

703 BAIL JUMPING AND FAILING TO RESPOND TO AN APPEARANCE TICKET; DEFENSE

In any prosecution for bail jumping or failing to respond to an appearance ticket, it is an affirmative defense that:

1. The defendant's failure to appear on the required date or within thirty days thereafter was unavoidable and due to circumstances beyond his control; and
2. During the period extending from the expiration of the thirty day period to the commencement of the action, the defendant either:
 - A. appeared voluntarily as soon as he was able to do so, or
 - B. although he did not so appear, such failure of appearance was unavoidable and due to circumstances beyond his control.

704 UNLAWFUL DISCLOSURE OF A CRIMINAL COMPLAINT

A public servant is guilty of unlawful disclosure of a criminal complaint when, except in the proper discharge of his official duties, he intentionally discloses the fact that a criminal complaint has been filed before the accused person is in custody.

Unlawful disclosure of a criminal complaint is a class B misdemeanor.

705 UNLAWFUL DISPOSITION OF ASSETS SUBJECT TO FORFEITURE

Any defendant in a forfeiture action pursuant to article thirteen-A of the civil practice law and rules who knowingly and intentionally conceals, destroys, dissipates, alters, removes from the jurisdiction, or otherwise disposes of, property specified in a provisional remedy ordered by the court or in a judgment of forfeiture in knowing contempt of said order shall be guilty of a class A misdemeanor.

I. OFFENSES AGAINST PUBLIC HEALTH, MORALS

706 CONTROLLED SUBSTANCES; DEFINITIONS

1. "Sell" means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.
2. "Unlawfully" means in violation of article thirty-three of the New York public health law.
3. "Ounce" means an avoirdupois ounce as applied to solids or semi-solids, and a fluid ounce as applied to liquids.
4. "Pound" means an avoirdupois pound.
5. "Controlled substance" means any substance listed in schedule I, II, III, IV or V of section thirty-three hundred six of the New York public health law other than marihuana, but including concentrated cannabis as defined in paragraph (a) of subdivision five of section thirty-three hundred two of such law.

6. "Marihuana" means "marihuana" or "concentrated cannabis" as those terms are defined in section thirty-three hundred two of the New York public health law.
7. "Narcotic drug" means any controlled substance listed in schedule I(b), I(c), II(b) or II(c) other than methadone.
8. "Narcotic preparation" means any controlled substance listed in schedule II (b-1), III (d) or III (e).
9. "Hallucinogen" means any controlled substance listed in schedule I (d) (5), (18), (19), (20), (21) and (22).
10. "Hallucinogenic substance" means any controlled substance listed in schedule I (d) other than concentrated cannabis, lysergic acid diethylamide, or a hallucinogen.
11. "Stimulant" means any controlled substance listed in schedule me (f), II (d).
12. "Dangerous depressant" means any controlled substance listed in schedule I (e) (2), (3), II(e), III(c)(3) or IV(c)(2), (31), (32), (40).
13. "Depressant" means any controlled substance listed in schedule IV(c) except (c) (2), (31), (32), (40).
14. "School grounds" means in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or within one thousand feet of the real property boundary line comprising any such school.
15. "Prescription for a controlled substance" means a direction or authorization, by means of an official New York state prescription form, a written prescription form or an oral prescription, which will permit a person to lawfully obtain a controlled substance from any person authorized to dispense controlled substances.
16. For the purposes of Sections 725-a, 725-b, 725-c, 725-d, 725-e, 725-f, and 725-g of this Code:
 - (a) "Precursor" means ephedrine, pseudoephedrine, or any salt, isomer or salt of an isomer of such substances.
 - (b) "Chemical reagent" means a chemical reagent that can be used in the manufacture, production or preparation of methamphetamine.
 - (c) "Solvent" means a solvent that can be used in the manufacture, production or preparation of methamphetamine.
 - (d) "Laboratory equipment" means any items, components or materials that can be used in the manufacture, preparation or production of methamphetamine.
 - (e) "Hazardous or dangerous material" means any substance, or combination of substances, that results from or is used in the manufacture, preparation or production of methamphetamine which, because of its quantity, concentration, or

physical or chemical characteristics, poses a substantial risk to human health or safety, or a substantial danger to the environment.

17. “Controlled substance organization” means four or more persons sharing a common purpose to engage in conduct that constitutes or advances the commission of a felony under this article.
18. “Director” means a person who is the principal administrator, organizer, or leader of a controlled substance organization or one of several principal administrators, organizers, or leaders of a controlled substance organization.
19. “Profiteer” means a person who: (a) is a director of a controlled substance organization; (b) is a member of a controlled substance organization and has managerial responsibility over one or more other members of that organization; or (c) arranges, devises or plans one or more transactions constituting a felony under this article so as to obtain profits or expected profits. A person is not a profiteer if he or she is acting only as an employee; or if he or she is acting as an accommodation to a friend or relative; or if he or she is acting only under the direction and control of others and exercises no substantial, independent role in arranging or directing the transactions in question.

