

## **E. OFFENSES INVOLVING DAMAGES TO AND INTRUSION UPON PROPERTY**

### **487 CRIMINAL TRESPASS AND BURGLARY; DEFINITIONS OF TERMS**

The following definitions are applicable to this chapter:

1. "Premises" includes the term "building," as defined herein, and any real property.
2. "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein, or used as an elementary or secondary school, or an enclosed motor truck, or an enclosed motor truck trailer. Where a building consists of two or more units separately secured or occupied, each unit shall be deemed both a separate building in itself and a part of the main building.
3. "Dwelling" means a building which is usually occupied by a person lodging therein at night.
4. "Night" means the period between thirty minutes after sunset and thirty minutes before sunrise.
5. "Enter or remain unlawfully." A person "enters or remains unlawfully" in or upon premises when he is not licensed or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner. A person who enters or remains in or about a school building without written permission from someone authorized to issue such permission or without a legitimate reason which includes a relationship involving custody of or responsibility for a pupil or student enrolled in the school or without legitimate business or a purpose relating to the operation of the school does so without license and privilege.

### **488 TRESPASS**

A Native American is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises.

Trespass is a violation.

### **489 CRIMINAL TRESPASS IN THE THIRD DEGREE**

A Native American is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property

- a. which is fenced or otherwise enclosed in a manner designed to exclude intruders; or

- b. where the building is utilized as an elementary or secondary school in violation of conspicuously posted rules or regulations governing entry and use thereof; or
- c. where the building is used as a public housing project in violation of conspicuously posted rules or regulations governing entry and use thereof; or

Criminal trespass in the third degree is a class B misdemeanor.

#### **490 CRIMINAL TRESPASS IN THE SECOND DEGREE**

A Native American is guilty of criminal trespass in the second degree when he knowingly enters or remains unlawfully in a dwelling.

Criminal trespass in the second degree is a class A misdemeanor.

#### **491 CRIMINAL TRESPASS IN THE FIRST DEGREE**

A Native American is guilty of criminal trespass in the first degree when he knowingly enters or remains unlawfully in a building, and when, in the course of committing such crime, he:

- 1. Possesses, or knows that another participant in the crime possesses, an explosive or a deadly weapon; or
- 2. Possesses a firearm, rifle or shotgun, and also possesses or has readily accessible a quantity of ammunition which is capable of being discharged from such firearm, rifle or shotgun; or
- 3. Knows that another participant in the crime possesses a firearm, rifle or shotgun under circumstances described in subdivision two.

Criminal trespass in the first degree is a class D felony.

#### **492 BURGLARY IN THE THIRD DEGREE**

A Native American is guilty of burglary in the third degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein.

Burglary in the third degree is a class D felony.

#### **493 BURGLARY IN THE SECOND DEGREE**

A Native American is guilty of burglary in the second degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when:

- 1. In effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:
  - A. Is armed with explosives or a deadly weapon; or
  - B. Causes physical injury to any person who is not a participant in the crime; or
  - C. Uses or threatens the immediate use of a dangerous instrument; or

- D. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. The building is a dwelling.

Burglary in the second degree is a class C felony.

#### **494 BURGLARY IN THE FIRST DEGREE**

A Native American is guilty of burglary in the first degree when he knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight therefrom, he or another participant in the crime:

1. Is armed with explosives or a deadly weapon; or
2. Causes physical injury to any person who is not a participant in the crime; or
3. Uses or threatens the immediate use of a dangerous instrument; or
4. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; except that in any prosecution under this subdivision, it is an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged. Nothing contained in this subdivision shall constitute a defense to a prosecution for, or preclude a conviction of, burglary in the second degree, burglary in the third degree or any other crime.

Burglary in the first degree is a class B felony.

#### **495 POSSESSION OF BURGLAR'S TOOLS**

A Native American is guilty of possession of burglar's tools when he possesses any tool, instrument or other article adapted, designed or commonly used for committing or facilitating offenses involving forcible entry into premises, or offenses involving larceny by a physical taking, or offenses involving theft of services. Under circumstances evincing an intent to use or knowledge that some person intends to use the same in the commission of an offense of such character.

Possession of burglar's tools is a class A misdemeanor.

#### **496 UNLAWFUL POSSESSION OF RADIO DEVICES**

As used in this section, the term "radio device" means any device capable of receiving a wireless voice transmission on any frequency allocated for police use, or any device capable of transmitting and receiving a wireless voice transmission. A person is guilty of unlawful possession of a radio device when he possesses a radio device with the intent to use that device in the commission of robbery, burglary, or larceny.

Unlawful possession of a radio device is a class B misdemeanor.

**497 CRIMINAL MISCHIEF IN THE FOURTH DEGREE**

A Native American is guilty of criminal mischief in the fourth degree when, having no right to do so nor any reasonable ground to believe that he has such right, he:

1. Intentionally damages property of another person; or
2. Intentionally participates in the destruction of an abandoned building; or
3. Recklessly damages property of another person in an amount exceeding two hundred- fifty dollars.

