

**ONEIDA INDIAN NATION**

**PENAL CODE**

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# ONEIDA INDIAN NATION

## PENAL CODE

### Chapter 1

#### 101 SHORT TITLE

This code shall be known as the Oneida Indian Nation Penal Code.

#### 102 OTHER LIMITATIONS ON APPLICABILITY OF THIS CODE

1. Except as otherwise provided, the procedure governing the accusation, prosecution, conviction and punishment of offenders and offenses is not regulated by this Code but by the Oneida Indian Nation Rules of Criminal Procedure.
2. This code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in such civil action constitutes an offense defined in this Code.

#### 103 DEFINITIONS

Except where different meanings are expressly specified in subsequent provisions of this code, the following terms have the following meanings:

1. "Benefit" means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.
2. "Court" means the Oneida Nation Court.
3. "Crime" means a felony, misdemeanor or a violation.
4. "Dangerous instrument" means any instrument, article or substance, including a "vehicle" as that term is defined in this section, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.
5. "Deadly physical force" means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
6. "Deadly weapon" means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchable knife, gravity knife, pilum ballistic knife, dagger, billy, blackjack, or metal knuckles.

7. "Felony" means an offense for which a sentence to a term of imprisonment not to exceed three years may be imposed.
8. "He" means both the male and female gender.
9. "Juror" means any person who is a member of any jury impaneled by the court. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.
10. "Misdemeanor" means an offense for which a sentence to a term of imprisonment in excess of six months cannot be imposed.
11. "Native American" means a person who is an enrolled member of a state recognized or federally recognized Indian tribe or Indian Nation.
12. "Offense" means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of the Nation.
13. "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.
14. "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.
15. "Physical injury" means impairment of physical condition or substantial pain.
16. "Public servant" means (a) any public officer or employee of the Nation or of any political subdivision thereof, or (b) any person exercising the functions of any such public officer or employee.
17. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
18. "Vehicle" means a "motor vehicle", "trailer" or semi-trailer," any snowmobile, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail.
19. "Violation" means an offense for which a sentence to a term of imprisonment in excess of three months cannot be imposed.



## Chapter 2

### PRINCIPLES OF CRIMINAL LIABILITY

#### 201 CULPABILITY; DEFINITION OF TERMS

The following definitions are applicable to this code:

1. "Act" means a bodily movement.
2. "Voluntary act" means a bodily movement performed consciously as a result of effort or determination, and includes the possession of property if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it.
3. "Omission" means a failure to perform an act as to which a duty of performance is imposed by law.
4. "Conduct" means an act or omission and its accompanying mental state.
5. "To act" means either to perform an act or to omit to perform an act.
6. "Culpable mental state" means "intentionally" or "knowingly" or "recklessly" or with "criminal negligence," as these terms are defined in Section 202.

#### 202 CULPABILITY; DEFINITIONS OF CULPABLE MENTAL STATES

The following definitions are applicable to this code:

1. "Intentionally." A defendant acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct.
2. "Knowingly." A defendant acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.
3. "Recklessly." A defendant acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A defendant who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.
4. "Criminal negligence." A defendant acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

**203 REQUIREMENTS FOR CRIMINAL LIABILITY IN GENERAL AND FOR OFFENSES OF STRICT LIABILITY AND MENTAL CULPABILITY**

The minimal requirement for criminal liability is the performance by a defendant of conduct which includes a voluntary act or the omission to perform an act which he is physically capable of performing. If such conduct is all that is required for commission of a particular offense, or if an offense or some material element thereof does not require a culpable mental state on the part of the actor, such offense is one of "strict liability." If a culpable mental state on the part of the actor is required with respect to every material element of an offense, such offense is one of "mental culpability."

**204 CONSTRUCTION OF STATUTES WITH RESPECT TO CULPABILITY REQUIREMENTS**

1. When the commission of an offense defined in this code, or some element of an offense, requires a particular culpable mental state, such mental state is ordinarily designated in the statute defining the offense by use of the terms "intentionally," "knowingly," "recklessly" or "criminal negligence," or by use of terms, such as "with intent to defraud" and "knowing it to be false," describing a specific kind of intent or knowledge. When one and only one of such terms appears in a statute defining an offense, it is presumed to apply to every element of the offense unless an intent to limit its application clearly appears.
2. Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of such offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such culpable mental state. A statute defining a crime, unless clearly indicating intent to impose strict liability, should be construed as defining a crime of mental culpability. This subdivision applies to offenses defined both in and outside this code.

**205 EFFECT OF IGNORANCE OR MISTAKE UPON LIABILITY**

1. A defendant is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief of fact, unless:
  - A. Such factual mistake negatives the culpable mental state required for the commission of an offense; or
  - B. The statute defining the offense or a statute related thereto expressly provides that such factual mistake constitutes a defense or exemption; or
  - C. Such factual mistake is of a kind that supports a defense of justification.
2. A defendant is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless such mistaken belief is founded upon an official statement of the law contained in (a) a statute or other enactment, or (b) an administrative order or grant of permission, or (c) a judicial decision of the Court, another Indian Nation court or a state or federal court, or (d) an interpretation of the statute or law relating to the offense, officially made or issued by a public servant, agency or body legally charged or empowered with the responsibility or privilege of administering, enforcing or interpreting such statute or law.
3. Notwithstanding the use of the term "knowingly" in any provision of this code defining an

offense in which the age of a child is an element thereof, knowledge by the defendant of the age of such child is not an element of any such offense and it is not, unless expressly so provided, a defense to a prosecution therefore that the defendant did not know the age of the child or believed such age to be the same as or greater than that specified in the statute.

## **206 EFFECT OF INTOXICATION UPON LIABILITY**

Intoxication is not, as such, a defense to a criminal charge; but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

## **PARTIES TO OFFENSES AND LIABILITY THROUGH ACCESSORIAL CONDUCT**

### **207 CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER**

When one defendant engages in conduct which constitutes an offense, another defendant is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct.

### **208 CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER; NO DEFENSE**

In any prosecution for an offense in which the criminal liability of the defendant is based upon the conduct of another person pursuant to Section 207, it is no defense that:

1. Such other person is not guilty of the offense in question owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of the offense in question; or
2. Such other person has not been prosecuted for or convicted of any offense based upon the conduct in question, or has previously been acquitted thereof, or has legal immunity from prosecution therefor; or
3. The offense in question, as defined, can be committed only by a particular class or classes of persons, and the defendant, not belonging to such class or classes, is for that reason legally incapable of committing the offense in an individual capacity.