707 CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE

A Native American is guilty of criminal possession of a controlled substance in the seventh degree when he knowingly and unlawfully possesses a controlled substance.

Criminal possession of a controlled substance in the seventh degree is a class A misdemeanor.

708 CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE

A Native American is guilty of criminal possession of a controlled substance in the fifth degree when he knowingly and unlawfully possesses:

1. a controlled substance with intent to sell it; or
2. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing a narcotic preparation; or
3. fifty milligrams or more of phencyclidine; or
4. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-quarter ounce or more containing concentrated cannabis as defined in paragraph (a) of subdivision five of section thirty-three hundred two of the New York public health law.
5. five hundred milligrams or more of cocaine.
6. ketamine and said ketamine weighs more than one thousand milligrams;
or
7. ketamine and has previously been convicted of possession or the attempt to commit possession of ketamine in any amount; or

8. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more.

Criminal possession of a controlled substance in the fifth degree is a class D felony.

709 CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE

A Native American is guilty of criminal possession of a controlled substance in the fourth degree when he knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing a narcotic drug; or
2. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing methamphetamine, its salts, isomers or salts of isomers;
3. one or more preparations, compounds, mixtures or substances of an aggregate weight of two ounces or more containing a narcotic preparation; or
4. one gram or more of a stimulant; or
5. one milligram or more of lysergic acid diethylamide; or
6. twenty-five milligrams or more of a hallucinogen; or
7. one gram or more of a hallucinogenic substance; or
8. ten ounces or more of a dangerous depressant; or
9. two pounds or more of a depressant; or
10. one or more preparations, compounds, mixtures or substances of an aggregate weight of one ounce or more containing concentrated cannabis as defined in paragraph (a) of subdivision five of section thirty-three hundred two of the public health law; or
11. two hundred fifty milligrams or more of phencyclidine; or
12. three hundred and sixty milligrams or more of methadone; or
13. fifty milligrams or more of phencyclidine with intent to sell it and has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense.
14. four thousand milligrams or more of ketamine; or
15. an aggregate of two hundred grams or more of one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid.

Criminal possession of a controlled substance in the fourth degree is a class C felony.

710 CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE

A Native American is guilty of criminal possession of a controlled substance in the third degree when he knowingly and unlawfully possesses:

1. a narcotic drug with intent to sell it; or
2. a stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide, with intent to sell it and has previously been convicted of an offense defined in article two hundred twenty or the attempt or conspiracy to commit any such offense; or
3. one gram or more of a stimulant with intent to sell it; or
4. one milligram or more of lysergic acid diethylamide with intent to sell it; or
5. twenty-five milligrams or more of a hallucinogen with intent to sell it; or
6. one gram or more of a hallucinogenic substance with intent to sell it; or
7. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine, its salts, isomers or salts of isomers with intent to sell it; or
8. five grams or more of a stimulant; or
9. five milligrams or more of lysergic acid diethylamide; or
10. one hundred twenty-five milligrams of a hallucinogen; or
11. five grams or more of a hallucinogenic substance; or
12. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing a narcotic drug.
13. one thousand two hundred fifty milligrams or more of phencyclidine.

Criminal possession of a controlled substance in the third degree is a class B felony.

711 CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SECOND DEGREE

A Native American is guilty of criminal possession of a controlled substance in the second degree when he knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances of an aggregate weight of two ounces or more containing a narcotic drug; or
2. one or more preparations, compounds, mixtures or substances of an aggregate weight of two

- ounces or more containing methamphetamine, its salts, isomers or salts of isomers; or
3. ten grams or more of a stimulant; or
 4. twenty-five milligrams or more of lysergic acid diethylamide; or
 5. six hundred twenty-five milligrams of a hallucinogen; or
 6. twenty-five grams or more of a hallucinogenic substance; or
 7. two thousand eight hundred eighty milligrams or more of methadone.

Criminal possession of a controlled substance in the second degree is a class A-II felony.

712 CRIMINAL POSSESSION OF CONTROLLED SUBSTANCE IN THE FIRST DEGREE

A Native American is guilty of criminal possession of a controlled substance in the first degree when he knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances of an aggregate weight of four ounces or more containing a narcotic drug; or
2. five thousand seven hundred and sixty milligrams or more of methadone.

Criminal possession of a controlled substance in the first degree is a class A-I felony.

713 CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE; PRESUMPTION

1. The presence of a controlled substance in an automobile, other than a public omnibus, is presumptive evidence of knowing possession thereof by each and every person in the automobile at the time such controlled substance was found; except that such presumption does not apply (a) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of his trade, or (b) to any person in the automobile if one of them, having obtained the controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (c) when the controlled substance is concealed upon the person of one of the occupants.
2. The presence of a narcotic drug, narcotic preparation, marihuana or phencyclidine in open view in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, package or otherwise prepare for sale such controlled substance is presumptive evidence of knowing possession thereof by each and every person in close proximity to such controlled substance at the time such controlled substance was found; except that such presumption does not apply to any such persons if (a) one of them, having obtained such controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (b) one of them has such controlled substance upon his person.

