

## **TITLE 7 - CRIMES**

### **CHAPTER 1 - CRIMINAL CODE**

*Legislative History: Ordinance No. 02-85, adopting the “Criminal Code of the Papago Tribe,” was adopted by the Papago Council on April 11, 1985 and approved by the Papago Agency Acting Superintendent on April 23, 1985. Resolution No. 107-88 amended and renamed the “Criminal Code of the Tohono O’odham Nation” effective June 1, 1988.*

*Resolution No. 05-662 incorporated Criminal Code sections, Chapter 1, Section 1.22, “Severability”; Chapter 3, Section 3.13, “Unlawful Transporting of Illegal Alien(s)”; and Section 3.14, “Unlawful Harboring of Illegal Alien(s)” effective November 21, 2005.*

*Resolution No. 05-664 incorporated Criminal Code sections, Chapter 1, Section 1.21, “Savings Clause”; Chapter 2, Section 2.23, “Refusal to Provide Chemical Evidence”; and Chapter 13, Section 13.12, “Driving Under the Influence” effective November 21, 2005.*

*Resolution No. 08-717 incorporated Criminal Code Section 10.9, “Participating in or Assisting a Criminal Gang” effective December 19, 2008.*

*Resolution No. 09-494 enacted amendments and additions to the following Criminal Code sections effective September 16, 2009: Chapter 1, Section 1.5 Statute of Limitations; Chapter 1, Section 1.16, definitions 27, 68, and 88; Chapter 1, Section 1.16, definitions 94-98, inclusive; Chapter 5, Section 5.7 Theft; and Chapter 10, Sections 10.10-10.21.*

*Resolution No. 11-142 amended Criminal Code Chapter 1, Section 1.4 “Criminal Jurisdiction” and enacted Criminal Code Chapter 7, Section 7.10 “Stalking” effective April 13, 2011. Resolution No. 11-142 also amended and updated Chapter 8, Section 8.9 “Domestic Violence; Arrest and Procedure” effective April 15, 2011. Chapter 8, Section 8.9 amendments apply exclusively to the construction of and punishment for offenses committed on or after April 15, 2011. Provisions of Section 8.9 in effect before April 15, 2011 are preserved and remain applicable exclusively to offenses committed before April 15, 2011, regardless of the actual date of prosecution or sentencing.*

*Resolution No. 13-390 amended Criminal Code Chapter 1, Section 1.11 Penalties and Remedies (to add maximum sentencing limitations) effective October 3, 2013.*

*Resolution No. 14-235 enacted Criminal Code Section 10.22 - Bank Records (authorizes Nation’s chief prosecutor to issue subpoenas duces tecum to a financial institution to obtain account records in an investigation or prosecution) effective June 9, 2014.*

*Resolution No. 15-477 enacted Criminal Code Section 9.15 – Voyeurism, effective December 15, 2015.*

*Resolution No. 17-021 amended Criminal Code Chapter 1, Section 3.4 Criminal Trespass (to clarify that a Nation’s member entering a district while banished and after receiving notice of the banishment may be prosecuted for Criminal Trespass) effective January 20, 2017.*

*Resolution No. 20-150 enacted Criminal Code Section 3.15 Violating an Executive Order, effective May 18, 2020.*

*Resolution No. 20-443 repealed Criminal Code Section 3.15 Violating an Executive Order, effective December 14, 2020.*

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## CHAPTER 1

### GENERAL PROVISIONS

#### Section 1.1 Criminal Offenses

The offenses defined in this Code, and those provided for in other ordinances of the Tohono O'odham Nation constitute prohibited criminal behavior against the nation. Persons committing such offenses will be tried and punished by the Judiciary of the Tohono O'odham Nation as provided for by this Code, provided, however, that such jurisdiction whether or not invoked, shall not affect the power or authority of any other courts, including those of the United States, which may have lawful jurisdiction.

#### Section 1.2 Responsibility for Enforcement

The Tohono O'odham Nation of Arizona hereby assumes responsibility for the enforcement of the Criminal Code of the Tohono O'odham Nation, including any amendments and additions as may be later enacted by the Tohono O'odham Council.

#### Section 1.3 Authority to Enter into Cooperative Agreements

The Chairman of the Tohono O'odham Nation is authorized, with the consent of the Tohono O'odham Council, to enter into cooperative agreements with Federal and State governments for the purposes of mutual assistance and definition of responsibilities in the area of law enforcement.

#### Section 1.4 Criminal Jurisdiction

- A. The Nation shall have criminal jurisdiction over any Indian who commits any offense prohibited by this Code or the other laws of the Tohono O'odham Nation when the offense occurs within the Tohono O'odham Nation. In addition, the Nation has criminal jurisdiction over an offense if:
1. Conduct constituting any element of the offense or a result of such conduct occurs within the Nation; or
  2. The conduct outside the Nation constitutes an attempt, solicitation, aiding and abetting, or conspiracy to commit an offense within the Nation and an act in furtherance of the attempt or conspiracy occurs within the Nation; or
  3. The conduct within the Nation constitutes an attempt, solicitation, aiding and abetting, or conspiracy to commit or establishes criminal accountability for the commission of an offense in another jurisdiction that is also an offense under the law of the Nation; or

4. The offense consists of an omission to perform a duty imposed by a Nation's law regardless of the location of the defendant at the time of the offense; or
  5. The offense is a violation of a Nation's law that prohibits conduct outside the Nation.
- B. Nothing in this Code shall be interpreted as limiting the civil or criminal jurisdiction of the Tohono O'odham Nation over non-Indians if such jurisdiction is recognized by the laws of the United States.
- C. The Tohono O'odham Nation or "nation" means all lands within the boundaries of the Tohono O'odham Nation established by Executive Orders: December 12, 1882, modified June 17, 1909 (Gila Bend); July 1, 1874 (San Xavier); February 1, 1917, the Act of February 21, 1931 (Sells); the Act of September 10, 1978 (Florence) and to such other lands as may have been or may hereafter be added thereto by purchase, gift, Act of Congress or otherwise.
- D. Signs shall be posted at each entrance of the nation stating: You are now entering the Tohono O'odham Nation. By so entering you will be subject to the criminal or civil laws and regulations of this Nation.

#### 1.5 Statute of Limitations

- A. No person shall be prosecuted, fined or punished for any criminal offense unless a complaint has been filed against the alleged offender within three years after discovery of the offense by the Tohono O'odham Nation Police Department, or the reporting of the offense to Tohono O'odham Nation Police Department. When the offense is based on a series of acts performed at different times, the period of limitation prescribed by this section will begin at the time when the last act alleged to have been committed is discovered.
- B. Notwithstanding the provisions of paragraph A above, a five-year limitation period from the date of discovery or reporting as defined in paragraph A shall apply to the following Criminal Code offenses: Section 2.7 Bribery; Section 2.8 Accepting a Bribe; Section 2.14 Abuse of Office; Chapter 5 offenses; Chapter 10 offenses; and Chapter 6 offenses when charged with any other offense identified in this paragraph B.
- C. Notwithstanding the provisions of paragraph A above, a prosecution for any of the following Criminal Code offenses may be commenced at any time: Chapter 9 offenses; Section 7.4 Kidnapping; Section 5.6 Armed Robbery, Section 5.11 Removal or Destruction of Antiquities; any offense involving misuse of public monies or an offense involving falsification of public records; and Chapter 6 offenses when charged with any other offense identified in this paragraph C.

- D. The period of limitation does not run during any time when the accused is continuously absent from the Nation or has no ascertainable place of residence within the Nation.

Section 1.6 Criminal Responsibility

- A. A person less than ten (10) years of age at the time of the offense charged will not be criminally responsible unless proof is offered showing beyond a reasonable doubt that at the time the offense was committed the person knew it was wrong.

Section 1.7 Mental Disease or Defect

A person may raise as a defense to a criminal charge a claim of mental disease or defect by offering credible evidence showing that such conduct was a result of a defect of reason as not to know the nature and quality of the act.

Section 1.8 Intoxication

- A. Intoxication of a defendant will not be a defense to a criminal charge unless the evidence of intoxication offered by the defendant negates the existence of a specific intent if such is an element of the offense charged.
- B. Intoxication as used in this Section means a disturbance of mental or physical capacity resulting from the introduction of any substance into the body including, but not limited to, alcohol, toxic vapor or narcotic drugs.

Section 1.9 Complicity

A person will be legally accountable as a principal for the criminal behavior of another if he or she aided, abetted or advised that person in planning or committing the offense.

Section 1.10 Affirmative Defenses

A defendant may raise an issue of affirmative defenses to an alleged offense by presenting credible evidence on the issue. Affirmative defenses include, but are not limited to, legal justification, lawful authority, justifiable and reasonable defense of self, a third party or property, or duress or entrapment.

Section 1.11 Penalties and Remedies

- A. Any offense under this Code or any ordinance of the Tohono O'odham Nation for which no penalty is specifically provided for, may be punished by imprisonment for

- a period not to exceed three hundred sixty days (360), or a fine not to exceed one thousand dollars (\$1,000), or a combination of both.
- B. The court shall not impose on a person in a criminal proceeding a total term of imprisonment greater than nine years.
- C. The court may in its discretion, unless imprisonment is mandatory, order in addition to, or in lieu of the sentence, any of the following remedies:
1. Labor for the public purposes of the Tohono O'odham Nation; or
  2. Restitution for the victim; or
  3. Probation. A person convicted of an offense may be placed under the supervision of a probation officer who will supervise and monitor his or her conduct during the probation period ordered by a Judge of the Court.
  4. Rehabilitation. The Court may order a person convicted of an offense to undergo evaluation, testing or counseling by an agency qualified to conduct such evaluation, tests or counseling. Sentencing may be deferred until a progress report is submitted to the Court.
  5. Parole. A person convicted of an offense and sentenced to jail may be paroled after he or she has served at least half of the particular sentence with good behavior.
  6. Equitable Relief. The Court may order equitable relief, including temporary restraining orders, preliminary or permanent injunctions, or require a party to post a cash bond to keep the peace in an amount not to exceed one thousand dollars (\$1,000), and for a period of time not to exceed one year.

Section 1.12 Credit for Confinement

The Court may, in its discretion, give full credit towards any sentence ordered of any time spent in confinement prior to arraignment of final commitment in connection with the same offense.

Section 1.13 Work Credit

The Court may, in its discretion, give any confined inmate work credit on a jail sentence for each day of satisfactory work performed. The Court shall determine how many days credit to give for work credit.

Section 1.14 Return to Surety

Any cash or other property deposited as security for the release of a defendant shall be returned by the Court upon the entry of a non guilty verdict or upon the imposition of a sentence.

Section 1.15 Detention

- A. No person shall be detained, jailed or imprisoned for a period longer than thirty-six (36) hours including, Saturdays, Sundays, and legal holidays without a detention order bearing the signature of a duly qualified judge of the Tohono O'odham Courts.
- B. If no complaint has been filed with the Court against the person who has been arrested, and that person is brought before the Court, and the Court has probable cause to believe the person has committed an offense and that a complaint will be filed, the Court may order the temporary detention of a person pending the filing of the complaint. No detention under this subsection shall be for more than seventy-two (72) hours.

Section 1.16 Definitions

- A. Unless the context otherwise provides, or where different meanings are given in subsequent sections of this Code, the following terms have the following meanings:
  - 1. Abandoned means to relinquish or give the intent of never again resuming one's interest or right.
  - 2. Affirmative Defense means that part of a defendant's answer to a complaint that goes beyond denying facts and arguments of the complaint. It sets out new facts and arguments which if true, is a defense to a charged offense.
  - 3. Aiding and Abetting means to intentionally help another person to commit a crime.
  - 4. Altered means a change or modification in some degree of an element or detail without destruction of the identity of the object or thing altered.
  - 5. Antiquity or Antiquities refers to relics or monuments relating to the life or culture of ancient people.
  - 6. Business means the investment of capital, labor and management in any undertaking for profit or non-profit.
  - 7. Cannabis Sativa (Marijuana) means the genus plant Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and any compound, salt, derivative, mixture or preparation of the plant,

its seeds or resin, including tetrahydrocannabinol (THC) and including its naturally occurring or synthetically produced ingredients.

8. Children's Court means the Court established and operating under the authority of the constitution, and which exercises exclusive jurisdiction over children alleged to be children in need of care, and the judges of the Court, collectively and individually, serving and acting in that office and capacity.
9. Civil refers to all non-criminal issues, matters, subjects, cases and controversies between or among any persons, and between their representatives, agents and employees.
10. Coercion means to compel a person by force or arms to act against free will.
11. Complicity means an association or participation in a wrongful act.
12. Conspiracy means an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful manner.
13. Contraband means any article or thing which a person is not permitted to obtain or possess by law, regulation, rule or order, and whose use or possession would endanger the safety, security or welfare of any person.
14. Control or Exercises Control means to act so as to exclude others from using their property except on the defendant's own terms.
15. Conduct means an act or omission and its accompanying mental state.
16. Court means one of the Courts of the Tohono O'odham Judiciary to which the reference is intended to apply as determined by the particular section of this Code in which the reference is made, and all and each of the Judges of that court acting collectively and individually in that office and capacity.
17. Courts of the Tohono O'odham Nation means the Tohono O'odham Courts, Appeals, the Children's Court, and such other inferior courts as the Tohono O'odham Council may from time to time establish by law.
18. Credible means worthy of belief.
19. Crime or Offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is provided for upon conviction a fine or imprisonment, or both.



20. Criminal Action refers to a proceeding by which a person charged with a crime or offense is accused and brought to trial and a judgment is obtained, and to the procedures for trial or other disposition of them.
21. Custody means the imposition of actual or constructive restraint by a police officer pursuant to an on-site arrest or court order but does not include detention in a correctional facility, juvenile detention or state hospital.
22. Damage means any physical visual impairment of any surface.
23. Dangerous Instrument means anything that under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.
24. Deadly Weapon means anything designed for lethal use, including a firearm.
25. Deface means any unnecessary act of deforming or blighting of any surface or place, whether by mechanical means using such instruments as a hatchet, knife, or spray paint, or by other means, so as to detract substantially from its visual attractiveness or utility.
26. Deliver or Delivery means the actual or constructive transfer of any contraband such as Cannabis or liquor, with or without consideration.
27. Deprive means to withhold the property interest of another either permanently or for so long a time period that a substantial portion of its economic value or usefulness or enjoyment is lost, to withhold with the intent to restore it only upon payment of any reward or other compensation or to transfer or dispose of it so that it is unlikely to be recovered.
28. Detention means the temporary placement of a person in physically restraining facilities pending disposition of trial, or for the protection of the person or the community.
29. Duel means combat with a deadly or prohibited weapon between two or more persons by previous agreement.
30. Enter or Remain Unlawfully means an act of a person who enters or remains on premises when he or she is not licensed, invited or otherwise privileged to do so. Regardless of intent, a person who enters or remains on premises open to the public does so with license and privilege. To enter or remain in a structure only partly open to the public is not authority to enter or remain in a part not open to the public.

31. Entry means the intrusion of any part of any instrument or any part of a person's body inside the external boundaries of a structure or unit of real property.
32. Equitable Relief means relief - just and fair.
33. Escape means departure from custody or from correctional facility in which a person is held or detained with knowledge that such departure is unpermitted, or failure to return to custody or detention following a temporary leave granted for a specific purpose or for a limited period, or failure to return to custody or detention following a work release.
34. Exploitation means an unjust or improper use of another person for one's own profit or advantage.
35. Explosive means any compound or mixture susceptible of explosive chemical reaction such as dynamite, nitroglycerine, or other similar device or material.
36. Fine means a monetary or property payment to the Court not to exceed the maximum set.
37. Firearm means any loaded or unloaded pistol, revolver, rifle, shotgun, air gun or other weapon which will or is designed to, or may readily be converted to expel a projectile by the action of any explosive or expanding gas.
38. Force means any physical aggression directed against a person as a means of gaining control over the person or over property.
39. Forfeiture means something to which the right is lost, by the commission of a crime or fault, or the losing of something by way of penalty.
40. Impoundment means to take a thing into custody of the law until a legal question about it is decided.
41. Intimidation means to put a person in fear.
42. Indian means any person of Indian descent who is a member, either enrolled or eligible for enrollment, of any Indian Tribe recognized by the Federal Government.
43. Judge means a judge of the Court which is the subject of the particular section of the Code in which the reference is made.

