

# OMAHA TRIBAL CODE (2013)

## TITLE 5. CRIMES

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*Source:* Omaha Tribal Council Resolution No. 83-50 (3-18-83).

### CHAPTER 1. GENERAL PROVISIONS

#### A. Introductory Provisions

##### SECTION 5-1-1. Name and Citation.

This Title shall be known and may be cited as the "Criminal Code," and references in this part to "Code" shall refer to this Code unless another is clearly indicated.

##### SECTION 5-1-2. Effective Date.

This Code shall apply to all offenses as herein defined occurring on or before its effective date. If all or, any part of any offense was committed prior to such date, the offense shall be governed by the prior existing law, except that defenses enumerated herein shall apply to all offenses tried after the effective date.

##### SECTION 5-1-3. Purpose and Construction.

(a) The provisions of this Code shall be construed in accordance with these general principles and purposes:

- (1) To forbid and prevent the commission of offenses and give fair warning of conduct that is declared to be an offense;
- (2) To define adequately the conduct and mental state that constitute each offense and safeguard conduct that is without fault from condemnation;
- (3) To prescribe penalties which are proportionate to the seriousness of the offense and that permit recognition of differing rehabilitative needs of individual offenders while at the same time recognizing the need of society to protect itself, when necessary, from offenders;
- (4) To prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons.

(b) This Code shall be strictly construed to promote fairness and justice and accomplish the general purposes set forth herein.

##### SECTION 5-1-4. Exclusiveness of Offenses.

No conduct constitutes an offense unless so declared by this Code, or by any other Tribal resolution or ordinance or Code provision or by Federal law.

##### SECTION 5-1-5. Civil Liability Unaffected.

This Code does not change, suspend or otherwise affect any civil or other liability, or other than criminal liability as defined herein, which would otherwise arise from any conduct defined herein.

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## SECTION 5-1-6. Severability.

If any provision of this Code or the application of any provision of this Code to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby.

## B. Multiple Prosecutions and Double Jeopardy

### SECTION 5-1-7. Prosecution for Multiple Offenses.

When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense, if:

- (a) one offense is a lesser included offense of another offense where conviction was sought for both;
- (b) one offense consists only of a conspiracy, solicitation, or an attempt to commit the other; or
- (c) inconsistent findings of fact are required to establish the offenses; or
- (d) the offenses only differ in that one is defined to prohibit a specific kind of conduct and the other prohibits the same conduct generally; or
- (e) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the Code provides that specific periods of such conduct constitute separate offenses.

### SECTION 5-1-8. Limitation.

Except as provided in Section 5-1-7, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses are known to the prosecuting officer or to the Tribal police at the time of the commencement of the first trial and are within the jurisdiction of the Tribe.

### SECTION 5-1-9. Separate Trials.

Upon application of any party and if justice so requires, the Court may order that separate trials be held for two or more offenses based on the same conduct or arising from the same criminal episode.

### SECTION 5-1-10. Lesser Included Offenses.

(a) A defendant may be convicted of a lesser included offense different from the offense charged in a complaint without having been specifically charged with such included offense. An offense is so included when:

- (1) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or
- (2) it consists of an attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or

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(3) it differs from the offense charged only, in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(b) The Court must charge the jury with respect to a lesser included offense if so requested by the defendant if there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the lesser included offense.

### SECTION 5-1-11. Double jeopardy.

(a) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode or the same facts as the original prosecution, a subsequent prosecution for the same or a different offense arising out of such episode or facts is barred if:

(1) the subsequent prosecution is for an offense that was or should have been tried in the former prosecution, unless such subsequent trial has been ordered as a separate trial by the judge; and

(2) the former prosecution:

(A) resulted in acquittal; or

(B) resulted in conviction; or

(C) was improperly terminated; or

(D) was terminated by a final order of judgment for the defendant that has not been reversed, set aside or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

(b) There is an acquittal if the prosecution results in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.

(c) There is a conviction if the prosecution resulted in a judgment of guilty that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the Court.

(d) There is an improper termination of prosecution if the termination takes place before the verdict, if for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn in, or, if the matter was to be tried without a jury, after the first witness is sworn. However, termination of prosecution is not improper if:

(1) the defendant consents to the termination; or

(2) the defendant waives his right to object to the termination; or

(3) the Court finds and states for the record that the termination is necessary because:

(A) it is physically impossible to proceed with the trial in conformity to the law; or

(B) there is a legal defect in the proceeding not attributable to the prosecution that would make any judgment entered upon a verdict reversible as a matter of law; or

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(C) prejudicial conduct in or out of the courtroom not attributable to the prosecution makes it impossible to proceed with the trial without injustice to the defendant or to the prosecution; or

(D) the jury is unable to agree on the verdict; or

(E) a false statement of a juror on voir dire prevents a fair trial.

(e) A subsequent prosecution of an offense is not barred if the former prosecution resulted in a judgment of guilt held invalid in a subsequent proceeding on appeal, on writ of habeas corpus, coram nobis or similar collateral attack.

(f) Prosecution for an offense under this Code is not barred by virtue of the fact that the defendant could be or has been charged or convicted under 18 U.S.C. § 1153 (Major Crimes Act) or other federal law.

### C. Burden of Proof.

#### SECTION 5-1-12. Burden and Presumption of Innocence.

(a) A defendant in a criminal proceeding is presumed to be innocent until each and every element of the offense against him is proved beyond a reasonable doubt. In the absence of such proof the defendant shall be acquitted.

(b) By "element of the offense" it is meant:

(1) the conduct, attendant circumstances or results of conduct included in the definition of the offense; plus

(2) the culpable mental state required (if any); but

(3) jurisdiction is not an element of the offense nor is the statute of limitations or any other matter similarly unconnected with the harm or evil, incident or conduct, sought to be prevented by the offense nor is the existence of justification or excuse as defenses to the offense, and such may be established by a preponderance of the evidence.

#### SECTION 5-1-13. Negating Defenses.

The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either side, or unless the defense is an affirmative defense, and the defendant has presented evidence of such.

#### SECTION 5-1-14. Presumptions of Fact.

An evidentiary presumption established by this Code has the following consequences:

(a) When the evidence of facts that support the presumption exist, the issue of the existence of the presumed fact must be submitted to the jury unless the Court is satisfied that the evidence as a whole clearly negates the presumed fact.

(b) In submitting the issue of the presumed fact to the jury, the court shall charge the jury that the presumed fact must on all evidence be proved beyond a reasonable doubt and that the law regards the facts

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that give rise to the presumed fact as evidence which, in effect, establishes the presumed fact at least by a preponderance of the evidence, but does not necessarily establish such fact beyond a reasonable doubt.

## CHAPTER 2. PRINCIPLES OF CRIMINAL RESPONSIBILITY

### SECTION 5-2-1. Acts and Omissions to Act.

- (a) A person is not guilty of an offense unless his liability is based on conduct that includes a voluntary act or the omission to perform an act of which he is physically capable.
- (b) The following are not voluntary acts within the meaning of this section:
  - (1) a reflex or convulsion;
  - (2) a bodily movement during unconsciousness or sleep;
  - (3) conduct during hypnosis;
  - (4) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.
- (c) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:
  - (1) the omission is expressly made sufficient by the law defining the offense; or
  - (2) a duty to perform the omitted act is otherwise imposed by law.
- (d) Possession is an act, within the meaning of this section, if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to determine his possession.

### SECTION 5-2-2. Culpability - General Requirements.

- (a) A person is not guilty of an offense unless he acted purposely, knowingly, or negligently, as the law may require, with respect to each element of the offense, or unless his acts constitute an offense involving strict liability.
- (b) Kinds of culpability defined are:
  - (1) Purposely: a person acts purposely with respect to an element of an offense when:
    - (A) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
    - (B) if the element involves the attendant circumstances, he is aware of the existence of such circumstances, or he believes or hopes that they exist.
  - (2) Knowingly: a person acts knowingly with respect to an element of an offense when:
    - (A) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

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(B) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(3) Recklessly: a person acts recklessly with respect to an element of an offense when he consciously disregards a substantial and unjustifiable risk that the element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(4) Negligently: a person acts negligently with respect to an element of an offense when he should be aware of a substantial and unjustifiable risk that the element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known, reflects a want of that degree of care that a reasonable person would observe in the actor's situation.

(5) Strict Liability: an element of an offense shall involve strict liability only when the definition of the offense or element clearly indicates a legislative purpose to impose strict liability for an element of the offense by use of the phrase "strict liability" or other terms of similar import, and when so used no proof of a culpable mental state is required to establish the commission of the element or offense.

(c) When the culpability sufficient to establish an element of an offense is not specifically prescribed, such element is established if a person acts purposely, knowingly, or recklessly with respect thereto.

(d) When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the elements thereof, such provisions shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(e) When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly, or recklessly. When recklessness suffices to establish an element, such element is also established if a person acts, purposely or knowingly. When acting knowingly suffices to establish an element, such element is also established if a person acts purposely.

(f) When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negates the harm or evil sought to be prevented by the offense.

(g) When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is or should be aware of a high probability of its existence, unless he actually believes that it does not exist.

(h) A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(i) Neither the knowledge nor recklessness nor negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offenses unless the definition of the offense so provides.

(j) When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly, or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any element of the offense.

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## SECTION 5-2-3. Causal Relationship Between Conduct and Result.

(a) Conduct is the cause of a result when:

- (1) it is an antecedent but for which the result in question would not have occurred; and
- (2) the relationship between the cause and result satisfies any additional causal requirements imposed by this Code or the definition of the offense.

(b) When a particular mental state is specified in conjunction with an element of an offense, proof of the existence of that element is not avoided because the actual result differed from that intended or that which was probable or likely under the circumstances either in kind or degree or because a different person or different property was injured or affected than that intended or than that which was probable or likely under the circumstances, unless such differences are sufficient without consideration of the mental state involved to constitute a defense or avoidance or unless such differences are of such magnitude that it would be unjust to find the element involved in light of such differences.

## SECTION 5-2-4. Ignorance or Mistake.

(a) The law provides that the actual state of mind that exists itself constitutes a defense when intent is an element of the offense. However, state of mind may be inferred from the acts of the defendant.

(b) Although ignorance or mistake of fact will otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense if the situation had been as he supposed, in which case the punishment available upon conviction shall not exceed that prescribed for the other offense.

## SECTION 5-2-5. Liability for Conduct of Another.

(a) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for whom he is legally accountable, or both.

(b) A person is legally accountable for the conduct of another person when:

- (1) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or
- (2) he is an accomplice of such other person in the commission of the offense.

(c) A person is an accomplice of another person in the commission of an offense if:

- (1) with the purpose of promoting or facilitating the commission of an offense, he:
  - (A) solicits such other person to commit it; or
  - (B) aids or agrees or attempts to aid such other person in planning or committing it; or
  - (C) having legal duty to prevent the commission of the offense, fails to make proper effort to do so; or
- (2) his conduct is expressly declared by law to establish his complicity.

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(d) When causing a particular result is an element of an offense an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(e) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for whom he is legally accountable, unless such liability is inconsistent with the purpose of his incapacity.

(f) Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

- (1) he is a victim of that offense; or
- (2) the offense is so defined that his conduct is inevitably incident to its commission; or
- (3) he terminates his complicity prior to the commission of the offense, and
  - (A) wholly deprives it of effectiveness in the offense; or
  - (B) gives timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

(g) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted of a different offense or degree of offense or has immunity from prosecution or has been acquitted.

(h) Notwithstanding the above, no person shall be held legally accountable in any criminal proceeding for another's criminal conduct solely because of their familial or marital relationship with any person accused of criminal conduct.

### **SECTION 5-2-6. Corporation and Unincorporated Associations.**

(a) A person is legally accountable for any conduct he performs or causes to be performed in the name of a corporation or unincorporated association or in its behalf to the same extent as if it were performed in his own name or behalf.

(b) Whenever a duty to act is imposed by law upon a corporation or unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.

(c) When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the class involved.

### **SECTION 5-2-7. Intoxication.**

(a) Except as provided in Subsection (d) of this Section, intoxication of the actor is not a defense unless it negates an element of the offense, including, but not limited to, "specific intent."

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(b) When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such lack of awareness is not a defense to the crime charged.

(c) Intoxication does not, in itself, constitute a mental disease as that term is used in this Code.

(d) Intoxication which (1) is not self induced, or (2) is the result of intoxication excessive in degree given the amount of intoxicant, to which result the actor does not know he is susceptible, is an affirmative defense if by reason thereof the defendant lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

(e) "Intoxication" means a disturbance of mental or physical capabilities and/or capacities resulting from the introduction of substances into the body. Except as otherwise provided in this Code, intoxication can be proven by its external indications and no proof of specific consumption or blood alcohol or drug content is necessary, though such is permissible.

### SECTION 5-2-8. Duress.

(a) Except as herein otherwise provided, it is an affirmative defense that the actor engaged in conduct constituting an offense because he was coerced to do so by the use of, or threat to use, unlawful force against his person or the person of another, which a law-abiding person of reasonable firmness in his situation would have been unable to resist.

(b) The defense provided in this section is unavailable to a person who intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subject to duress.

(c) It is not a defense that a spouse acted on the command of his or her spouse, unless they acted under coercion as would establish a defense under Subsection (a) above. No presumption of duress arises from the mere presence of one spouse at the time the other acted.

(d) The defense provided in this section is unavailable in any situation where the coerced conduct threatens to cause death or serious bodily harm to some person other than the actor or does in fact cause such harm.

### SECTION 5-2-9. Consent.

(a) The consent of the victim to conduct constituting an offense or to the result thereof is a defense if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(b) When conduct constitutes an offense because it threatens to cause or causes bodily harm, consent to such conduct or to the infliction of such harm is a defense only if:

- (1) the bodily harm consented to or threatened by the conduct consented to is not serious; or
- (2) the conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful activity; or
- (3) the consent establishes a justification for the conduct under this Code.

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(c) Unless otherwise provided by this Code or the law defining the offense, assent does not constitute consent if:

- (1) it is given by a person who is legally incompetent to authorize the conduct constituting an offense; or
- (2) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known to the actor to be unable to make a reasonable judgment as to the nature or the harmfulness of the conduct constituting the offense; or
- (3) it is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or
- (4) it is induced by force, duress, or deception.

### SECTION 5-2-10. Entrapment.

(a) A public law enforcement officer or official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting an offense by either:

- (1) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
- (2) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it in the absence of such inducement.

(b) The defense afforded by this Section shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

(c) Except as provided in Subsection (b) above, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the Court and not by jury. Evidence of past offenses shall be admissible only if the defendant takes the stand in his own defense.

### SECTION 5-2-11. Mental Disease or Defect.

(a) In any prosecution for an offense, it shall be a defense that the defendant, at the time of the conduct upon which the prosecution is based, as a result of mental disease or defect lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of the law.

(b) As used in this section, the terms "mental disease" or "defect" do not include an abnormality manifested only by repeated criminal, or otherwise antisocial conduct.

(c) The defense afforded by this section shall not be available unless notice of intent to rely on such defense is given at least two weeks before trial. By giving such notice, the defendant will be deemed to have consented to be examined for the prosecution by not more than two professional medical or other experts for the purpose, of ascertaining the state of defendant's mental health.

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(d) No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

(e) The defendant shall have the burden of proving by a preponderance of the evidence that he has a mental disease or defect within the meaning of this section.

### SECTION 5-2-12. Justification.

Conduct that is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:

(a) when the actor's conduct is in defense of persons or property or as otherwise described in Sections 5-2-13 through 5-2-15.

(b) when the actor's conduct is reasonable and in fulfillment of his duties as a Tribal or governmental officer or employee; or

(c) when the actor's conduct is reasonable discipline of minors by parents, guardians, teachers or other persons *in loco parentis*; or

(d) when the actor's conduct is reasonable discipline of persons in custody under this Code.

### SECTION 5-2-13. Force in Defense of Persons.

(a) A person is justified in threatening or using force against another which and to the extent that he reasonably believes that such force is necessary to defend himself or a third person against such other's imminent use of unlawful force; however, a person is justified in using force which is intended to likely to cause death or serious bodily injury only if he reasonably believes that such force is necessary to prevent death or serious bodily injury to himself or a third person.

(b) A person is not justified in using force under the circumstances specified in Subsection (a) of this Section if he:

(1) initially provokes the use of force against himself with the intent to use force as an excuse;

(2) is attempting to commit, committing, or fleeing after the commission of an offense; or

(3) was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicate to such other person his intent to do so and the other notwithstanding continues or threatens to continue the use of unlawful force.

### SECTION 5-2-14. Justification as a Defense; Civil Remedies.

(a) In any prosecution based on conduct that is justified as specified in this Code, such justification is an affirmative defense.

(b) The fact that conduct is justifiable as specified in this Code does not abolish or impair any civil right or remedy that might arise from such conduct.

### SECTION 5-2-15. Choice of Evils.

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(a) Conduct that the actor believes to be necessary to avoid a harm or evil to himself or another is justifiable, provided that:

- (1) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and
- (2) neither this Code nor any other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
- (3) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(b) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

## CHAPTER 3. SENTENCES AND PUNISHMENTS

### A. Classification of Offenses

#### SECTION 5-3-1. Sentencing in General.

- (a) A person adjudged guilty of an offense under this Code shall be sentenced in accordance with this part.
- (b) Penal laws enacted or adopted after the effective date of this Code shall be classified for sentencing purposes in accordance with the provisions in this part.

#### SECTION 5-3-2. Designation of Offenses.

Offenses are designated as Class A offenses, Class B offenses, and Class C offenses.

#### SECTION 5-3-3. Class of Offense Not Specified.

An offense for which no penalty or sentence is specifically designated as a certain class of offense shall be treated for purposes of sentencing and punishment as a Class C offense.

### B. Sentencing

#### SECTION 5-3-4. General Principles.

The sentence imposed in each case should call for the minimum amount of custody or confinement that is consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant.

#### SECTION 5-3-5. Sentences and Combinations of Sentences; Civil Penalties.

- (a) A court may, as provided in this part, sentence a person adjudged guilty of an offense to any one of the following sentences or combinations of such sentences:
  - (1) to pay a fine;

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(2) to removal from and/or disqualification of public or private office, but only if such is specifically provided for as a punishment for conviction of a specific offense;

(3) to probation and/or suspension of sentence on such terms and conditions as the Court may direct; and

(4) to imprisonment or confinement, either full or part time.

