presumptive evidence that such person defaced the same.

6. The possession of five or more firearms by any person is presumptive evidence that such person possessed the firearms with the intent to sell same.

821 CRIMINAL SALE OF A FIREARM TO A MINOR

A Native American is guilty of criminal sale of a firearm to a minor when he is not authorized pursuant to law to possess a firearm and he unlawfully sells, exchanges, gives or disposes of a firearm to another person who is or reasonably appears to be less than nineteen years of age who is not licensed pursuant to law to possess a firearm.

Criminal sale of a firearm to a minor is a class D felony.

822 EXEMPTIONS

1. Police officers.

2. Persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to possess the same.

3. Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the same is necessary for manufacture, transport, installation and testing under the requirements of such contract.

4. Possession of a rifle, shotgun or longbow for use while hunting, trapping or fishing, by a person, carrying a valid Nation hunting license.

5. Possession of a switchblade or gravity knife for use while hunting, trapping or fishing by a person carrying a valid Nation hunting license.

823 OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

1. No Native American shall operate a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of alcohol. A violation of this section shall be punishable by a fine of two hundred fifty dollars, or by imprisonment in a jail for not more than fifteen days, or by both such fine and imprisonment. A person who operates a vehicle in violation of this section after having been convicted of a violation of any subdivision of this section within the preceding two years shall be punished by a fine of not less than three hundred fifty dollars nor more than five hundred dollars, or by imprisonment of not more than thirty days in a jail or by both such fine and imprisonment. A person who operates a vehicle in violation of this section after having been convicted two or more times of a violation of any subdivision of this section within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than fifteen hundred dollars, or by imprisonment of not more than ninety days in a jail or by both such fine and imprisonment.

2. No Native American shall operate a motor vehicle while he has .10 of one per centum or more by weight of alcohol in his blood as shown by chemical analysis of his blood, breath, urine or saliva pursuant to section 825.

3. No Native American shall operate a motor vehicle while he is in an intoxicated condition.

4. No Native American shall operate a motor vehicle while his ability to operate such a motor vehicle is impaired by the use of a drug as defined in this code.

5. A violation of subdivision two, three or four of this section shall be a misdemeanor and shall be punishable by imprisonment in a jail for not more than six months, or by a fine of not less than three hundred fifty dollars nor more than five hundred dollars, or by both such fine and imprisonment. A person who operates a vehicle in violation of subdivision two, three or four of this section after having been convicted of a violation of subdivision two, three or four of this section, or of driving while intoxicated, or of driving while his or her ability is impaired by the use of drugs, within the preceding five years, shall be guilty of a felony and shall be punished by a fine of not less than five hundred dollars and imprisonment for not more than one year.

6. A prior conviction from another jurisdiction for operating a motor vehicle while under the influence of alcohol or drugs shall be deemed to be a prior conviction of a violation of subdivision one of this section for purposes of determining penalties imposed under this section.

824 ARREST FOR VIOLATION OF SECTION 823

A police officer may, without a warrant, arrest a person, in case of a violation of section 823, if such violation is coupled with an accident or collision in which such person is involved, which in fact has been committed, though not in the police officer's presence, when he has reasonable cause to believe that the violation was committed by such person.

825 BREATH TESTS FOR OPERATORS OF CERTAIN MOTOR VEHICLES

Every Native American operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may require such operator to submit to a chemical test pursuant to section 826.

826 CHEMICAL TESTS

1. Any Native American who operates a motor vehicle within the territorial jurisdiction of the Oneida Indian Nation shall be deemed to have given his consent to a chemical test, of his breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of his blood provided that such test is administered at the direction of an Oneida Indian Nation police officer:

    1. having reasonable grounds to believe such person to have been operating in violation of any subdivision of section 823 and within two hours after such person has been placed under arrest for any such violation, or

    2. within two hours after a breath test, as provided in section 825 indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which he is a member.

2. Evidence of a refusal to submit to such chemical test or any portion thereof shall be admissible in any trial, proceeding or hearing based upon a violation of the provisions of section 823 but only upon a

showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and that the person persisted in his refusal.

3. Upon the request of the person who was tested, the results of such test shall be made available to him.

4. The person tested shall be permitted to have a physician of his own choosing administer a chemical test in addition to the one administered at the direction of the police officer.