44. Labor for Public Purposes means any service rendered for the promotion of the public health, safety and welfare of the members of the nation and any other persons living within the nation.
45. Litter means all rubbish, waste material, refuse, garbage, trash, debris, or other substances, solid or liquid of every form, size and description, including junk or abandoned vehicles and household appliances.
46. Livestock means cattle, horses, sheep, goats, mules, swine and asses.
47. Malicious or Maliciously means an intent or wish to do a wrongful act, to injure, annoy or to act in reckless disregard of another's rights.
48. Manufacture means the production, preparation, conversion or processing of Cannabis, by extraction from the natural plant, or by means of chemical synthesis.
49. Nation means the Tohono O'odham Nation as established, existing and geographically defined under the laws of the United States, encompassing all territory within the exterior boundaries as now or hereafter established, including fee patented lands, allotted lands, town sites, roads, waters, bridges, and lands and rights-of-way owned, used or claimed by any person.
50. Negates means to cause to be ineffective or invalid.
51. Oral Sexual Contact means oral contact with the penis, vulva or anus.
52. Parole means a release from prison before a sentence is up, that depends on the person "keeping clean" and doing what he or she is supposed to do while out. If the person fails to meet the "conditions of parole," the rest of the sentence must be served.
53. Party means any person or person who is involved in, or is the subject of, whether active or inactive, voluntary or involuntary, in, or to, any case, trial, hearing, controversy matter, relationship or proceeding under this Code.
54. Peddle means to sell or offer for sale from place to place.
55. Percussion Cap means a paper or metal container holding an explosive charge used to detonate another charge.
56. Person means a human being, and where appropriate, a public or private corporation, an incorporated association, a partnership, a government or governmental authority.

57. Physical Injury means impairment of physical condition or substantial pain.
58. Police Officer means any law enforcement officer vested by law with a duty to maintain public order, to make arrests, whether that duty extends to all offenses or is limited to a specific class of offenses or offenders.
59. Possess means to have physical possession of, or control over property, whether actual or constructive.
60. Possession means a voluntary act whereby the defendant knowingly obtains or receives the thing possessed, or when the defendant is aware of his or her control of it for a sufficient period to have been able to terminate his or her possession.
61. Preponderance of the Evidence means the greater weight of evidence, not as to quantity (number of witnesses), but at the quality (believability and greater weight of important facts proved).
62. Prima Facia means at first sight on the face of it; a fact that will be considered to be true unless disproved by contrary evidence, as for example: a prima facia case is a case that will win unless the other side comes forward with evidence to dispute it.
63. Principal means a person who is the chief perpetrator, or a person who is an aider or abettor and is actually or constructively present at the scene of the crime.
64. Probation means allowing a person convicted of a criminal offense to stay out of jail under supervised conditions.
65. Production means planting, cultivating, tending or harvesting Cannabis.
66. Prohibited Person means any person whose mental or physical state is impaired as a result of the introduction of any intoxicating substance into the body; or whose mental capacity is impaired in the opinion of a physician and is a danger to self or others; or who has been convicted of a felony involving violence, or possession or use of a prohibited weapon or dangerous instrument; or who is under the age of eighteen years.
67. Prohibited Weapon means any explosive bomb, grenade, rocket, mine or device designed to inflict serious bodily injury or death, finger rings or guards, switchblade or gravity knife, or any knife with a blade over three and one-half inches in length, firearm capable of shooting more than one shot automatically, without manual reloading, or a rifle with a barrel length of less than 16 inches, or a shotgun with a barrel length of less than 18 inches, or

any firearm which has been altered and has an overall length of less than 26 inches.

68. Property of another means property in which any person other than the defendant has an interest in which the defendant is not privileged to infringe, including property in which the defendant also has an interest, notwithstanding the fact that the other person might be precluded from civil recovery because the property was used in any unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant is not deemed property of another person who has only a security interest in the property, even if the creditor holds legal title pursuant to a security agreement.
69. Property means anything of value, tangible or intangible, real or personal.
70. Prurient means having or easily susceptible to lascivious thoughts or desires about sex.
71. Public means open to common use for all or many, or belonging to the people at large, not limited to, or restricted to any private class of the community.
72. Public Place means a place to which the general public has a right to gather, use or visit, or which is usually accessible to the public.
73. Patently Offensive means representations or descriptions of sexual acts, normal or abnormal, actual or simulated, which are readily or visibly distasteful or disgusting to the person viewing them.
74. Restitution means the act of restoring; restoration; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification.
75. Serious physical injury means physical injury which creates a substantial risk of death or which causes disfigurement, impairment of health, or loss or impairment of the function of any bodily organ.
76. Sexual Contact means any direct or indirect fondling or manipulating of any part of the genitals, anus or female breasts.
77. Sexual Intercourse means penetration by any part of the body or by any object into the penis, vulva or anus.
78. Sexual Acts means sexual intercourse, actual or simulated.
79. Solicitation means asking for; enticing; strongly requesting.

80. Obscene refers to an item or material, which, when the average person, applying customary or community standards, finds that the item or material taken as a whole, appeals to the prurient interest and the item or material describes in a patently offensive way sexual acts.
81. Structure means any building, object, vehicle, water, or aircraft or place with sides and a floor, separately securable from any other structure attached to it, and used for lodging, business, transportation or storage.
82. Tamper means any act of interference with property so as to alter its character or identity.
83. Temporarily Deprive means to withhold the property interest of another for a period of time not to exceed twenty-four (24) hours.
84. Threat or threatening means a verbal or physical menace of imminent harm, or pain, or damage to a person; or an attempt to injure a person by an unlawful act.
85. Tohono O'odham Council means the legislative branch of the nation existing and functioning pursuant to the Constitution of the Tohono O'odham Nation.
86. Tohono O'odham Courts means the courts of record established and operating pursuant to the Constitution of the Tohono O'odham Nation, and the judges of those courts, collectively and individually, serving and acting in that office and capacity.
87. Unlawful means contrary to law or where the context so requires not permitted by law.
88. Value means the fair market value of the property or services at the time of the theft. Written instruments that do not have a readily ascertained market value have as their value either the face amount of indebtedness less the portion satisfied or the amount of economic loss involved in deprivation of the instrument, whichever is greater. When property has an undeterminable value the court shall determine its value and, in reaching its decision, may consider all relevant evidence, including evidence of the property's value to its owner.
89. Vehicle means any motorized, self-propelled vehicle such as an automobile, truck, tractor, motorcycle, or aircraft and also any trailer, mobile home, bicycle or farm equipment or industrial equipment whether or not motorized or self-propelled.

90. Voluntary Act means bodily movement performed consciously and as a result of effort and determination.
91. Wildlife means all species of non-domesticated animals, fish, birds, reptiles and amphibians and all mammals.
92. Without consent means either: (a) the victim is coerced with the immediate use or threatened use of force against the person or property; or (b) the victim's will is impaired as a result of a mental disorder, drugs, alcohol or any other similar impairment; or (c) the victim is deceived as to the nature of the act or (d) the victim is deceived to believe that the person is the victim's spouse.
93. With the intent or intentionally means that a person's objective is to cause a particular result or to engage in particular conducts.
94. Check means any check, draft, note or other negotiable or non-negotiable instrument of any kind.
95. Credit means to express agreement with the drawee for the payment of a check.
96. Draw means making, drawing, uttering, preparing, writing or delivering a check.
97. Material misrepresentation means a pretense, promise, representation or statement of present, past or future fact that is fraudulent and that, when used or communicated, is instrumental in causing the wrongful control or transfer of property or service. The pretense may be verbal or it may be a physical act.
98. Services includes but is not limited to labor, professional services, transportation, cable television, computer or communication service, gas or electricity services, accommodation in hotels, restaurants or leased premises or elsewhere, admission to exhibitions and use of vehicles or other moveable property.

Section 1.17 Forfeiture

- A. Whenever a forfeiture is provided for in the Criminal Code or in any other law or ordinance, the procedure shall be as set forth in this section, unless a different procedure is otherwise provided for by law.

- B. The Court may order a forfeiture when a forfeiture is authorized by law and the Prosecutor motions the court following the conviction of a person for an offense for which forfeiture is authorized.
- C. Upon a motion for forfeiture, the Court shall order the thing subject to forfeiture to be held for a period of sixty (60) days, during which time reasonable notice shall be given to all persons who might have an interest in the pending forfeiture.
- D. During the sixty (60) day period, any person claiming a lawful interest in the thing to which forfeiture is pending may make a claim in the Court for recovery of the thing. The Court shall order the thing restored or transferred to the claimant if, by a preponderance of the evidence, the claimant proves:
  - 1. he or she is the lawful owner, and
  - 2. his or her possession, use or other act is, or was lawful, and
  - 3. the unlawful possession, use or other act upon which the forfeiture is based was without the knowledge and consent of the claimant.
- E. If no claimant makes the proof required by subsection D, the Court shall declare the thing forfeited to the nation; if the thing forfeited is money, the Court shall order it deposited to the credit of the general fund of the nation, otherwise the Court shall order the thing:
  - 1. destroyed by the police department; or
  - 2. sold at public auction with the expenses of keeping and selling such property and the amount of any valid liens established by the Court paid out of the proceeds of the sale, with the balance credited to the general fund of the nation; or
  - 3. returned to the owner of a lien upon payment of expenses, if any; or
  - 4. retained for official use by the nation or a district, with expenses for keeping and transferring such property to be paid by the nation or the respective district.

Section 1.18 Impoundment

- A. Any vehicle which is abandoned anywhere within the nation shall be impounded by the police department of the nation.



Evidence that a vehicle is left unattended for a period of 48 hours within a right of way of a highway, road, street or other public, thoroughfare, shall be prima facie evidence of abandonment. The police department, shall be required to post notice on the vehicle indicating date and time impoundment is to take place.

- B. Any vehicle stopped, parked or left standing in violation of any section of the Traffic Code of the nation may be impounded by the police department in any of the following circumstances:
  - 1. if the vehicle is unattended for more than 48 hours; or
  - 2. if the vehicle is attended, but it is incapable of being moved by the driver to a place where the vehicle no longer is in violation of the law; or
  - 3. if the driver, after being requested by the police department, fails or refuses to move the vehicle.
- C. If the driver of any vehicle is taken into custody by the police department for a suspected violation of the Criminal, Civil or Traffic Code or of any Civil Regulations, that vehicle may be impounded by the police department.
- D. Impoundment of a vehicle shall not excuse or waive any violation or offense under this Code, nor shall it serve as a defense upon prosecution of such violation or offense.
- E. The police department shall establish an impoundment area to which all vehicles impounded shall be moved. When a vehicle has been impounded the police department shall promptly:
  - 1. make an inventory of all contents of impounded vehicle; and
  - 2. make reasonable effort to determine the names and addresses of all parties who own, are entitled to possession, or otherwise have an interest in that vehicle; and
  - 3. make reasonable effort to notify all such parties of the impoundment.
- F. Any person having an interest in an impounded vehicle shall have thirty (30) days after the notice of impoundment in which to claim the vehicle, by payment of the actual costs of movement to the impoundment and any storage fee charged by the nation, plus an impoundment fee of five (\$5) dollars for each day or fraction thereof the vehicle is impounded.

- G. An impounded vehicle shall become the property of the nation, to be retained or disposed of at the direction of the court under either of the following circumstances:
    - 1. If it is not claimed on or before the thirtieth (30) day following notification to any party determined to have an interest in the vehicle; or
    - 2. If it is not claimed on or before the sixtieth (60) day following impoundment, if after reasonable effort, it cannot be determined who has an interest in the vehicle or no person determined to have an interest can be notified.
  - H. Any issue of right of a party to claim an impounded vehicle shall be referred to the Tohono O'odham Courts for resolution, and the impounded vehicle shall not be disposed of until the matter is resolved by final court order.
  - I. The driver or owner of a vehicle impounded under subsection A hereof, shall have the right and opportunity to remove the contents of the vehicle upon commencement of the impoundment. The contents of a vehicle impounded under subsection B or C hereof, shall be impounded and disposed of in the same manner as the vehicle, except as otherwise required or authorized for prosecution of violations of law.
  - J. The nation and its agents and representatives shall not be responsible or liable for any loss of, or any damages resulting to an impounded vehicle or the impounded contents.
- Section 1.19 Reserved.
- Section 1.20 Reserved.
- Section 1.21 Savings Clause<sup>1</sup>
- (A) The enactment, re-enactment, revision, amendment, or repeal of any provision of the Criminal Code or any other criminal laws of Nation (hereinafter, “revisions”) shall govern the construction of and punishment for any offense defined in the revisions and committed upon or after the effective date of such revisions.
  - (B) Except as otherwise provided or unless context otherwise requires, the revisions shall govern the construction of and punishment for any offense

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<sup>1</sup>Effective November 21, 2005 pursuant to Resolution No. 05-662

defined outside the revisions and committed upon or after the effective date of such revisions.

- (C) Such revisions do not apply to or govern the prosecution or construction of and punishment for any offense committed before the effective date of the revisions, or the construction and application of any defense to a prosecution for such an offense. Such an offense shall be prosecuted, construed, and punished according to the provisions of law existing at the time of the commission thereof, regardless of the actual date of prosecution and sentencing, and in the same manner as if revisions had not been enacted.

Section 1.22 Severability<sup>2</sup>

Each provision of this Code shall stand separate and independent of every other provision. If any provision of the Code or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect any other provisions or applications of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

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<sup>2</sup>Effective November 21, 2005 pursuant to Resolution No. 05-664

**CHAPTER 2 - INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE  
AND RELATED OFFENSES**

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## CHAPTER 2

### INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE AND RELATED OFFENSES

#### Section 2.1 Disobedience to a Court Order

- A. A person commits the offense of disobedience to a court order if he or she disobeys any order, warrant, subpoena, summons or command duly issued by the Courts of the Tohono O'odham Judiciary or by a Judge thereof.
- B. A person found guilty of disobeying a court order shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eight (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

#### Section 2.2 Criminal Contempt of Court

- A. A person commits the offense of criminal contempt of court if he or she with intent does any of the following:
  - 1. engages in conduct that is disorderly, disrespectful or insolent during the session of a Court which directly tends to interrupt proceedings or lessens the respect due to its authority; or
  - 2. disobeys or resists the lawful order, process or other mandate of a Court; or
  - 3. refuses to be sworn as a witness in any Court proceeding; or
  - 4. refuses to serve as a juror; or
  - 5. fails without excuse to attend a trial at which he or she has been chosen to serve as a juror.
- B. A person found guilty of criminal contempt of court shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eight (180) days; or

2. A fine not to exceed five hundred dollars (\$500); or
3. Both of the above.

Section 2.3 Perjury

- A. A person commits the offense of perjury if he or she makes any sworn statement or affidavit knowing or having reason to know the statement to be false.
- B. A person found guilty of perjury shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed three hundred sixty days (360); or
  2. A fine not to exceed one thousand dollars (\$1000); or
  3. Both of the above.

Section 2.4 Tampering with Physical Evidence

- A. A person commits the offense of tampering with physical evidence if he or she does any of the following:
  1. destroys, mutilates, alters, conceals or removes physical evidence with intent that it be used, introduced, rejected or unavailable in an official proceeding; or
  2. knowingly makes, produces or offers any false physical evidence in an official proceeding.
- B. A person found guilty of tampering with physical evidence shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed one hundred twenty (120) days; or
  2. A fine not to exceed three hundred sixty dollars (\$360); or
  3. Both of the above.

Section 2.5 Influencing a Witness or Juror

- A. A person commits the offense of influencing a witness or a juror if he or she threatens, induces, offers, confers or agrees to confer a benefit upon a witness or juror with intent to influence the witness or juror's testimony, vote, opinion, decision or other action as a witness or juror.
- B. A person found guilty of influencing a witness or juror shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 2.6 Misconduct by a Juror

- A. A juror commits the offense of misconduct by a juror if, in regard to an action or proceeding pending or scheduled to be brought before him or her, he or she does any of the following:
  - 1. communicates with a person a party to an action directly or indirectly without authorization by the Court, if necessary; or
  - 2. receives a bribe upon an agreement or understanding that his or her vote, opinion, decision or other action as a juror will be influenced; or
  - 3. makes a promise or agreement to decide for or against any party to the proceeding other than as part of jury deliberation.
- B. A juror found guilty of misconduct shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 2.7 Bribery

- A. A person commits the offense of bribery if he or she offers, gives or agrees to give or offer a bribe or anything of value to any public officer, elected official, court official or judge, policeman, council member or any person

who is acting as a trustee or fiduciary, with intent to improperly influence his or her vote, opinion, judgment, exercise of discretion or other action or inaction in his or her official capacity.