(b) A court shall also have the authority to order a person adjudged guilty of an offense to pay any or all of the following amounts or do the following acts:

(1) pay court costs not to exceed \$50.00;

(2) pay any civil penalty provided by law;

(3) pay money damages, surrender property, or perform any other act for the benefit of any person or party injured personally or in his property by the person adjudged guilty provided such injuries are fairly attributable to the act or failure to act constituting the offense for which guilty was adjudged.

(c) This part shall not deprive a Court by authority to cite for contempt, cancel or suspend a license, forfeit property, or do any other act or make any other order authorized by law.

(d) The court may not impose a sentence upon an indigent setting him to a choice of a set monthly fine or a set jail term.

### **SECTION 5-3-6. Maximum Fines and Sentences of Imprisonment.**

(a) A person convicted of a registerable sex offense, or Possession with Intent to Deliver a Controlled Substance, if that substance is methamphetamine, or any inchoate offense of the same derivation e.g. Attempt, Conspiracy or Solicitation offense may be sentenced as follows:

(1) if the offense is a Class A offense, to a term of imprisonment not to exceed one (1) year and to a fine not to exceed \$5,000.00;

(2) if the offense is a Class B offense, to a term of imprisonment not to exceed six (6) months and to a fine not to exceed \$2,500.00;

(3) if the offense is a Class C offense, to a term of imprisonment not to exceed three (3) months and to a fine not to exceed \$1,000.00.

(4) if the offense is a Class D Offense, to a term of imprisonment not to exceed two (2) months and to a fine not to exceed \$500.00.

(5) if the offense is a Class E Offense, to a term of imprisonment not to exceed one (1) month and to a fine not to exceed \$250.00.

(6) if the offense is an infraction, to a fine not to exceed \$100.00

(b) A person convicted of any other offense may be sentenced as follows:

(1) if the offense is a Class A offense, to a term of imprisonment not to exceed one (1) year and to a fine not to exceed \$500.00;

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- (2) if the offense is a Class B offense, to a term of imprisonment not to exceed six (6) months and to a fine not to exceed \$200.00;
  - (3) if the offense is a Class C offense, to a term of imprisonment not to exceed three (3) months and to a fine not to exceed \$100.00.
  - (4) if the offense is a Class D Offense, to a term of imprisonment not to exceed two (2) months and to a fine not to exceed \$50.00.
  - (5) if the offense is a Class E Offense, to a term of imprisonment not to exceed one (1) month and to a fine not to exceed \$25.00.
  - (6) if the offense is an infraction, to a fine not to exceed \$20.00
- (c) The terms of imprisonment listed above apply only to full-time incarceration in the Tribal or some other jail or penitentiary and do not apply to full or part-time residence or confinement in a medical or rehabilitative facility as a condition of probation or parole or as otherwise ordered by the Court.
  - (d) The fines listed above may be imposed in addition to any assessment of costs or other civil penalties and in addition to any amounts ordered paid as restitution.

### **SECTION 5-3-7. Payment of Fines and Other Monies.**

- (a) Fine shall be paid in cash unless upon request of the defendant the Court allows payment by commodities of like value, or by other means.
- (b) The Court may, upon request of a defendant or upon its own motion allow any fines or other required payments to be made in installments and on conditions tailored to the means of the defendant.
- (c) In addition to the contempt remedy where appropriate, the methods available for collecting a civil judgment shall be available to collect any unpaid money upon order of the court following a failure to make any required payment and ascertainment of a reason therefor.
- (d) When justice requires, the court may revoke or remit a fine or any unpaid portion thereof or any other monies required to be paid, or may modify the terms and conditions of payment.

### **SECTION 5-3-8. Decision to Impose a Fine.**

In determining whether to impose a fine and its amount, the court should consider:

- (a) The financial resources of the defendant and the burden that payment of fine will impose with due regard to his other obligations;
- (b) The ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the Court;
- (c) The extent to which payment of a fine will interfere with the ability of the defendant to make any ordered restitution or reparation to the victim of the crime; and
- (d) Whether there are particular reasons that make a fine appropriate as a deterrent to the offense involved or appropriate as a corrective measure for the defendant.

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### SECTION 5-3-9. Concurrent and Consecutive Sentences.

(a) Unless the Court shall direct otherwise in its pronouncement of sentence, all sentences shall run concurrently and not consecutively.

(b) The Court shall not impose consecutive sentences for offenses arising out of a single course of criminal conduct, including solicitation and criminal conspiracy, unless the criminal conduct involved the death or serious bodily injury of any victim of the crime or a serious threat of such, or unless the offense was committed in a willful, malicious or aggravated manner and involved an offense against the person of the victim or victims.

(c) A consecutive sentence shall not be imposed unless the Court has obtained and considered a pre-sentence report from the Tribal Probation Department or other source.

(d) Whenever a sentence or sentences are imposed to run concurrently with sentences presently being served, the greater sentence shall be the term to be served with all lesser sentences merging therein, or, if equal sentences are imposed, they shall merge into one sentence, but in no event shall the imposition of one sentence cut short the time to be served on another sentence unless the Court specifically directs that such be the result.

### SECTION 5-3-10. Credit.

(a) Credit against a term of imprisonment imposed following an adjudication of guilty shall be given to a defendant for all time spent in custody as a result of the criminal charge for which the sentence is imposed or as a result of the conduct on which such charge is based. Such credit shall apply to time spent in custody prior to trial, during trial, pending sentence, and pending resolution of an appeal.

(b) In case of re-prosecution for any reason of the same offense or an offense based on the same conduct for which a defendant has been imprisoned, credit shall be given for all time spent in custody under prior prosecution as provided in Subsection (a) above.

(c) Credit as provided in this Section should be considered and computed by the Court at the time of sentencing.

### SECTION 5-3-11. Reduction of Sentences.

(a) The Court may, upon motion of any party or its own motion, reduce or modify a sentence within a reasonable time after its imposition as provided in the Rules of Criminal Procedure if new factors bearing on the sentence become known. Such reduction or modification shall be done in open court upon due notice to the prosecution and the defendant after hearing if requested by either party.

(b) In the event that commitment to a special type of facility other than a jail or penitentiary is imposed or accepted as a condition of probation or parole, the Court may for good cause shown terminate or reduce such commitment.

(c) The Court shall have authority to terminate at any time continued supervision or the power to revoke either a sentence not involving confinement or a sentence involving less than total confinement in a jail or penitentiary. The court shall also have the power to lessen the conditions on which such sentences were imposed or lessen the time in which the power to revoke will exist.

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(d) Except as otherwise specifically provided in this part, the Court shall not increase a term of imprisonment once it has been imposed.

### SECTION 5-3-12. Board for the Disposition of Offenders upon Conviction.

(a) The Tribal Council may appoint a Board for the Disposition of Offenders following conviction to be composed of any combination of the following:

- (1) a doctor of psychiatry or psychology licensed to practice medicine or psychology in the States of Nebraska or Iowa;
- (2) a criminologist or social worker with graduate training and a degree in such field from an accredited university;
- (3) a probation and parole officer from the Tribal Probation Department;
- (4) the head of the Alcohol and Drug Abuse Rehabilitation program on the Reservation;
- (5) such other persons as the Council believes would be appropriate on such a Board;
- (6) the trial judge who conducted the trial of an offender shall be member of any such Board for purpose of considering the disposition of such offender.

(b) Disposition Boards may be established on a case-by-case basis or as a uniform procedure depending upon the action of the Tribal Council.

(c) The purpose and duties of the Board for the Disposition of Offenders in all cases referred to it as provided herein are:

- (1) with the aid of the Tribal Probation Department, to compile and consider the history and background of an offender;
- (2) to consider the present social, economic and family situation of the offender;
- (3) to consider the actual or potential threat of further criminal activity by the offender and the need to protect the public from such;
- (4) to consider the corrective and rehabilitative needs of the offender and the facilities available to the offender;
- (5) based upon consideration of such factors, to make a recommendation to the Court regarding the sentencing of an offender.

(d) The Court shall defer immediate sentencing following pronouncement of a judgment of guilty and refer the offender to the Board of Disposition of Offenders for their sentencing recommendation in the following cases:

- (1) whenever the offender has been convicted of a Class A offense;
- (2) whenever the offender has been convicted of an offense involving the use of alcohol or drugs by the offender;
- (3) whenever the offender has been convicted of an offense involving the family relationship or involving any member of the offender's family as the victim of the offense;

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- (4) whenever the offender is under 21 years of age at the time of sentencing;
- (5) whenever the Court shall be considering the imposition of consecutive sentences;
- (6) whenever the offender shall have been convicted of two or more prior offenses in the 12-month period preceding the judgment of guilty in the present cause;
- (7) whenever requested by the offender, unless such request reasonably appears to the Court to be for the sole purpose of delaying the pronouncement of sentence or some other improper motive;
- (8) whenever the judge deems it appropriate or desirable to do so.

(e) The Board shall deliver its recommendations, together with any written reports on the defendant that it has considered, to the Court within 60 days. A majority vote of the Board members shall determine the Board's recommendation. In cases of disagreement, a minority recommendation may be included if desired by the dissenting board members.

(f) The Court, upon receipt of the recommendations of the Board, shall consider and give weight to such recommendations but shall not be bound to follow such either in whole or in part when pronouncing sentence on a defendant.

(g) In the event that the Board for the Disposition of Offenders has not been appointed or is for any reason unavailable or unable to meet, the Court shall not be required to defer immediate sentencing, but may, if it deems it advisable, defer sentencing and request such pre-sentence help as is available from Reservation or off-Reservation sources.

### **SECTION 5-3-13. Sentencing Proceeding.**

As soon as practicable after the determination of guilt and the examination of any pre-sentence reports or recommendations, a proceeding should be held at which the Court shall:

- (a) hear submissions by the parties on the facts relevant to the sentence;
- (b) hear argument by the parties on the applicability of various sentencing alternatives to the facts of the case;
- (c) afford the parties the opportunity to make statements to the Court;
- (d) in cases where guilt was determined by plea, inform itself, if not previously informed, of the existence of plea discussions or agreements and the extent to which they involve recommendations as to the appropriate sentence;
- (e) make specific findings on all controverted issues of fact which are deemed relevant to the sentencing decision;
- (f) ascertain and consider all credits due the defendant as a result of prior relevant to the sentencing decision;
- (g) carefully state and assure that a record is made of the precise terms of the sentence imposed and assure that those responsible for executing the sentence be informed of such terms;

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(h) state for the record the reasons for selecting the particular sentence imposed, unless the Court deems it to be in the best interests of the defendant not to do so;

(i) require that a record be kept of the sentencing proceeding with a verbatim recording or transcription of such if possible.

### C. Suspension of Sentence and Probation.

#### SECTION 5-3-14. Suspension of Sentence and Probation.

(a) Except as otherwise provided in this Code, the Court shall have the authority to suspend the imposition of sentence on a person who has been convicted of an offense or to place him on probation as provided herein.

(b) When the court suspends the imposition of sentence on a person who has been convicted of a crime or sentences him to be placed on probation, it shall attach such reasonable conditions, as authorized herein, as it deems necessary to insure that he will lead a law abiding life or likely to assist him to do so.

(c) The court, as a condition of its order suspending a sentence or probation, may require the defendant:

- (1) to meet his family responsibilities;
- (2) to devote himself, to a specific employment or occupation;
- (3) to undergo available medical or psychiatric or other rehabilitative treatment and to enter and remain in a specified institution, when required for that purpose;
- (4) to pursue a prescribed course of study or vocational training;
- (5) to attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
- (6) to refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
- (7) to refrain from all use of intoxicants, narcotics, or drugs, the sale of which is controlled by the State or federal government, unless taken or used under a doctor's orders and obtained by a doctor's prescription;
- (8) to have in his possession no firearm or other dangerous weapon unless granted written permission by the Court or the Probation and Parole Department;
- (9) to make restitution of the fruits of his crime or to make reparation, in an amount he can afford to pay for the loss or damage caused thereby;
- (10) to remain within the jurisdiction of the Court and to notify the Court or the probation officer of any change of address or employment;
- (11) to report as directed to the Court or the probation officer and to permit the officer to visit his home;

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(12) to post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations;

(13) to pay all or part of a fine and/or court costs imposed in the original sentence;

(14) to satisfy any other conditions reasonably related to the rehabilitation of the defendant and not incompatible with his freedom of conscience or unduly restrictive of his liberty given his status.

(15) to put the defendant to a choice of serving a specified jail term or leaving the Reservation for the duration of such term.

(d) When the court sentences a person who has been convicted of a Class A offense or a Class B offense to be placed on probation, it may require him to serve a term of imprisonment not to exceed thirty (30) days in the case of a Class A offense and fifteen (15) days in the case of a Class B offense as an additional condition of its order.

(e) The defendant shall be given a copy of the requirements of his probation stated with sufficient specificity to enable him to guide himself accordingly.

### **SECTION 5-3-15. Period of Suspension or Probation; Modification.**

(a) When the Court has suspended sentences or has sentenced a defendant to be placed on probation, the maximum period of the suspension or probation shall be two (2) years, provided, however, that the maximum period will be imposed for Class B and C offenses only when such appears to be consistent with the rehabilitative needs of the defendant. Shorter periods may be imposed at the Court's discretion.

(b) During the period of suspension or probation, the Court, on application of the probation officer or of the defendant, or on its own motion, may modify the requirements imposed on the defendant or add further requirements consistent with the rehabilitative needs of the defendant or may discharge the defendant, after notice to the parties and hearing if requested.

(c) Upon termination of the period of suspension or probation, or the earlier discharge of the defendant, the defendant shall be relieved of any obligations imposed by the order of the Court and shall have satisfied his sentence for the offense.

### **SECTION 5-3-16. Violation of Terms of Suspension or Probation**

(a) At any time before the discharge of the defendant or the termination of the period of suspension or probation:

(1) the Court may summon the defendant to appear before it or it may issue a warrant for his arrest;

(2) a probation or law enforcement officer, having probable cause to believe the defendant has failed to comply with a requirement imposed as a condition of the probation order or that he has committed another crime, may arrest him without a warrant;

(3) the Court, if there is probable cause to believe that the defendant has committed another crime or if he has been held to answer therefor, may commit him without bail, pending a determination of the charge by the Court;

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(4) the Court, if satisfied that the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the suspension or probation order, or if he has been convicted of another crime, may revoke the suspension or probation and reimpose the original sentence.

(b) The Court shall not revoke suspension or probation or increase the requirements imposed thereby except after a hearing upon written notice to the defendant of the grounds on which such action is proposed. The defendant shall have the right to hear and controvert the evidence against him, to offer evidence in his defense and to be represented by counsel of his choice at his own expense.

(c) Whenever a defendant is taken into and held in custody as provided in this section for violation of suspension or probation conditions other than the alleged commission of an offense, he shall be entitled to have his confinement, unless he requests further time to prepare his defense.

### **SECTION 5-3-17. Order Removing Disqualification or Disability Based Conviction.**

(a) When the Court has suspended sentence or has sentenced the defendant to be placed on probation and the defendant has fully complied with the requirements imposed as a condition of such order and has satisfied the sentence, the Court may order that so long as the defendant is not convicted of another offense, the judgment shall not constitute a conviction for the purpose of any disqualification or disability imposed by law upon conviction of a crime or offense.

(b) Proof of a conviction as relevant evidence upon the trial or determination of any issue or for the purpose of impeaching the defendant as a witness is not a disqualification or disability within the meaning of this section.

### **SECTION 5-3-18. Final Judgment.**

A judgment suspending sentence or sentencing a defendant to be placed on probation shall be deemed tentative to the extent such is modifiable as provided herein, but for all other purposes shall constitute a final judgment.

#### **D. Parole.**

### **SECTION 5-3-19. Parole.**

(a) Except as otherwise provided herein, a defendant sentenced to and serving a term of imprisonment for more than 60 days shall be eligible to petition the Court for a grant of release on parole.

(b) Parole may be granted as provided herein to a defendant who has demonstrated good behavior and faithful performance of duties while incarcerated.

(c) Parole shall not be considered or granted to a defendant who has been convicted of an offense involving the death or serious bodily injury of a victim of the offense unless the defendant has been sentenced to consecutive sentences totaling in excess of one (1) year and such consideration may be given only after the defendant has served one (1) year under such sentences.

(d) The provisions on parole contained herein shall apply only to confinement in a jail or penitentiary and shall not apply to confinement ordered in a medical or rehabilitative facility.

### **SECTION 5-3-20. Petition for Parole.**

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(a) Parole may be granted by the Court on its own motion or on the petition of an incarcerated defendant.

(b) Any defendant eligible for parole as set forth above may petition the Court for consideration of parole. Such petition may be made on a form to be provided for such purposes by the Court, at a time no earlier than the expiration of half the period of imprisonment ordered by the Court. If a defendant desires, he will be allowed the opportunity to contact and meet with counsel on the jail premises to aid him in the preparation of his petition for parole. The completed petition shall be forwarded without unnecessary delay to the Court by the defendant's counsel or the jailer.

### SECTION 5-3-21. Consideration of Parole.

(a) The Court, upon receipt of a petition for parole, shall cause the clerk of the Court to prepare a report stating the term for which the defendant was sentenced, the offenses charged, the time served and may include a sworn statement from a Tribal jailer regarding the conduct of the defendant while incarcerated and any other information deemed relevant by the Court.

(b) Unless it appears that the defendant is not eligible for parole as a result of some reason other than his behavior while incarcerated, the judge shall schedule a parole hearing within 14 days and shall request a report from the Board for the Disposition of Offenders and/or the Probation and Parole Department on the background and rehabilitative needs of the defendant.

(c) A hearing shall be held at which the defendant shall have the right to be represented by counsel and present evidence. The Court may, upon consideration of all relevant factors, grant parole to a defendant upon any of all of the conditions set forth in this Code for the granting of probation and for like periods as if probation were then imposed.

(d) The court's decision to grant or refuse parole shall be reviewable only for abuse of discretion.

### SECTION 5-3-22. Powers Over Parole.

Once parole is granted, the defendant shall be subject to the same procedures and conditions as if he were originally placed on probation and the Court shall have the power to modify or revoke the probation under like rules and circumstances as provided in this Code for defendants on probation.