713-a USE OF A CHILD TO COMMIT A CONTROLLED SUBSTANCE OFFENSE

A Native American is guilty of use of a child to commit a controlled substance offense when, being eighteen years old or more, he or she commits a felony sale or felony attempted sale of a controlled substance in violation of this Code and, as part of that criminal transaction, knowingly uses a child to effectuate such felony sale or felony attempted sale of such controlled substance.

For purposes of this section, “uses a child to effectuate the felony sale or felony attempted sale of such controlled substance” means conduct by which the actor: (a) conceals such controlled substance on or about the body or person of such child for the purpose of effectuating the criminal sale or attempted sale of such controlled substance to a third person; or (b) directs, forces or otherwise requires such child to sell or attempt to sell or offer direct assistance to the defendant in selling or attempting to sell such controlled substance to a third person.

For purposes of this section, “child” means a person less than sixteen years of age.

Use of a child to commit a controlled substance offense is a felony.

714 CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE

A Native American is guilty of criminal sale of a controlled substance in the fifth degree when he knowingly and unlawfully sells a controlled substance.

Criminal sale of a controlled substance in the fifth degree is a class D felony.

715 CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE

A Native American is guilty of criminal sale of a controlled substance in the fourth degree when he knowingly and unlawfully sells:

1. a narcotic preparation; or
2. ten ounces or more of a dangerous depressant or two pounds or more of a depressant; or
3. concentrated cannabis as defined in paragraph (a) of subdivision five of section thirty-three hundred two of the New York public health law; or
4. fifty milligrams or more of phencyclidine; or
5. methadone; or
6. any amount of phencyclidine and has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense; or
7. a controlled substance in violation of section 714 of this Code to a person less than nineteen years of age, when such sale takes place upon school grounds.
8. a controlled substance in violation of section 714 of this Code, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds. For the purposes of this subdivision, a rebuttable presumption shall be established that a person

has knowledge that they are within the grounds of a child day care or educational facility when notice is conspicuously posted of the presence or proximity of such facility; or

9. twenty-eight grams or more of one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid.

Criminal sale of a controlled substance in the fourth degree is a class C felony.

716 CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE

A Native American is guilty of criminal sale of a controlled substance in the third degree when he knowingly and unlawfully sells:

1. a narcotic drug; or
2. a stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide and has previously been convicted of an offense defined in article two hundred twenty or the attempt or conspiracy to commit any such offense; or
3. one gram or more of a stimulant; or
4. one milligram or more of lysergic acid diethylamide; or
5. twenty-five milligrams or more of a hallucinogen; or
6. one gram or more of a hallucinogenic substance; or
7. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine, its salts, isomers or salts of isomers; or
8. two hundred fifty milligrams or more of phencyclidine; or
9. a narcotic preparation to a person less than twenty-one years old.

Criminal sale of a controlled substance in the third degree is a class B felony.

717 CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE SECOND DEGREE

A Native American is guilty of criminal sale of a controlled substance in the second degree when he knowingly and unlawfully sells:

1. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing a narcotic drug; or
2. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing methamphetamine, its salts, isomers or salts of isomers; or
3. five grams or more of a stimulant; or

4. five milligrams or more of lysergic acid diethylamide; or
5. one hundred twenty-five milligrams or more of a hallucinogen; or
6. five grams or more of a hallucinogenic substance; or
7. three hundred and sixty milligrams or more of methadone.

Criminal sale of a controlled substance in the second degree is a class A-II felony.

718 CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FIRST DEGREE

A Native American is guilty of criminal sale of a controlled substance in the first degree when he knowingly and unlawfully sells:

1. one or more preparations, compounds, mixtures or substances of an aggregate weight of two or more ounces containing a narcotic drug; or
2. two thousand eight hundred and eighty milligrams or more of methadone.

Criminal sale of a controlled substance in the first degree is a class A-I felony.

719 CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN OR NEAR SCHOOL GROUNDS

A Native American is guilty of criminal sale of a controlled substance in or near school grounds when he knowingly and unlawfully sells:

1. a controlled substance in violation of any one of subdivisions one through six of section 715 of this code to a person less than nineteen years of age, when such sale takes place upon school grounds; or
2. a controlled substance in violation of any one of subdivisions one through eight of section 716 of this code to a person less than nineteen years of age, when such sale takes place upon school grounds.
3. a controlled substance in violation of any one of subdivisions one through eight of section 715 of this Code, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds; or
4. a controlled substance in violation of any one of subdivisions one through eight of section 716 of this Code, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds.
5. For purposes of subdivisions three and four of this section, “the grounds of a child day care or educational facility” means (a) in or on or within any building, structure, athletic playing field, a playground or land contained within the real property boundary line of a public or private child day care, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such facility or any

parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such facility. For the purposes of this section an “area accessible to the public” shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

6. For the purposes of this section, a rebuttable presumption shall be established that a person has knowledge that they are within the grounds of a child day care or educational facility when notice is conspicuously posted of the presence or proximity of such facility.