- B. A person found guilty of bribery shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  - 2. A fine not to exceed one thousand dollars (\$1000); or
  - 3. Both of the above.

Section 2.8 Accepting a Bribe

- A. A person commits the offense of accepting a bribe if he or she asks, receives, or agrees to receive a bribe, upon an agreement or understanding that his or her vote, opinion, judgment, exercise of discretion or other action or inaction will be improperly influenced.
- B. A person found guilty of accepting a bribe shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  - 2. A fine not to exceed one thousand dollars (\$1000); or
  - 3. Both of the above.

Section 2.9 Interfering with a Police Officer

- A. A person commits the offense of interfering with a police officer if he or she engages in conduct which tends to impair, obstruct, hinders or prevent a police officer from discharging his or her official duties.
- B. A person found guilty of interfering with a police officer shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.



Section 2.10 Refusing to Aid a Police Officer

- A. A person commits the offense of refusing to aid a police officer if he or she, upon a request by a police officer, refuses or fails to aid such police officer in effecting or securing an arrest or otherwise carrying out his or her official duties.
- B. A person found guilty of refusing to aid a police officer shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

Section 2.11 Resisting Lawful Arrest

- A. A person commits the offense of resisting lawful arrest if he or she prevents a police officer acting under his or her official authority from effecting an arrest by:
  - 1. using or threatening to use physical force against the police officer or another, requiring the police officer to use or employ substantial force to overcome the resistance; or
  - 2. using any other means which creates a risk of bodily injury to the police officer or another.
- B. A person found guilty of resisting lawful arrest shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

Section 2.12 Escape from Lawful Custody

- A. A person commits the offense of escape from lawful custody if he or she, while in lawful custody, escapes from such custody.
- B. A person found guilty of escape from lawful custody shall be sentenced to any of the following:

1. Imprisonment in jail for a period not less than thirty (30) days nor more than one hundred eighty (180) days; or
2. A fine not less than one hundred fifty dollars (\$150), nor more than five hundred dollars (\$500); or
3. Both of the above.

Section 2.13 Aiding Another to Escape

- A. A person commits the offense of aiding another to escape as defined in Section 2.12 if he or she aids, assists or provides the means for another to escape from lawful custody.
- B. A person found guilty of aiding another to escape shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.

Section 2.14 Abuse of Office

- A. A person commits the offense of abuse of office if he or she acts or purports to act in an official capacity with corrupt intent, including wilful failure to act, so as to obtain any personal or pecuniary benefit, gain, advantage or privilege to which he or she is not entitled.
- B. A person found guilty of abuse of office shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.

Section 2.15 Probation Violation

- A. A person commits the offense of probation violation if he or she violates any condition of probation ordered by the Court.
- B. A person found guilty of probation violation shall be sentenced to the following:
  - 1. Imprisonment in jail for a period equal to the original sentence suspended or deferred plus any new sentence the Court may impose for a new offense.

Section 2.16 Parole Violation

- A. A person commits the offense of parole violation if he or she violates any condition of parole ordered by the Court.
- B. A person found guilty of parole violation shall be sentenced to the following:
  - 1. Imprisonment in jail for a period equal to the sentence imposed which resulted in parole, plus one half of that sentence; and
  - 2. If parole violation is based on a new offense the Court shall impose additional jail time to be served consecutively with the parole violation sentence.

Section 2.17 Failure to Pay Fine

- A. A person commits the offense of failure to pay a fine if he or she fails to pay a fine assessed by the Court after agreeing to pay according to an installment schedule or by a definite date.
- B. A person found guilty of failing to pay a fine shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. To pay the fine amount due and owed immediately; or
  - 3. To pay a fine, in addition to the fine owed, not to exceed three hundred dollars (\$300); or
  - 4. A combination of the above.

Section 2.18 Malicious Prosecution

- A. A person commits the offense of malicious prosecution if he or she maliciously and without probable cause commences a criminal prosecution or a civil suit against another.
- B. A person found guilty of malicious prosecution shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 2.19 False Arrest

- A. A person commits the offense of false arrest if he or she knowingly makes, or causes to be made, an unlawful arrest, detention or imprisonment of another.
- B. A person found guilty of false arrest shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

Section 2.20 Refusal of a Police Officer to Arrest or Receive a Suspect

- A. A person commits the offense of refusal of a police officer to arrest or receive a suspect, if he or she is a police officer and wilfully refuses to arrest or receive a person charged with a criminal offense.
- B. A person found guilty of refusal of a police officer to arrest or receive a suspect shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

Section 2.21 Wilful Delay in Taking an Accused Before a Judge

- A. A person commits the offense of wilful delay in taking an accused before a judge if he or she has arrested any person but fails forthwith to take the accused before the trial judge having jurisdiction of the charge.
- B. A person found guilty of wilful delay in taking an accused before a judge shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

Section 2.23 Refusal to Provide Chemical Evidence<sup>3</sup>

- (A) A person commits the offense of refusal to provide chemical evidence when he or she is requested by a police officer of the Tohono O'odham Nation to take a breath, blood, or urine test to determine that person's alcohol concentration and the person refuses to take and complete the test. A failure to expressly agree to the test or successfully complete the test shall be deemed a refusal. Such a request shall only be made upon probable cause in accordance with Chapter 13, § 13.12(H) of this Code.
- (B) A person found guilty of refusal to provide chemical evidence shall be sentenced
  - (1) to a fine not to exceed \$500; or
  - (2) if a person is found guilty of refusal to provide chemical evidence and the evidence adduced at trial shows that he or she was charged with a violation of Chapter 13, § 13.12 on facts arising from the same incident then said person shall be sentenced to the following:
    - (a) Imprisonment in jail for a period not to exceed one year; and
    - (b) A \$1000 fine.

Section 2.24 [RESERVED]

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<sup>3</sup>Effective November 21, 2005 pursuant to Resolution No. 05-664

**CHAPTER 3 - OFFENSES AGAINST PUBLIC PEACE, ORDER, WELFARE AND  
ADMINISTRATION**

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## CHAPTER 3

### OFFENSES AGAINST PUBLIC PEACE, ORDER, WELFARE AND ADMINISTRATION

#### Section 3.1 Public Nuisance

- A. A person commits the offense of public nuisance if he or she allows anything which is harmful to health, or which is indecent or offensive to the senses, to interfere with the comfortable enjoyment of life or property by an entire community, neighborhood, or by an individual.
- B. A person found guilty of creating a public nuisance shall be ordered to remove the public nuisance within a period of time and shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

#### Section 3.2 Unlawful Assembly

- A. A person commits the offense of unlawful assembly if he or she gathers or assembles with two or more persons with the intent to engage in conduct which:
  - 1. creates a clear or present danger of damage or injury to property or persons; or
  - 2. obstructs, interferes with or disturbs the performance of any lawful function or activity.
- B. A person found guilty of unlawful assembly shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

#### Section 3.3 Joyriding

- A. A person commits the offense of joyriding if he or she, with intent to temporarily deprive the owner or lawful possessor of the use of a motor vehicle, drives or takes away such motor vehicle without the consent of the owner or lawful possessor.
- B. For purposes of this section, temporarily deprive shall mean a period of time of not more than twenty-four (24) hours. If the offender drives or takes the motor vehicle for a period in excess of twenty-four (24) hours, it shall be presumed that he or she intended to permanently deprive the owner or lawful possessor of its use, benefit or value and will be charged with Theft, Section 5.7.
- C. A person found guilty of joyriding shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 3.4 Criminal Trespass

- A. A person commits the offense of criminal trespass if he or she, without legal right, consent or authority, enters, or remains upon, or within any building, structure, or land, after being notified not to enter or remain.
- B. A person who is an enrolled member of the Nation commits criminal trespass if he or she enters a district while banished from that district and the person received notice of the banishment.
- C. Notice may be given by written or verbal communication or by a notice posted on or about the property in a manner reasonably likely to come to the attention of the potential trespasser, or by fence, barricades or other structures designed to enclose the property.
- D. A person found guilty of criminal trespass under Section 3.4.A. shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300.00); or
  - 3. Both of the above.



- E. A person found guilty of criminal trespass under Section 3.4.B. shall be sentenced to the following:
1. First offense
    - a. Imprisonment in jail for 60 days, which shall be served without suspension, probation, parole, or release of any kind; and
    - b. A fine of \$2,500, which shall not be suspended or converted to community service.
  2. Second or subsequent offense based on the same banishment
    - a. Imprisonment in jail for 180 days, which shall be served without suspension, probation, parole, or release of any kind; and
    - b. A fine of \$5,000, which shall not be suspended or converted to community service.

Section 3.5 Disturbing the Peace

- A. A person commits the offense of disturbing the peace if he or she disturbs the peace or quiet of a neighborhood, village, family or person by loud or unusual noise, or by quarreling or fighting while under the influence of intoxicants.
- B. A person found guilty of disturbing the peace shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed twenty (20) days; or
  2. A fine not to exceed fifty dollars (\$50); or
  3. Both of the above.

Section 3.6 Disorderly Conduct

- A. A person commits the offense of disorderly conduct if he or she commits any of the following acts:
1. while under the influence of intoxicants he or she causes public inconvenience, annoyance or alarm, or disturbs the peace or quiet of a

neighborhood, family, public place, person, religious or public gathering; or

2. uses abusive, vulgar or profane language which by its use tends to incite violence, unlawful conduct or breach of the peace by others; or
3. makes an offensive gesture or symbol which by its nature tends to incite anger, unlawful conduct or breach of peace by others; or
4. abuses or threatens a person in a manner calculated to place him or her in fear of bodily harm; or
5. fights or provokes a fight with another; or
6. displays a deadly weapon as defined in Section 1.16 (24) of this Code, or discharges a firearm with the intent to cause alarm; or
7. lies or sleeps as a result of intoxication on any public street, alley or in any other public place or upon private property without the consent of the owner.

B. A person found guilty of disorderly conduct shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed sixty (60) days; or
2. A fine not to exceed three hundred dollars (\$300); or
3. Both of the above.

Section 3.7 Abuse of Religious Sites, Shrines, Objects, or Burial Sites

A. A person commits the offense of abuse of religious sites, shrines, objects or burial sites if he or she intentionally abuses, disrupts, removes or carries away any object of religious or cultural significance to the Tohono O'odham people.

B. A person found guilty of abuse of religious sites, shrines, objects or burial sites shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed one hundred twenty (120) days; or
2. A fine not to exceed three hundred sixty dollars (\$360); or

3. Both of the above.

Section 3.8 Abuse of Human Corpse

- A. A person commits the offense of abuse of a human corpse if he or she without legal right or privilege abuses, disinters, defaces, or removes a human corpse from its burial site, or fails or refuses to bury a human corpse.
- B. A person found guilty of abuse of a human corpse shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred (\$500); or
  3. Both of the above.

Section 3.9 Cruelty of Animals

- A. A person commits the offense of cruelty to animals if he or she intentionally or negligently mistreats, abandons, neglects, kills, or injures any animal without legal justification or authority.
- B. A person found guilty of cruelty to animals shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  2. A fine not to exceed three hundred dollars (\$300); or
  3. Both of the above.

Section 3.10 Contempt Upon the Flag

- A. A person commits the offense of contempt upon the flag of the Tohono O'odham Nation or of a District if he or she intentionally and publicly mutilates, defaces, defiles, burns or tramples upon the flag of the Tohono O'odham Nation or of a District.
- B. A person found guilty of contempt upon the flag of the Tohono O'odham Nation or of a District shall be sentenced to any of the following:
  1. Imprisonment in jail for a period of not less than ten (10) days nor more than sixty (60) days; or

2. A fine of not less than twenty five dollars (\$25) nor more than three hundred dollars (\$300).

Section 3.11 Dueling

- A. A person commits the offense of dueling if he or she fights a duel, or sends or accepts a challenge to duel, or knowingly aids or assists in a duel in any manner.
- B. For purposes of this section duel means combat with a deadly or prohibited weapon between two or more persons by previous agreement.
- C. A person found guilty of dueling shall be sentence to any of the following:
  1. Imprisonment in jail for a period not to exceed one hundred twenty (120) days; or
  2. A fine not to exceed three hundred sixty dollars (\$360), or:
  3. Both of the above.

Section 3.12 Loitering Around a School

- A. A person commits the offense of loitering around a school if he or she without lawful business or reason loiters around a school where children are in attendance.
- B. A person found guilty of loitering around a school shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  2. A fine not to exceed three hundred dollars (\$300); or
  3. Both of the above.

Section 3.13 Unlawful Transporting of Illegal Alien(s)<sup>4</sup>

- (A) For purposes of this Section 3.13 and Section 3.14, the term “illegal alien” means any person who is not an enrolled member of the Tohono O’odham Nation or any other recognized tribe in the United States of America and who is not a citizen of the United States of America and is present in the United States illegally.

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<sup>4</sup>Effective November 21, 2005 pursuant to Resolution No. 05-662

- (B) A person commits the offense of unlawful transporting of illegal alien(s) if he or she transports, carries or conveys by any means any illegal alien within the Tohono O'odham Nation, except for
  - (1) law enforcement personnel acting for an authorized law enforcement purpose or
  - (2) a person transporting an illegal alien solely for emergency medical treatment.
- (C) A person found guilty of unlawful transporting of illegal alien(s) shall be sentenced to the following:
  - (1) Imprisonment in jail for one year; and
  - (2) A fine of \$5,000.
- (D) Any person who is previously convicted of unlawful transporting of illegal alien(s) or the equivalent offense in any jurisdiction shall receive a minimum jail sentence of 180 days, provided that at least 180 days of the jail sentence shall be served without suspension, probation, parole, or release of any kind.
- (E) Any person who is previously convicted two or more times of unlawful transporting of illegal alien(s) or the equivalent offense in any other jurisdiction shall receive a minimum jail sentence of one year, provided that at least one year of the jail sentence shall be served without suspension, probation, parole, or release of any kind.

Section 3.14 Unlawful Harboring of Illegal Alien(s)<sup>5</sup>

- (A) A person commits the offense of unlawful harboring of illegal alien(s) if he or she allows and/or keeps illegal alien(s) at any residence, structure, within a vehicle, or any other place for the purpose of concealment from law enforcement.
- (B) A person found guilty of unlawful harboring of illegal alien(s) shall be sentenced to the following:
  - (1) Imprisonment in jail for a period of one year; and
  - (2) A fine of \$5,000.
- (C) Any person who is previously convicted of unlawful harboring of illegal alien(s) or the equivalent offense in any jurisdiction shall receive a minimum jail sentence of

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<sup>5</sup>Effective November 21, 2005 pursuant to Resolution No. 05-662

180 days, provided that at least 180 days of the jail sentence shall be served without suspension, probation, parole, or release of any kind.

- (D) Any person who is previously convicted two or more times of unlawful harboring of illegal alien(s) or the equivalent offense in any jurisdiction shall receive a minimum jail sentence of one year, provided that at least one year of the jail sentence shall be served without suspension, probation, parole, or release of any kind.

Section 3.15 [REPEALED]

**CHAPTER 4 - OFFENSES INVOLVING CARE AND PROTECTION OF PUBLIC  
PROPERTY**

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## CHAPTER 4

### OFFENSES INVOLVING CARE AND PROTECTION OF PUBLIC PROPERTY

#### Section 4.1 Unlawful Burning of Timber

- A. A person commits the offense of unlawful burning of timber if he or she sets on fire any timber, wood, meadow, marsh, field or prairie without permission from the Tohono O'odham Nation or any of the District Councils.
- B. A person found guilty of unlawful burning of timber shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

#### Section 4.2 Unauthorized Hay or Pasture Cutting

- A. A person commits the offense of unauthorized hay or pasture cutting if he or she cuts hay or pasture grass from a village, community or District pasture without permission from the Tohono O'odham Nation or any District Councils.
- B. A person found guilty of unauthorized hay or pasture cutting shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

#### Section 4.3 Unlawful Sale of Timber

- A. A person commits the offense of unlawful sale of timber if he or she cuts timber or wood with the intent to sell the wood or timber without permit when a permit is required by the Tohono O'odham Nation or by any of the Districts.
- B. Enrolled members of the nation shall be allowed to sell wood or timber at any time without permit unless a permit is required by a particular District.



- C. A person found guilty of unlawful sale of timber shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  2. A fine not to exceed three hundred dollars (\$300); or
  3. Forfeiture or impoundment of instruments used in the violation and forfeiture of wood cut for sale.
  4. A combination of the above.
- D. If any non-Indian person is charged with unlawful sale of timber, he or she shall be subject to forfeiture or impoundment and expulsion from the nation.