### **209 CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER; EXEMPTION**

Notwithstanding the provisions of Sections 207 and 208, a person is not criminally liable for conduct of another person constituting an offense when his own conduct, though causing or aiding the commission of such offense, is of a kind that is necessarily incidental thereto. If such conduct constitutes a related but separate offense upon the part of the actor, he is liable for that offense only and not for the conduct or offense committed by the other person.

### **210 CONVICTIONS FOR DIFFERENT DEGREES OF OFFENSE**

Except as otherwise expressly provided in this code, when, pursuant to Section 207, two or more persons are criminally liable for an offense which is divided into degrees, each person is guilty of such degree as is compatible with his own culpable mental state and with his own accountability for an aggravating fact or circumstance.

## **211 CRIMINAL LIABILITY OF CORPORATIONS**

1. As used in this section:
  - A. "Agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.
  - B. "High managerial agent" means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.
2. A corporation is guilty of an offense when:
  - A. The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or
  - B. The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation; or
  - C. The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offense is (i) a misdemeanor or a violation or (ii) one defined by a statute which clearly indicates intent to impose such criminal liability on a corporation.

## **212 CRIMINAL LIABILITY OF AN INDIVIDUAL FOR CORPORATE CONDUCT**

A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.

## Chapter 3

### DEFENSES

#### 301 DEFENSES; BURDEN OF PROOF

1. When a "defense," other than an "affirmative defense," defined by statute is raised at a trial, the Nation has the burden of disproving such defense beyond a reasonable doubt.
2. When a defense declared by statute to be an "affirmative defense" is raised at a trial, the defendant has the burden of establishing such defense by a preponderance of the evidence.

#### 302 INFANCY

1. Except as provided in subdivision two of this section, a person less than thirteen years old is not criminally responsible for conduct.
2. In any prosecution for an offense, lack of criminal responsibility by reason of infancy, as defined in this section, is a defense.

#### 303 JUSTIFICATION; A DEFENSE

In any prosecution for an offense, justification, as defined in Section 304 through 308, is a defense.

#### 304 JUSTIFICATION; GENERALLY

Unless otherwise limited by the ensuing provisions of this chapter defining justifiable use of physical force, conduct which would otherwise constitute an offense is justifiable and not criminal when:

1. Such conduct is required or authorized by law or by a judicial decree, or is performed by a public servant in the reasonable exercise of his official powers, duties or functions; or
2. Such conduct is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. The necessity and justifiability of such conduct may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder. Whenever evidence relating to the defense of justification under this subdivision is offered by the defendant, the court shall rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a defense.

#### 305 JUSTIFICATION; USE OF PHYSICAL FORCE GENERALLY

The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

1. A parent, guardian or other person entrusted with the care and supervision of a person under the age of eighteen or an incompetent person, and a teacher or other person entrusted with

the care and supervision of a person under the age of eighteen for a special purpose, may use physical force, but not deadly physical force, upon such person when and to the extent that he reasonably believes it necessary to maintain discipline or to promote the welfare of such person.

2. A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his direction, may use physical force when and to the extent that he reasonably believes it necessary to maintain order, but he may use deadly physical force only when he reasonably believes it necessary to prevent death or serious physical injury.
3. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force upon such person to the extent that he reasonably believes it necessary to thwart such result.
4. A duly licensed physician, or a person acting under his direction, may use physical force for the purpose of administering a recognized form of treatment which he reasonably believes to be adapted to promoting the physical or mental health of the patient if (a) the treatment is administered with the consent of the patient or, if the patient is under the age of eighteen years or an incompetent person, with the consent of his parent, guardian or other person entrusted with his care and supervision, or (b) the treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.
5. A person may, pursuant to the ensuing provisions of this Code, use physical force upon another person in defense of himself or a third person, or in defense of premises, or in order to prevent larceny of or criminal mischief to property, or in order to effect an arrest or prevent an escape from custody. Whenever a person is authorized by any such provision to use deadly physical force in any given circumstance, nothing contained in any other such provision may be deemed to negate or qualify such authorization.

### **306 JUSTIFICATION; USE OF PHYSICAL FORCE IN DEFENSE OF A PERSON**

1. A person may, subject to the provisions of subdivision (2), use physical force upon another person when and to the extent he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by such other person, unless:
  - A. The latter's conduct was provoked by the actor himself with intent to cause physical injury to another person; or
  - B. The actor was the initial aggressor; except that in such case his use of physical force is nevertheless justifiable if he has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened imminent use of unlawful physical force; or
  - C. The physical force involved is the product of a combat by agreement not specifically authorized by law.
2. A person may not use deadly physical force upon another person under circumstances specified in subdivision one unless:

- A. He reasonably believes that such other person is using or about to use deadly physical force. Even in such case, however, the actor may not use deadly physical force if he knows that he can with complete safety as to himself and others avoid the necessity of so doing by retreating; except that he is under no duty to retreat if he is:
  - (i) in his dwelling and not the initial aggressor; or
  - (ii) a police officer or peace officer or a person assisting a police officer; or
- B. He reasonably believes that such other person is committing or attempting to commit a kidnapping, forcible rape, forcible sodomy or robbery; or
- C. He reasonably believes that such other person is committing or attempting to commit a burglary, and the circumstances are such that the use of deadly physical force is authorized by law.

**307 JUSTIFICATION; USE OF PHYSICAL FORCE IN DEFENSE OF PREMISES AND IN DEFENSE OF A PERSON IN THE COURSE OF BURGLARY**

1. Any person may use physical force upon another person when he reasonably believes such to be necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission by such other person of a crime involving damage to premises. He may use any degree of physical force, other than deadly physical force, which he reasonably believes to be necessary for such purpose, and he may use deadly physical force if he reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of arson.
2. A person in possession or control of any premise, or a person licensed or privileged to be thereon or therein, may use physical force upon another person when he reasonably believes such to be necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission by such other person of a criminal trespass upon such premises. He may use any degree of physical force, other than deadly physical force, which he reasonably believes to be necessary for such purpose, and he may use deadly physical force in order to prevent or terminate the commission or attempted commission of arson, as prescribed in subdivision one, or in the course of a burglary or attempted burglary, as prescribed in subdivision three.
3. A person in possession or control of, or licensed or privileged to be in, a dwelling or an occupied building, who reasonably believes that another person is committing or attempting to commit a burglary of such dwelling or building, may use deadly physical force upon such other person when he reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of such burglary.
4. As used in this section, the following terms have the following meanings:
  - A. The terms "premises," "building" and "dwelling" have the meanings prescribed in Section 487;
  - B. Persons "licensed or privileged" to be in buildings or upon other premises include,

but are not limited to, police officers or peace officers acting in the performance of their duties.