## CHAPTER 4. OFFENSES

### A. Inchoate Offenses.

#### SECTION 5-4-1. Attempt.

(a) A person is guilty of an attempt to commit an offense if, acting with the kind of culpability otherwise required for the commission of the offense, he engages in conduct constituting a substantial step towards commission of the offense.

(b) Conduct does not constitute a substantial step towards the commission of an offense unless it is strongly corroborative of the actor's intent to commit the offense.

(c) No defense to the offense of attempt shall arise:

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- (1) because the offense attempted was actually committed; or
  - (2) due to the factual or legal impossibility of consummating the intended offense if the offense could have been committed had the circumstances been as the actor believed them to be.
- (d) Except as otherwise provided in this code, attempt shall be:
- (1) a Class A offense if the attempted offense was a Class A offense;
  - (2) a Class B offense if the attempted offense was a Class B offense;
  - (3) a Class C offense if the attempted offense was a Class C offense.

### SECTION 5-4-2. Criminal Conspiracy.

(a) A person is guilty of criminal conspiracy when he, intending that conduct constituting a crime be performed, agrees with one or more persons to engage in or cause the performance of such conduct and any one of them commits an overt act in pursuance of the conspiracy, except that where the offense is a Class A offense the overt act is not required for the commission of conspiracy.

(b) Conspiracy to commit:

- (1) a Class A offense is a Class A offense;
- (2) a Class B offense is a Class B offense;
- (3) a Class C offense is a Class C offense;

### SECTION 5-4-3. Solicitation.

(a) A person is guilty of solicitation when he, intending that another person commit an offense, entices, advises, incites, orders, or otherwise encourages such other person to commit an offense.

(b) Solicitation to commit:

- (1) a Class A offense is a Class A offense;
- (2) a Class B offense is a Class B offense;
- (3) a Class C offense is a Class C offense;

## B. Offenses Against the Person.

### 1. Assault and Related Offenses.

#### SECTION 5-4-4. Simple Assault.

- (a) A person is guilty of simple assault if he:
- (1) attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another; or
  - (2) negligently causes bodily injury to another with a deadly weapon; or
  - (3) attempts by a show of force or violence to put another in fear of imminent serious bodily injury; or

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(4) recklessly endangers another by an act or omission to act which threatens to cause serious bodily harm to another, whether or not such harm actually occurs.

(b) Simple Assault is a Class B offense unless committed in fight or scuffle entered into by mutual consent, in which case, it is a Class C offense.

### SECTION 5-4-5. Aggravated Assault.

(a) A person is guilty of aggravated assault if he:

(1) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or

(2) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or

(3) intentionally or knowingly uses a deadly weapon to put another in fear of imminent serious bodily injury.

(b) Aggravated assault is a Class A offense.

### SECTION 5-4-6. Mayhem.

(a) A person is guilty of mayhem if he unlawfully and purposely or knowingly;

(1) deprives a human being of a member of his body or disables or renders it useless; or

(2) cuts out or disables the tongue, puts out an eye, or slits the nose, ear or lip of another.

(b) Mayhem is a Class A offense.

### SECTION 5-4-7. Terroristic Threats.

(a) A person is guilty of terroristic threats if he threatens verbally or in writing to commit any offense involving violence with intent to terrorize another or place such other in fear of imminent serious bodily injury or to cause evacuation of a building, place or assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror of inconvenience.

(b) Terroristic threats is a Class B offense, unless serious public inconvenience or the evacuation of a building, place of assembly or facility of public transportation is intended by the actor or actually results, or if a deadly weapon is used in making the threat, in which case it is a Class A offense.

## 2. Criminal Homicide and Related Offenses.

### SECTION 5-4-8. Criminal Homicide.

(a) A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being.

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(b) Criminal homicide is a Class A offense, and if the offense is found to have been committed purposely or knowingly, no suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration shall be imposed.

### SECTION 5-4-9. Vehicular Homicide.

(a) A person is guilty of vehicular homicide if, while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or any drug, to a degree which renders the person incapable of safely driving a vehicle, he causes the death of another by operating a motor vehicle in a reckless, negligent, or careless manner.

(b) The presumptions established in the Nebraska Revised Statutes regarding blood alcohol content and the presumption of intoxication are adopted by reference into this Code and shall be applicable to this Section, and any chemical test administered to a defendant with his consent or after his arrest, whether with or against his consent, shall be admissible in accordance with the rules of evidence.

(c) For purpose of this Section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, water craft, aircraft or snowmobile.

(d) Vehicular homicide is a Class A offense.

### SECTION 5-4-10. Causing a Suicide.

(a) A person is guilty of causing a suicide if he purposely causes a suicide by force, duress, or deception.

(b) Causing a suicide is a Class A offense.

### SECTION 5-4-11. Aiding or Soliciting a Suicide.

(a) A person is guilty of aiding or soliciting a suicide if he deliberately and knowingly aids or solicits another to commit suicide.

(b) Aiding or soliciting a suicide is a Class A offense if the defendant's deliberate or knowing procurement of the suicide has actually caused or contributed substantially to a suicide or an attempted suicide; otherwise, it is a Class C offense.

## 3. Kidnapping and Related Offenses.

### SECTION 5-4-12. Kidnapping.

(a) A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:

- (1) to hold for ransom or reward, or as a shield or hostage; or
- (2) to facilitate commission of any offense or flight thereafter; or
- (3) to inflict bodily injury on or to terrorize the victim or another; or

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(4) to interfere with the performance of any Tribal, governmental or political function.

(b) A removal, restraint, or confinement is unlawful within the meaning of this part if it is accomplished by force, threat or deception, or, in the case of a person under the age of 14 or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

(c) Kidnapping is a Class A offense.

### SECTION 5-4-13. False Imprisonment.

(a) A person is guilty of false imprisonment if he knowingly restrains another unlawfully so as to interfere with his liberty.

(b) False imprisonment is a Class C offense unless the detention occurs under circumstances that expose the victim to a risk of serious bodily injury, in which cause it is a Class B offense.

### SECTION 5-4-14. Custodial Interference.

(a) A person, whether a parent or other person, is guilty of custodial interference if:

(1) without good cause, he takes, entices, conceals, or detains a child under the age of 16 from his parent, guardian or other lawful custodian,

(A) knowing he has no legal right to do so; and

(B) with intent to hold the child for a period substantially longer than any visitation or custody period previously awarded by a court of competent jurisdiction; or

(2) having actual physical custody of a child under the age of 16 pursuant to a judicial award of a court of competent jurisdiction that has given another person visitation or custody rights, and without good cause, he detains or conceals the child with intent to deprive the other person of his lawful visitation or custody rights; or

(3) without good cause he takes, entices or detains an incompetent or other person who has been committed by authority of law to the custody of another person or institution from the other person or institution, knowing he has no legal right to do so.

(b) Custodial interference is a Class B offense.

### SECTION 5-4-15. Criminal Coercion.

(a) A person is guilty of criminal coercion if, with purpose to restrict unlawfully another's freedom of action to his detriment, he threatens to:

(1) commit any criminal offense; or

(2) accuse anyone of a criminal offense; or

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or

(4) take or withhold action as an official, or cause an official to take or withhold action.

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(b) It is an affirmative defense to prosecution based on this section, except for subsection (a) above, that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure, or proposed official action; for example, as by refraining from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

(c) Criminal coercion is a Class C offense, unless the threat is to commit a Class A offense or the actor's purpose is to cause the accomplishment of a Class A or Class B offenses by the other, in which case it is a Class B offense.

### 4. Sexual Offenses.

#### SECTION 5-4-16. Promoting Commercial or Illicit Sexual Commerce or Conduct

(a) A person is guilty of the crime of Promoting Commercial or Illicit Sexual Commerce or Conduct if he benefits financially, receives anything of value or benefits through sexual gratification, from participation in a venture, enterprise or undertaking, alone or in concert with others, whereby he:

(1) knowingly recruits, entices, harbors, transports, provides, or obtains a person over the age of 18 years to engage in a commercial sex act with another;

(2) knowingly, or in reckless disregard of the use of fraud, force or coercion recruits, entices, harbors, transports, provides, or obtains a person over the age of 18 years to engage in a commercial sex act with another;

(3) knowingly recruits, entices, harbors, transports, provides, or obtains a person under the age of 18 years but more than 14 years of age to engage in a commercial sex act with another or ones self, or to engage in any sexual conduct which would be illegal for any party, not just the minor, so engaged;

(A) it is sufficient for this section that the person knowingly recruits, harbors, transports, provides or obtains the person to engage in a commercial sex act; it is not a defense that he did not "know" the person so obtained was under the age of 18 years;

(4) knowingly, or in reckless disregard of the use of fraud, force or coercion recruits, entices, harbors, transports, provides, or obtains a person under the age of 18 years but more than 14 years to engage in a commercial sex act with another or ones self, or to engage in any sexual conduct which would be illegal for any party, not just the minor, so engaged;

(5) knowingly or recklessly recruits, entices, harbors, transports, provides, or obtains a person under the age of 14 years to engage in a commercial sex act with another or ones self, or to engage in any sexual conduct which would be illegal for any party, not just the minor, so engaged;

(6) for the purpose of this section the term "coercion" shall mean:

(A) threats of serious harm against any person, to include psychological, financial or reputational harm that is sufficiently serious under all surrounding circumstances to compel a reasonable person to perform a commercial sex act in order to avoid incurring the harm;

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(B) threats of physical restraint against any person, or any scheme, plan, or pattern intended to cause a person to believe that failure to perform a commercial sex act would result in serious harm or physical restraint against any person;

(C) the abuse of threatened abuse of law or legal process, whether administrative, civil, criminal in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action;

(b) Promoting Commercial or Illicit Sexual Commerce or Conduct shall be graded as follows:

(1) Violation of §(a)(1) above shall be a class C offense;

(2) Violation of §(a)(2) or (a)(3) above shall be a class B offense;

(3) Violation of §(a)(4) above shall be a class A offense;

(4) Violation of §(a)(5) above shall be a class A offense with a mandatory minimum one (1) year incarceration as a penalty.

(5) except that if the actor is a parent, custodian or legal guardian or the minor victim the mandatory minimum for all such Offenses shall be imprisonment to the maximum allowed under the offense category; and

(A) such conviction shall be grounds for initiation of proceedings to sever all legal ties between the actor and the minor child;

### SECTION 5-4-17. Aggravated Sexual Assault

(a) A person is guilty of the crime of Aggravated Sexual Assault if a Sexual Act is accomplished, or attempted, with any other person under any one of the following circumstances:

(1) by the use of force against the victim;

(2) by threatening the victim with serious bodily injury or unlawful restraint so as to substantially impair the victim's liberty;

(A) any victim who is in official detention, incarceration or placement at any juvenile detention, staff secure or emergency shelter and the person engaging in the Sexual Act has custodial, supervisory or disciplinary authority over the victim, shall be determined to be *de facto* threatened with serious bodily injury or unlawful restraint so as to substantially impair the victim's liberty.

(3) by placing the victim in fear that any other person will be subjected to serious bodily injury, forcible sexual contact or unlawful restraint so as to substantially impair the other's liberty;

(4) where the victim is incapable, because of physical or mental incapacity or injury, of giving consent to such act;

(5) by administering to the victim by force or through the threat of force, or without the knowledge of the victim, any intoxicating, narcotic or anesthetic drug or agent which causes the victim

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to be incapable of giving consent due to incapacity or substantial impairment of the ability to appraise or control conduct;

(6) where the Sexual Act is performed with consent with a person under the age of eighteen (18) years and the actor is more than four years senior in age;

(A) it is an affirmative defense to this section that the actor and victim were legally married when the Sexual Act occurred;

(7) where the sexual act is performed, with or without consent, with a person twelve years in age or younger;

(8) Sexual Act shall be defined purpose of this statute as:

(A) oral, anal or vaginal penetration of any kind;

(B) direct touching of the genitals or anus of any person under the age of 18 years of age.

(b) Aggravated Sexual Assault shall be a Class A offense, except that Aggravated Sexual Assault under §(a)(2)(A), or §(a)(7) accomplished without the consent of the minor, shall carry mandatory minimum incarceration of one (1) year imprisonment.

(1) except that if the actor is a parent, custodian or legal guardian or the minor victim the mandatory minimum for all such Offenses shall be imprisonment to the maximum allowed under the offense category; and

(A) such conviction shall be grounds for initiation of proceedings to sever all legal ties between the actor and the minor child;

### SECTION 5-4-18. Sexual Assault

(a) A person is guilty of the crime of Sexual Assault if a Sexual Act is accomplished, or attempted, with any other person under any one of the following circumstances:

(1) by placing the victim in fear, other than that defined in Aggravated Sexual Assault §(a)(2) and (a)(3);

(2) where the victim is incapable of giving consent due to incapacity or substantial impairment of the ability to appraise or control conduct, because of any intoxicating, narcotic or anesthetic drug or agent, or because of hypnosis administered by or with the knowledge of the accused; or

(b) A person is guilty of the crime of Sexual Assault if a Sexual Contact is accomplished, or attempted, with any other person under any one of the following circumstances:

(1) by the use of force against the victim;

(2) by threatening the victim with serious bodily injury or unlawful restraint so as to substantially impair the victim's liberty;

(A) any victim who is in official detention, incarceration or placement at any juvenile detention, staff secure or emergency shelter and the person engaging in the Sexual Act has custodial, supervisory or disciplinary authority over the victim, shall be determined to be *de facto*

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threatened with serious bodily injury or unlawful restraint so as to substantially impair the victim's liberty.

(3) by placing the victim in fear that any other person will be subjected to serious bodily injury, forcible sexual contact or unlawful restraint so as to substantially impair the other's liberty;

(4) where the victim is incapable, because of physical or mental incapacity or injury, of giving consent to such act;

(5) by administering to the victim by force or through the threat of force, or without the knowledge of the victim, any intoxicating, narcotic or anesthetic drug or agent which causes the victim to be incapable of giving consent due to incapacity or substantial impairment of the ability to appraise or control conduct;

(6) where the sexual act is performed, with or without consent, with a person twelve years in age or younger;

(7) Sexual Contact shall be defined purpose of this statute as:

(A) sexual contact or touching with the sexual parts of the body, to include genitals, anus, buttocks and female breasts, either directly or through the clothing;

(c) Sexual Assault shall be a Class B offense, except that violation of §2(a) or (2)(b)(7) shall be a Class A offense.

(1) except that if the actor is a parent, custodian or legal guardian or the minor victim the mandatory minimum for all such Offenses shall be imprisonment to the maximum allowed under the offense category; and

(A) such conviction shall be grounds for initiation of proceedings to sever all legal ties between the actor and the minor child;

### SECTION 5-4-19. Sexual Conduct With a Minor

(a) A person is guilty of the crime of Sexual Conduct With a Minor under any one of the following circumstances where the victim is under the age of eighteen (18) years and the Sexual Contact is accomplished:

(1) by the use of force against the victim;

(2) by threatening the victim with serious bodily injury or unlawful restraint so as to substantially impair the victim's liberty;

(A) any victim who is in official detention, incarceration or placement at any juvenile detention, staff secure or emergency shelter and the person engaging in the Sexual Act has custodial, supervisory or disciplinary authority over the victim, shall be determined to be *de facto* threatened with serious bodily injury or unlawful restraint so as to substantially impair the victim's liberty.

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(3) by placing the victim in fear that any other person will be subjected to serious bodily injury, forcible sexual contact or unlawful restraint so as to substantially impair the other's liberty;

(4) where the victim is incapable, because of physical or mental incapacity or injury, of giving consent to such act;

(5) by administering to the victim by force or through the threat of force, or without the knowledge of the victim, any intoxicating, narcotic or anesthetic drug or agent which causes the victim to be incapable of giving consent due to incapacity or substantial impairment of the ability to appraise or control conduct;

(6) where the Sexual Conduct is Sexual Contact performed with consent with a person under the age of eighteen (18) years and the actor is more than four years senior in age;

(A) it is an affirmative defense to this section that the actor and victim were legally married when the Sexual Contact occurred;

(7) where the Sexual Conduct is Sexual Contact is performed, with or without consent, with a person twelve years in age or younger;

(8) Sexual Contact shall be defined for the purpose of this statute as:

(A) touching with the sexual parts of the body, to include genitals, anus, buttocks and female breasts, either directly or through the clothing;

(9) Sexual Conduct shall include and be defined for the purpose of this section to include all actions meeting the definition of Sexual Contact above and;

(A) knowingly exposing a minor to sexual explicit acts, pictures or electronic or other depictions of sexually explicit content or pornography.

(i) This shall include knowingly, intentionally or recklessly allowing, encouraging or promoting the exposure of such sexually explicit content to minor children by the creation, promotion or distribution of misleading internet domain names, website addresses or advertisements, words or digital images intended to deceive a minor into viewing such material;

(b) Sexual Conduct With a Minor shall be a Class B offense, except that violation of §(a)(2)(A) or §(a)(7) shall be a Class A offense.

(1) except that if the actor is a parent, custodian or legal guardian or the minor victim the mandatory minimum for all such Offenses shall be imprisonment to the maximum allowed under the offense category; and

(A) such conviction shall be grounds for initiation of proceedings to sever all legal ties between the actor and the minor child;

### SECTION 5-4-20. Sexual Exploitation of a Minor

(a) A person is guilty of the crime of Sexual Exploitation of a Minor under any one of the following circumstances where the victim is under the age of eighteen (18) years and:

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(1) the actor knowingly recruits, entices, harbors, transports, provides, or obtains a person under the age of 18 years to engage in any sexual conduct with another, or to engage in sexually explicit conduct for the purpose of:

(A) producing a visual depiction of such conduct, whether it be photographic, electronic or other digital or technological media storage; or

(B) transmitting a live visual depiction of such acts or conduct through any electronic or technological media;

(C) having such sexual conduct or sexually explicit conduct viewed in person, by others for their sexual gratification;

(2) the actor knowingly sells, distributes, circulates or possesses with intent to sell, distribute or circulate any visual depiction, whether electronic or in print of photographic, electronic or other digital or technological media storage, of a person under the age of 18 years engaging in any sexual conduct with another, or engaging in sexually explicit conduct, or graphic or computer generated obscene sexually explicit acts meant to represent a person under the age of 18 years;

(A) It shall be an affirmative defense to this section that the actor is the minor under the age of 18 who is the subject of the depiction, and distributes to another person(s) with who he/she has a romantic relationship;

(3) the actor knowingly receives, possesses or accesses with intent to view, any visual depiction whether electronic or in print of photographic, electronic or other digital or technological media storage of a person under the age of 18 years engaging in any sexual conduct with another, or to engaging in sexually explicit conduct, or graphic or computer generated obscene sexually explicit acts meant to represent a person under the age of 18 years;

(A) It shall be an affirmative defense to this section that actor received such visual depiction from the minor under the age of 18 with whom he/she is involved in a romantic relationship and the actor is either under the age of 18 or no more than four years senior to the minor in the visual depiction;

(4) the actor is one who views such conduct as prohibited in §(a)(1)(A) or (a)(1)(B) above whether or not the source of transmission, and the location of such conduct, are located within the exterior boundaries of the Omaha Tribal Reservation;

(A) It shall be an affirmative defense to this section that the actor, promptly and in good faith, without making any copies or allowing any other person other than law enforcement to view such depiction; and

(i) immediately took steps to destroy each such visual depiction; or

(ii) reported the matter to law enforcement and afforded law enforcement access to each visual depiction.