Section 4.4 Careless Handling of Camp Fire

- A. A person commits the offense of careless handling of a camp fire if he or she does any of the following:
1. builds a camp fire on land not his or her own without clearing the ground immediately around the camp fire causing the fire to burn out of control; or
  2. leaves a camp fire burning unattended;
  3. starts a fire by throwing away a lighted cigar, cigarette, match or by the use of firearms in a forest or wooded area.
- B. A person found guilty of careless handling of a camp fire shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  2. A fine not to exceed three hundred dollars (\$300); or
  3. Both of the above.

Section 4.5 Unlawful Cutting of a Fence

- A. A person commits the offense of unlawful cutting of a fence or corral if he or she willfully cuts the wire of a village, individual or private, community or District fence or corral without legal right or authority.

- B. A person found guilty of unlawful cutting of a village, community, or District fence shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  2. A fine not to exceed three hundred dollars (\$300); or
  3. Both of the above.

Section 4.6 - 4.10 RESERVED

**CHAPTER 5 - OFFENSES AGAINST PROPERTY**

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## CHAPTER 5

### OFFENSES AGAINST PROPERTY

#### Section 5.1 Criminal Damage to Public Property

A. A person commits the offense of criminal damage to public property if he or she does any of the following acts:

1. with intent to impair its function or value; or
2. in a negligent or careless manner; or
3. while under the influence of alcohol;

defaces, damages, tampers with, or abuses any property of the Tohono O'odham Nation, or any agency of the federal government, or the State of Arizona while that property is located within the exterior boundaries of the nation.

B. A person found guilty of criminal damage to public property shall be sentenced to any of the following:

1. Restitution of an amount which will fully compensate for any damage caused; or
2. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
3. A fine not to exceed five hundred dollars (\$500); or
4. Any combination of the above.

#### Section 5.2 Criminal Damage to Private/Personal Property

A. A person commits the offense of criminal damage to private or personal property if he or she does any of the following acts:

1. with intent to impair its function or value; or
2. in negligent or careless manner; or
3. while under the influence of alcohol; defaces, damages, tampers with or abuses the property of another.

- B. A person found guilty of criminal damage to private or personal property shall be sentenced to any of the following:
  - 1. Restitution of an amount which will fully compensate for any damage caused; or
  - 2. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 3. A fine not to exceed three hundred dollars (\$300); or
  - 4. Any combination of above.

Section 5.3 Arson

- A. A person commits the offense of arson if he or she intentionally or recklessly sets fire to, or burns, or causes to be burned by the use of an explosive any property including government property.
- B. A person found guilty of arson shall be sentenced to any of the following:
  - 1. Restitution in an amount which will compensate for any damage caused; or
  - 2. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  - 3. A fine not to exceed one thousand dollars (\$1,000); or
  - 4. Any combination of the above.

Section 5.4 Burglary

- A. A person commits the offense of burglary if he or she with intent to commit an offense against a person or property does any of the following:
  - 1. enters, breaks into, or remains unlawfully in a building or structure; or
  - 2. enters or breaks into any vault, safe, cash register, coin vending machine, product dispenser, money depository box, telephone coin box, vehicle or other equipment, whether or not coin operated, with intent to take, use or steal any object or anything therein.
- B. A person found guilty of burglary shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
2. A fine not to exceed five hundred dollars (\$500); or
3. Both of the above.

Section 5.5 Robbery

- A. A person commits the offense of robbery if he or she by the use of force, threats, coercion, or intimidation takes property or anything of value from any person.
- B. A person found guilty of robbery shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  2. A fine not to exceed one thousand dollars (\$1,000); or
  3. Both of the above.

Section 5.6 Armed Robbery

- A. A person commits the offense of armed robbery if he or she in the course of committing robbery as defined in Section 5.5:
  1. is armed with a deadly or prohibited weapon; or
  2. uses or threatens to use a deadly or prohibited weapon or a dangerous instrument.
- B. A person found guilty of armed robbery shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  2. A fine not to exceed one thousand dollars (\$1,000); or
  3. Both of the above.

Section 5.7 Theft

- A. A person commits theft if, without lawful authority, the person knowingly:

1. Controls property of another with the intent to deprive the other person of such property; or
  2. Converts for an unauthorized term of use services or the property of another which he, she, or it entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use; or
  3. Obtains services or property of another by means of any material misrepresentation with intent to deprive the other person of such property or services; or
  4. Comes into control of lost, mislaid or mis-delivered property of another when the person is reasonably able to discover the true owner's identity and appropriates such property to the person's own or another's use without reasonable efforts to notify the true owner; or
  5. Controls property of another knowing or having reason to know that the property was stolen; or
  6. Obtains services, known to the defendant to be available only for compensation, without payment or without an agreement to pay the compensation or diverts another's services to the person's own or another's benefit without authority to do so.
- B. A person commits theft if the person knowingly takes control, title, use or management of an incapacitated or vulnerable adult or minor's assets or property through intimidation or deception, or while acting in a position of trust and confidence and with the intent to deprive the incapacitated or vulnerable adult of the asset or property.
- C. A person found guilty of theft shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed one year; or
  2. A fine not to exceed one thousand dollars (\$1,000.00); or
  3. Both of the above.

Section 5.8 Receiving Illegally Obtained Property

- A. A person commits the offense of receiving illegally obtained property if he or she with knowledge that it was obtained by theft, robbery, fraud or other unlawful means, buys, receives, conceals, or arranges the sale, transfer, disposal or receipt of such property.

- B. A person found guilty of receiving illegally obtained property shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 5.9 Unlawful Taking of Papers/Documents of the Nation

- A. A person commits the offense of unlawful taking of papers or documents of the nation if he or she, upon termination of employment or office with the nation, takes or converts to his or her own use any official paper or document, file or other materials belonging to the nation which came into possession of the person as a result of their office or position with the nation.
- B. A person found guilty of unlawful taking of papers or documents of the nation shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 5.10 Malicious Mischief

- A. A person commits the offense of malicious mischief if he or she willfully destroys any personal property of another.
- B. A person found guilty of malicious mischief shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. Restitution of an amount which will compensate for any damage caused; or
  - 3. A fine not to exceed three hundred dollars (\$300); or
  - 4. Any combination of the above.



Section 5.11 Removal or Destruction of Antiquities

- A. A person commits the offense of removal or destruction of antiquities if he or she without legal right or authority, removes, excavates, injures or destroys any historic or prehistoric ruin or monument, or any object of antiquity.
- B. A person found guilty of removal or destruction of antiquities shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not less than thirty (30) days nor more than one hundred eighty (180) days; or
  - 2. A fine of not less than one hundred fifty dollars (\$150) nor more than five hundred dollars (\$500); or
  - 3. A combination of both.

Section 5.12 Poisoning Animals

- A. A person commits the offense of poisoning animals if he or she willfully administers poison to an animal belonging to another with the intent that the animal take or swallow the poison.
- B. This section shall not apply to any officer or agent of the United States, the State of Arizona, or the nation administering poison to predatory animals.
- C. A person found guilty of poisoning animals shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

Section 5.13 - 5.20 RESERVED

**CHAPTER 6 - PREPARATORY OFFENSES**

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## CHAPTER 6

### PREPARATORY OFFENSES

#### Section 6.1 Criminal Attempt

- A. A person commits the offense of criminal attempt if he or she with intent attempts to commit an offense.
- B. Factual or legal impossibility will not be a defense if the offense would have been committed if the circumstances had been as the actor believed them to be.
- C. A person found guilty of criminal attempt shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Provided, however, that the sentence shall not exceed the maximum specified for the offense attempted, whether or not the offense was committed.

#### Section 6.2 Conspiracy

- A. A person commits the offense of conspiracy if he or she, with intent, agrees with one or more persons to commit an offense and one of them commits an act in furtherance of the offense, or, he or she agrees to aid in the planning or commission of an offense.
- B. It is a defense to a prosecution if the defendant clearly ceases to agree with the conspiracy, takes no further part in the conspiracy, and communicates his desire to abandon the conspiracy to the authorities.
- C. A person found guilty of conspiracy shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or

3. Both of the above.

Section 6.3 Solicitation

- A. A person commits the offense of solicitation if he or she with intent encourages, or requests or solicits another person to commit an offense.
- B. A person found guilty of solicitation shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.

Section 6.4 Aiding and Abetting

- A. A person commits the offense of aiding and abetting if he or she acting with knowledge that another person is committing or intends to commit an offense, engages in conduct which provides such person with means or opportunity to commit the offense and which in fact aids such person to commit the offense.
- B. A person found guilty of aiding and abetting shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.

Section 6.5 - 6.10 RESERVED

**CHAPTER 7 - OFFENSES AGAINST PERSONS**

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## CHAPTER 7

### OFFENSES AGAINST PERSONS

#### Section 7.1 Assault

- A. A person commits the offense of assault if he or she commits any of the following acts:
1. with intent to cause bodily injury to another person he or she causes bodily injury; or
  2. with intent to assault, threaten, intimidate or endanger any person he or she causes bodily injury to another person; or
  3. acting alone or with one or more persons he or she commits or participates in the commission of, or in furtherance of a crime that is being committed or attempted, or while in the process of immediate flight from anyone he or she causes bodily injury to another person; or
  4. recklessly or by negligence he or she causes bodily injury to another person; or
  5. intentionally and with indifference to the value of human life, he or she engages in conduct which creates a substantial risk of injury to a person and thereby causes such injury to the person; or
  6. he or she operates a motor vehicle in a reckless or grossly negligent manner, or while intoxicated, or while under the influence of alcohol, drugs or other intoxicants and such conduct causes bodily injury to another person.
- B. A person found guilty of assault shall be sentenced to any of the following:
1. Imprisonment in jail for not less than ninety (90) days nor more than three hundred sixty (360) days; or
  2. A fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000).
- C. Provided, however, that if any person who is found guilty of this offense has committed the offense against a public officer or agent of this Nation, a district or of the federal or, state governments while acting in their official

capacities, the maximum sentence specified shall be imposed in its entirety by the Court.

Section 7.2 Aggravated Assault

- A. A person commits the offense of aggravated assault if he or she commits an assault as defined in Section 7.1 causing serious physical injury to the victim or when a deadly weapon or dangerous instrument is used against the victim or the victim's capacity to resist is substantially impaired.
- B. A person found guilty of aggravated assault shall be sentenced to the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; and
  - 2. A fine of one thousand dollars (\$1,000).

Section 7.3 Threatening

- A. A person commits the offense of threatening if he or she commits any of the following acts:
  - 1. by physical threat he or she intentionally places or attempts to place another in fear of bodily injury; or
  - 2. he or she threatens to commit an act of violence with the intent to terrorize another, or acts in reckless disregard of the risk of causing such terror; or
  - 3. with intent to cause, or in reckless disregard of causing serious public inconvenience, including but not limited to evacuation of a building or transportation facility, he or she causes such inconvenience; or
  - 4. with intent to induce a person to do an act against his or her will, or to refrain from doing a lawful act, he or she threatens to cause bodily injury to the person or another, or to damage the property of, or reputation of the threatened person or another; or
  - 5. recklessly or while under the influence of alcohol or drugs he or she engages in conduct which creates a significant risk of bodily injury to another person.
- B. A person found guilty of threatening shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
2. A fine not to exceed five hundred dollars (\$500); or
3. Both of the above.

Section 7.4 Kidnapping

- A. A person commits the offense of kidnapping if with intent to hold or detain, he or she seizes, confines, entices, abducts, conceals, steals or carries away any person by any means whatsoever, against the person's will or without the person's consent.
- B. A person found guilty of kidnapping shall be sentenced to the following:
  1. Imprisonment in jail for not less than ninety (90) days nor more than three hundred sixty (360) days; and
  2. A fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1000).

Section 7.5 Custodial Interference

- A. A person commits the offense of custodial interference if with knowledge that he or she has no privilege or right to do so, he or she takes or entices a minor child from the lawful custody of another parent, guardian or custodian.
- B. A person found guilty of custodial interference shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.

Section 7.6 Abducting

- A. A person commits the offense of abduction if he or she takes any person against the person's will and by force or duress compels the person to marry him or her, or to marry another person.



- B. A person found guilty of abduction shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. To pay a fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 7.7 Seduction

- A. A person commits the offense of seduction if he or she makes a promise of marriage to an unmarried person of previous good repute for chastity, with intent to induce such person to have sexual intercourse and does have sexual intercourse. Provided, however that if the accused marries or offers to marry the person before trial and the offer is rejected, the accused shall not be tried for seduction.
- B. A person found guilty of seduction shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eight (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 7.8 Unlawful Abortion

- A. A person commits the offense of unlawful abortion if he or she provides, supplies or administers to a pregnant woman any medicine, drugs or substance, or uses or employs any instrument or other means whatever, with intent to cause the miscarriage of such pregnant woman.
- B. A person found guilty of unlawful abortion shall be sentenced to the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; and
  - 2. A fine of one thousand dollars (\$1000).

This section shall not apply to abortions provided by or administered for medical purposes under the supervision of a person licensed to practice medicine in any of the states.

Section 7.9 Adding Poison or Harmful Substance to Food, Drink or Medication

- A. A person commits the offense of adding poison or a harmful substance to food, drink or medication, if he or she willfully adds or mingles poison with any food, drink or medication with intent that it be taken by a human being to his or her injury, or he or she willfully poisons a spring, well or reservoir of water.
- B. A person found guilty of adding poison or a harmful substance to food, drink or medication shall be sentenced to the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; and
  - 2. A fine of one thousand dollars (\$1000).

Section 7.10 Stalking

- A. Offense defined. A person commits the offense of stalking by intentionally or knowingly engaging in a course of conduct that is directed toward another person if that conduct would cause a reasonable person to fear for the person's safety or the safety of that person's immediate family member and that person does fear for his or her safety or for the safety of that person's immediate family member.
- B. Definitions. For the purposes of this section:
  - 1. "Course of conduct" means maintaining visual or physical proximity to a specific person or harassing or directing verbal, written or other threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include constitutionally protected activity.
  - 2. "Harassing" includes conduct directed at a specific person, either directly or through a third party, that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. Harassing behavior may include but is not limited to:
    - (a) Vandalism or criminal damage;
    - (b) Annoying, threatening, or unwanted telephone calls, emails, letters, or other communications;

- (c) Order of protection or restraining order violations;
  - (d) Assault;
  - (e) Appearing at a victim's home or workplace;
  - (f) Attempting to obtain private information about the victim through others;
  - (g) Leaving gifts for the victim;
  - (h) Disabling or otherwise tampering with the victim's vehicle;
  - (i) Taking victim's mail or other property;
  - (j) Entering the victim's residence whether the victim is present or not;
  - (k) Parking near or driving by the victim's residence or workplace for no legitimate reason; and
  - (l) Initiating unwarranted investigations, employment actions, or sanctions against the victim.
3. "Immediate family member" means a spouse, parent, child or sibling or any other person who regularly resides in a person's household or resided in a person's household within the past six months.
- C. Penalties; repeated offenses.
- 1. No Contest Pleas Prohibited. A plea of no contest to the offense of stalking shall not be accepted.
  - 2. First Offense; Enhanced Sentence for Domestic Violence.
    - (a) A person who makes a judicial admission of, pleads guilty, or is found guilty of a first offense of stalking under this section shall be subject to a penalty of not less than 60 days and not more than 180 days in jail, and a fine not to exceed \$2,500.
    - (b) If the defendant and victim share a domestic relationship as defined in Section 8.9.B. of the Criminal Code, at least 60 days of the jail sentence for a first offense of stalking shall be

served without suspension, probation, parole, or release of any kind.

3. Second or Subsequent Offense; Enhanced Sentence for Domestic Violence.
  - (a) A person who makes a judicial admission of, pleads guilty to, or is found guilty of a second or subsequent stalking offense under this section within five years of the first offense shall be sentenced to a term of one year in jail and a fine not to exceed \$5,000, provided that at least 90 days of the jail sentence shall be served without suspension, probation, parole, or release of any kind.
  - (b) If the defendant and victim share a domestic relationship as defined in Section 8.9.B. of the Criminal Code, at least 180 days of the jail sentence for a second or subsequent stalking offense shall be served without suspension, probation, parole, or release of any kind.