**308 JUSTIFICATION; USE OF PHYSICAL FORCE TO PREVENT OR TERMINATE LARCENY OR CRIMINAL MISCHIEF**

A person may use physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes such to be necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission by such other person of larceny or of criminal mischief with respect to property other than premises.

**309 DURESS**

1. In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist.
2. The defense of duress as defined in subdivision one of this section is not available when a person intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

**310 ENTRAPMENT**

In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the proscribed conduct because he was induced or encouraged to do so by a public servant, or by a person acting in cooperation with a public servant, seeking to obtain evidence against him for purpose of criminal prosecution, and when the methods used to obtain such evidence were such as to create a substantial risk that the offense would be committed by a person not otherwise disposed to commit it. Inducement or encouragement to commit an offense means active inducement or encouragement. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

**311 RENUNCIATION**

1. In any prosecution for an offense, other than an attempt to commit a crime, in which the defendant's guilt depends upon his criminal liability for the conduct of another person pursuant to Section 207, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant withdrew from participation in such offense prior to the commission thereof and made a substantial effort to prevent the commission thereof.
2. In any prosecution for criminal facilitation it is an affirmative defense that, prior to the commission of the felony which he facilitated, the defendant made a substantial effort to prevent the commission of such felony.
3. In any prosecution pursuant to Section 418 for an attempt to commit a crime, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.



4. In any prosecution for criminal solicitation pursuant to Section 401-407 or for conspiracy pursuant to Section 408-417 in which the crime solicited or the crime contemplated by the conspiracy was not in fact committed, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose the defendant prevented the commission of such crime.
5. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by:
  - A. a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose, or
  - B. a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

### **312 MENTAL DISEASE OR DEFECT**

In any prosecution for an offense, it is an affirmative defense that when the defendant engaged in the proscribed conduct, he lacked criminal responsibility by reason of mental disease or defect. Such lack of criminal responsibility means that at the time of such conduct, as a result of mental disease or defect, he lacked substantial capacity to know or appreciate either:

1. The nature and consequences of such conduct; or
2. That such conduct was wrong.

## Chapter 4

### SPECIFIC OFFENSES

#### A. ANTICIPATORY OFFENSES

##### 401 CRIMINAL SOLICITATION IN THE FIFTH DEGREE

A Native American is guilty of criminal solicitation in the fifth degree when, with intent that another person engage in conduct constituting a crime, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct.

Criminal solicitation in the fifth degree is a violation.

##### 402 CRIMINAL SOLICITATION IN THE FOURTH DEGREE

A Native American is guilty of criminal solicitation in the fourth degree when:

1. with intent that another person engage in conduct constituting a felony, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct; or
2. being over eighteen years of age, with intent that another person under sixteen years of age engage in conduct that would constitute a crime, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct.

Criminal solicitation in the fourth degree is a misdemeanor.

##### 403 CRIMINAL SOLICITATION IN THE THIRD DEGREE

A Native American is guilty of criminal solicitation in the third degree when, being over eighteen years of age, with intent that another person under sixteen years of age engage in conduct that would constitute a felony, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct.

Criminal solicitation in the third degree is a felony.

##### 404 CRIMINAL SOLICITATION IN THE SECOND DEGREE

A Native American is guilty of criminal solicitation in the second degree when, with intent that another person engage in conduct constituting a felony, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct.

Criminal solicitation in the second degree is a felony.

##### 405 CRIMINAL SOLICITATION IN THE FIRST DEGREE

A Native American is guilty of criminal solicitation in the first degree when, being over eighteen years of age, with intent that another person under sixteen years of age engage in conduct that would constitute a felony, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct.

Criminal solicitation in the first degree is a felony.

**406 CRIMINAL SOLICITATION; NO DEFENSE**

It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime solicited owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the conduct solicited or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of the crime in question.

**407 CRIMINAL SOLICITATION; EXEMPTION**

A Native American is not guilty of criminal solicitation when his solicitation constitutes conduct of a kind that is necessarily incidental to the commission of the crime solicited. When under such circumstances the solicitation constitutes an offense other than criminal solicitation which is related to but separate from the crime solicited, the actor is guilty of such related and separate offense only and not of criminal solicitation.

**B. CONSPIRACY**

**408 CONSPIRACY IN THE SIXTH DEGREE**

A Native American is guilty of conspiracy in the sixth degree when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the sixth degree is a misdemeanor.

**409 CONSPIRACY IN THE FIFTH DEGREE**

A Native American is guilty of conspiracy in the fifth degree when, with intent that conduct constituting:

1. a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct; or
2. a crime be performed, he, being over eighteen years of age, agrees with one or more persons under sixteen years of age to engage in or cause the performance of such conduct.

Conspiracy in the fifth degree is a misdemeanor.

**410 CONSPIRACY IN THE FOURTH DEGREE**

A Native American is guilty of conspiracy in the fourth degree when, with intent that conduct constituting:

1. a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct; or
2. a felony be performed, he, being over eighteen years of age, agrees with one or more persons under sixteen years of age to engage in or cause the performance of such conduct.

Conspiracy in the fourth degree is a felony.

#### **411 CONSPIRACY IN THE THIRD DEGREE**

A Native American is guilty of conspiracy in the third degree when, with intent that conduct constituting a felony be performed, he, being over eighteen years of age, agrees with one or more persons under sixteen years of age to engage in or cause the performance of such conduct.

Conspiracy in the third degree is a felony.

#### **412 CONSPIRACY IN THE SECOND DEGREE**

A Native American is guilty of conspiracy in the second degree when, with intent that conduct constituting a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the second degree is a felony.