Criminal sale of a controlled substance in or near school grounds is a class B felony.

720 CRIMINALLY POSSESSING A HYPODERMIC INSTRUMENT

A Native American is guilty of criminally possessing a hypodermic instrument when he knowingly and unlawfully possesses or sells a hypodermic syringe or hypodermic needle.

Criminally possessing a hypodermic instrument is a class A misdemeanor.

721 CRIMINAL INJECTION OF A NARCOTIC DRUG

A Native American is guilty of criminal injection of a narcotic drug when he knowingly and unlawfully possesses a narcotic drug and he intentionally injects by means of a hypodermic syringe or hypodermic needle all or any portion of that drug into the body of another person with the latter’s consent.

Criminal injection of a narcotic drug is a class E felony.

721-a CRIMINAL SALE OF A CONTROLLE SUBSTANCE TO A CHILD

A Native American is guilty of criminal sale of a controlled substance to a child when, being over twenty-one years old, he or she knowingly and unlawfully sells a controlled substance in violation of section 715 or 716 of this Code to a person less than seventeen years old.

Criminal sale of a controlled substance to a child is a felony.

722 CRIMINALLY USING DRUG PARAPHERNALIA IN THE SECOND DEGREE

A Native American is guilty of criminally using drug paraphernalia in the second degree when he knowingly possesses or sells:

1. Diluents, or adulterants, including but not limited to, any of the following: quinine hydrochloride, mannitol, mannite, lactose or dextrose, adapted for the dilution of narcotic drugs or stimulants under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for purposes of unlawfully mixing, compounding, or otherwise preparing any narcotic drug or stimulant; or
2. Gelatin capsules, glassine envelopes, vials, capsules or any other material suitable for the packaging of individual quantities of narcotic drugs or stimulants under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for the purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant; or

3. Scales and balances used or designed for the purpose of weighing or measuring controlled substances, under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant.

Criminally using drug paraphernalia in the second degree is a class A misdemeanor.

723 CRIMINALLY USING DRUG PARAPHERNALIA IN THE FIRST DEGREE

A Native American is guilty of criminally using drug paraphernalia in the first degree when he commits the crime of criminally using drug paraphernalia in the second degree and he has previously been convicted of criminally using drug paraphernalia in the second degree.

Criminally using drug paraphernalia in the first degree is a class D felony.

724 CRIMINAL POSSESSION OF PRECURSORS OF CONTROLLED SUBSTANCES

A Native American is guilty of criminal possession of precursors of controlled substances when, with intent to manufacture a controlled substance unlawfully, he possesses at the same time:

- a. carbamide (urea) and propanedioc and malonic acid or its derivatives; or
- b. ergot or an ergot derivative and diethylamine or dimethylformamide or diethylamide; or
- c. phenylacetone (1-phenyl-2 propanone) and hydroxylamine or ammonia or formamide or benzaldehyde or nitroethane or methylamine.
- d. pentazocine and methyl iodide; or
- e. phenylacetonitrile and dichlorodiethyl methylamine or dichlorodiethyl benzylamine; or
- f. diphenylacetonitrile and dimethylaminoisopropyl chloride; or
- g. piperidine and cyclohexanone and bromobenzene and lithium or magnesium; or
- h. 2, 5-dimethoxy benzaldehyde and nitroethane and a reducing agent.

Criminal possession of precursor of controlled substances is a class E felony.

725 CRIMINAL SALE OF A PRESCRIPTION FOR A CONTROLLED SUBSTANCE

A Native American is guilty of criminal sale of a prescription for a controlled substance when, being a practitioner, as that term is defined in section thirty-three hundred two of the public health law; he knowingly and unlawfully sells a prescription for a controlled substance. For the purposes of this section, a person sells a prescription for a controlled substance unlawfully when he does so other than in good faith in the course of his professional practice.

Criminal sale of a prescription is a class C felony.

725-a CRIMINAL POSSESSION OF METHAMPHETAMINE MANUFACTURING MATERIAL IN THE SECOND DEGREE

A Native American is guilty of criminal possession of methamphetamine manufacturing material in the second degree when he or she possesses a precursor, a chemical reagent or a solvent with the intent to use or knowing another intends to use such precursor, chemical reagent, or solvent to unlawfully produce, prepare or manufacture methamphetamine.

Criminal possession of methamphetamine manufacturing material in the second degree is a class A misdemeanor.

725-b CRIMINAL POSSESSION OF METHAMPHETAMINE MANUFACTURING MATERIAL IN THE FIRST DEGREE

A Native American is guilty of criminal possession of methamphetamine manufacturing material in the first degree when he or she commits the offense of criminal possession of methamphetamine manufacturing material in the second degree, as defined in section 725-a of this article, and has previously been convicted within the preceding five years of criminal possession of methamphetamine manufacturing material in the second degree, as defined in section 725-a of this article, or a violation of this section.

Criminal possession of methamphetamine manufacturing material in the first degree is a felony.

