in detention facilities for a period of time to be determined by the presiding judge.

305.615 Seizure of Profits, Proceeds, and Instrumentalities of Criminal Street Gang Activities or Recruitment; Forfeiture.

All profits, proceeds, and instrumentalities of criminal street gang activity or recruitment and all property used or intended or attempted to be used to facilitate the criminal activity or recruitment activities of any criminal street gang are subject to seizure and forfeiture, with proceeds of said forfeiture to be used by the Tribe to fund gang prevention or enforcement programs.

H. Chapter 307 – Liquor Violations

307.020 (7) It shall be unlawful for any person to sell or furnish alcoholic liquor to any other person under the age of 21 years.

307.030 Penalties

Any person who violates the provisions of this Chapter, except for WSTC 307.020(7), may be subject to a civil penalty in Tribal Court for a civil infraction. Such civil penalty shall not exceed the sum of \$500 for each such infraction. The Tribal Council hereby specifically finds that such civil penalties are reasonably necessary and are related to the expense of governmental administration necessary in maintaining law and order and public safety on the Reservation and in managing, protecting and developing the natural resources on the Reservation.

It is the legislative intent of the Tribal Council that all violations of this Chapter, with the exception of WSTC 307.020(7), be considered civil in nature rather than criminal. Any person who violates WSTC 307.020(7) shall be subject to criminal penalties pursuant to WSTC 305.715.