7.11 - 7.20 RESERVED

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**CHAPTER 8**  
**OFFENSES AGAINST THE FAMILY**

Section 8.1 Abandonment of Child

- A. A person commits the offense of abandonment of child if he or she is a parent, guardian or custodian having custody of a child and intentionally abandons the child for more than twenty-four (24) hours without good cause.
- B. A person found guilty of abandoning a child shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 8.2 Adultery

- A. A person commits the offense of adultery if he or she intentionally or knowingly, while married, engages in sexual intercourse or oral sexual contact with one other than his or her spouse, or if unmarried, engages in sexual intercourse or oral sexual contact with a married person.
- B. No prosecution for adultery shall be commenced except under the complaint of the husband or wife not committing the offense.
- C. A person found guilty of adultery shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed six hundred dollars (\$600); or
  - 3. Both of the above.

Section 8.3 Bigamy

- A. A person commits the offense of bigamy if he or she while lawfully married, purports or attempts to marry another person.
- B. A person found guilty of bigamy shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
2. A fine not to exceed six hundred dollars (\$600); or
3. Both of the above.

Section 8.4 Abuse of a Person

- A. A person commits the offense of abuse of a person if he or she intentionally causes or permits a person to be:
  1. in need of care and control including food, clothing or shelter; or
  2. subjected to infliction of physical or mental injury; or
  3. placed in a situation or unfit place that endangers the person's life or health; or
  4. subjected to any sexual or related offense.
- B. A person found guilty of abuse of a person shall be sentenced to any of the following:
  1. Imprisonment in jail for three hundred sixty (360) days; and
  2. A fine of one thousand dollars (\$1000).

Section 8.5 Contributing to the Delinquency of a Minor

- A. A person commits the offense of contributing to the delinquency of a minor if he or she intentionally or negligently contributes, encourages, approves or causes a person under the age of eighteen (18) years to:
  1. engage in any conduct which is prohibited by law; or
  2. engage in any act in violation of the Children's Code or any lawful order of the Children's Court; or
  3. disobey the reasonable and lawful orders and directions of a parent, guardian or custodian; or
  4. be habitually truant from school or a runaway from a parent, guardian or custodian; or

5. accompany known criminals, drunks and other persons of disreputable character; or
  6. frequent places or houses where alcohol, drugs or other intoxicants are used or sold; or
  7. use alcohol, drugs, narcotics, or other intoxicants, including tobacco.
- B. A person found guilty of contributing to the delinquency of a minor shall be sentenced to the following:
1. Imprisonment in jail for three hundred sixty (360) days; and
  2. A fine of one thousand dollars (\$1000).

Section 8.6 Failure to Send a Minor to School

- A. A person commits the offense of failure to send a minor to school, if he or she is a parent, guardian or custodian having custody of a minor child and without good cause neglects or refuses to send a minor child or children to school while such child(ren) are between the ages of six (6) and eighteen (18) years.
- B. A person found guilty of failure to send a minor to school shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.

Section 8.7 Endangering the Welfare of a Minor

- A. A person commits the offense of endangering the welfare of a minor if he or she knowingly or negligently contributes, encourages or allows a person under the age of eighteen (18) years to:
1. be subjected to physical or mental injury as a result of failing to maintain and provide reasonable care and treatment; or
  2. be subjected to overwork or exploitation resulting in physical or mental injury; or



3. cause the minor to live in a home which by reason of neglect, cruelty or depravity is an unfit place.
- B. A person found guilty of endangering the welfare of a minor shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.
- C. Provided, however, that the court may suspend or defer imposition of a sentence upon the condition that the defendant be given a chance to rectify the claim of nonsupport within a reasonable period of time set by the Court.

Section 8.8 Nonsupport

- A. A person commits the offense of nonsupport if he or she intentionally and persistently fails to provide food, shelter, clothing, medical attention, financial support or other necessary care which he or she can provide and is legally obliged to provide to a spouse, child or other dependent.
- B. A person found guilty of nonsupport shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  2. A fine not to exceed three hundred dollars (\$300); or
  3. Both of the above.

Section 8.9 Domestic Violence; Arrest and Procedure

- A. "Domestic Violence" means any act which is an offense defined in Section 2.2 Criminal Contempt of Court, 2.5 Influencing a Witness or Juror, 3.4 Criminal Trespass, 3.5 Disturbing the Peace, 3.6 Disorderly Conduct, 5.2 Criminal Damage to Private/Personal Property, 5.10 Malicious Mischief, 7.1 Assault, 7.2 Aggravated Assault, 7.3 Threatening, 7.4 Kidnapping, 7.5 Custodial Interference, 7.10 Stalking, 9.1 Sexual Assault, 9.2 Sexual Abuse, or 12.2 Public Intoxication of this Code, if the victim and the offender share a domestic relationship.

- B. For purposes of this Criminal Code, persons who share a “domestic relationship” include:
1. Adults or minors who are current or former spouses or who are current or former cohabitants;
  2. Adults or minors who are dating or who have dated, including persons involved in a same sex relationship;
  3. Adults or minors who are engaged in or who have engaged in a sexual relationship including same sex relationships;
  4. Adults or minors who are related or formerly related by marriage, including same sex relationships;
  5. Persons who have a child in common;
  6. A minor child, including a legally adopted child, of a person in a relationship that is described in paragraphs (1) through (5);
  7. Adults or minors related to the defendant or the defendant’s spouse by blood or court order;
  8. A parent, grandparent, child, grandchild, brother or sister, or by marriage as a parent in law, grandparent in law, stepparent, step grandparent, stepchild, step grandchild, brother in law or sister in law; and
  9. Adults or minors recognized as family members under Tohono O’odham custom and tradition.
- C. A police officer may, with or without a warrant, arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether such offense was committed within or without the presence of the officer.
- D. When a police officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform the alleged or potential victim of procedures and resources available for the protection of such victim, including:
1. Emergency telephone number for the police department.

2. Telephone numbers of available emergency services in the local community.
  3. An order of protection pursuant to Section 8.10.
- E. A person found guilty or who pleads guilty of a domestic violence offense is not eligible for deferred sentencing, diversion, or unsupervised probation. The terms and conditions of any probation shall include those necessary to provide for the protection of the victim and other specifically designated persons and additional conditions and requirements which the Court deems appropriate including any counseling or other programs available to the defendant.
- F. When a victim of domestic violence is unavailable, adversarial, or unwilling to testify, the prosecution may proceed based upon available evidence.
- G. A plea of no contest to an offense of domestic violence shall not be accepted.

Section 8.10 Order of Protection; Arrest for Violation

- A. A person may file a petition with a Judge of the Tohono O'odham Court for an order of protection for the purpose of restraining a person from committing an act of domestic violence as defined in subsection A of Section 8.9 of this Code.
- B. The petition shall state the name address of the plaintiff, name, address of the defendant, the time and dates of the domestic violence alleged; the relationship between the parties and whether there is pending an action for legal separation or dissolution of marriage; dates of any prior or pending proceedings or orders concerning the conduct which is sought to be restrained and the desired relief.
- C. The Court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff to determine whether the orders requested should issue without further hearing. If the Court determines that there is reasonable cause to believe that the defendant may commit an act of domestic violence, the Court shall issue an order. If the Court denies the requested relief, it may schedule a further hearing within ten days, with notice to the defendant.
- D. An order of protection issued by the Court may include any of the following:
1. Enjoin either or both parties from committing an act of domestic violence.

2. Grant one party the use and exclusive possession of the parties' residence on a showing that there is reasonable cause to believe that physical harm may result.
  3. Restrain one or both parties from coming near the residence, place of employment or school of the other party or other identified locations on a showing that there is reasonable cause to believe that physical harm may result.
  4. Relief necessary for the protection of the alleged victim and other identified persons proper under the circumstances.
- E. An ex parte order issued under this Section shall inform the defendant that the defendant is entitled to a hearing on written request. An order of protection shall be served on the defendant, and is effective on service.
- F. An order may be modified, revoked or continued by the Court after a hearing. An order expires, unless renewed, six months after service on the defendant. A certified copy of the order of protection shall be filed with the police department within 24 hours of the entry of the order.
- G. A police officer may, with or without a warrant, arrest a person if the officer has probable cause to believe that the person has violated Section 2.1 by disobeying or resisting an order issued pursuant to this Section, whether or not such violation occurred in the presence of the officer.
- H. A police officer making an arrest pursuant to Section 8.9 or 8.10 of this Code is not civilly or criminally liable for such arrest if the officer acts upon probable cause and without malice.

Section 8.11 - 8.50 RESERVED

**CHAPTER 9 - SEXUAL AND RELATED OFFENSES**

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## CHAPTER 9

### SEXUAL AND RELATED OFFENSES

#### Section 9.1 Sexual Assault

- A. A person commits the offense of sexual assault when without consent, and by force or threat of death or bodily harm to the victim, or anyone else, he or she subjects the victim to sexual intercourse or oral sexual contact.
- B. A person found guilty of sexual assault shall be sentenced to the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; and
  - 2. A fine of one thousand dollars (\$1000).
- C. Any person found guilty of sexual assault shall not be eligible for suspension or commutation of sentence, probation, pardon, parole or release on any other basis.

#### Section 9.2 Sexual Abuse

- A. A person commits the offense of sexual abuse if he or she, without consent, makes sexual contact with any person not his or her spouse.
- B. A person found guilty of sexual abuse shall be sentenced to the following:
  - 1. Imprisonment in jail not less than ninety (90) days nor more than three hundred sixty (360) days; and
  - 2. A fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1000).
- C. Provided, however, that if any person who is found guilty of this offense commits the offense against a person under the age of eighteen (18) years, the maximum sentence specified shall be imposed in its entirety by the Court.
- D. Any person found guilty of sexual abuse shall not be eligible for suspension or commutation of sentence, probation, pardon or parole or release on any other basis.

#### Section 9.3 Sexual Conduct with a Minor (Statutory Rape)

- A. A person commits the offense of sexual conduct with a minor if he or she intentionally or knowingly engages in sexual intercourse or oral sexual contact with any person under the age of eighteen (18) years not his or her spouse.
- B. A person found guilty of sexual conduct with a minor shall be sentenced to the following:
  - 1. Imprisonment in jail for not less than ninety (90) days nor more than three hundred sixty (360) days; and
  - 2. A fine of not less than two hundred dollars (\$250) nor more than one thousand dollars (\$1000).

Section 9.4 Incest

- A. A person commits the offense of incest if he or she marries or has sexual intercourse with a parent, brother or sister, an aunt, uncle, nephew, niece of the whole or half-blood, or with any person related in the first or second degree, or with a step-parent, step-brother or sister.
- B. A person found guilty of incest shall be sentenced to any of the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; and
  - 2. A fine of one thousand dollars (\$1000).

Section 9.5 Indecent Exposure

- A. A person commits the offense of indecent exposure if he or she intentionally or while under the influence of intoxicants, exposes his or her genitals or anus to the public view in a manner calculated to alarm or offend any person present and viewing the event.
- B. A person found guilty of indecent exposure shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

- C. Provided, however, that if any person found guilty of this offense commits the offense against a person under the age of sixteen (16) years, the maximum sentence specified shall be imposed in its entirety by the Court.

Section 9.6 Child Molesting

- A. A person commits the offense of child molesting if he or she molests a child under the age of sixteen (16) years by:
  - 1. fondling, playing with or touching the private parts of the child; or
  - 2. causing the child to fondle, play or touch the private parts of the person.
- B. A person found guilty of child molesting shall be sentenced to the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; and
  - 2. A fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000).

Section 9.7 Prostitution

- A. A person commits the offense of prostitution if he or she performs, agrees or offers to perform any act of sexual intercourse or oral sexual contact in exchange for money or anything of value.
- B. A person found guilty of prostitution shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 9.8 Soliciting for Prostitution

- A. A person commits the offense of soliciting for prostitution if he or she arranges, solicits or offers to provide the services of a prostitute.
- B. A person found guilty of soliciting for prostitution shall be sentenced to any of the following:



1. Imprisonment in jail for a period not to exceed two hundred forty (240) days; or
2. A fine not to exceed six hundred dollars (\$600); or
3. Both of the above.

Section 9.9 Patronizing a Prostitute

- A. A person commits the offense of patronizing a prostitute if he or she engages in any act of sexual intercourse or oral sexual contact with a prostitute.
- B. A person found guilty of patronizing a prostitute shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500).or
  3. Both of the above.

Section 9.10 Receiving the Proceeds of Prostitution

- A. A person commits the offense of receiving the proceeds of prostitution if he or she knowingly receives or lives on or is supported or maintained in whole or in part by money or other consideration or thing of value, earned, received, procured or realized by any person through prostitution.
- B. A person found guilty of receiving the proceeds of prostitution shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.

Section 9.11 Causing or Taking a Child for Purposes of Prostitution

- A. A person commits the offense of causing or taking a child for purposes of prostitution if he or she takes away any person under the age of eighteen (18) years from a parent, guardian or custodian, for the purpose of prostitution.

- B. A person found guilty of causing or taking a child for purposes of prostitution shall be sentenced to the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; and
  - 2. A fine of one thousand dollars (\$1000).
- C. Any person found guilty of causing or taking a child for purposes of prostitution shall not be eligible for suspension or commutation of sentence, probation, pardon or parole, or release on any other basis.

Section 9.12 Possession of Obscene Materials

- A. A person commits the offense of possession of obscene materials if he or she has in his or her possession with intent to sell, rent, lend, transport or distribute any obscene materials.
- B. Obscene as used in this section means an item is obscene when the average person, applying customary or community standards would find that the item or materials taken as a whole appeals to the prurient interest and the item or materials describes in a patently offensive way sexual acts.
- C. A person found guilty of possession of obscene materials shall be sentenced to the following:
  - 1. Imprisonment in jail for a period not to exceed two hundred forty (240) days; or
  - 2. A fine not to exceed six hundred dollars (\$600); or
  - 3. Both of the above.

Section 9.13 Furnishing Obscene Materials to Minors

- A. A person commits the offense of furnishing obscene materials to minors if he or she knowingly gives, lends, shows or distributes for sale obscene materials to any person under the age of eighteen (18) years.
- B. A person found guilty of furnishing obscene materials to minors shall be sentenced to the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; and
  - 2. A fine of one thousand dollars (\$1000).

Section 9.14 Seizure of Obscene Materials

An obscene or indecent writing, paper, book, picture or print found in the possession of a person arrested shall be seized and delivered to the prosecutor's office. The materials shall be destroyed upon the conviction of the accused.

Section 9.15 Voyeurism

- A. A person commits the offense of voyeurism by knowingly invading the privacy of another person, as defined in subsection C, without the knowledge or without the consent of the other person for the purpose of sexual stimulation.
- B. It is unlawful for a person to disclose, display, distribute or publish a photograph, videotape, film or digital recording that is made in violation of subsection A of this section without the consent or knowledge of the person depicted.
- C. For the purposes of this section, a person's privacy is invaded if both of the following apply:
  - 1. The person has a reasonable expectation that the person will not be photographed, videotaped, filmed, digitally recorded or otherwise viewed or recorded.
  - 2. The person is photographed, videotaped, filmed, digitally recorded or otherwise viewed, with or without a device, either:
    - a. While the person is in a state of undress or partial dress;
    - b. While the person is engaged in sexual intercourse or sexual contact;
    - c. While the person is urinating or defecating; or
    - d. In a manner that directly or indirectly captures or allows the viewing of the person's genitalia, buttock, or female nipple or female breast, whether clothed or unclothed, that is not otherwise visible to the public.
- D. This section does not apply to any of the following:
  - 1. Photographing, videotaping, filming or digitally recording for security purposes if notice of the use of the photographing, videotaping, filming or digital recording equipment is clearly posted in the location

and the location is one in which the person has a reasonable expectation of privacy.

2. Photographing, videotaping, filming or digitally recording by correctional officials for security reasons or in connection with the investigation of alleged misconduct of persons on the premises of a jail.
3. Photographing, videotaping, filming or digitally recording by law enforcement officers pursuant to an investigation, which is otherwise lawful.
4. The use of a child monitoring device that is capable of transmitting an audio or audiovisual signal and that is installed or used in a residence for child supervision or safety monitoring by any parent, guardian or other responsible person in the person's own residence.

E. For purposes of this section, "sexual stimulation" means sexual arousal, stimulation, or gratification.

F. A person found guilty of voyeurism shall be sentenced to any of the following:

1. Imprisonment in jail for a period not less than 180 days and not exceeding one year; provided that if the person whose privacy was invaded was under the age of 16 years at the time the offense was committed, at least 60 days shall be served without suspension, probation, parole, or release of any kind; and
2. A fine not to exceed one thousand dollars (\$1000).