#### **413 CONSPIRACY IN THE FIRST DEGREE**

A Native American is guilty of conspiracy in the first degree when, with intent that conduct constituting a felony be performed, he, being over eighteen years of age, agrees with one or more persons under sixteen years of age to engage in or cause the performance of such conduct.

Conspiracy in the first degree is a felony.

#### **414 CONSPIRACY; PLEADING AND PROOF; NECESSITY OF OVERT ACT**

A Native American shall not be convicted of conspiracy unless an overt act is alleged and proved to have been committed by one of the conspirators in furtherance of the conspiracy.

#### **415 CONSPIRACY; JURISDICTION AND VENUE**

1. A Native American may be prosecuted for conspiracy in the county in which he entered into such conspiracy or in any county in which an overt act in furtherance thereof was committed.
2. An agreement made within the territorial jurisdiction of the Oneida Indian Nation to engage in or cause the performance of conduct in another jurisdiction is punishable herein as a conspiracy only when such conduct would constitute a crime both under the laws of the Nation if performed herein and under the laws of the other jurisdiction if performed therein.
3. An agreement made in another jurisdiction to engage in or cause the performance of conduct within this state, which would constitute a crime herein, is punishable herein only when an overt act in furtherance of such conspiracy is committed within this state. Under such circumstances, it is no defense to a prosecution for conspiracy that the conduct which is the objective of the conspiracy would not constitute a crime under the laws of the other jurisdiction if performed therein.

#### **416 CONSPIRACY; NO DEFENSE**

It is no defense to a prosecution for conspiracy that, owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the agreement or the object conduct or

of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of conspiracy or the object crime, one or more of the defendant's co-conspirators could not be guilty of conspiracy or the object crime.

#### **417 CONSPIRACY; ENTERPRISE CORRUPTION; APPLICABILITY**

For the purposes of this code, conspiracy to commit the crime of enterprise corruption shall not constitute an offense.

#### **C. ATTEMPT**

#### **418 ATTEMPT TO COMMIT A CRIME**

A Native American is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime.

#### **419 ATTEMPT TO COMMIT A CRIME; PUNISHMENT**

An attempt to commit a crime is a:

1. A felony when the crime attempted is a felony.
2. A misdemeanor when the crime attempted is a misdemeanor.

#### **420 ATTEMPT TO COMMIT A CRIME; NO DEFENSE**

If the conduct in which a person engages otherwise constitutes an attempt to commit a crime it is no defense to a prosecution for such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission, if such crime could have been committed had the attendance circumstances been as such person believed them to be.

#### **421 CRIMINAL FACILITATION IN THE FOURTH DEGREE**

A Native American is guilty of criminal facilitation in the fourth degree when, believing it probable that he is rendering aid:

1. to a Native American who intends to commit a crime, he engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony; or
2. to a Native American under sixteen years of age who intends to engage in conduct which would constitute a crime, he, being over eighteen years of age, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a crime.

Criminal facilitation in the fourth degree is a misdemeanor.

#### **422 CRIMINAL FACILITATION IN THE THIRD DEGREE**

A Native American is guilty of criminal facilitation in the third degree, when believing it probable that he is rendering aid to a person under sixteen years of age who intends to engage in conduct that would constitute a

felony, he, being over eighteen years of age, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony.

Criminal facilitation in the third degree is a felony.

#### **423 CRIMINAL FACILITATION IN THE SECOND DEGREE**

A Native American is guilty of criminal facilitation in the second degree when, believing it probable that he is rendering aid to a person who intends to commit a class A felony, he engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit such class A felony.

Criminal facilitation in the second degree is a felony.

#### **424 CRIMINAL FACILITATION IN THE FIRST DEGREE**

A Native American is guilty of criminal facilitation in the first degree when, believing it probable that he is rendering aid to a person under sixteen years of age who intends to engage in conduct that would constitute a class A felony, he, being over eighteen years of age, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit such a class A felony.

Criminal facilitation in the first degree is a felony.

#### **425 CRIMINAL FACILITATION; NO DEFENSE**

It is no defense to a prosecution for criminal facilitation that:

1. The Native American facilitated was not guilty of the underlying felony owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the conduct in question or to other factors precluding the mental state required for the commission of such felony; or
2. The Native American person facilitated has not been prosecuted for or convicted of the underlying felony, or has previously been acquitted thereof; or
3. The defendant himself is not guilty of the felony which he facilitated because he did not act with the intent or other culpable mental state required for the commission thereof.

#### **426 CRIMINAL FACILITATION; CORROBORATION**

A Native American shall not be convicted of criminal facilitation upon the testimony of a person who has committed the felony charged to have been facilitated unless such testimony be corroborated by such other evidence as tends to connect the defendant with such facilitation.

### **D. OFFENSES AGAINST THE PERSON INVOLVING PHYSICAL INJURY, SEXUAL CONDUCT, RESTRAINT AND INTIMIDATION**

#### **427 ASSAULT IN THE THIRD DEGREE**

A Native American is guilty of assault in the third degree when:

1. With intent to cause physical injury to another person, he causes such injury to such person or to a third person; or
2. He recklessly causes physical injury to another person; or
3. With criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a misdemeanor.

#### **428 VEHICULAR ASSAULT IN THE SECOND DEGREE**

A Native American is guilty of vehicular assault in the second degree when:

1. With criminal negligence he causes serious physical injury to another person and either
2. causes such serious physical injury by operation of a vehicle while intoxicated.

Vehicular assault in the second degree is a felony.

#### **429 VEHICULAR ASSAULT IN THE FIRST DEGREE**

A Native American is guilty of vehicular assault in the first degree when he:

1. commits the crime of vehicular assault in the second degree as defined in section 428, and
2. commits such crime while knowing or having reason to know that his license or his privilege of operating a motor vehicle or his privilege of obtaining a license is suspended or revoked.

Vehicular assault in the first degree is a felony.

#### **430 ASSAULT IN THE SECOND DEGREE**

A Native American is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or
2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
3. With intent to prevent a peace officer, police officer, a fireman, including a fireman acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such fireman, or an emergency medical service paramedic or emergency medical service technician, from performing a lawful duty, he causes physical injury to such peace officer, police officer, fireman, paramedic or technician; or
4. He recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

5. For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the same; or
6. In the course of and in furtherance of the commission or attempted commission of a felony, he or another participant if there be any, causes physical injury to a person other than one of the participants; or
7. Having been charged with or convicted of a crime and while confined in a correctional facility, pursuant to such charge or conviction, with intent to cause physical injury to another person, he causes such injury to such person or to a third person; or
8. Being eighteen years old or more and with intent to cause physical injury to a person less than eleven years old, the defendant recklessly causes serious physical injury to such person.