725-c CRIMINAL POSSESSION OF PRECURSOR OF METHAMPHETAMINE

A Native American is guilty of criminal possession of precursors of methamphetamine when he or she possesses at the same time a precursor and a solvent or chemical reagent, with intent to use or knowing that another intends to use each such precursor, solvent or chemical reagent to unlawfully manufacture methamphetamine.

Criminal possession of precursors of methamphetamine is a felony.

725-d UNLAWFUL MANUFACTURE OF METHAMPHETAMINE IN THE THIRD DEGREE

A Native American is guilty of unlawful manufacture of methamphetamine in the third degree when he or she possesses at the same time and location, with intent to use, or knowing that another intends to use each such product to unlawfully manufacture, prepare or produce methamphetamine:

1. Two or more items of laboratory equipment and two or more precursors, chemical reagents or solvents in any combination; or
2. One item of laboratory equipment and three or more precursors, chemical reagents or solvents in any combination; or
3. A precursor:
 - (a) mixed together with a chemical reagent or solvent; or
 - (b) with two or more chemical reagents and/or solvents mixed together.

Unlawful manufacture of methamphetamine in the third degree is a felony.

726 MARIHUANA; DEFINITIONS

Unless the context in which they are used clearly otherwise requires, the terms occurring in this article shall have the same meaning ascribed to them in section 706 of this Code.

727 UNLAWFUL POSSESSION OF MARIHUANA

A Native American is guilty of unlawful possession of marihuana when he knowingly and unlawfully possesses marihuana.

Unlawful possession of marihuana is a violation punishable only by a fine of not more than one hundred dollars. However, where the defendant has previously been convicted of an offense defined in this Code or section 706, committed within the three years immediately preceding such violation, it shall be punishable (a) only by a fine of not more than two hundred dollars, if the defendant was previously convicted of one such offense committed during such period, and (b) by a fine of not more than two hundred fifty dollars or a term of imprisonment not in excess of fifteen days or both, if the defendant was previously convicted of two such offenses committed during such period.

728 CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE

A Native American is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses:

1. marihuana in a public place, as defined in section 772 of this Code, and such marihuana is burning or open to public view; or
2. one or more preparations, compounds, mixtures or substances of an aggregate weight of more than twenty-five grams containing marihuana.

Criminal possession of marihuana in the fifth degree is a class B misdemeanor.

729 CRIMINAL POSSESSION OF MARIHUANA IN THE FOURTH DEGREE

A Native American is guilty of criminal possession of marihuana in the fourth degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances of an aggregate weight of more than two ounces containing marihuana.

Criminal possession of marihuana in the fourth degree is a class A misdemeanor.

730 CRIMINAL POSSESSION OF MARIHUANA IN THE THIRD DEGREE

A Native American is guilty of criminal possession of marihuana in the third degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances of an aggregate weight of more than eight ounces containing marihuana.

Criminal possession of marihuana in the third degree is a class E felony.

731 CRIMINAL POSSESSION OF MARIHUANA IN THE SECOND DEGREE

A Native American is guilty of criminal possession of marihuana in the second degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances of an aggregate weight of more than sixteen ounces containing marihuana.

Criminal possession of marihuana in the second degree is a class D felony.

732 CRIMINAL POSSESSION OF MARIHUANA IN THE FIRST DEGREE

A Native American is guilty of criminal possession of marihuana in the first degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances of an aggregate weight of more than ten pounds containing marihuana.

Criminal possession of marihuana in the first degree is a class C felony.

733 CRIMINAL SALE OF MARIHUANA IN THE FIFTH DEGREE

A Native American is guilty of criminal sale of marihuana in the fifth degree when he knowingly and unlawfully sells, without consideration, one or more preparations, compounds, mixtures or substances of an aggregate weight of two grams or less containing marihuana or one cigarette containing marihuana.

Criminal sale of marihuana in the fifth degree is a class B misdemeanor.

734 CRIMINAL SALE OF MARIHUANA IN THE FOURTH DEGREE

A Native American is guilty of criminal sale of marihuana in the fourth degree when he knowingly and unlawfully sells marihuana except as provided in section 733 of this Code.

Criminal sale of marihuana in the fourth degree is a class A misdemeanor.

735 CRIMINAL SALE OF MARIHUANA IN THE THIRD DEGREE

A Native American is guilty of criminal sale of marihuana in the third degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances of an aggregate weight of more than twenty-five grams containing marihuana.

Criminal sale of marihuana in the third degree is a class E felony.

736 CRIMINAL SALE OF MARIHUANA IN THE SECOND DEGREE

A Native American is guilty of criminal sale of marihuana in the second degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances of an aggregate weight of more than four ounces containing marihuana or sells one or more preparations, compounds, mixtures or substances containing marihuana to a person less than eighteen years of age.

Criminal sale of marihuana in the second degree is a class D felony.

737 CRIMINAL SALE OF MARIHUANA IN THE FIRST DEGREE

A Native American is guilty of criminal sale of marihuana in the first degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances of an aggregate weight of more than sixteen ounces containing marihuana.