Section 9.16 - 9.20 RESERVED

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## CHAPTER 10

### OFFENSES INVOLVING FRAUD AND RELATED OFFENSES

#### Section 10.1 Forgery

- A. A person commits the offense of forgery if with intent to defraud, he or she falsely makes, completes, alters, offers, delivers, presents or submits a written document for the purpose of obtaining money or other consideration or thing of value, or he or she knowingly has in his or her possession a forged document.
- B. A person found guilty of forgery shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  - 2. A fine not to exceed one thousand dollars (\$1000); or
  - 3. Both of the above.

#### Section 10.2 Criminal Fraud

- A. A person commits the offense of criminal fraud if he or she obtains money, property, advantage, interest, credit or asset from another by trick, deceit or misrepresentation.
- B. A person found guilty of criminal fraud shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  - 2. A fine not to exceed one thousand dollars (\$1000); or
  - 3. Both of the above.

#### Section 10.3 Passing Bad Checks

- A. A person commits the offense of passing a bad check if he or she makes, signs, issues, delivers or passes a written order to pay a sum of money, drawn on a bank account, when the person knows or has reason to know that the order will not be paid or honored by the bank because of insufficient funds or because the account has been closed.

- B. A person found guilty of passing a bad check shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  - 2. A fine not to exceed one thousand dollars (\$1000); or
  - 3. Both of the above.

Section 10.4 Embezzlement

- A. A person commits the offense of embezzlement if he or she fraudulently takes, steals, or appropriates any property or money for his or her own use or benefit, and which is entrusted to his or her care and control.
- B. A person found guilty of embezzlement shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  - 2. A fine not to exceed one thousand dollars (\$1000); or
  - 3. Both of the above.

Section 10.5 Shoplifting

- A. A person commits the offense of shoplifting if he or she, while in a mercantile establishment knowingly obtains goods displayed for sale with the intent to deprive the owner of the goods by:
  - 1. removing, taking or concealing any goods within the mercantile establishment without paying the purchase price; or
  - 2. paying less than the purchase price by altering or substituting a price label; or
  - 3. charging the purchase price of the goods to a fictitious person or to any person without their consent; or
  - 4. removing any edible goods and eating the goods within the mercantile establishment without paying the purchase price.

- B. A merchant, or his agent or employee, may, if probable cause exists, detain on the premises in a reasonable manner and for a reasonable time any person suspected of shoplifting for questioning or to call a police officer.
- C. A person found guilty of shoplifting shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

Section 10.6 Extortion

- A. A person commits the offense of extortion if he or she knowingly obtains or seeks to obtain money or property by means of a threat to commit any of the following acts:
  - 1. to cause physical injury to anyone; or
  - 2. to cause damage to property; or
  - 3. to expose a secret or fact, whether true or false, with intent to subject anyone to hatred, contempt or ridicule or to impair his or her character or business standing credit; or
  - 4. to engage in other conduct constituting a crime; or
  - 5. to take or withhold action as a public official or cause a public official to take or withhold action.
- B. A person found guilty of extortion shall be sentenced to any of the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; and
  - 2. A fine of one thousand dollars (\$1000).

Section 10.7 Slander

- A. A person commits the offense of slander if he or she maliciously speaks or utters a false and defamatory statement with intent to injure or prejudice the reputation, character, office, business, trade or livelihood of another.
- B. A person found guilty of slander shall be sentenced to the following:



1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.
- C. Provided, however, that if any person is found guilty of this offense has committed the offense against a public officer of this Nation or of a district, the maximum sentence specified shall be imposed in its entirety by the Court.

Section 10.8 Criminal Libel

- A. A person commits the offense of criminal libel if he or she writes, prints, or by signs or pictures, expresses any malicious falsehood with intent to bring disrepute, contempt or ridicule upon a person.
- B. A person found guilty of criminal libel shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.
- C. Provided, however, that if any person found guilty of this offense has committed the offense against a public officer of this Nation or of a district, the maximum sentence specified shall be imposed in its entirety by the Court.
- D. In a criminal prosecution for criminal libel, the truth of the matter charged to be libelous may be given in evidence, and if it appears to the trier of the fact that the matter is true, and was published with good motives and for justifiable reason, the accused shall be acquitted.

Section 10.9 Participating in or Assisting a Criminal Gang

- A. Definitions. For purposes of this Section 10.9, the following definitions shall apply:
1. Criminal Gang means an ongoing formal or informal association of persons whose members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any criminal act defined under this Criminal Code and who has at least one individual who is a criminal gang member.

2. Criminal Gang Member means an individual to whom at least two of the following seven criteria that indicate criminal gang membership apply:
  - (a) self-proclamation;
  - (b) witness testimony or official statement;
  - (c) written or electronic correspondence;
  - (d) paraphernalia or photographs;
  - (e) tattoos;
  - (f) clothing or colors; or
  - (g) any other evidence of gang membership.
- B. Evidence of gang membership including but not limited to graffiti, gang-related paraphernalia, hand signals, tattoos, clothing or colors may be submitted into evidence in any case brought under this section with proper foundation.
- C. A person commits the offense of Participating in or Assisting a Criminal Gang if he or she does any of the following:
  1. Intentionally organizes, manages, directs or supervises a criminal gang with the intent to promote or further the criminal objectives of the criminal gang; or
  2. Knowingly entices or induces others to engage in violence or intimidation to promote or further the criminal objectives of a criminal gang; or
  3. Furnishes advice or direction in the conduct, financing or management of a criminal gang's affairs with the intent to promote or further the criminal objectives of a criminal gang; or
  4. Hires, engages or uses a minor for any conduct preparatory to or in completion of any offense in this section; or
  5. Commits any offense under this Criminal Code with the intent to promote or further the objectives of a criminal gang.
- D. General Sentencing Ranges. Except as otherwise provided in this section, a person who is convicted of participating in or assisting a criminal gang shall be sentenced to the following:
  1. Imprisonment in jail for a period of not less than six months and not to exceed one year;
  2. A fine of not less than \$500 and not to exceed \$5,000;

3. Restitution; and
  4. Community service, which the court may order performed within the community where the offense was committed.
- E. Sentencing.
1. First Offense. A person who is convicted of participating in or assisting a criminal gang shall be sentenced to six months in jail and not less than 50 hours of community service.
  2. Second Offense. A person who has previously been convicted of participating in or assisting a criminal gang shall be sentenced to
    - a. a minimum six months in jail, provided that at least 30 days shall be served without suspension, probation, parole, or release of any kind except to attend essential medical appointments; and
    - b. not less than 100 hours of community service.
  3. Third or Subsequent Offense. A person who has previously been convicted two or more times of participating in or assisting a criminal gang shall be sentenced to
    - a. one year in jail, provided that three months shall be served without suspension, probation, parole, or release of any kind except to attend essential medical appointments; and
    - b. not less than 150 hours of community service.
  4. For purposes of this Section 10.9.E., the term “conviction” shall include a guilty verdict, or a plea of guilty or no contest to the offense of participating in or assisting a criminal gang.

Section 10.10 Criminal Impersonation

- A. A person commits criminal impersonation by:
1. Assuming a false identity with the intent to defraud or injure another; or
  2. Pretending to be a representative of some person or organization with the intent to defraud; or
  3. Pretending to be, or assuming a false identity of, an employee or a representative of some person or organization with the intent to induce

another person to provide or allow access to property or information. This paragraph does not apply to peace officers in the performance of their duties.

- B. A person found guilty of criminal impersonation, shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one year; or
  - 2. A fine not to exceed one thousand dollars (\$1,000.00); or
  - 3. Both of the above.

#### Section 10.11 Criminal Possession of a Forgery Device

- A. A person commits criminal possession of a forgery device if the person either:
  - 1. Makes or possesses with knowledge of its character and with intent to commit fraud any plate, die, or other device, apparatus, equipment, software, access device, article, material, good, property or supply specifically designed or adapted for use in forging written instruments.
  - 2. Makes or possesses any plate, die, or other device, apparatus, equipment, software, access device, article, material, good, property or supply specifically designed or adapted for use in forging written instruments with intent to use it or to aid or permit another to use it for purposes of forgery.
- B. Subsection A, paragraph 1 does not apply to peace officers or prosecutors in the performance of their duties.

A person found guilty of criminal possession of a forgery device shall be sentenced to any of the following:

- 1. Imprisonment in jail for a period not to exceed one year; or
- 2. A fine not to exceed one thousand dollars (\$1,000.00); or
- 3. Both of the above.

#### Section 10.12 Criminal Simulation

- A. A person commits criminal simulation if, with intent to defraud, such person makes, alters, or presents or offers, whether accepted or not, any object so that it appears to have an antiquity, rarity, source, authorship or value that it does not in fact possess.

- B. A person found guilty of criminal simulation shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one year; or
  - 2. A fine not to exceed one thousand dollars (\$1,000.00); or
  - 3. Both of the above.

Section 10.13 Fraudulent schemes and artifices

- A. A person commits fraudulent schemes and artifices who, pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions. Reliance on the part of any person shall not be a necessary element of the offense.
- B. A person found guilty of fraudulent schemes and artifices shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one year: or
  - 2. A fine, not to exceed five thousand dollars (\$5,000.00); or
  - 3. Both of the above.
- C. As used in this section, "scheme or artifice to defraud" includes a scheme or artifice to deprive a person of the intangible right of honest services.

Section 10.14 Fraudulent schemes and practices-willful concealment

- A. A person commits fraudulent schemes and practices-willful concealment who, in the course of the business of any department, agency, political subdivision, enterprise, or other entity of the Nation, uses a scheme or artifice to defraud or deceive and knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device, or who makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry.
- B. A person found guilty of fraudulent schemes and practices-willful concealment shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one year: or
  - 2. A fine, not to exceed five thousand dollars (\$5,000.00); or
  - 3. Both of the above.

- C. As used in this section, "scheme or artifice to defraud" includes a scheme or artifice to deprive a person of the intangible right of honest services.

Section 10.15 Obtaining a signature by deception

- A. A person commits obtaining a signature by deception if, with intent to defraud, such person obtains the signature of another person to a written instrument by knowingly misrepresenting or omitting any fact material to the instrument or transaction.
- B. A person found guilty of obtaining a signature by deception, shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one year; or
  - 2. A fine not less than twenty-five thousand dollars (\$2,500.00) and not exceeding five thousand dollars (\$5,000.00); or
  - 3. Both of the above.

Section 10.16 Taking or accepting the identity of another

- A. A person commits taking or accepting the identity of another if the person knowingly takes, purchases, manufactures, records, possesses or uses any identifying information of another person or entity, including a real or fictitious person or entity, without the consent of that other person or entity, with the intent to obtain or use that identity for any unlawful purpose or to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense, or with the intent to obtain or continue employment.
- B. A person commits taking or accepting the identity of another if the person, in hiring an employee, knowingly does both of the following:
  - 1. Accepts any personal identifying information of another person from an individual and knows that the individual is not the actual person identified by that information; and
  - 2. Uses that identity information for the purpose of determining whether the individual who presented that identity information has the legal right or authorization under federal law to work in the United States as described and determined under the processes and procedures under 8 United States Code § 1324a.
- C. On the request of a person or entity, a police officer shall take a report if an element of an offense under this section is committed on the Nation, if a result of an offense

- under this section occurs, or if the person or entity whose identity is taken or accepted resides or is located on the Nation. The police officer may provide a copy of the report to any other law enforcement agency that is located in a jurisdiction in which the unlawful taking or accepting the identity of another occurred.
- D. The Nation shall have jurisdiction over the offense of taking or accepting the identity of another if any element of the offense occurs within the exterior boundaries of the Tohono O’odham Nation.
- E. A person found guilty of taking or accepting the identity of another, shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed one year; or
  2. A fine not to exceed one thousand dollars (\$1,000.00); or
  3. Both of the above.

Section 10.17 Trafficking in the identity of another

- A. A person commits trafficking in the identity of another if the person knowingly sells, transfers or transmits any personal identifying information or entity identifying information of another person or entity, including a real or fictitious person or entity, without the consent of the other person or entity for any unlawful purpose or to cause loss to the person or entity whether or not the other person or entity actually suffers any economic loss, or allowing another person to obtain or continue employment.
- B. A person found guilty of trafficking in the identity of another shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed one year; or
  2. A fine not to exceed one thousand dollars (\$1,000.00); or
  3. Both of the above.

Section 10.18 Unlawful use of power of attorney

- A. An agent who holds a principal’s power of attorney and who uses or manages the principal’s assets or property with the intent to unlawfully deprive that person of the asset or property is guilty of unlawful use of power of attorney.
- B. A person found guilty of unlawful use of power of attorney, shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed one year; or
2. A fine not to exceed one thousand dollars (\$1,000.00); or
3. Both of the above.

Section 10.19 Computer tampering

- A. A person who acts without authority or who exceeds his or her authorization of use commits computer tampering by:
1. Accessing, altering, damaging or destroying any computer, computer system or network, or any part of a computer, computer system or network, with the intent to devise or execute any scheme or artifice to defraud or deceive, or to control property or services by means of false or fraudulent pretenses, representations or promises.
  2. Knowingly altering, damaging, deleting or destroying computer programs or data.
  3. Knowingly introducing a computer contaminant into any computer, computer system or network.
  4. Recklessly disrupting or causing the disruption of computer, computer system or network services or denying or causing the denial of computer or network services to any authorized user of a computer, computer system or network.
  5. Recklessly using a computer, computer system or network to engage in a scheme or course of conduct that is directed at another person and that seriously alarms, torments, threatens or terrorizes the person. For the purposes of this paragraph, the conduct must both:
    - (a) Cause a person to suffer substantial emotional distress; and
    - (b) Serve no legitimate purpose.
  6. Preventing a computer user from exiting a site, computer system or network-connected location in order to compel the user's computer to continue communicating with, connecting to or displaying the content of the service, site or system.
  7. Knowingly obtaining any information that is required by law or policy to be kept confidential or any records that are not public records by accessing any computer, computer system or network that is operated by the Nation, a political subdivision or entity of the Nation, or a medical or educational



institution.

8. Knowingly accessing any computer, computer system or network or any computer software, program or data that is contained in a computer, computer system or network.
- B. On conviction of a violation of this section, the court shall order that any computer system or instrument of communication that was owned or used exclusively by the defendant and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed; unless the computer is the property of another who had no knowledge of the offense.
- C. A person found guilty of computer tampering shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed one year: or
  2. A fine, not to exceed five thousand dollars (\$5,000.00); or
  3. Both of the above.

Section 10.20 Unlawful possession of an access device

- A. A person commits unlawful possession of an access device by knowingly possessing, trafficking in, publishing or controlling an access device without the consent of the issuer, owner or authorized user and with the intent to use or distribute that access device. For purposes of this section, the term “access device” means any card, token, code, account number, electronic serial number, mobile or personal identification number, password, encryption key, biometric identifier or other means of account access, including a canceled or revoked access device, that can be used alone or in conjunction with another access device to obtain money, goods, services, computer or network access or any other thing of value or that can be used to initiate a transfer of anything of value.
- B. The possession, trafficking, publishing or control of five or more access devices without the consent of the issuer, owner or authorized user shall give rise to a presumption that the person possessing, trafficking in, publishing or controlling the access devices intended to use or distribute the devices.
- C. A person found guilty of unlawful possession of an access device, shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed one year; or
  2. A fine not to exceed one thousand dollars (\$1,000.00); or

3. Both of the above.

Section 10.21 Unauthorized release of computer security information; exceptions

- A. A person commits unauthorized release of computer security information by communicating, releasing or publishing proprietary or confidential computer security information, security-related measures, algorithms or encryption devices relating to a particular computer, computer system or network without the authorization of its owner or operator.
- B. The following are exempt from this section:
  1. The release by publishers, vendors, users and researchers of warnings or information about security measures or defects in software, hardware or encryption products if the release of the warnings or information is not specific to a particular owner's or operator's computer, computer system or network.
  2. The release of security information among the authorized users of a computer, computer system or network or the notification to the owner or operator of a computer, computer system or network of a perceived security threat.
  3. The release of security information in connection with the research, development and testing of security-related measures, products or devices if the release of the security information is not specific to a particular owner's or operator's computer, computer system or network.
- C. A person found guilty of unauthorized release of computer security information, shall be sentenced to any of the following:
  1. Imprisonment in jail for a period not to exceed one year; or
  2. A fine not to exceed one thousand dollars (\$1,000.00); or
  3. Both of the above.