Assault in the second degree is a felony.

#### **431 ASSAULT IN THE FIRST DEGREE**

A Native American is guilty of assault in the first degree when:

1. With intent to cause serious injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or
3. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person; or
4. In the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight therefrom, he, or another participant if there be any, causes serious physical injury to a person other than one of the participants.

Assault in the first degree is a felony.

#### **432 AGGRAVATED ASSAULT UPON A POLICE OFFICER OR A PEACE OFFICER**

A Native American is guilty of aggravated assault upon a police officer or a peace officer when, with intent to cause serious physical injury to a person whom he knows or reasonably should know to be a police officer engaged in the course of performing his official duties, he causes such injury by means of a deadly weapon when such weapon is a firearm.

Aggravated assault upon a police officer or a peace officer is a felony.

#### **433 AGGRAVATED ASSAULT UPON A PERSON LESS THAN ELEVEN YEARS OLD**

A Native American is guilty of aggravated assault upon a person less than eleven years old when being



eighteen years old or more the defendant commits the crime of assault in the third degree upon a person less than eleven years old and has been previously convicted of such crime upon a person less than eleven years old within the preceding three years.

Aggravated assault upon a person less than eleven years old is a felony.

#### **434 MENACING IN THE FIRST DEGREE**

A Native American is guilty of menacing in the first degree when he or she commits the crime of menacing in the second degree and has been previously convicted of the crime of menacing in the second degree within the preceding ten years.

Menacing in the first degree is a felony.

#### **435 MENACING IN THE SECOND DEGREE**

A Native American is guilty of menacing in the second degree when:

1. He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. He or she repeatedly follows a person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death.

Menacing in the second degree is a misdemeanor.

#### **436 MENACING IN THE THIRD DEGREE**

A Native American is guilty of menacing in the third degree when, by physical menace, he or she intentionally places or attempts to place another person in fear of death, imminent serious physical injury or physical injury.

Menacing in the third degree is a misdemeanor.

#### **437 HAZING IN THE FIRST DEGREE**

A Native American is guilty of hazing in the first degree when, in the course of another person's initiation into or affiliation with any organization, he intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person or a third person and thereby causes such injury.

Hazing in the first degree is a misdemeanor.

**438 HAZING IN THE SECOND DEGREE**

A Native American is guilty of hazing in the second degree when, in the course of another person's initiation or affiliation with any organization, he intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person or a third person.

Hazing in the second degree is a violation.

**439 RECKLESS ENDANGERMENT IN THE SECOND DEGREE**

A Native American is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

Reckless endangerment in the second degree is a misdemeanor.

**440 RECKLESS ENDANGERMENT IN THE FIRST DEGREE**

A Native American is guilty of reckless endangerment in the first degree when, under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person.

Reckless endangerment in the first degree is a felony.

**441 PROMOTING A SUICIDE ATTEMPT**

A Native American is guilty of promoting a suicide attempt when he intentionally causes or aids another person to attempt suicide.

Promoting a suicide attempt is a felony.

**442 PROMOTING A SUICIDE ATTEMPT; WHEN PUNISHABLE AS ATTEMPT TO COMMIT MURDER**

A Native American who engages in conduct constituting both the offense of promoting a suicide attempt and the offense of attempt to commit murder may not be convicted on attempt to commit murder unless he causes or aids the suicide attempt by the use of duress or deception.

**443 HOMICIDE DEFINED**

Homicide means conduct which causes the death of a person or an unborn child with which a female has been pregnant for more than twenty-four weeks under circumstances constituting murder, manslaughter in the first degree, manslaughter in the second degree, criminally negligent homicide, abortion in the first degree or self-abortion in the first degree.

**444 HOMICIDE, ABORTION AND RELATED OFFENSES; DEFINITION OF TERMS**

The following definitions are applicable to this article:

1. "Person," when referring to the victim of a homicide, means a human being who has been born and is alive.

2. "Abortional act" means an act committed upon or with respect to a female, whether by another person or by the female herself, whether she is pregnant or not, whether directly upon her body or by the administering, taking or prescription of drugs or in any other manner, with intent to cause a miscarriage of such female.
3. "Justifiable abortional act." An abortional act is justifiable when committed upon a female with her consent by a duly licensed physician acting (a) under a reasonable belief that such is necessary to preserve her life, or, (b) within twenty-four weeks from the commencement of her pregnancy. A pregnant female's commission of an abortional act upon herself is justifiable when she acts upon the advice of a duly licensed physician (1) that such act is necessary to preserve her life, or, (2) within twenty-four weeks from the commencement of her pregnancy. The submission by a female to an abortional act is justifiable when she believes that it is being committed by a duly licensed physician, acting under a reasonable belief that such act is necessary to preserve her life, or within twenty-four weeks from the commencement of her pregnancy.

#### **445 CRIMINALLY NEGLIGENT HOMICIDE**

A Native American is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person.

Criminally negligent homicide is a felony.

#### **446 VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE**

A Native American is guilty of vehicular manslaughter in the second degree when he:

1. commits the crime of criminally negligent homicide as defined in section 445, and either
2. causes the death of such other person by operation of a vehicle, or by operation of a vessel.
3. causes the death of such other person by operation of a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives is the cause of such death, by operation of a snowmobile, or by operation of an all-terrain vehicle.

Vehicular manslaughter in the second degree is a felony.

#### **447 VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE**

A Native American is guilty of vehicular manslaughter in the first degree when he:

1. commits a the crime of vehicular manslaughter in the second degree as defined in section 446, and
2. commits such crime while knowing or having reason to know that his license or his privilege of operating a motor vehicle or his privilege of obtaining a license is suspended or revoked.

Vehicular manslaughter in the first degree is a felony.

**448 MANSLAUGHTER IN THE SECOND DEGREE**

A Native American is guilty of manslaughter in the second degree when:

1. He recklessly causes the death of another person; or
2. He commits upon a female an abortifacient act which causes her death, unless such abortifacient act is justifiable pursuant to subdivision three of section 444; or
3. He intentionally causes or aids another person to commit suicide.