Criminal sale of marihuana in the first degree is a class C felony.

738 GAMBLING OFFENSES; DEFINITIONS OF TERMS

The following definitions are applicable to this article:

1. "Contest of chance" means any contest, game, gaming scheme or gaming devise in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.
2. "Gambling." A person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.
3. "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in "bookmaking", as defined in this section is not a "player."
4. "Advance gambling activity." A person "advances gambling activity" when, acting other than as a player, he engages in conduct which materially aids any form of gambling activity. Such conduct includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. One advances gambling activity when, having substantial proprietary or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits such to occur or continue or makes no effort to prevent its occurrence or continuation.
5. "Profit from gambling activity." A person "profits from gambling activity" when, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.
6. "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly

contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

7. "Gambling devise" means any devise, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether such activity consists of gambling between persons or gambling by a person involving the playing of a machine. Notwithstanding the foregoing, lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices.
 - a. A "coin operated gambling device" means a gambling device which operates as a result of the insertion of something of value. A device designed, constructed or readily adaptable or convertible for such use is a coin operated gambling device notwithstanding the fact that it may require adjustment, manipulation or repair in order to operate as such.
8. "Slot machine" means a gambling device which, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of some physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value. A device so constructed, or readily adaptable or convertible to such use, is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because, apart from its use or adaptability as such, it may also sell or deliver something of value on a basis other than chance. A machine which sells items of merchandise which are of equivalent value is not a slot machine merely because such items differ from each other in composition, size, shape or color. A machine which awards free or extended play is not a slot machine merely because such free or extended play may constitute something of value provided that the outcome depends in a material degree upon the skill of the player and not in a material degree upon an element of chance.
9. "Bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.
10. "Lottery" means an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value.
11. "Policy" or "the numbers game" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.
12. "Unlawful" means not specifically authorized by law.

Sections 738 through and including 747 shall not apply to any activities of the Turning Stone Casino or operations or any other Nation Enterprise relating to bingo or gambling, or any activities authorized by the Compact between the Nation and the State of New York.

739 PROMOTING GAMBLING IN THE SECOND DEGREE

A Native American is guilty of promoting gambling in the second degree when he knowingly advances or profits from unlawful gambling activity.

Promoting gambling in the second degree is a class A misdemeanor.

740 PROMOTING GAMBLING IN THE FIRST DEGREE

A Native American is guilty of promoting gambling in the first degree when he knowingly advances or profits from unlawful gambling activity by:

1. Engaging in bookmaking to the extent that he receives or accepts in any one day more than five bets totaling more than five thousand dollars; or
2. Receiving, in connection with a lottery or policy scheme or enterprise, (a) money or written records from a person other than a player whose chances or plays are represented by such money or records, or (b) more than five hundred dollars in any one day of money played in such scheme or enterprise.

Promoting gambling in the first degree is a class E felony.

741 POSSESSION OF GAMBLING RECORDS IN THE SECOND DEGREE

A Native American is guilty of possession of gambling records in the second degree when, with knowledge of the contents or nature thereof, he possesses any writing, paper, instrument or article:

1. Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or
2. Of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise; except that in any prosecution under this subdivision, it is a defense that the writing, paper, instrument or article possessed by the defendant constituted, reflected or represented plays, bets or chances of the defendant himself in a number not exceeding ten.
3. Of any paper or paper product in sheet form chemically converted to nitrocellulose having explosive characteristics.
4. Of any water soluble paper or paper derivative in sheet form.

Possession of gambling records in the second degree is a class A misdemeanor.

742 POSSESSION OF GAMBLING RECORDS IN THE FIRST DEGREE

A Native American is guilty of possession of gambling records in the first degree when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:

1. Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than five bets totaling more than five thousand dollars; or

2. Of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise, and constituting, reflecting or representing more than five hundred plays or chances therein.

Possession of gambling records in the first degree is a class E felony.

743 POSSESSION OF GAMBLING RECORDS; DEFENSE

In any prosecution for possession of gambling records, it is a defense that the writing, paper, instrument or article possessed by the defendant was neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise, or in the operation, promotion or playing of a lottery or policy scheme or enterprise.

744 POSSESSION OF A GAMBLING DEVICE

A Native American is guilty of possession of a gambling device when, with knowledge of the character thereof, he manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:

1. A slot machine; or
2. Any other gambling device, believing that the same is to be used in the advancement of unlawful gambling activity.
3. A coin operated gambling device with intent to use such device in the advancement of unlawful gambling activity.

Possession of a gambling device is a class A misdemeanor.