(5) the actor is one who personally views such sexual conduct or sexually explicit conduct as detailed in §(a)(1)(C) above.

(b) Sexual Exploitation of a Minor in violation of:

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(1) §(a)(1), §(a)(2) or §(a)(5) is a Class A Offense, except that if the minor so depicted is 14 years or younger the sentence shall be a mandatory minimum incarceration of 1 year;

(2) §(a)(3) or §(a)(4) is a Class B Offense, for the first offense, any subsequent offenses shall be Class A Offenses;

(3) except that if the actor is a parent, custodian or legal guardian or the minor victim the mandatory minimum for all such Offenses shall be imprisonment to the maximum allowed under the offense category; and

(A) such conviction shall be grounds for initiation of proceedings to sever all legal ties between the actor and the minor child;

(c) Sexual Exploitation of a Minor shall not be considered a lesser included offense of any other statute or Title of the Omaha Tribal Code.

### SECTION 5-4-21. Voyeurism

(a) A person is guilty of the crime of Voyeurism under any one of the following circumstance:

(1) intentionally or knowingly views or attempts to view the private areas of an individual without their consent under circumstances where the individual has a reasonable expectation of privacy;

(2) intentionally or knowingly attempts to capture an image, whether in person or by means of some electronic, photographic or technological storage devise or broadcast, of the private areas of an individual without their consent under circumstances where the individual has a reasonable expectation of privacy;

(3) for the purpose of this section the term private areas of an individual shall mean the naked or undergarment clad genitals, pubic area, buttock or female breast below the top of the areola;

(b) Voyeurism is a Class C offense except;

(1) where the actor knowingly or recklessly intends to view or views an individual under the age of 18 years but more than 14 years Voyeurism shall be a Class B Offense;

(2) where the actor knowingly or recklessly intends to view or views an individual under the age of 14 years shall be a Class A Offense.

(3) except that if the actor is a parent, custodian or legal guardian or the minor victim the mandatory minimum for all such Offenses shall be imprisonment to the maximum allowed under the offense category; and

(A) such conviction shall be grounds for initiation of proceedings to sever all legal ties between the actor and the minor child;

### SECTION 5-4-22. Indecent Exposure

(a) A person is guilty of the crime of Indecent Exposure if, for the purpose of arousing or gratifying the sexual desires of himself or any other person, the actor exposes his/her genital, anus or female breast below the top of the areola;

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(b) Indecent Exposure is a Class C Offense, except that if the actor knowingly or recklessly exposes him/herself to a minor child under the age of 14 year it shall be a Class B offense.

(1) except that if the actor is a parent, custodian or legal guardian or the minor victim the mandatory minimum for all such Offenses shall be imprisonment to the maximum allowed under the offense category; and

(A) such conviction shall be grounds for initiation of proceedings to sever all legal ties between the actor and the minor child;

### SECTION 5-4-23. Provisions Applicable to Sexual Offenses.

(a) Whenever an element of any sexual offense depends on the age of a child being below the age of 18 years, below the age of fourteen or 12 years or younger, it shall not be a defense that the actor did not know the child's age or reasonable believed the child to be older than the requisite age.

(b) A defendant shall not offer evidence of specific instances of a victim's past sexual behavior, except under the following circumstances:

(1) Notice of such intent and the specific instances to be offered as evidence shall be filed by motion served on the Tribal Prosecutor at least thirty day prior to the date of trial; and

(2) The Court shall conduct a in Court hearing, which shall be closed to the public at which the Court must determine in order for specific evidence to be admissible:

(A) That the evidence sought to be admitted of past sexual behavior with persons other than the Defendant shall be offered to challenge any physical or forensic evidence by offering an alternative source of such evidence; or

(B) That the evidence sought to be admitted is of past sexual behavior with the Defendant offered to establish the issue of consent based upon prior existing patterns of conduct or behavior by the victim bearing on the issue of consent; and

(C) That the evidence sought to be admitted is more probative than prejudicial, and that the evidence is not merely intended to embarrass the victim or prejudice the Court or Jury against the victim.

(c) Whenever an element of any sexual offense depends on the victim being any age under 18 years of age the statute of limitations shall be extended until the victim's 21<sup>st</sup> (twenty-first) birthday or seven years after the commission of the offense, whichever is later.

(1) Whenever such an offense is part of a pattern of conduct with the same victim all such similar crimes shall fall within the statute of limitations if the last such occurrence is within the statute of limitations.

### C. Offenses Against Property.

#### 1. Property Destruction.

### SECTION 5-4-24. Arson.

(a) A person is guilty of arson if he starts a fire or causes an explosion with the purpose of:

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- (1) destroying a building or occupied structure or another; or
- (2) destroying or damaging any property, whether his own or another's, to collect insurance for such loss.

(b) Definitions:

- (1) The term "occupied structure" includes a ship, trailer, sleeping car, airplane or vehicle, structure or place adopted for overnight accommodations of persons or for carrying on business therein, whether or not a person is actually present.
  - (2) Property is that of another, for the purposes of this section, if anyone other than the actor has a possessory or proprietary interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.
- (c) Arson is a Class A offense.

### SECTION 5-4-25. Reckless Burning.

- (a) A person is guilty of reckless burning if he:
- (1) recklessly starts a fire or causes an explosion which endangers human life; or
  - (2) damages property of another by reckless use of fire or reckless causing of an explosion; or
  - (3) having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm.
- (b) Reckless burning is a Class B offense.

### SECTION 5-4-26. Causing a Catastrophe.

- (a) A person is guilty of causing a catastrophe if he, by explosion, fire, flood, avalanche, collapse of a building, release of a poison gas, radioactive material, or other harmful or destructive force or substance, or by any other means, causes actual or potentially wide-spread injury to persons or property.
- (b) Causing a catastrophe is a Class A offense if done purposely or knowingly and a Class B offense if done recklessly.

### SECTION 5-4-27. Criminal Mischief.

- (a) A person is guilty of criminal mischief if:
- (1) under circumstances not amounting to arson, he damages or destroys property with the intention of defrauding an insurer; or
  - (2) he intentionally and unlawfully tampers with the property of another and thereby:
    - (A) recklessly endangers human life; or
    - (B) recklessly causes or threatens a substantial interruption or impairment of any public utility service; or

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(3) he intentionally damages, defaces, or destroys the livestock, domestic animal or other property of another; or

(4) he purposely or recklessly shoots or propels a missile or other object against a motor vehicle, bus, airplane, boat, locomotive, or train, whether moving or standing.

(b) Criminal mischief is a Class B offense unless the actor's conduct causes pecuniary loss of less than \$100.00, in which case it is a Class C offense.

### 2. Burglary and Related Offenses.

#### SECTION 5-4-28. Burglary.

(a) A person is guilty of burglary if he breaks and enters or remains unlawfully in a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit an offense therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to a prosecution for burglary that the building or structure was abandoned.

(b) Definitions:

(1) An "occupied structure" is any structure, vehicle, or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

(2) "Enter" means an intrusion of any part of the body, or intrusion of any physical object under control of the actor.

(3) "Break" means to secure entry into any "occupied structure" by use of any act of force or violence to unlock, open, override, smash or otherwise secure entry into any such structure which could not have been entered at the point of entry without the use of such force or violence.

(c) Burglary is a Class A offense.

(d) A person may not be convicted of both burglary and the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense if such offense was a Class C offense; he may be convicted of both of all of such other offenses that are Class A or B offenses.

#### SECTION 5-4-29. Burglary of a Vehicle.

(a) A person is guilty of burglary of a vehicle if he unlawfully enters any vehicle with intent to commit an offense therein.

(b) Burglary of a vehicle is a Class A offense.

#### SECTION 5-4-30. Aggravated Trespass.

(a) A person is guilty of aggravated trespass if he enters or remains unlawfully on property which he is not otherwise privileged to enter or remain and:

(1) accomplishes such entry by an act of force or violence or the use of a key or similar device which provides entry and which device the actor is not authorized or privileged to use for such purpose; or

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- (2) intends to cause or causes annoyance or injury to any person, property, or violates any provisions of Title 15 governing Wildlife and Parks; or
  - (3) intends to commit or commits an offense thereon; or
  - (4) is reckless as to whether his presence will cause fear for the safety of another.
- (b) Aggravated trespass is a Class B offense.

### SECTION 5-4-31. Simple Trespass.

(a) A person is guilty of simple trespass if, knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entry is given by:

- (1) personal communication to the actor by the owner or someone with authority to act for the owner; or
- (2) fencing or other enclosure obviously designed to exclude intruders; or
- (3) posting of signs reasonably likely to come to the attention of intruders.

(b) it is an affirmative defense to simple trespass that:

- (1) the property was open to the public when the actor entered or remained and he had not been informed that he should leave or not enter; or
- (2) the actor's conduct did not substantially interfere with the owner's use of the property and the actor left the property when asked to do so.

(c) Simple trespass is a Class C offense.

### 3. Robbery.

#### SECTION 5-4-32. Robbery.

(a) A person is guilty of robbery if, in the course of committing a theft, he:

- (1) Inflicts serious bodily injury upon another; or
- (2) threatens another with, or purposely puts him in fear of immediate serious bodily injury; or
- (3) commits or threatens to commit a Class A or Class B offense.

(b) An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit a theft or in flight after the attempt or commission of a theft.

(c) Robbery is a Class A offense.

### 4. Theft and Related Offenses

#### SECTION 5-4-33. Consolidation of Theft Offenses; General Provisions.

(a) Conduct denominated in this part of the Code constitutes a single offense embracing the separate offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence

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that it was committed in any manner that would be theft under this part of the Code, notwithstanding a different name is charged in the complaint, subject only to the power of the Court to ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

(b) It is an affirmative defense to prosecution for theft that the actor:

(1) acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or

(2) obtained or exercised control over the property or service honestly and reasonably believing that the owner if present would have consented.

(c) It is no defense that:

(1) the theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together; or

(2) the actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe upon.

(d) Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.

(e) All unbranded cattle over six (6) months old shall be presumed to be the property of the Tribe and its livestock enterprise, and the burden of proving otherwise shall be upon the person found in possession of such unbranded cattle on the Reservation.

(f) The Tribal Police shall have authority to stop any vehicle transporting livestock within the exterior boundaries of the Reservation to determine the ownership of such livestock and check for disease or infection.

### SECTION 5-4-34. Grading of Theft Offenses.

(a) Theft of property or services as provided in this part shall be punishable as follows:

(1) if the value of the property or services involved is more than \$500.00, the offense shall be a Class A offense;

(2) if the value of the property or services involved is \$100.00 or more but less than \$500.00, the offense shall be a Class B offense.

(3) if the value of the property or services involved is less than \$100.00, the offense shall be a Class C offense.

(b) If no evidence as to the value of the property or services involved is presented and the value of such is not obvious without presentation of such evidence, and if it otherwise is proven that a theft offense has been committed, the offense shall be a Class C offense.

### SECTION 5-4-35. Theft of Property.

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A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

### SECTION 5-4-36. Theft by Deception.

(a) A person is guilty of theft if he obtains or exercises unauthorized control over property of another by deception and with a purpose to deprive him thereof.

(b) A person deceives if he purposely;

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) prevents another from acquiring information which would affect his judgment of a transaction; or

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) fails to disclose a lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid or is not a matter of official record.

(c) The term "deceive" does not, however, include matters having no pecuniary significance, or mere puffing by statements unlikely to deceive ordinary persons in the group addressed.

### SECTION 5-4-37. Theft by Extortion.

(a) A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.

(b) Extortion occurs when a person threatens to:

(1) inflict bodily injury on anyone or commit any other criminal offense; or

(2) accuse anyone of a criminal offense; or

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or

(4) take or withhold action as an official, or cause an official to take or withhold action; or

(5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

(6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) inflict any other harm which would not benefit the actor but which would substantially harm any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

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(c) It is an affirmative defense to prosecution based on Subsections (2), (3), or (4) of Subsection (b) above that the property obtained by threat of action, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relies, or as compensation for property or lawful services.

### SECTION 5-4-38. Theft of Property Lost, Mislaid or Delivered by Mistake.

A person is guilty of theft if he comes into control or possession of property of another that he knows or reasonably suspects has been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with purpose to deprive the owner thereof, false to take reasonable measures to restore the property to a person entitled to have it.

### SECTION 5-4-39. Receiving Stolen Property.

(a) A person is guilty of theft if he receives, retains or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.

(b) The requisite knowledge or belief is presumed in the case of a person who:

(1) is found in possession or control of other property stolen on a separate occasion; or

(2) has received stolen property in another transaction within the year preceding the transaction charged; or

(3) being a dealer in property of the sort received, acquired it for a consideration which he knows or should know is far below its reasonable value.

(c) As used in this section, "receives" means acquiring possession, control or title, or lending on the security of the property; "dealer" means a person in the business of buying or selling goods.

### SECTION 5-4-40. Theft of Services

(a) A person is guilty of theft if:

(1) he obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefor; or

(2) having control over the disposition of services of others, to which he is not entitled, he diverts such services to his own benefit or to the benefit of another not entitled thereto.

(b) Where compensation for services is ordinarily paid immediately upon the rendering of such service, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to the intent to pay.

(c) "Services" includes, but is not limited to, labor, professional service, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admissions to a place for which a charge for admission is made, the use of vehicles or other moveable or real property.

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### SECTION 5-4-41. Theft by Failure to Make Required Disposition of Funds Received.

(a) A person is guilty of theft if he obtains property from anyone, or personal services from an employee, upon agreement, or subject to a known legal obligation to make a specified payment or other disposition to a third person, whether from the property or its proceeds or from his own property in an equivalent amount, and if he deals with the property as his own and fails to make the required payment or disposition.

(b) It is no defense that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.

(c) An officer or employee of the Tribe, government, or of a financial institution is presumed:

(1) to know of any legal obligation relevant to his liability under this section; and

(2) to have dealt with the property as his own if he fails to pay or, account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

(d) Failure to make required payments for realty or goods purchased in the ordinary course of business or in any consumer or commercial transaction shall not constitute theft hereunder.

### SECTION 5-4-42. Unauthorized Use of a Vehicle.

(a) A person is guilty of unauthorized use of a vehicle if he operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner.

(b) It is an affirmative defense for prosecution of this offense that the actor reasonably believed that the owner would have consented to the operation had he known of it.

(c) Unauthorized use of a vehicle is a Class C offense.

### SECTION 5-4-43. Definitions Applicable to This part.

(a) "Property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, commodities of a public utility such as water, gas or electricity, trade or business secrets which the owner thereof intends to be available only to persons selected by him, or any other right, object, labor or service valuable to the owner thereof.

(b) "Property of another" includes property in which any person, company, group or organization other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(c) "Obtain" means, in relation to property, to bring about a transfer or purported transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another; in relation to labor or services, to secure performance thereof; and in relation to a trade or business secret, to make any facsimile, replica, photograph or other reproduction thereof.

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(d) "Purpose to deprive" means to have the conscious object:

- (1) to withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or the use and benefit thereof, would be lost; or
- (2) to restore the property only upon payment of a reward or other compensation; or
- (3) to dispose of the property under circumstances that make it unlikely that the owner will recover it unharmed.

### 5. Forgery and Fraudulent Practices.

#### SECTION 5-4-44. Forgery.

(a) A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, he:

- (1) alters any writing of another without his authority; or
- (2) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be that of another who did not authorize that act, or to have executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
- (3) utters or attempts to circulate as genuine any writing which he knows to be forged in the manner specified in this section.

(b) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks and other symbols of value, right, privilege, or identification.

(c) Forgery is a Class A offense if the writing purports to be money, securities, postage or revenue stamps, or other instruments issued by the Tribe or the government, a will, deed, contract, release, commercial instrument or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations. Otherwise, forgery is a Class B offense.

#### SECTION 5-4-45. Criminal Simulation.

(a) A person is guilty of criminal simulation if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters or attempts to circulate or sell as genuine any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

(b) Criminal simulation is a Class B offense.

#### SECTION 5-4-46. Fraudulent Handling of Recordable instruments

(a) A person is guilty of fraudulent handling of recordable instruments if, with purpose to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording or knowingly records a false or forged instrument.

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- (b) Fraudulent handling of recordable instruments is a Class B offense.

### SECTION 5-4-47. Tampering With Records.

(a) A person is guilty of tampering with records if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrong doing.

- (b) Tampering with records is a Class B offense.

### SECTION 5-4-48. Bad Checks.

(a) A person is guilty of bad checks if he issues or passes a check or similar sight order for the payment of money, for the purpose of obtaining any money, property, or other thing of value or paying for any services, rent, wages or salary, knowing or believing that it will not be honored by the drawee.

(b) For the purposes of this section as well as in any prosecution theft committed by means of bad check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid if:

- (1) the issuer had no account with the drawee at the time the check or order was issued; or
- (2) payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days of issue, and the issuer thereafter failed or was intentionally unavailable to make good within ten (10) days after such refusal and receipt of notice thereof;

(c) Bad checks is a Class A offense if the check or a series of checks issued over a period not exceeding six (6) months exceeds \$500.00; otherwise bad checks is a Class B offense.