Manslaughter in the second degree is a felony.

**449 MANSLAUGHTER IN THE FIRST DEGREE**

A Native American is guilty of manslaughter in the first degree when:

1. With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or
2. With intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance, as defined paragraph (a) of subdivision one of Section 450. The fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subdivision; or
3. He commits upon a female pregnant for more than twenty-four weeks an abortifacient act which causes her death unless such abortifacient act is justifiable pursuant to subdivision three to Section 444; or
4. Being eighteen years old or more and with intent to cause physical injury to a person less than eleven years old, the defendant recklessly engages in conduct which creates a grave risk of serious physical injury to such person and thereby causes the death of such person.

Manslaughter in the first degree is a felony.

**450 MURDER IN THE SECOND DEGREE**

A Native American is guilty of murder in the second degree when:

1. With intent to cause death of another person, he causes the death of such person or of a third person; or except that in any prosecution under this subdivision, it is an affirmative defense that:
  - A. The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of,

manslaughter in the first degree or any other crime; or

- B. The defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the second degree or any other crime; or
- 2. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person; or
  - 3. Acting either alone or with one or more other persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, sodomy in the first degree, sexual abuse in the first degree, aggravated sexual abuse, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:
    - A. Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and
    - B. Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and
    - C. Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and
    - D. Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury; or
  - 4. Under circumstances evincing a depraved indifference to human life, and being eighteen years old or more the defendant recklessly engages in conduct which creates a grave risk of serious physical injury or death to another person less than eleven years old and thereby causes the death of such person.

Murder in the second degree is a felony.

#### **451 MURDER IN THE FIRST DEGREE**

A Native American is guilty of murder in the first degree when:

- 1. With intent to cause the death of another person, he causes the death of such person; and
  - A. Either:
    - (i) the victim was a police officer who was killed in the course of performing his official duties, and the defendant knew or reasonably should have known that the victim was a police officer;

or

(ii) the victim was an employee of a correctional facility who was killed in the course of performing his official duties, and the defendant knew or reasonably should have known that the victim was an employee of a correctional facility; or

B. The defendant was more than eighteen years old at the time of the commission of the crime.

2. In any prosecution under subdivision one, it is an affirmative defense that:

A. The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant situation under the circumstances as the defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime except murder in the second degree; or

B. The defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the second degree or any other crime except murder in the second degree.

Murder in the first degree is a felony.

#### **452 ABORTION IN THE SECOND DEGREE**

A Native American is guilty of abortion in the second degree when he commits an abortifacient act upon a female, unless such abortifacient act is justifiable pursuant to subdivision three of Section 444.

Abortion in the second degree is a felony.

#### **453 ABORTION IN THE FIRST DEGREE**

A Native American is guilty of abortion in the first degree when he commits upon a female pregnant for more than twenty-four weeks an abortifacient act which causes the miscarriage of such female, unless such abortifacient act is justifiable pursuant to subdivision three of Section 444.

Abortion in the first degree is a felony.

#### **454 SELF-ABORTION IN THE SECOND DEGREE**

A Native American female is guilty of self-abortion in the second degree when, being pregnant; she commits or submits to an abortifacient act upon herself, unless such abortifacient act is justifiable pursuant to subdivision three of Section 444.

Self-abortion in the second degree is a misdemeanor.

#### **455 SELF-ABORTION IN THE FIRST DEGREE**

A Native American female is guilty of self-abortion in the first degree when, being pregnant for more than twenty-four weeks; she commits or submits to an abortifacient act upon herself which causes her miscarriage, unless such abortifacient act is justifiable pursuant to subdivision three of Section 444.

Self-abortion in the first degree is a misdemeanor.

#### **456 ISSUING ABORTIFACIENT ARTICLES**

A Native American is guilty of issuing abortifacient articles when he manufactures, sells or delivers any instrument, article, medicine, drug or substance with intent that the same be used in unlawfully procuring the miscarriage of a female.

Issuing abortifacient articles is a misdemeanor.

#### **457 SEX OFFENSES; DEFINITION OF TERMS**

The following definitions are applicable to this chapter:

1. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight.
2. "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and penis, or the mouth and the vulva.
3. "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.
4. "Female" means any female person who is not married to the actor. For the purposes of this chapter "not married" means:
  - A. the lack of an existing relationship of husband and wife between the female and the actor which is recognized by law, or
  - B. the existence of the relationship of husband and wife between the actor and the female which is recognized by law at the time the actor commits an offense proscribed by this chapter by means of forcible compulsion against the female, and the female and actor are living apart at such time pursuant to a valid and effective:
    - (i) order issued by a court of competent jurisdiction which by its terms or in its effect requires such living apart or
    - (ii) decree or judgment of separation, or
    - (iii) written agreement of separation subscribed by them and

acknowledged in the form required to entitle a deed to be recorded which contains provisions specifically indicating that the actor may be guilty of the commission of a crime for engaging in conduct which constitutes an offense proscribed by this chapter against and without the consent of the female.

5. "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.
6. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent
7. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to act.
8. "Forcible compulsion" means to compel by either:
  - A. use of physical force; or
  - B. a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.
9. "Foreign object" means any instrument or article which, when inserted in the vagina, urethra, penis or rectum, is capable of causing physical injury.

#### **458 SEX OFFENSES; LACK OF CONSENT**

1. Whether or not specifically stated, it is an element of every offense defined in this article, except the offense of consensual sodomy, that the sexual act was committed without consent of the victim.
2. Lack of consent results from:
  - A. Forcible compulsion; or
  - B. Incapacity to consent; or
  - C. Where the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
3. A person is deemed incapable of consent when he is:
  - A. less than seventeen years old; or
  - B. mentally defective; or
  - C. mentally incapacitated; or



D. physically helpless.

**459 SEX OFFENSES; DEFENSE**

In any prosecution under this Code in which the victim's lack of consent is based solely upon his capacity to consent because he was mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

**460 SEX OFFENSES; CORROBORATION**

A Native American shall not be convicted of consensual sodomy, or an attempt to commit the same, or of any offense defined in this chapter of which lack of consent is an element but results solely from incapacity to consent because of the victim's mental defect, or mental incapacity, or an attempt to commit the same, solely on the testimony of the victim, unsupported by other evidence tending to:

1. Establish that an attempt was made to engage the victim in sexual intercourse, deviate sexual intercourse, or sexual contact, as the case may be, at the time of the occurrence; and
2. Connect the defendant with the commission of the offense or attempted offense.