827 COMPULSORY CHEMICAL TESTS

1. No Native American who operates a motor vehicle within the territorial jurisdiction of the Nation may refuse to submit to a chemical test of one or more of the following: of his breath, blood, urine or saliva, for the purpose of determining the alcoholic or drug content of his blood when a court order for such chemical test has been issued in accordance with the provisions of this section.

2. Upon refusal to submit to a chemical test or any portion thereof as described above the test shall not be given unless the police officer or the Nation Prosecutor requests and obtains a court order to compel a person to submit to a chemical test to determine the alcoholic or drug content of his blood upon a finding of reasonable case to believe that:

(a) such person was the operator of a motor vehicle and in the course of such operation a person other than the operator was killed or suffered serious physical injury.

(b) (1) either such person operated the vehicle in violation of 823; or

(2) a breath test administered by a police officer indicates that alcohol has been consumed by such person; and

(c) such person has been placed under lawful arrest; and

(d) such person has refused to submit to a chemical test or any portion thereof, requested or is unable to give his consent to such a test.

For the purposes of this section "reasonable cause" shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was driving in violation of section 823. Such circumstances may include, but are not limited to: evidence that the operator was operating a motor vehicle in violation of any provision of this code or any other moving violation at the time of the incident; any visible indication of alcohol or drug consumption or impairment by the operator; the existence of an open container containing an alcoholic beverage in or around the vehicle driven by the operator; any other evidence surrounding the circumstances of the incident which indicate that the operator had been operating a motor vehicle while impaired by the consumption of alcohol or drugs or intoxicated at the time of the incident.

3. (a) An application for a court order to compel submission to a chemical test or any portion thereof may be made to the Nation Court. Such application may be communicated by telephone, radio or other means of electronic communication, or in person.

(b) The applicant must identify himself by name and title and must state the purpose of

the communication. Upon being advised that an application for a court order to compel submission to a chemical test is being made, the court shall place under oath the applicant and any other person providing information in support of the application. After being sworn the applicant must state that the person from whom the chemical test was requested was the operator of a motor vehicle and in the course of such operation a person, other than the operator, has been killed or seriously injured and, based upon the totality of circumstances, there is reasonable cause to believe that such person was operating a motor vehicle in violation of this code and, after being placed under lawful arrest such person refused to submit to a chemical test or any portion thereof. The applicant must make specific allegations of fact to support such statement. Any other person properly identified, may present sworn allegations of fact in support of the applicant's statement.

(c) Upon being advised that an oral application for a court order to compel a person to submit to a chemical test is being made, the judge shall place under oath the applicant and any other person providing information in support of the application. Such oath or oaths and all of the remaining communication must be recorded, either by means of a voice recording device or verbatim stenographic or verbatim longhand notes. If a voice recording device is used or a stenographic record made, the judge must have the record transcribed, certify to the accuracy of the transcription and file the original record and transcription with the court within seventy-two hours of the issuance of the court order. If longhand notes are taken, the judge shall subscribe a copy and file it with the court within twenty-four hours of the issuance of the order.

(d) If the court is satisfied that the requirements for the issuance of a court order pursuant to the provisions of subdivision two of this section have been met, it may grant the application and issue an order requiring the accused to submit to a chemical test to the alcoholic or drug content of his blood and ordering the withdrawal of a blood sample in accordance with this code. When a judge determines to issue an order to compel submission to a chemical test based on an oral application, the applicant therefor shall prepare the order in accordance with the instructions of the judge. In all cases the order shall include the name of the judge, the name of the applicant, and the date and time it was issued. It must be signed by the judge if issued in person, or by the applicant if issued orally.

(e) Any false statement by an applicant or any other person in support of an application for a court order shall subject such person to the offenses for perjury.

4. An order issued pursuant to the provisions of this section shall require that a chemical test to determine the alcoholic or drug content of the operator's blood must be administered. The provisions of this code shall be applicable to any chemical test administered pursuant to this section.

828 CHEMICAL TEST EVIDENCE

1. Upon the trial of any action or proceeding arising out of actions alleged to have been committed by a Native American arrested for a violation of any subdivision of section 823, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of this code.

2. The following effect shall be given to evidence of blood-alcohol content, as determined by such tests, of a person arrested for a violation of section 823.

   (a) Evidence that there was .05 of one per centum or less by weight of alcohol in such person's blood shall be prima facie evidence that the ability of such person to operate a motor vehicle was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition;

   (b) Evidence that there was more than .05 of one per centum but not more than .07 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition but such evidence shall be relevant evidence, but shall not be given prima facie effect, in determining whether the ability of such person to operate a motor vehicle was impaired by the consumption of alcohol.