### SECTION 5-4-49. Fraudulent Use of a Credit Card.

(a) A person is guilty of fraudulent use of a credit card if he uses a credit card for the purpose of obtaining property or services with knowledge that:

- (1) the card is stolen; or
- (2) the card has been revoked or cancelled; or
- (3) for any other reason his use of the credit card is unauthorized by either the issuer or the person to whom the card has been issued.

(b) "Credit card" means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(c) Fraudulent use of a credit card is a Class A offense if the value of the property or services secured or sought to be secured by means of the credit card exceeds \$500.00; otherwise, fraudulent use of a credit card is a Class B offense.

### SECTION 5-4-50. Deceptive Business Practices.

- (a) A person is guilty of deceptive business practices if, in the course of business, he:

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- (1) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or
- (2) sells, offers or exposes for sale, or delivers less than the represented quality or quantity of any commodity or services; or
- (3) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or
- (4) sells, offers, or exposes for sale adulterated or mislabeled commodities;
  - (A) “adulterated” means varying from the standard of composition or quality prescribed by law or commercial usage.
  - (B) “mislabeled” means varying from the standard of truth or disclosure in labeling prescribed by law or commercial usage; or
- (5) makes a false or misleading statement in any advertisement addressed to the public or a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or
- (6) makes a false or misleading statement for the purpose of obtaining property or credit; or
- (7) makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.
  - (b) It is an affirmative defense to prosecution under this section if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.
  - (c) Deceptive business practices is a Class B offense.

### **SECTION 5-4-51. Commercial Bribery.**

- (a) One is guilty of commercial bribery if:
  - (1) he solicits, accepts, or agrees to accept any benefits as consideration for knowingly violating or agreeing to violate any duty of fidelity to which he is subject as agent or employee of another; trustee, guardian, or other fiduciary; lawyer, physician, accountant, appraiser, or other participant in the direction of affairs of an incorporated or unincorporated association; or arbitrator or other purportedly disinterested adjudicator or referee; or
  - (2) being one who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services, he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticisms; or
  - (3) he confers or offers or agrees to confer any benefit the acceptance of which would be criminal under this section.

### **SECTION 5-4-52. Rigging a Contest.**

- (a) A person is guilty of rigging a contest if:

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(1) with a purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to overturn it, he:

(A) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or

(B) tampers with any person, animal, or thing; or

(2) he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under this section; or

(3) he knowingly engages in, sponsors, produces, judges, or otherwise participates in a publicly exhibited contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct which would be criminal under this section.

### SECTION 5-4-53. Defrauding Creditors.

(a) A person is guilty of defrauding creditors if:

(1) he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with deliberate intent to hinder enforcement of that interest; or

(2) knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors; he

(A) destroys, removes, encumbers, transfers, or otherwise deals with any property with purpose to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or

(B) knowingly falsifies any writing or record relating to the property; or

(C) knowingly misrepresents or refuses to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

(b) Defrauding creditors is a Class B offense.

### SECTION 5-4-54. Unlawful Dealing With Property by a Fiduciary.

(a) A person is guilty of unlawful dealing with property by a fiduciary if he deals with the property that has been entrusted to him as a fiduciary, or property of the Tribe or government or of a financial institution, in a manner which he knows is violation of his duty and which involves a substantial risk or loss to the owner or to a person for whose benefit the property was entrusted.

(b) As used in this section, "fiduciary" includes a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization that is a fiduciary.

(c) Unlawful dealing with property by a fiduciary is a Class B offense.

### SECTION 5-4-55. Securing Execution of Documents by Deception.

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(a) A person is guilty of securing execution of documents by deception if, by deception, he causes another to execute any instrument affecting or likely to affect the pecuniary interest of the person.

(b) Securing execution of documents by deception is a Class B offense.

### SECTION 5-4-56. Making a False Credit Report.

(a) A person is guilty of making a false credit report if he knowingly makes materially false or misleading statements to obtain property or credit himself or another or to keep some other person from obtaining credit.

(b) Making a false credit report is a Class B offense.

### SECTION 5-4-57. Criminal Usury

(a) A person is guilty of criminal usury when he knowingly engages in or directly or indirectly provides financing for the business of making loans or purchases a rate of interest or consideration therefore higher than the following:

(1) if the amount to which the interest applies is less than \$100.00 or the period of the lien or financing is less than one year, the rate of interest shall not exceed a twenty-four (24) percent per annum simple interest rate.

(2) if the amount to which the interest applies is greater than \$100.00 or the period of the loan or financing is greater than one year, the rate of interest shall not exceed an eighteen (18) percent per annum simple interest rate.

(b) In computing the interest rate, the following will be considered to be part of the interest charged: all charges payable directly or indirectly by the person receiving the credit as an incident to the extension of credit, including any of the following types of charges: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee of insurance protecting the seller against the buyer's default or other credit loss, charges incurred for investigating the collateral or credit of the borrower, and commissioner fees charged for obtaining credit.

(c) Criminal usury is a Class B offense.

## D. Offenses Against the Family.

### 1. Marital Violations.

### SECTION 5-4-58. Incest.

(a) A person is guilty of incest if he knowingly marries or cohabits or has sexual intercourse or sexual contact with a person he knows to be an ancestor or decendant, brother, sister, aunt, uncle, nephew, niece or first cousin, any of which are of the whole or half blood, without regard to legitimacy, adoption or parent/step-child relationship, while such relationship exists.

(b) Incest is a Class A offense.

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## 2. Nonsupport and Related Offenses.

### SECTION 5-4-59. Criminal Nonsupport.

(a) A person is guilty of criminal nonsupport if, without just cause and possession of the means to do so, he fails to provide for the support of his spouse, child under 18, or other dependant when such persons or any of them are in needy circumstances.

(b) "Child" includes a child born out of wedlock whose paternity has been admitted by the actor or been established in a civil suit.

(c) In a prosecution under this section, it is no defense that the person to be supported received necessary support from a source other than the defendant.

(d) Criminal nonsupport is a Class B offense.

### SECTION 5-4-60. Endangering the Welfare of a Child.

(a) A person is guilty of endangering the welfare of a child if he is a parent, guardian, or other person supervising the welfare of a child under the age of 18 and he knowingly endangers the child's welfare by violating a duty of care, protection or support or by intentionally leaving or abandoning a child in any manner which threatens serious harm to the physical, emotional or mental well being of the child.

(b) Endangering the welfare of a child is a Class B offense.

### SECTION 5-4-61. Failure to Send Children to School.

(a) A person is guilty of failure to send children to school if, being the parent, guardian or other person having a child under 18 in his custody and care, he, without good cause, neglects or refuses to send such child to school.

(b) Failure to send children to school is a Class C offense.

## E. Offenses Against the Administration of Government.

### 1. Bribery and Corrupt Influence.

#### SECTION 5-4-62. Bribery in Official Matters.

(a) A person is guilty of bribery in official matters if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(1) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal or governmental officer or employee, or as an official of a party or faction or as a voter; or

(2) any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of a known duty as a Tribal or governmental officer or employee or party official.

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(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(c) Bribery in official matters is a Class B offense.

### SECTION 5-4-63. Improper Influence in Official Matters.

(a) A person is guilty of improper influence in official matters if he:

(1) threatens unlawful harm to any person with purpose to influence another's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official, or voter; or

(2) threatens harm to any public servant or relative of a public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(3) threatens harm to any public servant or party official or relative of either with purpose to influence him to violate his duty; or

(4) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.

(b) It is no defense to prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(c) Improper influence in official matters is a Class B offense.

### SECTION 5-4-64. Compensation for Past Official Behavior.

(a) A person is guilty of compensation for past official behavior if:

(1) he solicits, accepts or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty; or

(2) he offers, confers or agrees to confer compensation acceptance of which is prohibited by this section.

(b) Compensation for past official behavior is a Class B offense.

### SECTION 5-4-65. Retaliation for Past Official Action.

(a) A person is guilty of retaliation for past official action if he harms any person by an unlawful act in retaliation for anything lawfully done by another person in his capacity as a public servant.

(b) Retaliation for past official action is a Class B offense.

### SECTION 5-4-66. Improper Gifts to Public Servants.

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(a) A person is guilty of improper gifts to public servants if:

(1) being a public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or, criminal litigation on behalf of the Tribe or government, or having custody of prisoners, he shall solicit, accept or agree to accept any valuable benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated; or

(2) being a public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other valuable transaction of the Tribe or government, he shall solicit, accept or agree to accept any valuable benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transactions; or

(3) being a public servant having judicial, legislative, or, administrative, authority, or being a public servant employed by or in a court or other tribunal having such authority, or being involved in the enforcement of such a tribunal's decisions, he shall solicit, accept or agree to accept any valuable benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated; or

(4) he knowingly confers or offers or agrees to confer any benefit prohibited by this section.

(b) This section shall not apply to:

(1) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives lawful consideration or to which he is otherwise entitled; or

(2) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or

(3) trivial benefits incidental to personal, professional or business contracts and involving no substantial risk of undermining official impartiality.

(c) Improper gifts to public servants is a Class B offense.

### 2. Abuse of Office.

#### SECTION 5-4-67. Official Misconduct.

(a) A person is guilty of official misconduct if:

(1) being a public servant, and with intent to benefit himself or another or harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a nondiscretionary duty imposed on him by law or clearly inherent in the nature of his office; or

(2) being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired. by virtue of his office or from another public servant which information has not been made public, he:

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(b) acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or

(c) speculates or wagers on the basis of such action or information; or knowingly aids another to do any of the foregoing.

(2) Official misconduct is a Class B offense.

### SECTION 5-4-68. Official Oppression.

(a) A person is guilty of official oppression if, when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, and knowing that his conduct is illegal, he:

(1) unlawfully and unknowingly subjects another to arrest, detention, search, seizure, termination of employment, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(2) unlawfully and unknowingly denies or impedes another in the exercise or enjoyment of any right, power or immunity.

(b) Official oppression is a Class B offense.

### SECTION 5-4-69. Special Influence.

(a) A person is guilty of special influence if:

(1) he solicits, receives or agrees to receive any pecuniary benefit as consideration for exerting special influence upon a public servant, or procuring another to do so; or

(2) he offers, confers or agrees to confer any pecuniary benefit receipt of which is prohibited by this Section.

(b) Special influence is a Class B offense.

### SECTION 5-4-70. Misusing Public Money.

(a) A person is guilty of misusing public money if, being a public servant or other person charged with the receipt, safekeeping, transfer or disbursement of public monies, he:

(1) without lawful authority appropriates the money or any portion of it to his own use or the use of another; or

(2) loans the money or any portion thereof without lawful authority; or

(3) fails to keep the money in his possession until lawfully disbursed or paid out; or

(4) deposits the money in a bank or with a person not lawfully authorized to receive such; or

(5) knowingly keeps any false account, or makes a false entry or erasure in any account of or relaying to the money; or

(6) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or

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(7) knowingly refuses or omits to pay over on lawful demand by competent authority any public monies in his hands; or

(8) knowingly omits to transfer money when transfer is required by proper authority; or

(9) makes a profit for himself or another not lawfully entitled to such, or in an unlawful manner, out of public moneys; or

(10) fails to pay over to the proper account or authority any fines, forfeitures, or fees received by him; or

(11) otherwise handles public money in a manner not authorized by law for his own benefit or the benefit of another; or

(12) handles public money in a reckless manner as a result of which risk of loss of such money is significant.

(b) "Public money" includes all money, bonds, and evidences of indebtedness or their equivalent, belonging to, or received or held by the Tribe or any other government, or any account or money held by the Tribe or government for any individual.

(c) Misusing public money is a Class A offense and disqualification to hold public office may be imposed upon proof by a preponderance of the evidence that the actor personally profited in any way by his misuse of public money as defined herein.

### 3. Falsification in Official Matters.

#### SECTION 5-4-71. Perjury.

(a) A person is guilty of perjury if, in any official proceeding, he makes a false statement under oath or equivalent affirmation, or swears of or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(b) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material is a given factual situation is a question of law to be decided by the Court.

(c) It is no defense to prosecution under this Section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made on oath of affirmation at any one time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(d) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(e) Where a defendant makes inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single complaint alleging in the alternative that one or the other was false and not believed by the defendant. In such case, it shall not be necessary for the prosecution to prove

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which statement was false but only that one or the other was false and not believed by the defendant to be true.

(f) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

(g) Perjury is a Class A offense.

### SECTION 5-4-72. False Swearing.

(a) A person is guilty of false swearing if he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, if:

- (1) the falsification occurs in an official proceeding; or
- (2) the falsification is intended to mislead a public servant in performing his official function; or
- (3) the statement is one which is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths.

(b) Subsections (c) to (f) of the Perjury section apply to this section.

(c) False swearing is a Class B offense.

### SECTION 5-4-73. Unsworn Falsification.

(a) A person is guilty of unsworn falsification if, with a purpose to mislead a public servant in performing his official function, he:

- (1) makes any written false statement which he does not believe to be true; or
- (2) purposely creates a false impression in a written application for any benefit by omitting information necessary to prevent statements therein from being misleading; or
- (3) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or
- (4) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(b) A person is guilty of unsworn falsification if he makes a written false statement that he does not believe to be true, on or pursuant to a form being notice, authorized by law, to the effect that false statements made therein are punishable.

(c) Subsections (c) to (f) of the Perjury section apply to this section.

(d) Unsworn falsification is a Class B offense.

### SECTION 5-4-74. False Alarms

(a) A person is guilty of false alarms if he knowingly:

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- (1) causes a false fire alarm or alarm of other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property; or
  - (2) gives false information to any law enforcement officer with purpose to implicate another in an offense; or
  - (3) reports to law enforcement authorities an offense or other incident within their concern knowing or believing that it did not occur; or
  - (4) pretends to furnish law enforcement authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident; or
  - (5) gives a false name or address to a law enforcement officer in the lawful discharge of his official duties.
- (b) False alarms is a Class C offense.

### SECTION 5-4-75. Tampering with Witnesses.

- (a) A person is guilty of tampering with witnesses if:
- (1) believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:
    - (A) testify or inform falsely; or
    - (B) withhold any testimony, information, document or thing; or
    - (C) elude legal process summoning him to testify or supply evidence; or
    - (D) absent himself from any proceeding or investigation to which he has been legally summoned;
  - (2) he harms another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or
  - (3) he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in this section.
- (b) Tampering with witnesses is a Class A offense if the actor employs force, deception, threat or offer of a valuable benefit; otherwise, tampering with witnesses is a Class B offense.

### SECTION 5-4-76. Tampering with Evidence.

- (a) A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:
- (1) alters, destroys, conceals or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or
  - (2) makes, presents or uses any record, document, or thing knowing to be false and with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.
- (b) Tampering with evidence is a Class B offense.

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## SECTION 5-4-77. Tampering with Public Records.

- (a) A person is guilty of tampering with public records if he:
- (1) knowingly makes a false entry in, or false alteration of, any record, document or things belonging to or received or kept by, the Tribe or government for information or record, or require by law to be kept by others for information of the Tribe or government; or
  - (2) makes, presents or uses any record, document, or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in (a) above; or
  - (3) purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

## SECTION 5-4-78. Impersonating a Public Servant.

- (a) A person is guilty of impersonating a public servant if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.
- (b) Impersonating a public servant is a Class B offense.

## SECTION 5-4-79. Definitions Applicable to This Part.

- (a) "Official proceeding" means any proceeding before a legislative, judicial, administrative, or other Tribal or governmental body or official authorized by law take evidence under oath or affirmation, including a Notary Public or other person taking evidence in connection with any of these proceedings.
- (b) "Statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to the state of mind apart from or in addition to any facts which are the subject of representation.
- (c) "Public servant" means any officer or employee of the Tribe or government, including judges and Tribal leaders, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses.
- (d) "Government" includes Tribal, State, local and Federal governments.
- (e) "Harm" means loss, disadvantage or injury to anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested.
- (f) "Benefit" means gain or advantage, or anything regarded as gain or advantage, including benefit to any other person, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate promises to support or oppose.

## 4. Obstructing Governmental Operations.

### SECTION 5-4-80. Obstructing Governmental Function.

- (a) A person is guilty of obstructing governmental function if:

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(1) he uses force, violence, intimidation, or engages in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function; or

(2) he purposely obstructs, impairs, or prevents the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

(b) Obstructing governmental function is a Class B offense.

### SECTION 5-4-81. Resisting Arrest.

(a) A person is guilty of resisting arrest if, for the purpose of preventing a law enforcement officer from effecting an arrest or detention of himself or of any other person, or of discharging any other duty, the person creates a substantial risk of bodily harm to anyone or employees means justifying or requiring substantial force to overcome the resistance, regardless of whether there is a legal basis for the arrest or detention.

(b) Resisting arrest is a Class C offense.

### SECTION 5-4-82. Obstructing Justice.

(a) A person is guilty of obstructing justice if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for the commission of an offense, he:

(1) harbors or conceals the other; or

(2) provides or aids in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or

(3) conceals or destroys evidence of the offense, or tampers with a witness, informant, document or other source of information, regardless of its inadmissibility in evidence; or

(4) warns the other of impending discovery or apprehension, except if such warning is given in an attempt to get the other person to comply with the law; or

(5) volunteers false information to a law enforcement officer for the purpose of preventing the apprehension of another; or

(6) obstructs by force, threat, bribery or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of another person.

(b) Obstructing justice is a Class B offense if the offense committed or charged or liable to be charged against the person aided is a Class A offense; otherwise, obstructing justice is a Class C offense.

### SECTION 5-4-83. Refusing to Aid an Officer.

(a) A person is guilty of refusing to aid an officer if he knowingly or recklessly refuses to aid a law enforcement officer or fireman in the performance of his official duties when called upon by the officer to do so.

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- (b) Refusing to aid an officer is a Class C offense.

### SECTION 5-4-84. Escape.

(a) A person is guilty of escape if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of crime; or any other detention for law enforcement purposes; but "official detention" does not include supervision of probation or parole, or constraint incident to release on bail.

(b) A person is guilty of escape if he:

- (1) aids another person to escape from official detention; or
- (2) knowingly provides a person in official detention with anything which may facilitate such person's escape; or
- (3) being a person in official detention, he knowingly procures, makes, or possesses anything, which may facilitate escape.