745 POSSESSION OF A GAMBLING DEVICE; DEFENSES

1. In any prosecution for possession of a gambling device specified in subdivision one of section 744 of this code, it is an affirmative defense that:
 - A. the slot machine possessed by the defendant was neither used nor intended to be used in the operation or promotion of unlawful gambling activity or enterprise and that such a slot machine is an antique; for purposes of this section proof that a slot machine was manufactured prior to nineteen hundred forty-one shall be conclusive proof that such a machine is an antique; or
 - B. the slot machine possessed by the defendant was manufactured or assembled by the defendant for the sole purpose of transporting such slot machine in a sealed container to a jurisdiction outside this state for purposes which are lawful in such outside jurisdiction.
2. Where a defendant raises an affirmative defense provided by subdivision one hereof, any slot machine seized from the defendant shall not be destroyed, or otherwise altered until a final court determination is rendered. In a final court determination rendered in favor of said defendant, such slot machine shall be returned, forthwith, to said defendant, notwithstanding any provisions of law to the contrary.

746 GAMBLING OFFENSES; PRESUMPTIONS

1. Proof of possession of any gambling device or of any gambling record specified in sections 741 and 742, is presumptive evidence of possession thereof with knowledge of its character or contents.
2. In any prosecution under this article in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine or other periodically printed publication of general circulation shall be admissible in evidence and shall constitute presumptive proof of the occurrence of such event.
3. Possession of three or more coin operated gambling devices or possession of a coin operated gambling device in a public place shall be presumptive evidence of intent to use in the advancement of unlawful gambling activity.

747 LOTTERY OFFENSES; NO DEFENSE

Any offense defined in this Code which consists of the commission of acts relating to a lottery is no less criminal because the lottery itself is drawn or conducted outside Nation jurisdiction and is not violative of the laws of the jurisdiction in which it was so drawn or conducted.

748 PROSTITUTION

A Native American is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

Prostitution is a class B misdemeanor.

749 PATRONIZING A PROSTITUTE; DEFINITIONS

1. A Native American patronizes a prostitute when:
 - A. Pursuant to a prior understanding, he pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him; or
 - B. He pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him; or
 - C. He solicits or requests another person to engage in sexual conduct with him in return for a fee.
2. As used in this article, "person who is patronized" means the person with whom the defendant engaged in sexual conduct or was to have engaged in sexual conduct pursuant to the understanding, or the person who was solicited or requested by the defendant to engage in sexual conduct.

750 PATRONIZING A PROSTITUTE IN THE FOURTH DEGREE

A Native American is guilty of patronizing a prostitute in the fourth degree when he patronizes a prostitute.

Patronizing a prostitute in the fourth degree is a class B misdemeanor.

751 PATRONIZING A PROSTITUTE IN THE THIRD DEGREE

A Native American is guilty of patronizing a prostitute in the third degree when, being over twenty-one years of age, he patronizes a prostitute and the person patronized is less than seventeen years of age.

Patronizing a prostitute in the third degree is a class A misdemeanor.

752 PATRONIZING A PROSTITUTE IN THE SECOND DEGREE

A Native American is guilty of patronizing a prostitute in the second degree when, being over eighteen years of age, he patronizes a prostitute and the person patronized is less than fourteen years of age.

Patronizing a prostitute in the second degree is a class E felony.

753 PATRONIZING A PROSTITUTE IN THE FIRST DEGREE

A Native American is guilty of patronizing a prostitute in the first degree when he patronizes a prostitute and the person patronized is less than eleven years of age.

Patronizing a prostitute in the first degree is a class D felony.

754 PATRONIZING A PROSTITUTE; DEFENSE

In any prosecution for patronizing a prostitute in the first, second or third degrees, it is a defense that the defendant did not have reasonable grounds to believe that the person was less than the age specified.

755 PROSTITUTION AND PATRONIZING A PROSTITUTE; NO DEFENSE

In any prosecution for prostitution or patronizing a prostitute, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated or solicited is immaterial, and it is no defense that:

1. Such persons were of the same sex; or
2. The person who received, agreed to receive or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was a female.

756 PROMOTING PROSTITUTION; DEFINITIONS OF TERMS

The following definitions are applicable to this article:

1. "Advance prostitution." A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.
2. "Profit from prostitution." A person "profits from prostitution" when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.

757 PROMOTING PROSTITUTION IN THE FOURTH DEGREE

A Native American is guilty of promoting prostitution in the fourth degree when he knowingly advances or profits from prostitution.

Promoting prostitution in the fourth degree is a class A misdemeanor.

758 PROMOTING PROSTITUTION IN THE THIRD DEGREE

A Native American is guilty of promoting prostitution in the third degree when he knowingly:

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes; or
2. Advances or profits from prostitution of a person less than nineteen years old.

Promoting prostitution in the third degree is a class D felony.

759 PROMOTING PROSTITUTION IN THE SECOND DEGREE

A Native American is guilty of promoting prostitution in the second degree when he knowingly:

1. Advances prostitution by compelling a person by force or intimidation to engage in prostitution, or profits from such coercive conduct by another; or
2. Advances or profits from prostitution of a person less than sixteen years old.

Promoting prostitution in the second degree is a class C felony.

760 PROMOTING PROSTITUTION IN THE FIRST DEGREE

A Native American is guilty of promoting prostitution in the first degree when he knowingly advances or profits from prostitution of a person less than eleven years old.