   (c) Evidence that there was more than .07 of one per centum but less than .10 of one per centum by weight of alcohol in his blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be given prima facie effect in determining whether the ability of such person to operate a motor vehicle was impaired by the consumption of alcohol.

3. A defendant who has been compelled to submit to a chemical test may move for the suppression of such evidence on the grounds that the order was obtained and the test administered in violation of the provisions of this code or any other applicable law.

OFFENSES RELATING TO CHILDREN

829 ENDANGERING THE WELFARE OF A CHILD

A Native American is guilty of endangering the welfare of a child when:

1. he or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than sixteen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health; or

2. being a parent, guardian or other person legally charged with the care or custody of a child less than sixteen years old, he fails or refuses to exercise reasonable diligence in the control of such child to prevent him or from becoming a "juvenile offender" as that term is defined in the Juvenile Justice Code.

Endangering the welfare of a child is a misdemeanor.

830 ENDANGERING THE WELFARE OF A CHILD; DEFENSE

In any prosecution for endangering the welfare of a child pursuant to Section 829:

1. based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the defendant (a) is a parent, guardian or other person legally charged with the care or custody of such child; and (b) is a member or adherent of an organized church or religious group the tenets of which prescribe prayer as

the principal treatment for illness; and (c) treated or caused such ill child to be treated in accordance with such tenets; or

2. based upon an alleged desertion of a child not more than five days old, it is an affirmative defense that, with the intent that the child be safe from physical injury and cared for in an appropriate manner, the defendant left the child with an appropriate person or in a suitable location and promptly notified an appropriate person of the child's location.

831 UNLAWFULLY DEALING WITH A CHILD IN THE FIRST DEGREE

A Native American is guilty of unlawfully dealing with a child in the first degree when:

1. he or she knowingly permits a child less than sixteen years old to enter or remain in or upon a place, premises or establishment where Sexual Contact as defined by Section 457 or activity involving Controlled Substances as defined by Section 706(5) or involving Marihuana as defined by Section 706(6) is maintained or conducted, and he knows or has reason to know that such activity is being maintained or conducted; or

2. he or she gives or sells or causes to be given or sold any alcoholic beverage to a person less than twenty-one years old.

It is no defense to a prosecution pursuant to subsection two of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child in the first degree is a misdemeanor.

832 UNLAWFULLY DEALING WITH A CHILD IN THE SECOND DEGREE

A Native American is guilty of unlawfully dealing with a child in the second degree when:

1. being an owner, lessee, manager or employee of a place where alcoholic beverages are sold or given away, he permits a child less than sixteen years old to enter or remain in such place unless:

   (a) The child is accompanied by his or parent, guardian or an adult authorized by a parent or guardian; or

   (b) The entertainment or activity is being conducted for the benefit or under the auspices of a not-for-profit school, church or other educational or religious institution; or

   (c) Otherwise permitted by law to do so; or

   (d) The establishment is closed to the public for a specified period of time to conduct an activity or entertainment, during which the child is in or remains in such establishment, and no alcoholic beverages are sold, served, given away or consumed at such establishment during such period.

2. he or she sells or causes to be sold tobacco in any form to a child less than eighteen years old.

It is no defense to a prosecution pursuant to subsection three of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child in the second degree is a misdemeanor.

O. SEX OFFENDER REGISTRATION

901 PENALTY FOR FAILURE TO REGISTER

Any sex offender required to register or to verify who fails to register or verify in the manner and within the time periods required by the Oneida Indian Nation shall be guilty of a felony and shall be subject to the following:

1. First failure to register, a mandatory minimum 1 month incarceration period (or probation) and a fine imposed by the court.

2. Second failure to register, a mandatory minimum 6 month incarceration period and a fine imposed by the court

3. All subsequent failures to register, a mandatory minimum incarceration period greater than 6 months and a fine imposed by the court.

Any such failure to register may also be the basis for revocation of parole or the basis for revocation of probation.

902 AFFIRMATIVE DEFENSE

In the prosecution for a violation under section 901 above, it is an affirmative defense that—

1. Uncontrollable circumstances prevented the individual from complying;

2. The individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

3. The individual complied as soon as such circumstances ceased to exist.