Section 10.22 Bank Records

- A. The Chief Prosecutor of the Tohono O’odham Nation may issue a subpoena duces tecum to a financial institution to obtain account records or affidavits of dishonor in an investigation or prosecution of any violation of any crime enumerated in the Tohono O’odham Nation Criminal Code.
- B. The subpoena shall identify the subject of the investigation, the account or accounts under investigation and a specific time period that is relevant to the investigation or prosecution.
- C. Account records may include copies of any account agreement between the drawee financial institution and the subject of the investigation, signature cards, monthly statements, correspondence or other records of communication between the financial institution and the subject of the investigation.
- D. An authorized representative of a drawee financial institution may certify bank records that are obtained by subpoena if all of the following apply:
  - 1. The bank records are the regular account records that are used and kept by the drawee financial institution.
  - 2. The bank records are made at or near the time the underlying transactions occur in the ordinary course of business.
  - 3. The bank records are made from information that is transmitted by a person who has firsthand knowledge acquired in the course of the drawee financial institution's regular course of business.
- E. At a trial for a violation of a crime enumerated in the Criminal Code, certified bank records that are obtained by subpoena may be introduced in evidence and constitute prima facie evidence of the facts contained in the records.
- F. At a trial for a violation of a crime enumerated in the Criminal Code, an affidavit of dishonor may be introduced in evidence and constitutes prima facie evidence of either:
  - 1. The refusal of a drawee financial institution to pay a check because the drawer had no account or a closed account with the drawee at the time a check was issued or passed.
  - 2. The refusal of a drawee financial institution to pay a check because of insufficiency of the drawer's funds at the time a check was issued or passed.

- G. A certification of bank records or an affidavit of dishonor that is acknowledged by any notary public or other officer who is authorized by law to take acknowledgments shall be received in evidence without further proof of its authenticity.

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## CHAPTER 11

### LIVESTOCK OFFENSES

#### Section 11.1 Unlawful Transporting of Livestock

- A. A person commits the offense of unlawful transporting of livestock if he or she carries, transports or conveys livestock beyond the boundaries of the Tohono O'odham Nation without first having the livestock inspected and certified by a certificate of inspection.
- B. A person found guilty of unlawful transporting of livestock shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.
- C. The Livestock Inspector shall have the right to inspect livestock for health, marks and brands at leading stations, exits from the nation and places where livestock are gathered. Upon being advised that livestock is being moved out of the nation without inspection, the Livestock Inspector shall have the general powers of arrest pursuant to Section 9 (G) of Article IX of the Livestock Ordinance.

#### Section 11.2 Unlawful Alteration of Certificate of Inspection

- A. A person commits the offense of unlawful alteration of certificate of inspection if he or she alters a certificate of inspection with the intent that the altered certificate falsely appear as the authentic certificate of inspection by an inspector or other agent of the Livestock Board.
- B. A person found guilty of unlawful alteration of certificate of inspection shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  - 2. A fine not to exceed one thousand dollars (\$1000); or
  - 3. Both of the above.

Section 11.3 Unlawful Substitution of Animals

- A. A person commits the offense of unlawful substitution of animals if he or she removes or adds another animal to a lot of livestock for which a certificate of inspection has already been issued with the intent to avoid having the animal inspected.
- B. A person found guilty of unlawful substitution of animals shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  - 2. A fine not to exceed one thousand dollars (\$1000); or
  - 3. Both of the above.

Section 11.4 Unlawful Altering of a Brand

- A. A person commits the offense of unlawful altering of a brand if he or she alters, defaces or obliterates any brand or mark upon any animal with the intent to convert the animal to his or her own use. Provided, however, that this section will not apply to the traditional or customary practice of changing or altering a mistake in branding.
- B. A person found guilty of unlawful altering of a brand shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  - 2. A fine not to exceed one thousand dollars (\$1000); or
  - 3. Both of the above.

Section 11.5 Unlawful Altering of a Recorded Brand or Mark

- A. A person commits the offense of unlawful altering of a recorded brand or mark if he or she changes, disfigures or extends a recorded brand or mark, or by other additional marks, figures or characters, turns a recorded brand into some other brand.
- B. A person found guilty of unlawful altering of a recorded brand or mark shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  2. A fine not to exceed one thousand dollars (\$1000); or
  3. Both of the above.
- C. Provided, however, that a person may change or alter a recorded brand or mark if he or she has bought the livestock and intends to brand or mark the livestock with his or her brand or mark. The customary or traditional practice of changing or altering a brand shall be used or as provided for by the particular District.

Section 11.6 Unlawful Sale of Livestock

- A. A person commits the offense of unlawful sale of livestock if he or she slaughters, sells, or offers for sale or trade livestock for which he or she has no bill of sale, evidence of transfer or power of attorney from the owner authorizing the sale, or no court order authorizing the sale, slaughter or offer for sale or trade.
- B. A person found guilty of unlawful sale of livestock shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  2. A fine not to exceed one thousand dollars (\$1000); or
  3. Both of the above.

Section 11.7 Unlawful Purchase of Livestock

- A. A person commits the offense of unlawful purchase of livestock if he or she knowingly buys from, or slaughters livestock for a person who does not have the required brand, bill of sale or power of attorney for such livestock.
- B. A person found guilty of unlawful purchase of livestock shall be sentenced to any of the following:
1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  2. A fine not to exceed one thousand dollars (\$1000); or



3. Both of the above.

C. Provided, however, that the evidence or transfer of ownership between the parties does not have to be written if the person charged with the offense produces a witness who will verify that the transfer or sale did take place, or produce other credible evidence.

Section 11.8 Allowing Domesticated Animals to Roam or Feed

A. A person commits the offense of allowing domestic animals to roam or feed upon the range lands of the nation if he or she allows domesticated animals to roam or feed upon the range lands of the nation.

B. A person found guilty of allowing domesticated animals to feed shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed sixty (60) days; or

2. A fine not to exceed three hundred dollars (\$300); or

3. Both of the above.

C. This section shall not apply to any student raising sheep or goats in order to fulfill the requirements of a school program such as the Future Farmers of America (FFA), 4-H Clubs, or any other school or university sanctioned program using sheep or goats as part of their projects.

D. For purposes of this section, the term "domestic animal" includes sheep, goats or swine.

Section 11.9 Use of Unrecorded Brand

A. A person commits the offense of use of an unrecorded brand if he or she uses an unrecorded brand to brand range livestock.

B. A person found guilty of use of an unrecorded brand shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed sixty (60) days; or

2. A fine not to exceed three hundred dollars (\$300); or

3. Both of the above.

- C. Provided, however, that the Court may defer imposition of the sentence if the offender records the brand within a time set by the Court.

Section 11.10 Unlawful Branding (Rustling)

- A. A person commits the offense of unlawful branding if he or she brands or marks an animal with a brand or mark other than the recorded brand or mark of the owner with the intent to steal the animal.
- B. A person found guilty of unlawful branding shall be sentenced to the following:
  - 1. Imprisonment in jail for not less than ninety (90) days nor more than three hundred sixty (360) days; and
  - 2. A fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1000).
- C. Upon the trial of a person charged with this offense the possession under claim of ownership without an acknowledged (written or witnessed) sale or transfer is prima facie evidence against the accused that the possession is unlawful.

Section 11.11 Unlawful Handling of Livestock

- A. A person commits the offense of unlawful handling of livestock if he or she gathers, drives or otherwise handles livestock bearing a brand without the authorization from the owner of the brand on the livestock done in accordance with custom or traditional practice recognized by individual districts.
- B. A person found guilty of unlawful handling of livestock shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.
- C. Upon trial of a person charged with this offense the possession under claim of ownership without an acknowledged (written or witnessed) sale of transfer is prima facie evidence against the accused that the possession is unlawful.

Section 11.12 Allowing Livestock to Roam in Restricted Area

- A. A person commits the offense of allowing livestock to roam if he or she allows livestock owned by such person or in his or her control to roam at large or wander through populated or residential areas causing damage to property and the District Council has designated such areas as restricted to livestock.
- B. A person found guilty of allowing livestock to roam in a restricted area shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

Section 11.13 Failure to Brand Livestock

- A. A person commits the offense of failure to brand livestock if he or she fails or refuses to brand or mark livestock of which he or she is the legal owner except that this section will not apply to livestock not suitable for branding, such as milking cows, horses, etc. Livestock exempt from this section shall be required to be identified by markings or other appropriate identification.
- B. A person found guilty of failure to brand livestock shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.
- C. Provided, however, that the Court may defer imposition of the sentence upon the condition that the offender brand or mark the livestock within a time set by the Court.

Section 11.14 Unlawful Possession of Livestock

- A. A person commits the offense of unlawful possession of livestock if he or she possesses livestock without any evidence of claim of ownership or transfer.
- B. Possession of livestock without an acknowledged (written or witnessed) sale or transfer is a prima facie evidence against the accused that the possession is unlawful.

- C. A person found guilty of unlawful possession shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.
  - 4. Impoundment or seizure of the livestock pursuant to Article X of the Livestock Ordinance.

Section 11.15 Harboring Stray Livestock

- A. A person commits the offense of harboring stray livestock if he or she allows or keeps stray livestock penned in a community or individual pasture without notifying the owner or Livestock Inspector within ten (10) days.
- B. For purposes of this section, a person allowing or keeping stray livestock must give the owner of such livestock oral notice within ten (10) days. The owner shall have ten (10) days to remove the stray livestock. Any livestock not removed within the time allowed without good cause shall be turned over to the Livestock Inspector to be disposed of in accordance with the provisions of Article X of the Livestock Ordinance.
- C. Failure to give notice of the stray livestock shall constitute prima facie evidence of an intent to harbor or keep the livestock permanently and the accused shall be charged with Theft in accordance with Chapter 5 Section 5.7 of this Code.
- D. A person found guilty of harboring stray livestock shall be sentenced to any of the following (unless the person is charged with theft under subsection C):
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred (\$300) dollars; or
  - 3. Both of the above.

Sections 11.16 - 11.20      RESERVED

**CHAPTER 12 - OFFENSES INVOLVING LIQUOR**

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## CHAPTER 12

### OFFENSES INVOLVING LIQUOR

#### Section 12.1 Possession of Liquor for Sale (Bootlegging)

- A. A person commits the offense of possession of liquor for sale if he or she possesses malt, beer, vinous or spirituous liquor which produces an alcoholic intoxication with the intent to sell the same.
- B. For purposes of this section, intent to sell may be inferred by the trier of fact if the accused possessed more than the following:
  - 1. 1152 ounces of tall cans, or quarts of beer or other malt liquor; or
  - 2. 128 ounces of spirituous liquor or distilled liquor; or
  - 3. 348 ounces of vinous liquor or wine.

Provided, however, that the presence of this inference may be rebutted by the accused by presenting contradicting evidence and the inference shall not relieve the prosecution of its burden to prove all elements of the offense beyond a reasonable doubt.

- C. Intent to sell shall not be inferred where the person charged possesses more than the specified amount of vinous liquor but where such liquor is the traditionally brewed Saguaro cactus wine used in the traditional wine ceremony of the O'odham people.
- D. A person found guilty of possession of liquor for sale shall be sentenced to the following:
  - 1. Imprisonment in jail for not less than ninety (90) days nor more than three hundred sixty (360) days; and
  - 2. A fine not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5000).

Provided, however, that if any person found guilty of this offense sold liquor to a person under the age of nineteen (19) years the maximum sentence specified shall be imposed in its entirety by the Court.

#### Section 12.2 Public Intoxication

- A. A person commits the offense of public intoxication if he or she appears in any public place, street, alley, or in a private place without the consent of the owner, and is under the influence of, or intoxicated by alcohol, toxic vapors, or any drugs, whether legal or illegal, to the degree that he or she may endanger himself or herself, or another person or property.
- B. A person found guilty of public intoxication shall be sentenced to the following:
  - 1. Imprisonment in jail for a period not to exceed twenty (20) days; or
  - 2. A fine not to exceed fifty dollars (\$50); or
  - 3. Both of the above.
- C. The Court may, in its discretion or at the request of another, commit a person convicted of Public Intoxication, if, he or she is a repeater, to an alcoholic rehabilitation unit for residential treatment, or require the offender to participate in an out-patient counseling program designed and supervised by an alcohol or drug rehabilitation program as a condition of probation or in lieu of a jail sentence as required in paragraph B of this Section.

Section 12.3 Under Age Possession of Liquor

- A. A person commits the offense of under age possession of liquor if he or she is under the age of nineteen (19) years and buys, receives, possesses or consumes, or attempts to buy, receive, possess or consume any malt, beer, vinous or spirituous liquor.
- B. A person found guilty of under age possession of liquor shall be sentenced to the following:
  - 1. Confinement in an appropriate juvenile detention facility for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

Section 12.4 Unlawful Possession of Liquor

- A. A person commits the offense of unlawful possession of liquor if he or she possesses, buys, receives, or consumes, or attempts to buy, receive or consume any malt, beer, vinous or spirituous liquor, which produces an

alcohol intoxication within any District of the Tohono O'odham Nation where such liquor is unlawful.

- B. Traditionally brewed Saguaro cactus wine used in the traditional wine ceremony of the O'odham people shall be exempt from application of this Section.
- C. A person found guilty of unlawful possession of liquor shall be sentenced to the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300) or.
  - 3. Both of the above.

Section 12.5 Unlawful Transporting of Liquor

- A. A person commits the offense of unlawful transporting of liquor if he or she transports, carries or conveys in a vehicle any malt, beer, vinous or spirituous liquor within any District of the Tohono O'odham Nation where liquor is unlawful.
- B. A person found guilty of unlawful transporting of liquor shall be sentenced to the following:
  - 1. Imprisonment in jail for a period not less than ninety (90) days nor more than three hundred sixty (360) days; and
  - 2. A fine not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000).

Section 12.6 - 12.10 RESERVED



**CHAPTER 13 - OFFENSES INVOLVING DRUGS OR CONTROLLED  
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## CHAPTER 13

### OFFENSES INVOLVING DRUGS OR CONTROLLED SUBSTANCES

#### Section 13.1 Unlawful Possession of Marijuana (less than 1½ oz.)

- A. A person commits the offense of unlawful possession of marijuana if he or she possesses not more than 1½ ounces of any substance or mixture containing marijuana.
- B. A person found guilty of unlawful possession of less than 1½ ounces of marijuana shall be sentenced to the following:
  - 1. Imprisonment in jail for sixty (60) days; and
  - 2. A fine of one thousand five hundred dollars (\$1500).

#### Section 13.2 Unlawful Possession of Marijuana (more than 1½ ounces but less than 16 ounces)

- A. A person commits the offense of unlawful possession of marijuana of more than 1½ ounces but less than 16 ounces if he or she possesses more than 1½ ounces but less than 16 ounces of any substance or mixture containing marijuana.
- B. A person found guilty of unlawful possession of more than 1½ ounces but less than 16 ounces of marijuana shall be sentenced to the following:
  - 1. Imprisonment in jail for ninety (90) days; and
  - 2. A fine of two thousand five hundred dollars (\$2500).

#### Section 13.3 Unlawful Possession of Marijuana with Intent to Deliver for Sale

- A. A person commits the offense of unlawful possession of marijuana with intent to deliver for sale if he or she possesses more than 16 ounces of any substance or mixture containing marijuana.
- B. A person found guilty of possession of marijuana with the intent to deliver for sale shall be sentenced to the following:
  - 1. Imprisonment in jail for not less than one hundred eighty (180) days nor more than three hundred (360) days; and
  - 2. A fine of five thousand dollars (\$5000).

Section 13.4 Unlawful Production or Manufacture of Marijuana

- A. A person commits the offense of unlawful production or manufacture of marijuana if he or she plants, cultivates, tends or harvests marijuana, or if he or she produces, prepares or processes marijuana by extraction from substances of natural origin or by means of chemical synthesis or by a combination of extraction and chemical synthesis.
- B. A person found guilty of unlawful production or manufacture of marijuana shall be sentenced to the following:
  - 1. Imprisonment in jail for not less than one hundred eighty (180) days nor more than three hundred sixty (360) days; and
  - 2. A fine of not less than one thousand dollars (\$1000) nor more than five thousand dollars (\$5000).

Section 13.5 Unlawful Delivery to a Minor

- A. A person commits the offense of unlawful delivery to a minor if he or she delivers marijuana to a person under the age of eighteen (18) years.
- B. A person found guilty of unlawful delivery to a minor shall be sentenced to the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; or
  - 2. A fine of five thousand dollars (\$5000).
- C. Provided, however, that if a person has previously been found guilty of this offense, he or she shall be sentenced to imprisonment in jail for three hundred sixty days (360) and a fine of five thousand dollars (\$5000) and shall not be eligible for suspension or commutation of sentence, probation, pardon or parole or release on any other basis.