**461 SEXUAL MISCONDUCT**

A Native American is guilty of sexual misconduct when:

1. Being a male, he engages in sexual intercourse with a female without her consent; or
2. He engages in deviate sexual intercourse with another person without the latter's consent; or
3. He engages in sexual conduct with an animal or a dead human body.

Sexual misconduct is a misdemeanor.

**462 RAPE IN THE THIRD DEGREE**

A Native American is guilty of rape in the third degree when:

1. He or she engages in sexual intercourse with another person to whom the actor is not married who is incapable of consent by reason of some factor other than being less than seventeen years old; or
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person to whom the actor is not married less than seventeen years old.

Rape in the third degree is a felony.

**463 RAPE IN THE SECOND DEGREE**

A Native American is guilty of rape in the second degree when, being eighteen years old or more, he or she engages in sexual intercourse with another person to whom the actor is not married less than fourteen years

old.

Rape in the second degree is a felony.

#### **464 RAPE IN THE FIRST DEGREE**

A Native American male is guilty of rape in the first degree when he engages in sexual intercourse with a female:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old.

Rape in the first degree is a felony.

#### **466 SODOMY IN THE THIRD DEGREE**

A Native American is guilty of sodomy in the third degree when:

1. He engages in deviate sexual intercourse with a person who is incapable of consent by reason of some factor other than being less than seventeen years old; or
2. Being twenty-one years old or more, he engages in deviate sexual intercourse with a person less than seventeen years old.

Sodomy in the third degree is a felony.

#### **467 SODOMY IN THE SECOND DEGREE**

A Native American is guilty of sodomy in the second degree when, being eighteen years old or more, he engages in deviate sexual intercourse with another person less than fourteen years old.

Sodomy in the second degree is a felony.

#### **468 SODOMY IN THE FIRST DEGREE**

A Native American is guilty of sodomy in the first degree when he engages in deviate sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old.

Sodomy in the first degree is a felony.

**469 SEXUAL ABUSE IN THE THIRD DEGREE**

A Native American is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a misdemeanor.

**470 SEXUAL ABUSER IN THE SECOND DEGREE**

A Native American is guilty of sexual abuse in the second degree when he subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old;  
or
2. Less than fourteen years old.

Sexual abuse in the second degree is a misdemeanor.

**471 SEXUAL ABUSE IN THE FIRST DEGREE**

A Native American is guilty of sexual abuse in the first degree when he subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than eleven years old.

Sexual abuse in the first degree is a felony.

**472 AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE**

1. A Native American is guilty of aggravated sexual abuse in the second degree when he inserts a finger in the vagina, urethra, penis, or rectum of another person causing physical injury to such person:
  - A. By forcible compulsion; or
  - B. When the other person is incapable of consent by reason of being physically helpless; or
  - C. When the other person is less than eleven years old.
2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the second degree is a felony.

**473 AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE**

1. A Native American is guilty of aggravated sexual abuse in the first degree when he inserts a foreign object in the vagina, urethra, penis, or rectum of another person causing physical injury to such person:
  - A. By forcible compulsion; or
  - B. When the other person is incapable of consent by reason of being physically helpless; or
  - C. When the other person is less than eleven years old.
2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the first degree is a felony.

**474 UNLAWFUL IMPRISONMENT, KIDNAPPING AND CUSTODIAL INTERFERENCE; DEFINITIONS OF TERMS**

The following definitions are applicable to this chapter:

1. "Restrain" means to restrict a person's movements intentionally and unlawfully in such manner as to interfere substantially with his liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in a place to which he has been moved, without consent and with knowledge that the restriction is unlawful. A person is so moved or confined "without consent" when such is accomplished by (a) physical force, intimidation or deception, or (b) any means whatever, including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of him has not acquiesced in the movement of confinement.
2. "Abduct" means to restrain a person with intent to prevent his liberation by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly physical force.
3. "Relative" means a parent, ancestor, brother, sister, uncle or aunt.

**475 UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE**

A Native American is guilty of unlawful imprisonment in the second degree when he restrains another person.

Unlawful imprisonment in the second degree is a class A misdemeanor.

**476 UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE**

A Native American is guilty of unlawful imprisonment in the first degree when he restrains another person under circumstances which expose the latter to a risk of serious physical injury.

Unlawful imprisonment in the first degree is a class E felony.

**477 UNLAWFUL IMPRISONMENT; DEFENSE**

In any prosecution for unlawful imprisonment, it is an affirmative defense that (a) the person restrained was a child less than sixteen years old, and (b) the defendant was a relative of such child, and (c) his sole purpose was to assume control of such child.

**478 KIDNAPPING IN THE SECOND DEGREE**

A Native American is guilty of kidnapping in the second degree when he abducts another person.

Kidnapping in the second degree is a class B felony.

**479 KIDNAPPING IN THE FIRST DEGREE**

A Native American is guilty of kidnapping in the first degree when he abducts another person and when:

1. His intent is to compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct, or to refrain from engaging in particular conduct; or
2. He restrains the person abducted for a period of more than twelve hours with intent to:
  - A. Inflict physical injury upon him or violate or abuse him sexually; or
  - B. Accomplish or advance the commission of a felony; or
  - C. Terrorize him or a third person; or
  - D. Interfere with the performance of a governmental or political function; or
3. The person abducted dies during the abduction or before he is able to return or to be returned to safety. Such death shall be presumed, in a case where

such person was less than sixteen years old or an incompetent person at the time of the abduction, from evidence that his parents, guardians or other lawful custodians did not see or hear from him following the termination of the abduction and prior to trial and received no reliable information during such period persuasively indicating that he was alive. In all other cases, such death shall be presumed from evidence that a person whom the person abducted would have been extremely likely to visit or communicate with during the specified period were he alive and free to do so did not see or hear from him during such period and received no reliable information during such period persuasively indicating that he was alive.

Kidnapping in the first degree is a class A-1 felony.

**480 KIDNAPPING; DEFENSE**

In any prosecution for kidnapping, it is an affirmative defense that (a) the defendant was a relative of the person abducted, and (b) his sole purpose was to assume control of such person.