(c) Escape is:

- (1) A Class B offense if the detainee was under arrest for or detained on a charge of a Class A offense or following conviction for any offense; or
- (2) a Class B offense if the actor employs force, threat, deadly weapon or other dangerous instrumentality to effect escape; or
- (3) a Class B offense if a public servant concerned with detention of persons purposely facilitates or permits an escape from a detention facility.
- (4) a Class C offense for all other cases.

### SECTION 5-4-85. Providing Contraband.

(a) A person is guilty of providing contraband if he knowingly provides a person in official detention with alcoholic beverages, drugs, weapons, implements of escape or any other thing or substance which the actor knows is unlawful or improper for the detainee to possess.

(b) Providing contraband is a Class C offense.

(c) It shall be an affirmative defense to criminal charges brought pursuant to 5-4-85 for providing alcoholic beverages or drugs (Providing Contraband) if the person:

- (1) Did not provide weapons or implements of escape;
- (2) Requested emergency medical assistance in response to the possible drug or alcohol overdose of himself or another person as soon as the emergency situation is apparent to the person requesting emergency medical assistance; or
- (3) Was the first person to make a request for medical assistance under section (2); or

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- (4) When emergency medical assistance was requested for the possible alcohol or drug overdose of another person:
- (a) Remained on the scene until the medical assistance arrived; and
  - (b) Cooperated with medical assistance and law enforcement personnel.

[Note: The provisions of Section 5-4-85 were amended by Resolution No. 15-196 on August 14th, 2015.]

### SECTION 5-4-86. Bail Jumping.

- (a) A person is guilty of bail jumping if, having been released on bail or on his own recognizance by tout order or other lawful authority upon condition that, he subsequently appear on a charge of an offense, he fails without just cause to appear in person or in the case where a Class C offense is charged, by counsel at the time and place which have been lawfully designated for his appearance.
- (b) Bail jumping is an offense of the next lower degree as the offense originally charged for which the actor was released, or, if more than one offense was charged, for the highest degree of such offenses, but not less than a Class C offense.

### SECTION 5-4-87. Doing Business Without a License.

- (a) A person is guilty of doing business without a license if he commences or carries on any business, trade, profession, or calling the transaction or carrying on of which is required by law to be licensed, without having an appropriate license, provided that in the absence of any other procedure, anyone seeking to do business on the reservation may apply to the Tribal Council for a business license in writing addressed to the Chairman. A letter granting or denying the license 'And stating the conditions thereof shall be issued within forty-five (45) days of the application.
- (b) This provision does not of its own force create any legal requirement that any Tribal license be obtained as a precondition for doing business on the Omaha Indian Reservation, but is merely an enforcement mechanism for any separately enacted tribal laws requiring a business license.
- (c) Doing business without a license-is a Class B offense unless the gross receipts of the on-reservation business involved is less than \$100.00, in which case it is a Class C offense.

### SECTION 5-4-88. Tampering with Public Property.

- (a) A person is guilty of tampering with public property if:
- (1) he steals, defaces, mutilates, alters, falsifies, or removes all or part of any record, map, book, document or thing, or any court documents or records, placed or filed in any public office or with any public officer, of if he permits another to do so; or
  - (2) he knowingly injures, defaces or removes any signal, monument or other maker placed or erected as part of an official survey of the Tribe or state or Federal government without authority to do so; or

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(3) he intentionally defaces, obliterates, tears down, or destroys any copy or transcript or extract from any law, or any proclamation, advertisement, or notice set up or displayed by any public officer or court, without authority to do so an before the expiration of the time for which the same was to remain set up.

(b) Tampering with public property is a class C offense.

### SECTION 5-4-89. Injuring Public Property.

(a) A person is guilty of injuring public property if he:

(1) intentionally breaks down, pulls down or otherwise injures or destroys any jail or other place of confinement; or

(2) intentionally and without authority to do so digs up, removes, displaces or otherwise injures or destroys any public road, highway or bridge or private road or bridge or other public building or structure; or

(3) removes or injures any milepost, guidepost or road or highway sign or marker or any inscription on them while such is erected along a road or highway.

(b) Injuring public property is a Class B offense if the injury is to a jail or place of confinement or value if the damage done exceeds \$100.00; otherwise, injuring public property is a Class C offense.

### 5. Offenses Against Public Order and Decency.

#### SECTION 5-4-90. Riot.

(a) A person is guilty of riot if simultaneously with two or more other persons he engages in tumultuous or violent conduct and thereby knowingly or recklessly creates a substantial risk of causing public alarm.

(b) Failure to cease or dispense from a lawful boycott, strike, or peaceful public or private gathering for redress of grievances or other lawful purposes, even in the face of a direct police order to do so, shall not constitute an offense under this section.

(c) Riot is a class A offense.

#### SECTION 5-4-91. Failure to Disperse.

(a) A person is guilty of failure to disperse if he refuses or knowingly fails to obey an order to disperse or leave the immediate vicinity given by a law, enforcement officer or other public servant performing a law enforcement function, at the scene of a riot, fire, or other public disorder or given in the course of executing or enforcing the law or in the course of the investigation of the commission of an accident, fire, offense or suspected offense.

(b) Failure to cease or dispense from a lawful boycott, strike, or peaceful public or private gathering for redress of grievances or other lawful purposes, even in the face of a direct police order to do so, shall not constitute an offense under this section.

(c) Failure to disperse is a Class C offense.

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### SECTION 5-4-92. False Reports.

(a) A person is guilty of false reports if he initiates or circulates a report or warning of a fire, bombing, or other crime or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of any building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm or action of any sort by an official or volunteer agency organized to deal with emergencies.

(b) False reports is a Class C offense.

### SECTION 5-4-93. Emergency Telephone Abuse.

(a) A person is guilty of emergency telephone abuse if he:

(1) knowingly refuses to yield or surrender the use of a party line or public pay telephone to another person upon being informed that said telephone is needed to report a fire, or summon police, medical or other aid in case of an emergency, unless the actor is already using said telephone to report an emergency; or

(2) asks for or requests the use of a party line or public pay phone on the pretext that an emergency exists, knowing that no emergency exists.

(b) "Emergency" means a situation in which property or human life or safety is in jeopardy and the prompt summoning of aid is or reasonably appears to be essential to preservation of human life, safety or property.

(c) Emergency telephone abuse is a Class C offense.

### SECTION 5-4-94. Desecration.

(a) A person is guilty of desecration if he purposely desecrates any public monument or structure, or place of worship or burial or other sacred place or thing.

(b) "Desecrate" means defacing, damaging, polluting or otherwise physically mistreating in a way that the actor knows or believes will outrage the sensibilities of persons likely to observe or discover his action.

(c) Desecration is a Class C offense.

### SECTION 5-4-95. Abusing a Corpse.

(a) A person is guilty of abusing a corpse if he purposely and unlawfully:

(1) removes, conceals, dissects, or destroys a corpse or any part of a corpse; or

(2) disinters a corpse that has been buried or otherwise interred; or

(3) treats a corpse in a way he knows would outrage ordinary sensibilities.

(b) Abusing a corpse is a Class C offense.

### SECTION 5-4-96. Cruelty to Animals.

(a) A person is guilty of cruelty to animals if he purposely or knowingly:

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- (1) tortures or seriously overworks an animal; or
- (2) fails to provide necessary food, care, or shelter for an animal in his custody; or
- (3) abandons an animal in his custody; or
- (4) transports or confines an animal in a cruel manner; or
- (5) kills, injures or administers poison to an animal without legal privilege to do so; or
- (6) causes one animal to fight with another.

(b) It is a defense to prosecution under this section that the conduct of the actor toward the animal was an accepted veterinary practice or directly related to a bona fide experimentation for scientific research provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless directly necessary to the veterinary purpose or scientific research involved.

(c) Cruelty to animals is a Class C offense.

### SECTION 5-4-97. Violation of Privacy.

(a) A person is guilty of violation of privacy if, except as authorized by law, if he:

- (1) trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or
- (2) installs in any private place, without the consent of the person or persons -entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or uses any such unauthorized installation; or
- (3) installs or uses outside of any private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the persons entitled to privacy there; or
- (4) intercepts without consent of the sender or receiver a message by telephone, telegraph, letter or other means of communicating privately; but this sub-paragraph does not apply to:
  - (A) overhearing of messages through a regularly installed instrument on a telephone party line or extensions; or
  - (B) interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or to other normal operation or use; or
- (5) divulges without the consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

(b) Definitions:

- (1) "Eavesdrop" means to overhear, record, amplify, or transmit any part of an oral or written communication of others without the consent of at least one party thereto by means of an electrical, mechanical or other device.

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(2) "Private place" means a place where one can reasonably expect to be safe from causal or hostile intrusion or surveillance.

(c) Violation of privacy is a Class C offense.

### SECTION 5-4-98. Criminal Defamation.

(a) A person is guilty of criminal defamation if he knowingly and with malicious intent communicates to any person orally or in writing any information which he knows or should know to be false and knows that the information tends to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby expose him to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown by way of defense.

(b) it shall be a defense to criminal defamation that the person making the publication was at the time engaged in the formal broadcast or publication of news by some public means or media of communication and in good faith believed he was reporting a newsworthy event with a basis in truth.

(c) Criminal defamation is a Class C offense.

### SECTION 5-4-99. Possession of an Alcoholic Beverage by a Person Under 21.

*See Section 12-7-3(b), which superseded and replaced the previous language here.*

## 6. Offenses Against Public Health, Safety, Welfare and Morals.

### SECTION 5-4-100. Prostitution.

(a) A person is guilty of prostitution if he or she:

(1) engages in indiscriminate sexual intercourse or oral or anal sexual conduct with another for hire in return for money or its equivalent.

(2) offers to engage in or solicits sexual intercourse or oral or anal sexual conduct with another in return for money or its equivalent.

(b) On the issue of whether a place is a house of prostitution, the following shall be admissible in evidence: its general reputation; the reputation of the persons who reside in or frequent the place; and frequency, timing and duration of visits by non-resident. Testimony of a person against his spouse shall be admissible to prove offenses under this Section.

(c) Prostitution under Subsection (a)(1) is a Class A offense, and Prostitution under Subsection (a)(2) is a Class B offense

### SECTION 5-4-101. Spreading Venereal Disease

(a) A person is guilty of spreading venereal disease if, knowing or having reason to believe he has a venereal disease, he shall infect another person with venereal disease.

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(b) Spreading venereal disease is a Class C offense. The Court shall, upon conviction, have the power to order the medical examination and treatment of the convicted offender and may also order an investigation to determine to what extent others have or may have been infected by the convicted offender.

### SECTION 5-4-102. Weapons Offense.

(a) A person shall be guilty of weapons offense if:

- (1) being addicted to any narcotic drug, or having been declared mentally incompetent, he owns or has in his possession or under his custody or control a dangerous weapon; or
- (2) being intoxicated or otherwise under the influence of alcoholic beverages or other intoxicating substance, drug, or medicine, he has a dangerous weapon in his possession or under his custody or control; or
- (3) he carries a loaded firearm in a vehicle on a public road without lawful authority to do so; or
- (4) he has on his person a dangerous weapon with intent to unlawfully assault another; or
- (5) he discharges any kind of firearm from a motor vehicle without lawful authority to do so; or
- (6) he discharges a firearm from, upon or across any public highway without lawful authority to do so; or
- (7) being under the age of 16 years old, he possesses a firearm without the consent of his parent or guardian.

(b) Definitions:

(1) "Dangerous weapon" means any item that in the manner of its wise or intended use is capable of causing death or serious bodily injury. In determining whether an item, object or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the instrument, object or thing, the character of the effect that would be produced, if any, and the manner in which the instrument, item or thing was used shall be determinative.

(2) "Firearms" means pistols, revolver, rifles, shotguns, and any device that is capable of being used as a weapon because it expels a projectile by some means of force.

(c) A firearm or other weapon shall be deemed loaded when there is an unexpended cartridge, shell or projectile in the firing position, except in the case of pistols and revolvers, in which case they shall be deemed loaded when the unexpended cartridge, shell or projectile is in a position that the manual operation of any mechanism once would cause the unexpended cartridge, shell, or projectile to be fired.

(d) Weapons is a Class B offense.

### SECTION 5-4-103. Aggravated Weapons.

(a) A person is guilty of aggravated weapons offense if:

- (1) he carries a dangerous weapon concealed on his person; or
- (2) he threatens to use or exhibits a dangerous weapon in a dangerous and threatening manner, or uses a dangerous weapon in a fight or quarrel; or

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(3) he possesses a shotgun or rifle having a barrel or barrels of less than 16 inches in length or an altered or modified shotgun or rifle less than 26 inches overall length.

(b) Aggravated weapons offense is a Class A offense.

### SECTION 5-4-104. Dangerous Devices.

(a) A person is guilty of dangerous devices if he:

(1) delivers or causes to be delivered to any express, railway company or common carrier, or places in the mail or delivers to any person, or throws or places on or about the premises or property of another or in any place where another may be injured thereby, a dangerous device, knowing it to be such, unless he informs the threatened person of the nature thereof and its placement if for some lawful purpose.

(b) For purposes of this section, a "dangerous device" is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or inflammable substance, chemical, or compound, or knife, loaded firearm or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts, unexpectedly when moved, handled or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property.

(c) Dangerous devices is a Class A offense.

### SECTION 5-4-105. Abuse of Psychotoxic Chemical Solvents.

(a) A person is guilty of abuse of psychotoxic chemical solvents if:

(1) for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, he purposely:

(A) smells or inhales the fumes of any psychotoxic chemical solvent; or

(B) possesses, purchases, or attempts to possess or purchase any psychotoxic chemical solvent; or

(2) knowing or believing that the purchaser or another intends to use a psychotoxic chemical solvent in violation of this section, he sells or offers to sell any psychotoxic chemical solvent.

(b) This section shall not apply to the inhalation of anesthesia for medical or dental purposes.

(c) As used in this section, "psychotoxic chemical solvents" includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

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- (d) Abuse of psychotoxic chemical solvents is a Class C offense.
- (e) It shall be an affirmative defense to criminal charges brought pursuant to 5-4-105 (Abuse of Psychotoxic Chemical Solvents) if the person:

- (1) Requested emergency medical assistance in response to the possible drug or alcohol overdose of himself or another person as soon as the emergency situation is apparent to the person requesting emergency medical assistance; or
- (2) Was the first person to make a request for medical assistance under section (1); or
- (3) When emergency medical assistance was requested for the possible alcohol or drug overdose of another person:
  - (a) Remained on the scene until the medical assistance arrived; and
  - (b) Cooperated with medical assistance and law enforcement personnel.

*[Note: The provisions of Section 5-4-105 were amended by Resolution No. 15-198 on August 14<sup>th</sup>, 2015.]*

### **SECTION 5-4-106. Water Offenses.**

- (a) A person is guilty of waters offense if he:
  - (1) interferes with or alters the flow of water in any stream, river, ditch, canal or lateral without lawful authority to do so and in violation of the right of any other person; or
  - (2) knowingly breaks, injures, alters or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so; or
  - (3) takes irrigation water out of turn or in excess amount without lawful authority to do so and in violation of the right of any other person; or
  - (4) pollutes or befouls any water in any of the following ways:
    - (A) constructs or maintains a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or
    - (B) deposits, piles, unloads or leaves any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into the waters of any stream, well, spring or source of water used for domestic purposes; or
    - (C) constructs, establishes or maintains any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes or which flows through

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a city or town, so that the waste, refuse or filth therefrom find their way into said source of water used for domestic purposes.

(b) The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

(c) Waters offense is a Class B offense.

### SECTION 5-4-107. Public Nuisance.

(Amended by Omaha Tribal Council Resolution No. 92-65 (4/13/92)).

(a) A person is guilty of public nuisance if, without lawful authority to do so, he does any act or fails to perform any duty, which act or omission either:

(1) unreasonably annoys, injures, or endangers the comfort, repose, health, or safety of one or more person; or

(2) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, highway or road; or

(3) in any way unreasonably renders one or more persons insecure in life or the use of property.

(b) An act or omission to act which affects three or more persons in the ways specified in this section is still a nuisance regardless that the extent of the annoyance or damage inflicted on the individuals is unequal.

(c) The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

(d) Public nuisance is a Class C offense.

### SECTION 5-4-108. Business Fraud.

(a) A person is guilty of business fraud if:

(1) he signs a fictitious name to a stock subscription or agreement to take or buy stock, or signs such a subscription or agreement without good faith intent to comply with the terms thereof; or

(2) being an officer, director or managerial level employee, he knowingly exhibits a false, forged, or altered book, paper, voucher, security or other document relating to the business to any person with intent to deceive regarding any aspect of the business; or

(3) he subscribes the name of another to any document relating to the offer or sale of stock or securities in an existing or contemplated business without such other person's consent with the intent to lead others to believe that such person is an officer, agent, member or promoter of the business when he is, in fact, not; or

(4) being an officer, director or managerial level employee of a business, he knowingly causes or allows to be made false or inaccurate entry in the books or accounts of the business or purposely misapplies any of the funds of the business, or knowingly does or causes to be done any act not properly authorized by the business management or by law, or makes or concurs in the making of a

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false report, exhibit or statement of the condition or affairs of the business, or refuses to allow inspection of the business books and records by one having legal authority to do so.

(b) Business fraud is a Class A offense if the fraud involves over \$500.00; otherwise, it is a Class B offense.

### SECTION 5-4-109. Contributing to the Delinquency of a Minor.

(a) A person is guilty of contributing to the delinquency of a minor if:

(1) he knowingly or recklessly sells or gives to or otherwise makes beer, liquor, wine or other alcoholic beverages available to a person under the age of 18 years; or

(2) he knowingly or recklessly, by act or omission, encourages, causes or contributes to the delinquency of a minor under 18 years of age.

(b) Contributing to the delinquency of a minor is a Class B offense.

(c) It shall be an affirmative defense to criminal charges brought pursuant to 5-4-109 (Contributing to the Delinquency of a Minor) if the person:

(5) Requested emergency medical assistance in response to the possible drug or alcohol overdose of himself or another person as soon as the emergency situation is apparent to the person requesting emergency medical assistance; or

(6) Was the first person to make a request for medical assistance under section (1); or

(7) When emergency medical assistance was requested for the possible alcohol or drug overdose of another person:

(a) Remained on the scene until the medical assistance arrived; and

(b) Cooperated with medical assistance and law enforcement personnel.