Promoting prostitution in the first degree is a class B felony.

761 PROMOTING PROSTITUTION; ACCOMPLICE

In a prosecution for promoting prostitution, a person less than seventeen years of age from whose prostitution activity another person is alleged to have advanced or attempted to advance or profited or attempted to profit shall not be deemed to be an accomplice.

762 PERMITTING PROSTITUTION

A Native American is guilty of permitting prostitution when, having possession or control of premises which he knows are being used for prostitution purposes, he fails to make reasonable effort to halt or abate such use.

Permitting prostitution is a class B misdemeanor.

763 OBSCENITY; DEFINITIONS OF TERMS

The following definitions are applicable to sections 764, 767, and 768:

1. "Obscene." Any material or performance is "obscene" if (a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated: sexual intercourse, sodomy, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals, and (c) considered as a whole, it lacks serious literary, artistic, political, and scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.
2. "Material" means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.
3. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.
4. "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.
5. "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate or to offer or agree to do the same for purposes of resale.
6. "Simulated" means the explicit depiction or description of any of the types of conduct set forth in clause (b) of subdivision one of this section, which creates the appearance of such conduct.

7. "Sodomy" means any of the types of sexual conduct defined in subdivision two of section 317 provided, however, that in any prosecution under this article the marital status of the persons engaged in such conduct shall be irrelevant and shall not be considered.

764 OBSCENITY IN THE THIRD DEGREE

A Native American is guilty of obscenity in the third degree when, knowing its content and character, he:

1. Promotes, or possesses with intent to promote, any obscene material; or
2. Produces, presents or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity.

Obscenity in the third degree is a class A misdemeanor.

765 OBSCENITY IN THE SECOND DEGREE

A Native American is guilty of obscenity in the second degree when he commits the crime of obscenity in the third degree as defined in subdivisions one and two of section 764 of this code and has been previously convicted of obscenity in the third degree.

Obscenity in the second degree is a class E felony.

766 OBSCENITY IN THE FIRST DEGREE

A Native American is guilty of obscenity in the first degree when, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote, any obscene material.

Obscenity in the first degree is a class D felony.

767 OBSCENITY; PRESUMPTIONS

1. A Native American who promotes or wholesale promotes obscene material, or possesses the same with intent to promote or wholesale promote it, in the course of his business is presumed to do so with knowledge of its content and character.
2. A Native American who possesses six or more identical or similar obscene articles is presumed to possess them with intent to promote the same.

The provisions of this section shall not apply to public libraries or association libraries as defined in subdivision two of section two hundred fifty-three of the education law, or trustees or employees of such public libraries or association libraries when acting in the course and scope of their duties or employment.

768 OBSCENITY; DEFENSE

1. In any prosecution for obscenity, it is an affirmative defense that the persons to whom allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing or viewing the same.

2. In any prosecution for obscenity, it is an affirmative defense that the person so charged was a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other non-managerial or non-supervisory capacity in a motion picture theater; provided he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of obscene material for sale, rental or exhibition or in the promotion, presentation or direction of any obscene performance, or is in any way responsible for acquiring obscene material for sale, rental or exhibition.

769 DISSEMINATING INDECENT MATERIAL TO MINORS; DEFINITIONS OF TERMS

The following definitions are applicable to sections 770 and 771:

1. "Minor" means any person less than seventeen years old.
2. "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernable turgid state.
3. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
4. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
5. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
6. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:
 - A. Considered as a whole, appeals to the prurient interest in sex of minors; and
 - B. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - C. Considered as a whole, lacks serious literary, artistic, political and scientific value for minors.

770 DISSEMINATING INDECENT MATERIAL TO MINORS

A Native American is guilty of disseminating indecent material to minors when:

1. With knowledge of its character and content, he sells or loans to a minor for monetary consideration:
 - A. Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts

nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors;
or

- B. Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors; or
2. Knowing the character and content of a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he:
- A. Exhibits such motion picture, show or other presentation to a minor for a monetary consideration; or
 - B. Sells to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such motion picture, show or other presentation; or
 - C. Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture show or other presentation.

Disseminating indecent material to minors is a class E felony.

771 DISSEMINATING INDECENT MATERIAL TO MINORS; PRESUMPTION AND DEFENSE

- 1. A Native American who engages in the conduct proscribed by section 629 is presumed to do so with knowledge of the character and content of the material sold or loaned, or the motion picture, show or presentation exhibited or to be exhibited.
- 2. In any prosecution for disseminating indecent material to minors, it is an affirmative defense that:
 - A. The defendant had reasonable cause to believe that the minor involved was seventeen years old or more; and
 - B. Such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was seventeen years old or more.

J. OFFENSES AGAINST PUBLIC ORDER, PUBLIC SENSIBILITIES AND THE RIGHT TO PRIVACY

772 OFFENSES AGAINST PUBLIC ORDER; DEFINITIONS OF TERMS

The following definitions are applicable to this article:

- 1. "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds and hallways, lobbies and other portions of apartment