Section 13.6 Unlawful Delivery or Furnishing of Narcotic Drug or Controlled Substances

- A. A person commits the offense of unlawful delivery or furnishing of narcotic drugs or controlled substances if he or she delivers or furnishes any of the following:
  - 1. Marijuana or any part of the plant Cannabis sativa, or any substance containing it; or

2. Opium, morphine, codeine, hashish or heroin; or
  3. Any drug or other substance identified or defined as a "Controlled Substance" under the provision of Chapter 13, Title 21, United States Code, as amended at the time of the offense.
- B. This section shall not apply to the delivery or furnishing of any substance for medical purposes under the prescription or supervision of a person licensed by the United States or one of the States to administer, prescribe, control or dispense such substance.
- C. A person found guilty of unlawful delivery or furnishing of narcotic drugs or controlled substances shall be sentenced to the following:
1. Imprisonment in jail for three hundred sixty (360) days; and
  2. A fine of five thousand dollars (\$5000).

Section 13.7 Unlawful Possession or Sale of Narcotic Drug, Controlled Substance or Prescription-only Drug

- A. A person commits the offense of unlawful possession or sale of a narcotic drug, controlled substance or prescription-only drug if he or she possesses or possesses for sale any of the following:
1. Opium, morphine, codeine, hashish or heroin; or
  2. Any drug or other substance identified or defined as a "Controlled Substance" under the provision of Chapter 13, Title 21, United States Code, as amended at the time of the offense; or
  3. Any prescription-only drug, other than the opiates and controlled substances referred to in subsection 1 and 2 above, which because of its toxicity or potential harmful effect must be used under supervision of a physician, or, which is by federal law limited to use under the supervision of a physician, or, which is potentially harmful and by federal law requires labeling to state: "caution, federal law prohibits dispensing without prescription."
- B. This section shall not apply to the possession or sale of any drug or substance for medical purposes under the prescription or supervision of a person licensed by the United States or one of the States to administer, prescribe, control or dispense such substance.

- C. A person found guilty of unlawful possession or sale of a narcotic drug, controlled substance or prescription-only drug shall be sentenced to any of the following:
  - 1. Imprisonment in jail for three hundred sixty (360) days; or
  - 2. A fine of five thousand dollars (\$5000) or.
  - 3. Both of the above.

Section 13.8 Inhaling Toxic Vapors

- A. A person commits the offense of inhaling toxic vapors if he or she knowingly inhales or sniffs the vapors or fumes of paint, gasoline, glue, or any other substance producing intoxicating fumes or vapors for the purpose of becoming intoxicated or subject himself or herself to the influence of them.
- B. A person found guilty of inhaling toxic vapors shall be sentenced to the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300).or
  - 3. Both of the above.
- C. The Court may, in its discretion or at the request of another, commit a person convicted of inhaling toxic vapors, if he or she is a repeater, to a drug rehabilitation unit for residential treatment, or require the offender to participate in an out-patient counseling program, designed and supervised by a drug rehabilitation program as a condition of probation or in lieu of a jail sentence as required in paragraph B of this Section.

Section 13.9 Unlawful Delivery or Furnishing of a Substance for Purposes of Inhaling Vapors or Fumes

- A. A person commits the offense of unlawful delivery or furnishing of a substance for purposes of inhaling vapors or fumes if he or she knowingly delivers a substance described in Section 13.7 of this Code to a person under the age of eighteen (18) years for the purpose of inhaling or sniffing the intoxicating fumes or vapors produced from such substance.
- B. A person found guilty of unlawful delivery or furnishing of a substance for purposes of inhaling vapors or fumes shall be sentenced to the following:

1. Imprisonment in jail for a period of one hundred eighty (180) days; and
2. A fine not to exceed five hundred dollars (\$500).

Section 13.10 Furnishing Tobacco to a Minor

- A. A person commits the offense of furnishing tobacco to a minor if he or she gives or furnishes cigars, cigarettes, or cigarette papers, smoking or chewing tobacco to any person under the age of eighteen (18) years.
- B. A person found guilty of furnishing tobacco to a minor shall be sentenced to the following:
  1. Imprisonment in jail for a period not to exceed twenty (20) days; or
  2. A fine not to exceed fifty dollars (\$50); or
  3. Both of the above.

Section 13.11 RESERVED

Section 13.12 Driving Under the Influence<sup>1</sup>

- (A) A person commits the offense of driving under the influence if he or she drives or is in actual physical control of a vehicle anywhere within the Tohono O'odham Nation, and
  - (1) is under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if the person is mentally or physically impaired to the slightest degree; or
  - (2) has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.
- (B) Sentencing Ranges. Except as otherwise provided in this section, person found guilty of driving under the influence shall be sentenced to the following:

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<sup>1</sup> Effective November 21, 2005 pursuant to Resolution No. 05-664

- (1) Imprisonment in jail for a period of not less than 90 days and not to exceed one year; and
  - (2) A fine of not less than \$250 and not to exceed \$5,000.
- (C) First Offense. A person who is convicted of driving under the influence shall receive a minimum jail sentence of 90 days and a minimum fine of \$250, provided that at least five days of the jail sentence shall be served without suspension, probation, parole, or release of any kind other than work release.
- (D) Second Offense. Any person who is previously convicted of driving under the influence or the equivalent offense in any jurisdiction within the five years immediately prior to the latest violation of this section shall receive a minimum jail sentence of 180 days and a minimum fine of \$500, provided that at least 180 days of the jail sentence shall be served without suspension, probation, parole, or release of any kind other than work release.
- (E) Third or Subsequent Offense. Any person who is convicted two or more times of driving under the influence or the equivalent offense in any jurisdiction within the five years immediately prior to the latest violation of this Section shall receive a jail sentence of one year and a minimum fine of \$1000, provided that the one year jail sentence shall be served without suspension, probation, parole, or release of any kind other than work release.
- (F) Notwithstanding any other law, if a law enforcement officer has probable cause to believe that a person has violated this section and a sample of blood, urine or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis shall be provided to a law enforcement officer if requested for law enforcement purposes. A person who collects blood, urine or any other bodily substance under this section or any hospital, laboratory or clinic employing or using the services of the person does not incur any civil liability as a result of this activity if requested by a law enforcement officer to collect blood, urine or other bodily substances unless the person, while performing the activity, acts with gross negligence.
- (G) All health agencies of the United States government on the Tohono O'odham Nation shall provide services for a blood draw for any person suspected of violating section (A) above and shall provide said services without the need of a court order.
- (H) Traffic accidents; implied consent; tests
- (1) A person who operates a motor vehicle within the Tohono O'odham Nation gives consent to a test or tests of the person's blood, breath,

urine or other bodily substance for the purposes of determining alcohol concentration or drug content if:

- (a) the person is involved in a traffic accident resulting in physical injury or property damage and a law enforcement officer has probable cause to believe that the person caused the accident; or
  - (b) a law enforcement officer has probable cause to believe that the person has committed a violation of this section.
- (2) The test or tests chosen by the law enforcement agency shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person:
- (a) was involved in a traffic accident resulting in physical injury or property damage and the law enforcement officer has probable cause to believe that the person caused the accident; or
  - (b) committed a violation of this section.
- (3) After a determination is made that a person was involved in a traffic accident resulting in physical injury or property damage and the officer has probable cause to believe that the person caused the accident or that the person committed a violation of this section, the person may be requested to submit to and successfully complete any test or test prescribed by subsection (H)(1) of this section. Failure to expressly agree to the test or successfully complete the test shall be deemed a refusal and may result in sanctions being imposed pursuant to Chapter 2, Section 2.23, "Refusal to Provide Chemical Evidence."
- (4) A person who is dead, unconscious or otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by subsection (H)(1) of this section and the test or tests shall be administered.

Section 13.13 [RESERVED]



**CHAPTER 14 - OFFENSES INVOLVING WEAPONS OR EXPLOSIVES**

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## CHAPTER 14

### OFFENSES INVOLVING WEAPONS OR EXPLOSIVES

#### Section 14.1 Misuse of a Weapon and/or a Dangerous Instrument

- A. A person commits the offense of misuse of a weapon and/or a dangerous instrument if he or she intentionally or knowingly:
1. carries a prohibited weapon or dangerous instrument concealed on or about his or her person; or
  2. carries a prohibited weapon concealed in or on a means of transportation, or within immediate reach of any person; or
  3. carries or possesses a prohibited weapon or dangerous instrument with the intent to use such weapon or dangerous instrument in the commission of a crime; or
  4. carries or possesses a prohibited weapon or dangerous instrument and is a prohibited person as defined in this section; or
  5. manufactures, transports, sells or transfers a prohibited weapon; or
  6. discharges a firearm within one-fourth (1/4) mile of an occupied residence.
  7. defaces or alters the serial number of a firearm or possesses a firearm whose serial number has been defaced or altered with the knowledge that the firearm serial number was defaced or altered.
  8. enters any public gathering or attends any public event and carries a prohibited weapon or dangerous instrument on his or her person.
- B. For purposes of this section “prohibited weapon” means any explosive, bomb, grenade, rocket, mine or device designed to inflict serious bodily injury or death, finger rings or guards, switchblade or gravity knife or any knife with a blade over three and one-half (3½) inches in length, firearm capable of shooting more than one shot automatically without manual reloading, or a rifle with a barrel length of less than 16 inches, or a shot gun with a barrel length of less than 18 inches, or any firearm which has been modified and has an overall length of less than 26 inches.
- C. For purposes of this section "prohibited person" means any person:

1. whose mental or physical state is impaired as a result of introduction of any intoxicating substance into the body; or
2. whose mental capacity is impaired in the opinion of a physician and is a danger to self or others; or
3. who has been convicted of a felony involving violence or possession or use of a prohibited weapon or dangerous instrument; or
4. who is under the age of fifteen (15) years, unless accompanied and supervised by a person eighteen (18) years of age.

D. For purposes of this section a weapon is not concealed if:

1. it is carried in a belt holster, wholly or partially visible, or is carried in a case designed for carrying weapons; or
2. the weapon is located in a closed trunk, luggage or locked glove compartment of a motor vehicle;
3. the person carrying the weapon is authorized to carry the weapon.

E. A person found guilty of misuse of a weapon and/or a dangerous instrument shall be sentenced to the following:

1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
2. A fine not to exceed one thousand dollars (\$1000); or
3. Both of the above.

#### Section 14.2 Unlawful Possession of Explosives

A. A person commits the offense of unlawful possession of explosives if he or she intentionally or knowingly:

1. keeps or stores more than 50 pounds of explosives in or near any building or premises or within a distance of 500 feet of a residence; or
2. keeps or stores percussion caps or any blasting powder within 200 feet of a building or premises; or

3. sells, transports or has in his or her possession dangerous explosives without having plainly marked its name, its explosive character and the date of manufacture.
- B. Subsection A shall not apply to mines or authorized manufacturers or dealers when the explosives are possessed, manufactured, transported or transferred solely for their use in the regular and lawful course of business.
- C. A person found guilty of unlawful possession of explosives shall be sentenced to the following:
1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  2. A fine not to exceed one thousand dollars (\$1000); or
  3. Both of the above.

Section 14.3 Unlawful Depositing or Exploding of Explosives

- A. A person commits the offense of unlawful depositing or exploding of explosives if he or she deposits, explodes or attempts to explode any explosive in or near any building, vehicle or place where people frequently assemble or pass.
- B. A person found guilty of unlawful depositing or exploding of explosives shall be sentenced to the following:
1. Imprisonment in jail for a period not to exceed three hundred sixty (360) days; or
  2. A fine not to exceed one thousand dollars (\$1000); or
  3. Both of the above.

Section 14.4 Forfeiture of Weapons and Explosives

Upon the conviction of any person for violation of any law of the Tohono O'odham Nation in which a prohibited weapon, dangerous instrument or explosive was used, displayed or unlawfully possessed, the Court may order the article forfeited to the nation in accordance with Chapter 1, Section 1.17 governing forfeiture.

Section 14.5 - 14.10 RESERVED

**CHAPTER 15 - GAMBLING AND RELATED OFFENSES**

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## CHAPTER 15

### GAMBLING AND RELATED OFFENSES

#### Section 15.1 Conducting of Game of Chance

- A. A person commits the offense of conducting of game of chance if he or she deals, carries on, opens or causes to be opened or conducts any game of chance, including but not limited to roulette, 21, poker, stud poker, draw poker, or any similar game played with cards, dice or other devices.
- B. A person found guilty of conducting a game of chance shall be sentenced to the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

#### Section 15.2 Unlawful Gambling

- A. A person commits the offense of unlawful gambling if he or she participates in any game of chance, raffle, or lottery to win money or other valuable consideration.
- B. A person found guilty of unlawful gambling shall be sentenced to the following:
  - 1. Imprisonment in jail for a period not to exceed twenty (20) days; or
  - 2. A fine not to exceed fifty dollars (\$50); or
  - 3. Both of the above.

#### Section 15.3 Unlawful Lottery or Raffle

- A. A person commits the offense of unlawful lottery or raffle if he or she keeps, maintains, employs or carries on a lottery or raffle.
- B. Bingo games, raffles or lotteries conducted or operated by a nonprofit organization in accordance with the provisions of Section 5 and 7 of Ordinance 12-82, Bingo Ordinance, or Bingo games conducted or operated by the nation in accordance with Section 6 and 7 of Ordinance 12-82, Bingo Ordinance shall be exempt from application of this section.

- C. A person found guilty of unlawful lottery or raffle shall be sentenced to the following:
1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  2. A fine to exceed three hundred dollars (\$300); or
  3. Both of the above.

Section 15.4 - 15.10 RESERVED

**CHAPTER 16 - OFFENSES INVOLVING PUBLIC UTILITIES**

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## CHAPTER 16

### OFFENSES INVOLVING PUBLIC UTILITIES

#### Section 16.1 Destruction of Telephone Apparatus

- A. A person commits the offense of destruction of a telephone apparatus if he or she takes down, injures or severs a telephone wire, or any part thereof, or a pole apparatus connected or used in connection with the wire.
- B. A person found guilty of destruction of a telephone apparatus shall be sentenced to the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Restitution of an amount which will compensate for any damage caused; or
  - 4. Any combination of the above.

#### Section 16.2 Preventative Use of Telephone in Emergency

- A. A person commits the offense of preventing the use of a telephone in an emergency if he or she willfully refuses to yield or surrender the use of a party line to another for the purpose of allowing such other person to report an emergency.
- B. A person found guilty of preventing the use of a telephone in an emergency shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

#### Section 16.3 Obstructing a Water Line

- A. A person commits the offense of obstructing a water line if he or she breaks, digs up, injures or obstructs a main pipe for water, or he or she willfully opens or draws water from a stopcock or faucet by which water is controlled, after being notified that it has been closed for a specific purpose.

- B. A person found guilty of obstructing a water line shall be sentenced to the following:
  - 1. Imprisonment in jail for a period not to exceed sixty (60) days; or
  - 2. A fine not to exceed three hundred dollars (\$300); or
  - 3. Both of the above.

Section 16.4 Interference with Transmission of Electrical Current

- A. A person commits the offense of interference with a transmission of electrical current if he or she takes down, removes, injures or obstructs a line, wire, cable, conduit or insulator created or constructed for transmission of electrical current.
- B. A person found guilty of interference with a transmission of electrical current shall be sentenced to any of the following:
  - 1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  - 2. A fine not to exceed five hundred dollars (\$500); or
  - 3. Both of the above.

Section 16.5 Tapping Water, Gas or Electrical Line

- A. A person commits the offense of tapping a water, gas or electric line if he or she does any of the following:
  - 1. connects a pipe or other instrument with a main service line for water for the purpose of taking water from the main service line without knowledge of the owner and with intent to avoid payment therefore; or
  - 2. connects with a main service line for electricity in such a way as to obtain electricity without it passing through the meter for registering and with the intent to avoid payment therefore; or
  - 3. connects with a pipe or other instrument with a main service line for gas in such a way as to supply gas to a burner or stove without passing it through the meter for measuring and with the intent to avoid payment therefore.

- B. A person found guilty of tapping water, gas or electric line shall be sentenced to the following:
1. Imprisonment in jail for a period not to exceed one hundred eighty (180) days; or
  2. A fine not to exceed five hundred dollars (\$500); or
  3. Both of the above.

Section 16.6 - 16.10 RESERVED