Criminal mischief in the fourth degree is a class A misdemeanor.

**498 CRIMINAL MISCHIEF IN THE THIRD DEGREE**

A Native American is guilty of criminal mischief in the third degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person in an amount exceeding two hundred fifty dollars.

Criminal mischief in the third degree is a class E felony.

**499 CRIMINAL MISCHIEF IN THE SECOND DEGREE**

A Native American is guilty of criminal mischief in the second degree when with intent to damage property of another person, and having no right to do so or any reasonable ground to believe that he has such right, he damages property of another person in an amount exceeding one thousand five hundred dollars.

Criminal mischief in the second degree is a class D felony.

**500 CRIMINAL MISCHIEF IN THE FIRST DEGREE**

A Native American is guilty of criminal mischief in the first degree when with intent to damage property of another person, and having no right to do so or any reasonable ground to believe that he has such right, he damages property of another person by means of an explosive.

Criminal mischief in the first degree is a class B felony.

**501 CRIMINAL TAMPERING IN THE THIRD DEGREE**

A Native American is guilty of criminal tampering in the third degree when, having no right to do so nor any reasonable ground to believe that he has such right, he tampers with property of another person with intent to cause substantial inconvenience to such person or to a third person.

Criminal tampering in the third degree is a class B misdemeanor.

**502 CRIMINAL TAMPERING IN THE SECOND DEGREE**

A Native American is guilty of criminal tampering in the second degree when, having no right to do so nor any reasonable ground to believe that he has such right, he tampers or makes connection with property of a gas, electric, sewer, steam or water-works corporation, telephone or telegraph corporation, common carrier, or public utility operated by a municipality or district; except that in any prosecution under this section, it is an affirmative defense that the defendant did not engage in such conduct for a larcenous or otherwise unlawful or wrongful purpose.

Criminal tampering in the second degree is a class A misdemeanor.

**503 CRIMINAL TAMPERING IN THE FIRST DEGREE**

A Native American is guilty of criminal tampering in the first degree when, with intent to cause a substantial interruption or impairment of a service rendered to the public, and having no right to do so nor any reasonable ground to believe that he has such right, he damages or tampers with property of a gas, electric, sewer, steam or water-works corporation, telephone or telegraph corporation, common carrier, or public utility operated by a municipality or district, and thereby causes such substantial interruption or impairment of service.

Criminal tampering in the first degree is a class D felony.

**504 RECKLESS ENDANGERMENT OF PROPERTY**

A Native American is guilty of reckless endangerment of property when he recklessly engages in conduct which creates a substantial risk of damage to the property of another person in an amount exceeding two hundred fifty dollars.

Reckless endangerment of property is a class B misdemeanor.

**505 UNLAWFULLY POSTING ADVERTISEMENTS**

1. A Native American is guilty of unlawfully posting advertisements when, having no right to do so nor any reasonable ground to believe that he has such right, he posts, paints or otherwise affixes to the property of another person any advertisement, poster, notice or other matter designed to benefit a person other than the owner of the property.
2. Where such matter consists of a commercial advertisement, it shall be presumed that the vendor of the specified product, service or entertainment is a person who placed such advertisement or caused it to be placed upon the property.

Unlawfully posting advertisements is a violation.

**506 TAMPERING WITH A CONSUMER PRODUCT; CONSUMER PRODUCT DEFINED**

For the purposes of sections 507 and 508 of this chapter, "consumer product" means any drug, food, beverage or thing which is displayed or offered for sale to the public, for administration into or ingestion by a human being or for application to any external surface of a human being.

**507 TAMPERING WITH A CONSUMER PRODUCT IN THE SECOND DEGREE**

A Native American is guilty of tampering with a consumer product in the second degree when, having no right to do so nor any reasonable ground to believe that he has such right, and with intent to cause physical injury to another or with intent to instill in another a fear that he will cause such physical injury, he alters, adulterates or otherwise contaminates a consumer product.

Tampering with a consumer product in the second degree is a class A misdemeanor.

**508 TAMPERING WITH A CONSUMER PRODUCT IN THE FIRST DEGREE**

A Native American is guilty of tampering with a consumer product in the first degree when, having no right to do so nor any reasonable ground to believe that he has such right, and with intent to cause physical injury to another or with intent to instill in another a fear that he will cause such physical injury, he alters, adulterates or otherwise contaminates a consumer product and thereby creates a substantial risk of serious physical injury to one or more persons.

Tampering with a consumer product in the first degree is a class E felony.