*[Note: The provisions of Section 5-4-109 were amended by Resolution No. 15-192 on August 14<sup>th</sup>, 2015]*

### SECTION 5-4-110. Curfew Violation.

*See Section 12-7-3(a), which superseded and replaced the previous language here.*

### SECTION 5-4-111. Fireworks Offense.

*Source: Omaha Tribal Council Resolution No. 02-90 (6/13/02)*

(a) A person shall be guilty of fireworks offense if he/she:

(1) Possesses, buys, sells, distributes, transports for sale or distribution or ignites or otherwise activates any firework or other explosive of like nature at any time except between the 1<sup>st</sup> of June and

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the 15<sup>th</sup> of July of any given year, or upon specific permission obtained from the Tribal Council for a festival, gathering, celebration, or religious or Tribal Ceremony.

(2) Except between the 1<sup>st</sup> of June and the 15<sup>th</sup> of July, not part of a commercial fireworks display, possesses, buys, sells, distributes, transports for sale or distribution or ignites or otherwise activates any firework or other explosive or other item of like nature which is not designated as a class "C" firework. This specifically includes bottle rockets and other self-propelled rockets, M-80's and other large explosive devices. Model rocket engines are exempt from this status.

(3) Being under the age of 14 and in possession or ignites or otherwise activates any firework or other explosive or other item of like nature without a parent or adult custodian being present.

(4) Being over the age of 14 allows a child under the age of 8 to be in possession of or ignites or otherwise activates any firework or other explosive or other item of like nature except sparklers, snaps, snakes or party favor or other pull string popper of fireworks of a like nature.

(5) Sell, distributes, ignites or otherwise relating to any activities pertaining to fireworks or other item of like nature within 100 feet of any location where flammable liquids or gases are stored, distributed, or sold, this includes gasoline and propane.

(6) Fireworks offense is a Class C offense.

(7) This Section shall not apply to any holder of a license issued pursuant to Title 14 (Fireworks Display).

*History:* Omaha Tribal Council Resolution No. 02-90 (6/13/02) superceded Omaha Tribal Council Resolution No. 95-111 (5/26/95), amended by Resolution 15-155 (7-2-15).

*See* Title 14, Fireworks Displays (Omaha Tribal Council Ordinance No. 88-59 (5/18/88).

### SECTION 5-4-112. Littering.

(a) A person is guilty of littering if:

(1) he throws, dumps, places or deposits upon the lands of another or any Tribal or public property, or highway, street, road, or other area not his own, without the consent of the owner or other lawful permission, any garbage, debris, junk, carcasses, trash, refuse or other substances of any nature whatsoever which would mar the appearance or detract from the cleanliness of the area; or

(2) he stores, keeps or allows to accumulate any wrecked, junked, or unserviceable vehicles, appliances or implements within the boundaries of a city, town, community or village, unless he has a permit from the Tribal council to maintain a junkyard.

(b) Littering is a Class C offense.

### SECTION 5-4-113. Livestock Offense.

(a) A person is guilty of livestock offense if he:

(1) knowingly or recklessly refuses or fails to mark or brand his livestock when such is required in the interest of livestock identification or directed by Tribal or government officials; or

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(2) alters, obliterates, or removes a brand or mark, or misbrands or mismarks livestock with a purpose to deceive another for any reason; or

(3) knowingly permits his livestock to graze or trespass on the property of another or of the Tribe without permission to do so or in excess of permission to do so or in excess of permitted time or amount; or

(4) knowingly refuses to sell, dispose, or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock; or

(5) knowingly fails to treat or dispose of a sick animal where there is a substantial danger of infecting other animals; or

(6) fails to dip, inoculate or otherwise treat livestock in the manner which the Tribal council or its designated representative shall direct; or

(7) makes a false report of livestock owned; or

(8) purposely obstructs or interferes with a livestock roundup.

(b) Except in cases in which the owner or person having custody of livestock believed to be in violation of this section cannot be found after reasonable search, no conviction shall be found for Subsections (1), (3), (4), (5), or (6) set forth next above unless the owner or person having custody of the livestock involved is given 48 hours written notice of his alleged violation and he has not after such period of notice remedied the alleged violation.

(c) Livestock found to be in violation of this section may be impounded at the time an arrest is made, and may be impounded without prior notice to the owner if a court so orders upon receipt of evidence that such animals seriously threaten the property of the Tribe or another or the health of other livestock on the Reservation and that immediate action is necessary to protect such interests from serious harm. A reasonable fee for the care of such animals may be collected prior to their release.

(d) Livestock offense is a Class C offense.

### SECTION 5-4-114. Welfare Offense.

(a) A person is guilty of welfare offense if:

(1) he gives false information to another for the purpose of obtaining or retaining welfare benefits; or

(2) he knowingly fails to correct misinformation which enables him to obtain or retain welfare benefits; or

(3) he continues to accept and use for his own benefit or the benefit of another, welfare benefits to which he knows he is not entitled; or

(4) he uses or expends money or commodities granted him as a welfare benefit in an improper manner or in a manner which does not proportionately benefit each of those persons intended to benefit by the grant; or

(5) he knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto.

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- (b) Welfare offense is a Class C offense.

### SECTION 5-4-115. Controlled Substances. Definitions.

For the purposes of this Section:

- (a) "Controlled substance" means a drug, substance or immediate precursor listed in Schedules I through V at Sections 5-4-112 to 5-4-116 and not excluded by Section 5-4-117.
- (b) "Deliver or delivery" means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship. For purposes of this Section, it also includes an offer to sell a controlled substance. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.
- (c) "Disperse" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner (in the course of professional practice or research), including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.
- (d) "Dispenser" means a person who dispenses.
- (e) "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- (f) "Distributor" means a person who distributes.
- (g) 'Marijuana', means and includes all parts of the plant cannabis; sativa, cannabis americana, and cannabis indica, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed plant which is incapable of germination.
- (h) "Narcotic drugs" means coca leaves, opium, cannabis, isonipecaine, amidone, isomidone, ketobemidone, lysergic acid diethylamide, commonly known as LSD, and every substance neither chemically nor physically distinguishable from them; and other drugs to which the federal laws relating to narcotic drugs may now apply;
- (i) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.
- (j) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.
- (k) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- (l) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.
- (m) "Possession" means actual care, custody, control or management.

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(n) "Practitioner" means:

(1) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; or

(2) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

(o) "Production" includes manufacturing, planting cultivating, growing, or harvesting of a controlled substance.

(p) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

### SECTION 5-4-116. Standards and Schedules.

The Omaha Tribal Council determines that all drugs and substances or immediate precursors listed in Schedules I, II, III, IV, and V shall be controlled substances, whether listed by official name, generic, common, or usual name, chemical name, brand, or trade name.

### SECTION 5-4-117. Schedule I – Opiates and Hallucinogenics

(a) Schedule I shall consist of the controlled substances listed in this Section.


(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;

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- The seal of the Omaha Tribe of Nebraska is a circular emblem. It features a central illustration of a Native American man in traditional dress, holding a bow and arrow. The man is surrounded by a wreath. The seal is encircled by a rope-like border. Text around the border includes "IN KECARE" on the left, "MORTHIKAGAXE" on the right, and "TAPA" at the bottom. The words "OMAHA TRIBE OF NEBRASKA" are written in a larger font across the top and sides of the seal.
- (12) Dextromoramide;
  - (13) Difenoxin;
  - (14) Diampromide;
  - (15) Diethylthiambutene;
  - (16) Dimenoxadol;
  - (17) Dimepheptanol;
  - (18) Dimethylthiambutene;
  - (19) Dioxaphetyl butyrate;
  - (20) Dipipanone;
  - (21) Ethylmethylthiambutene;
  - (22) Etonitazene;
  - (23) Etoxidine;
  - (24) Furethidine;
  - (25) Hydroxypethidine;
  - (26) Ketobemidone;
  - (27) Levomoramide;
  - (28) Levophenacilmorphan;
  - (29) Morpheridine;
  - (30) Noracymethadol;
  - (31) Norlevorphanol;
  - (32) Normethadone;
  - (33) Norpipanone;
  - (34) Phenadoxone;
  - (35) Phenampromide;
  - (36) Phenomorphan;
  - (37) Phenoperidine;
  - (38) Piritramide;
  - (39) Proheptazine;
  - (40) Properidine;
  - (41) Propiram;

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(42) Racemoramide;

(43) Trimeperidine;

(44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;

(45) Tilidine;

(46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;

(48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;

(49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;

(50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

(54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;

(56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide, its optical isomers, salts, and salts of isomers; and

(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

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- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine, except hydrochloride salt;
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyl-desorphine;
- (14) Methyl-dihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine; and
- (23) Thebacon.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

- (1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;
- (2) Diethyltryptamine. Trade and other names shall include, but are not limited to: N, N-Diethyl tryptamine; and DET;
- (3) Dimethyltryptamine. Trade and other names shall include, but are not limited to: DMT;
- (4) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

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- (5) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;
- (6) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;
- (7) 5-methoxy-N,N-dimethyltryptamine;
- (8) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;
- (9) Lysergic acid diethylamide;
- (10) Marijuana;
- (11) Mescaline;
- (12) Peyote. Peyote shall mean all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;
- (13) Psilocybin;
- (14) Psilocyn;
- (15) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered;
- (16) 3,4-methylenedioxy amphetamine;
- (17) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (18) 3,4,5-trimethoxy amphetamine;
- (19) N-ethyl-3-piperidyl benzilate;
- (20) N-methyl-3-piperidyl benzilate;
- (21) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TCP; and TCP;
- (22) 2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 2,5-dimethoxy-alpha-methylphenethylamine; and 2,5-DMA;
- (23) Hashish or concentrated cannabis;

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(24) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;

(25) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(26) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(27) 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional, and geometric isomers, salts, and salts of isomers;

(28) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B; and Nexus;

(29) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(30) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(31) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(32) Alpha-methyltryptamine, which is also known as AMT;

(33) 5-Methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DIPT;

(34) Salvia divinorum or Salvinorin A. Salvia divinorum or Salvinorin A includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

(35) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (i) through (viii) of this subdivision, including their salts, isomers, and salts of isomers, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through some form of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(i) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

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(ii) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(iii) Naphthylmethylindoles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(iv) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(v) Naphthylideneindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(vi) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;

(vii) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent; and

(viii) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent; and

(36) (A) Any substance containing any quantity of the following materials, compounds, mixtures, or structures:

(i) 3,4-methylenedioxy methcathinone, or bk-MDMA, or methylone;

(ii) 3,4-methylenedioxy pyrovalerone, or MDPV;

(iii) 4-methylmethcathinone, or 4-MMC, or mephedrone;

(iv) 4-methoxymethcathinone, or bk-PMMA, or PMMC, or methedrone;

(v) Fluoromethcathinone, or FMC;

(vi) Napthylpyrovalerone, or naphyrone; or

(vii) Beta-keto-N-methylbenzodioxolypropylamine; or

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(B) Unless listed in another schedule, any substance which contains any quantity of any material, compound, mixture, or structure, other than bupropion, that is structurally derived by any means from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

(i) Substitution in the ring system to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;

(ii) Substitution at the 3-position with an acyclic alkyl substituent; or

(iii) Substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone; and

(3) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Oxybate; and Sodium Oxybutyrate.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylamine;

(2) N-ethylamphetamine;

(3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;

(5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; and UR1432;

(6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine; and

(8) Benzylpiperazine, 1-benzylpiperazine.

(g) Any controlled substance analogue to the extent intended for human consumption.

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### SECTION 5-4-118. Schedule II – Opium and Amphetamines

(a) Schedule II shall consist of the controlled substances listed in this Section.

(b) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:

- (A) Raw opium;
- (B) Opium extracts;
- (C) Opium fluid;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Tincture of opium;
- (G) Codeine;
- (H) Ethylmorphine;
- (I) Etorphine hydrochloride;
- (J) Hydrocodone;
- (K) Hydromorphone;
- (L) Metopon;
- (M) Morphine;
- (N) Oxycodone;
- (O) Oxymorphone;
- (P) Oripavine;
- (Q) Thebaine; and
- (R) Dihydroetorphine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except

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that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(c) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan excepted:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Diphenoxylate;
- (5) Fentanyl;
- (6) Isomethadone;
- (7) Levomethorphan;
- (8) Levorphanol;
- (9) Metazocine;
- (10) Methadone;
- (11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
- (12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;
- (13) Pethidine or meperidine;
- (14) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (15) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (16) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (17) Phenazocine;
- (18) Piminodine;
- (19) Racemethorphan;
- (20) Racemorphan;
- (21) Dihydrocodeine;
- (22) Bulk Propoxyphene in nondosage forms;
- (23) Sufentanil;
- (24) Alfentanil;

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(25) Levo-alpha-acetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(26) Carfentanil;

(27) Remifentanil; and

(28) Tapentadol.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Phenmetrazine and its salts;

(3) Methamphetamine, its salts, isomers, and salts of its isomers; and

(4) Methylphenidate.

(e) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Phencyclidine; and

(5) Glutethimide.

(f) Hallucinogenic substances known as:

(1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.

(g) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone; or

(2) Immediate precursors to phencyclidine, PCP:

(i) 1-phenylcyclohexylamine; or

(ii) 1-piperidinocyclohexanecarbonitrile, PCC.

### SECTION 5-4-119. Schedule III – Depressants and Narcotics

(a) Schedule III shall consist of the controlled substances listed in this Section.

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(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Benzphetamine;
- (2) Chlorphentermine;
- (3) Clortermine; and
- (4) Phendimetrazine.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;
- (2) Chlorhexadol;
- (3) Lysergic acid;
- (4) Lysergic acid amide;
- (5) Methypylon;
- (6) Sulfondiethylmethane;
- (7) Sulfonethylmethane;
- (8) Sulfonmethane;
- (9) Nalorphine;
- (10) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;
- (11) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;
- (12) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on July 20, 2002;
- (13) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and
- (14) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for

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tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to : 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrzapon.

(d) Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(i) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(ii) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(iii) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(iv) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(v) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vi) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vii) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(viii) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(i) Buprenorphine.

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(e) Unless contained on the administration's list of exempt anabolic steroids as the list existed on June 1, 2007, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

- (1) Boldenone;
- (2) Boldione;
- (3) Chlorotestosterone (4-chlorotestosterone);
- (4) Clostebol;
- (5) Dehydrochloromethyltestosterone;
- (6) Desoxymethyltestosterone;
- (7) Dihydrotestosterone (4-dihydrotestosterone);
- (8) Drostanolone;
- (9) Ethylestrenol;
- (10) Fluoxymesterone;
- (11) Formebolone (formebolone);
- (12) Mesterolone;
- (13) Methandienone;
- (14) Methandranone;
- (15) Methandriol;
- (16) Methandrostenolone;
- (17) Methenolone;
- (18) Methyltestosterone;
- (19) Mibolerone;
- (20) Nandrolone;
- (21) Norethandrolone;
- (22) Oxandrolone;
- (23) Oxymesterone;
- (24) Oxymetholone;
- (25) Stanolone;
- (26) Stanozolol;
- (27) Testolactone;

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- (28) Testosterone;
  - (29) Trenbolone;
  - (30) 19-nor-4,9(10)-androstadienedione; and
  - (31) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.
- (f) Hallucinogenic substances known as:
- (1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a Food and Drug Administration approved drug product. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

### SECTION 5-4-120. Schedule IV – Barbiturates

- (a) Schedule IV shall consist of the controlled substances listed in this Section.
- (b) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
  - (1) Barbital;
  - (2) Chloralbetaine;
  - (3) Chloral hydrate;
  - (4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);
  - (5) Clonazepam;
  - (6) Clorazepate;
  - (7) Diazepam;
  - (8) Ethchlorvynol;
  - (9) Ethinamate;
  - (10) Flurazepam;
  - (11) Mebutamate;
  - (12) Meprobamate;
  - (13) Methohexital;
  - (14) Methylphenobarbital;
  - (15) Oxazepam;
  - (16) Paraldehyde;

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- (17) Petrichloral;
- (18) Phenobarbital;
- (19) Prazepam;
- (20) Alprazolam;
- (21) Bromazepam;
- (22) Camazepam;
- (23) Clobazam;
- (24) Clotiazepam;
- (25) Cloxazolam;
- (26) Delorazepam;
- (27) Estazolam;
- (28) Ethylloflazepate;
- (29) Fludiazepam;
- (30) Flunitrazepam;
- (31) Halazepam;
- (32) Haloxazolam;
- (33) Ketazolam;
- (34) Loprazolam;
- (35) Lorazepam;
- (36) Lormetazepam;
- (37) Medazepam;
- (38) Nimetazepam;
- (39) Nitrazepam;
- (40) Nordiazepam;
- (41) Oxazolam;
- (42) Pinazepam;
- (43) Temazepam;
- (44) Tetrazepam;
- (45) Tramadol;
- (46) Triazolam;

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- (47) Midazolam;
- (48) Quazepam;
- (49) Zolpidem;
- (50) Dichloralphenazone; and
- (51) Zaleplon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Diethylpropion;
- (2) Phentermine;
- (3) Pemoline, including organometallic complexes and chelates thereof;
- (4) Mazindol;
- (5) Pipradrol;
- (6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);
- (7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);
- (8) Fencamfamin;
- (9) Fenproporex;
- (10) Mefenorex;
- (11) Modafinil; and
- (12) Sibutramine.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Propoxyphene in manufactured dosage forms; and
- (2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Pentazocine.

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(g) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Butorphanol.

(h) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Carisoprodol.

(i) (1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (h) (1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

(i) Primatene Tablets; and

(ii) Bronkaid Dual Action Caplets.

### SECTION 5-4-116. Schedule V – Prescription Drugs

(a) Schedule V shall consist of the controlled substances listed in this Section.

(j) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

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(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(k) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

(l) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Ezogabine (N- (2-amino-4-(4-fluorobenzylamino)-phenyl)-carbamic acid ethyl ester);

(2) Lacosamide ((R)-2-acetoamido-N-benzyl-3-methoxy-propionamide); and

(3) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid).

### **SECTION 5-4-121. Exclusion from Schedule.**

A nonnarcotic substance is excluded from Schedules I through V if the substance may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act.

### **SECTION 5-4-122. Regulation of Manufacture, Distribution, and Dispensing of Controlled Substances.**

(a) Registration requirements voluntarily adopted by the Tribe without any jurisdictional waiver or recognition:

(1) So long as the State of Nebraska retains PL83-280 jurisdiction, every person who manufactures, distributes, analyzes, or dispenses any controlled substance within the exterior boundaries of the Omaha Indian Reservation must possess a valid registration from the State of Nebraska Board of Pharmacy or its equivalent. Said registrations must be obtained annually and be in compliance with all rules and regulations promulgated by the State of Nebraska.

(2) Persons registered with the State of Nebraska to manufacture, distribute, dispense, analyze, or conduct research with controlled substances may possess, manufacture, distribute, dispense, analyze, or conduct research with those substances to the extent authorized by their registration.

### **SECTION 5-4-123. Offenses and Penalties.**

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(a) Unlawful manufacture or delivery of controlled substances.

(1) Except as authorized by Sections 5-4-110 to 5-4-133, a person commits an offense if he knowingly or intentionally manufactures, delivers or possesses with intent to manufacture or deliver a controlled substance listed in Schedules I through V.

(2) Unlawful manufacture or delivery of controlled substances is a Class A offense.

(b) Unlawful possession of controlled substance.

(1) Except as authorized by Sections 5-4-110 to 5-4-133, a person commits an offense if he knowingly or intentionally possesses a controlled substance listed in Schedules I through V unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(2) Unlawful possession of controlled substance is a Class A offense.

(c) It shall be an affirmative defense to criminal charges brought pursuant to 5-4-123 (Offenses and Penalties) if the person:

(4) Requested emergency medical assistance in response to the possible drug or alcohol overdose of himself or another person as soon as the emergency situation is apparent to the person requesting emergency medical assistance; or

(5) Was the first person to make a request for medical assistance under section (1); or

(6) When emergency medical assistance was requested for the possible alcohol or drug overdose of another person:

(a) Remained on the scene until the medical assistance arrived; and

(b) Cooperated with medical assistance and law enforcement personnel.

*[Note: The provisions of Section 5-4-123 were amended by Resolution No. 15-194 on August 14<sup>th</sup>, 2015.]*

### SECTION 5-4-124. Marijuana.

*Source: Amended by Omaha Tribal Council Ordinance No. 08-66 (7-18-08) and by Resolution No. 15-193 on August 14<sup>th</sup>, 2015.*

(a) Possession of marijuana.

(1) Except as authorized by Sections 5-4-110 to 5-4-133, a person commits an offense if he knowingly or intentionally possesses a usable quantity of marijuana.

(b) Possession of marijuana is:

(1) A Class C offense if an individual possesses one ounce or less and said individual shall be punished by:

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- (A) a mandatory fine of not less than \$300.00.
- (2) A Class B offense if an individual possesses more than one ounce but less than four ounces and said individual shall be punished by:
  - (A) a mandatory fine not less than \$500.00; or,
  - (B) confinement in the Tribal Jail for a term not to exceed 90 days; or
  - (C) both such fine and imprisonment;
- (3) A Class B offense if an individual possesses four ounces or more but less than one pound and said individual shall be punished by:
  - (A) a mandatory fine not less than \$1,00.00; or,
  - (B) confinement in the Tribal Jail for a term not to exceed six (6) months; or
  - (C) both such fine and imprisonment;
- (4) A Class A offense if an individual possesses one pound or more and said individual shall be punished by:
  - (A) a mandatory fine not less than \$1,500.00; or,
  - (B) confinement in the Tribal Jail for a term not to exceed twelve (12) months; or
  - (C) both such fine and imprisonment;
- (c) It shall be an affirmative defense to criminal charges brought pursuant to 5-4-124 (Marijuana) if the person:
  - (8) Requested emergency medical assistance in response to the possible drug or alcohol overdose of himself or another person as soon as the emergency situation is apparent to the person requesting emergency medical assistance; or
  - (9) Was the first person to make a request for medical assistance under section (1); or
  - (10) When emergency medical assistance was requested for the possible alcohol or drug overdose of another person:
    - (a) Remained on the scene until the medical assistance arrived; and
    - (b) Cooperated with medical assistance and law enforcement personnel.

### SECTION 5-4-125. Peyote Exemption.

The provisions of this Code relating to the possession and distribution of peyote or mescaline shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the church.

### SECTION 5-4-126. Conditional Discharge for First Offense.

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(a) If any person who has not previously been convicted of an offense under Sections 5-4-110 to 5-4-133, or, subsequent to the effective date of this Section, under any statute of the United States or of any state relating to a substance that is defined by this Section as a controlled substance, is charged with a violation of this subchapter or is found guilty of violation of this subchapter after trial or on a plea of guilty, the Tribal Court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place him on probation on such reasonable conditions as it may require and for such period as the Tribal Court may prescribe, except that the probationary period may not exceed two (2) years.

(b) Upon violation of a condition of the probation, the Tribal Court may enter an adjudication of guilt, pronounce sentence, and punish him accordingly. The Tribal Court may, in its discretion, dismiss the proceedings against the defendant and discharge him from probation before the expiration of the maximum period of his probation.

(c) A discharge or dismissal under this Section shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by Tribal law for conviction of tribal offenses, including any provision for enhanced sentence or punishment for repeat or habitual offenders. There may be only one discharge and dismissal under this section with respect to any person.

(d) This Section shall not be construed to provide an exclusive procedure. Any other procedure provided by Tribal Law relating to suspension of trial or probation may be followed, in the discretion of the Tribal Court.

**SECTION 5-4-127. [RESERVED]**

**SECTION 5-4-128. [RESERVED]**

**SECTION 5-4-129. [RESERVED]**

**SECTION 5-4-130. [RESERVED]**

**SECTION 5-4-131. [RESERVED]**

**SECTION 5-4-132. [RESERVED]**

**SECTION 5-4-133. [RESERVED]**

**SECTION 5-4-134. Forfeitures.**

(a) The following are subject to forfeitures as authorized by this Section:

(1) all controlled substances that are or have been manufactured, distributed, dispensed, delivered acquired, obtained, or possessed in violation of this Section;

(2) all raw materials, products, and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Section;

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(3) all property that is used, or intended for use, as a container for property described in Paragraph (1) or (2) of this Section.

### SECTION 5-4-135. Seizure.

Property subject to forfeiture under this Code may be seized by any Tribal Officer under authority of a search warrant issued pursuant to this Code, or pursuant to a lawful arrest for the offense giving rise to the grounds for forfeiture.

### SECTION 5-4-136. Search Warrants.

A search warrant may be issued to search for and seize controlled substances possessed or manufactured in violation of this Code. The application for the issuance of and the execution of a search warrant under this Code shall conform to the provisions of the Tribal Code of Criminal Procedure.

### SECTION 5-4-137. Jurisdiction.

A person of the age of twenty-one (21) years or under, convicted of a first violation under this Section, shall be presumed to be entitled to a deferred imposition of sentence. Jurisdiction under this section shall be in the Juvenile Court depending upon the age of the offender.

### SECTION 5-4-138. Disorderly Conduct.

*Source:* Omaha Tribal Council Resolution No. 92-65 (4/13/92).

(a) A person commits an offense if he intentionally or knowingly:

- (1) uses abuse, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;
  - (2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;
  - (3) creates, by chemical means, a noxious and unreasonable odor in a public place;
  - (4) abuses or threatens a person in a public place in an obviously offensive manner;
  - (5) makes unreasonable noise in a public place or in or near a private residence that he has no right to occupy;
  - (6) fights with another in a private or public place;
  - (7) enters on the property of another and for a lewd or unlawful purpose looks into any dwelling on the property through any window or other opening in the dwelling;
  - (8) discharges a firearm in a public place;
  - (9) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;
- or
- (10) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by this act.

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(11) appears in a public or private place in an intoxicated or disorderly condition.

(b) For the purposes of this Section, an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence.

(c) Disorderly conduct is a Class C offense.

### **SECTION 5-4-139. Protective Custody.**

*Source:* Omaha Tribal Council Resolution No. 92-65 (4/13/92).

(a) A person who as a result of severe intoxication lacks the ability to perform normal physical functions or presents a clear and immediate danger to himself or others may be taken into protective custody and held in protective custody for a period not to exceed thirty-six (36) hours; provided that such individual shall be released without unnecessary delay upon achieving sobriety.

(b) Nothing in this Section shall be construed as constituting a criminal offense and no warrants, complaints or summons shall issue pursuant to this Section; provided that no person may be detained or jailed, under this Section, for a longer period than thirty-six (36) hours unless a judge of the Tribal Court has issued a commitment order in order that an alcohol evaluation can be performed on the committed individual.

### **SECTION 5-4-140. Definition of Person under Tribal Criminal Code.**

(a) "Person" is any Indian as defined at Section 1-8-8(a) of the Omaha Tribal Code. Non-Indians may be considered "persons" under this code for purposes of Section 5-4-136(b). Non-Indians shall not be considered persons under this Code for purposes of any criminal prosecution in the Omaha Tribal courts, and non-Indians shall not be subject to criminal prosecution in the Omaha Tribal courts for violation of any provision of the Omaha Criminal Code.

(b) The Omaha Criminal Code shall be applied as against non-Indians within this jurisdiction to the extent necessary to validate brief custodial detention of non-Indians who engage in conduct in violation of this Code, or if any applicable State or Federal law, causing a risk or harm to Indians or Indian property within this jurisdiction, which detentions shall be for the purpose of transporting said non-Indian offenders off the Reservation or to appropriate State or Federal authorities for prosecution, as the case may be.

### **SECTION 5-4-141. Open Container.**

*Source:* Omaha Tribal Council Resolution No. 94-75 (3-7-94).

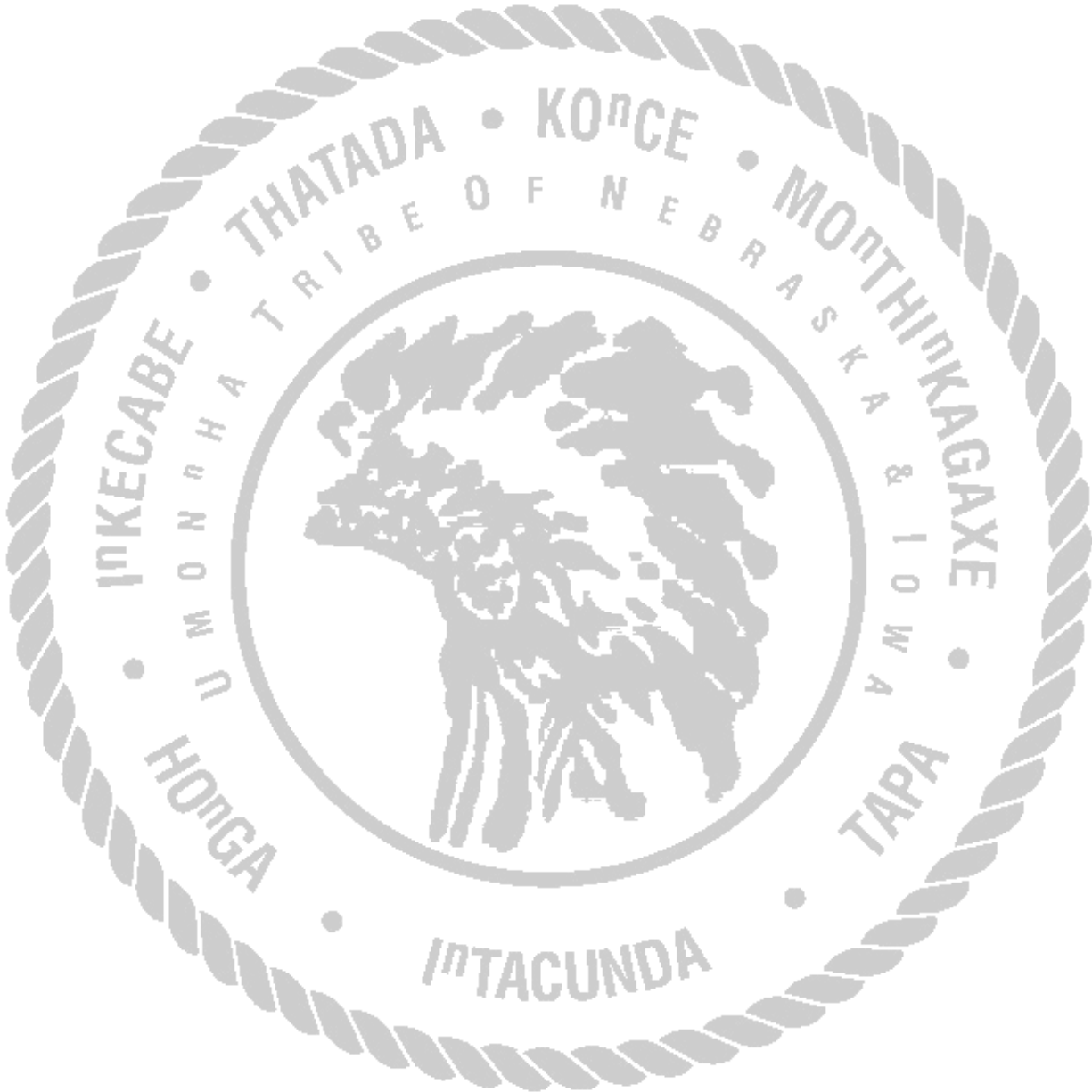
It shall be unlawful for any person to CONSUME alcoholic liquors or POSSESS alcoholic liquors in opened alcoholic liquor containers on the public streets, sidewalks, alleys, parking areas, roads, or highways, located within the exterior boundaries of the Omaha Indian Reservation or inside VEHICLES while upon the public streets, sidewalks, alleys, parking areas, roads, or highways located within the exterior boundaries of the Omaha Indian Reservation; or upon property owned by the Omaha Tribe of Nebraska and Iowa, unless authorized by the Tribal Council.

*[Note: The provisions of Section 5-4-141 were amended by Resolution No. 15-157 on July 2<sup>nd</sup>, 2015]*

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### TITLE 5. CRIMES

*Includes clerical corrections to original release, effective as of August 1, 2013*

## OMAHA TRIBAL CODE (2013)

Special Influence	5-4-64
Spreading Venereal Diseases	5-4-96
Standards and Schedules (Controlled Substances)	5-4-111
Tampering with Evidence	5-4-71
Tampering with Public Property	5-4-83
Tampering with Public Records	5-4-72
Tampering With Records	5-4-42
Tampering With Witnesses	5-4-70
Terroristic Threats	5-4-7
Consolidation of Theft Offenses; General Provisions.	5-4-28
Theft by Deception	5-4-31
Theft by Extortion	5-4-32
Theft by Failure to Make Required Disposition of Funds Received	5-4-36
Theft of Property	5-4-30
Theft of Property Lost, Mislaid, or Delivered by Mistake.	5-4-33
Theft of Services	5-4-35
Unauthorized Use of a Vehicle	5-4-37
Unlawful Dealing With Property by a Fiduciary	5-4-49
Unsworn Falsification	5-4-68
Vehicular Homicide	5-4-9
Violation of Privacy	5-4-92
Water Offenses	5-4-101
Weapons Offense	5-4-97
Welfare Offense	5-4-109

4815-9944-5524, v. 3

### TITLE 5. CRIMES

*Includes clerical corrections to original release, effective as of August 1, 2013*

# OMAHA TRIBE OF NEBRASKA

**Executive Officers  
Members**

Leander Merrick, Chairman  
Primo Hollowell, Vice-Chairman  
Jazelle Miller, Treasurer  
Cheyenne Robinson, Secretary



**Members**

Jason Sheridan  
Jerome Hamilton  
Alan Harlan

## RESOLUTION NO. 23- 175

### OF THE

### OMAHA TRIBE OF NEBRASKA

6/29/2023

**DRAFTED BY: Theresa Rachel**

**RE: *Resolution to Amend and Revise Title 5 Chapter 4 of the Omaha Tribal Code.***

**WHEREAS:** the Omaha Tribe of Nebraska is a Federally recognized Indian Tribe organized under a constitution and bylaws pursuant to Section 16 of the Indian Reorganization Act of 1934, (25 U.S.C. § 5123); and,

**WHEREAS:** pursuant to Article III, Section I of the Constitution of the Omaha Tribe of Nebraska, the governing body of the Omaha Tribe shall be known as the Tribal Council; and,

**WHEREAS:** pursuant to Article IV, Section I (g) of the Constitution of the Omaha Tribe of Nebraska, the Tribal Council has the authority to safeguard, promote, and enforce the peace, economy, safety, law and order, and general welfare of the Tribe and the Omaha Indian Reservation; ... to regulate all manner of criminal and non-criminal conduct, subject to any limitations of Federal law; and,

**WHEREAS:** pursuant to Article IV, Section I (m) of the Constitution of the Omaha Tribe of Nebraska, the Tribal Council has the authority to adopt resolutions regulating the Tribal Council itself and of other Tribal agencies and Tribal officials; and

**WHEREAS:** the Tribal Council finds that Omaha Tribe of Nebraska Tribal Code Title 5 Chapter 4 should be amended and added as follows:

5-4-61 (a)(l) A child age 12-18 has an affirmative responsibility to attend school. A child who, fails to attend school, without good cause, or refuses to attend school is guilty of Failure to Send Children to School.



**WHEREAS:** the Tribal Council directs the Attorney General to distribute this Resolution to the Courts and to update the Electronic Code housed at the Court.


**NOW THEREFORE, BE IT RESOLVED THAT: The Omaha Tribe of Nebraska hereby Amends and revises Title 5 Chapter 4 of the Omaha Tribal Code as outlined above.**

**CERTIFICATION**

This is to certify that the foregoing resolution was considered at a duly called meeting of the Omaha Tribal Council on the 11 day of August, 2023, and was adopted by a vote of: 4 for; 0 against; 1 abstaining; with the Chairman not voting. A quorum of 5 was present.


MEMBERS VOTE:	YES	NO	ABSTAIN
Leander Merrick			X
Cheyenne Robinson	X		
Jazelle Miller			
Jason Sheridan			
Jerome Hamilton	X		
Primo Hollowell	X		
Alan Harlan	X		

**Submitted by:**

  
Cheyenne Robinson, Secretary  
Omaha Tribal Council

8/11/23  
Date

**Attest:**

  
Leander Merrick, Chairman  
Omaha Tribal Council

8/11/23  
Date