**509 PENALTIES FOR LITTERING ON RAILROAD TRACKS AND RIGHTS-OF-WAY**

1. No person shall throw, dump, or cause to be thrown, dumped, deposited or placed upon any railroad tracks, or within the limits of the rights-of-way of any railroad, any refuse, trash, garbage, rubbish, litter or any nauseous or offensive matter.
2. Where a highway or road lies in whole or part within a railroad rights-of-way, nothing in this section shall be construed as prohibiting the use in a reasonable manner of ashes, sand, salt or other material for the purpose of reducing the hazard of, or providing traction on snow, ice or sleet situated on such highway or road.
3. A violation of the provisions of subdivision one of this section shall be punishable by a fine not to exceed two hundred fifty dollars and/or a requirement to perform services for a public or not-for-profit corporation, association, institution or agency not to exceed eight hours and for any second or subsequent violation by a fine not to exceed five hundred dollars and/or a requirement to perform services for a public or not-for-profit corporation, association, institution or agency not to exceed eight hours.
4. Nothing in this section shall be deemed to apply to a railroad or its employees when matter deposited by them on the railroad tracks or rights-of-way is done pursuant to railroad rules, regulations or procedures.

**510 MAKING GRAFFITI**

1. For purposes of this section, the term "graffiti" shall mean the etching, painting, covering, drawing upon or otherwise placing of a mark upon public or private property with intent to damage such property.
2. No person shall make graffiti of any type on any building, public or private, or any other property real or personal owned by any person, firm or corporation or any public agency or instrumentality, without the express permission of the owner or operator of said property.

Making graffiti is a class A misdemeanor.

### **511 ARSON; DEFINITIONS**

As used in this chapter,

1. "Building", in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein. Where a building consists of two or more units separately secured or occupied, each unit shall not be deemed a separate building.
2. "Motor vehicle", includes every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power, except (a) electrically-driven invalid chairs being operated or driven by an invalid, (b) vehicles which run only upon rails or tracks, and (c) snowmobiles.

### **512 ARSON IN THE FOURTH DEGREE**

1. A person is guilty of arson in fourth degree when he recklessly damages a building or motor vehicle by intentionally starting a fire or causing an explosion.
2. In any prosecution under this section, it is an affirmative defense that no person other than the defendant had a possessory or proprietary interest in the building or motor vehicle.

Arson in the fourth degree is a class E felony.

### **513 ARSON IN THE THIRD DEGREE**

1. A Native American is guilty of arson in the third degree when he intentionally damages a building or motor vehicle by starting a fire or causing an explosion.
2. In any prosecution under this section, it is an affirmative defense that (a) no person other than the defendant had a possessory or proprietary interest in the building or motor vehicle, or if other persons had such interests, all of them consented to the defendant's conduct, and (b) the defendant's sole intent was to destroy or damage the building or motor vehicle for a lawful and proper purpose, and (c) the defendant had no reasonable ground to believe that his conduct might endanger the life or safety of another person or damage another building or motor vehicle.

Arson in the third degree is a class C felony.

### **514 ARSON IN THE SECOND DEGREE**

A Native American is guilty of arson in the second degree when he intentionally damages a building or motor vehicle by starting a fire, and when (a) another person who is not a participant in the crime is present in such building or motor vehicle at the time, and (b) the defendant knows that fact or the circumstances are such as to render the presence of such a person therein a reasonable possibility.

Arson in the second degree is a class B felony.

**515 ARSON IN THE FIRST DEGREE**

1. A Native American is guilty of arson in the first degree when he intentionally damages a building or motor vehicle by causing an explosion or a fire and when (a) such explosion or fire is caused by an incendiary device propelled, thrown or placed inside or near such building or motor vehicle; or when such explosion or fire is caused by an explosive; or when such explosion or fire either (i) causes serious physical injury to another person other than a participant, or (ii) the explosion or fire was caused with the expectation or receipt of financial advantage or pecuniary profit by the actor; and when (b) another person who is not a participant in the crime is present in such building or motor vehicle at the time; and (c) the defendant knows that fact or the circumstances are such as to render the presence of such person therein a reasonable possibility.
2. As used in this section, "incendiary device" means a breakable container designed to explode or produce uncontained combustion upon impact, containing flammable liquid and having a wick or a similar device capable of being ignited.

Arson in the first degree is a class A-I felony.

**F. OFFENSES INVOLVING THEFT**

**516 LARCENY; DEFINITIONS OF TERMS**

The following definitions are applicable to this title:

1. "Property" means any money, personal property, real property, computer data, computer program, thing in action, evidence of debt or contract, or any article, substance or thing of value, including any gas, steam, water or electricity, which is provided for a charge or compensation.
2. "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.
3. "Deprive." To "deprive" another of property means (a) to withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him, or (b) to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.
4. "Appropriate." To "appropriate" property of another to oneself or a third person means (a) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit, or (b) to dispose of the property for the benefit of oneself or a third person.
5. "Owner." When property is taken, obtained or withheld by one person from another person, an "owner" thereof means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or