**481 CUSTODIAL INTERFERENCE IN THE SECOND DEGREE**

A Native American is guilty of custodial interference in the second degree when:

1. Being a relative of a child less than sixteen years old, intending to hold such child permanently or for a protracted period, and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; or
2. Knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution.

Custodial interference in the second degree is a class A misdemeanor.

**482 CUSTODIAL INTERFERENCE IN THE FIRST DEGREE**

A Native American is guilty of custodian inference in the first degree when he commits the crime of custodial interference in the second degree.

1. With intent to permanently remove the victim from Nation jurisdiction, he removes such person from the jurisdiction of the Nation; or
2. Under circumstances which expose the victim to a risk that his safety will be endangered or his health materially impaired.

It shall be an affirmative defense to a prosecution under subdivision one of this section that the victim had been abandoned or that the taking was necessary in an emergency to protect the victim because he has been subjected to or threatened with mistreatment or abuse.

Custodial interference in the first degree is a class E felony.

**483 COERCION IN THE SECOND DEGREE**

A Native American is guilty of coercion in the second degree when he compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

1. Cause physical injury to a person; or
2. Cause damage to property; or
3. Engage in other conduct constituting a crime; or
4. Accuse some person of a crime or cause criminal charges to be instituted against him; or

5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; or
7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

Coercion in the second degree is a class A misdemeanor.

#### **484 COERCION IN THE FIRST DEGREE**

A Native American is guilty of coercion in the first degree when he commits the crime of coercion in the second degree, and when:

1. He commits such crime by instilling in the victim a fear that he will cause physical injury to a person or cause damage to property; or
2. He thereby compels or induces the victim to:
  - A. Commit or attempt to commit a felony; or
  - B. Cause or attempt to cause physical injury to a person; or
  - C. Violate his duty as a public servant.

Coercion in the first degree is a class D felony.

#### **485 COERCION; NO DEFENSE**

The crimes of (a) coercion and attempt to commit coercion, and (b) bribe receiving by a labor official and bribe receiving by a public servant are not mutually exclusive, and it is no defense to a prosecution for coercion or an attempt to commit coercion that, by reason of the same conduct, the defendant also committed one of such specified crimes of bribe receiving.

#### **486 COERCION; DEFENSE**

In any prosecution for coercion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

## **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

withholds it from him by larcenous means.

A joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof.

In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest therein, even if legal title lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

6. "Secret scientific material" means a sample, culture, micro-organism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formula or any part or phase thereof, and which is not, and is not intended to be, available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his or their consent, and when it accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.
7. "Credit card" means any instrument or article defined as a credit card.
8. "Debit card" means any instrument or article defined as a debit card.
9. "Medical assistance card" means an identification card given to an individual for use in securing medical assistance.
10. "Access device" means any telephone calling card number, credit card number, account number or personal identification number that can be used to obtain telephone service.
11. "Service" includes, but is not limited to, labor, professional service, a computer service, transportation service, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water. A ticket or equivalent instrument which evidences a right to receive a service is not in itself service but constitutes property within the meaning of subdivision one.
12. "Cable television service" means any and all services provided by or through the facilities of any cable television system or closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.

#### **517 LARCENY; DEFINED**

1. A Native American steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.
2. Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:
  - A. By conduct heretofore defined or known as common law larceny by trespassory



taking, common law larceny by trick, embezzlement, or obtaining property by false pretenses;

B. By acquiring lost property.

A Native American acquires lost property when he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner;

C. By committing the crime of issuing a bad check;

D. By false promise.

A Native American obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.

In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are wholly consistent with guilty intent or belief and wholly inconsistent with innocent intent or belief, and excluding to a moral certainty every hypothesis except that of the defendant's intention or belief that the promise would not be performed;

E. By extortion.

A Native American obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

(i) Cause physical injury to some person in the future; or

(ii) Cause damage to property; or

(iii) Engage in other conduct constituting a crime; or

(iv) Accuse some person of a crime or cause criminal charges to be instituted against him; or

(v) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(vi) Cause a strike, boycott or other collective labor group action

injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or

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

(viii) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(ix) Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

#### **518 LARCENY; NO DEFENSE**

The crimes of (a) larceny committed by means of extortion and an attempt to commit the same, and (b) bribe receiving by a labor official and bribe receiving by a public servant are not mutually exclusive, and it is no defense to a prosecution for larceny committed by means of extortion or for an attempt to commit the same that, by reason of the same conduct, the defendant also committed one of such specified crimes of bribe receiving.

#### **519 LARCENY; DEFENSES**

1. In any prosecution for larceny committed by trespassory taking or embezzlement, it is an affirmative defense that the property was appropriated under a claim of right made in good faith.
2. In any prosecution for larceny by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

#### **520 LARCENY; VALUE OF STOLEN PROPERTY**

For the purposes of this title, the value of property shall be ascertained as follows:

1. Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.
2. Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:
  - A. The value of an instrument constituting an evidence of debt, such as a check, draft

or promissory note, shall be deemed the amount due or collectable thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

- B. The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon the value shall be deemed the price of such ticket or equivalent instrument which the issuer charges the general public.
  - C. The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.
- 3. Where the property consists of gas, steam, water or electricity, which is provided for charge or compensation, the value shall be the value of the property stolen in any consecutive twelve-month period.
  - 4. When the value of property cannot be satisfactorily ascertained pursuant to the standards set forth in subdivisions one and two of this section, its value shall be deemed to be an amount less than two hundred fifty dollars.

#### **521 PETIT LARCENY**

A Native American is guilty of petit larceny when he steals property.

Petit larceny is a class A misdemeanor.

#### **522 GRAND LARCENY IN THE FOURTH DEGREE**

A Native American is guilty of grand larceny in the fourth degree when he steals property and when:

- 1. The value of the property exceeds one thousand dollars; or
- 2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
- 3. The property consists of secret scientific material; or
- 4. The property consists of a credit card or debit card; or
- 5. The property, regardless of its nature and value, is taken from the person of another; or
- 6. The property, regardless of its nature and value, is obtained by extortion; or
- 7. The property consists of one or more firearms, rifles or shotguns.
- 8. The value of the property exceeds one hundred dollars and the property consists of a motor vehicle, other than a motorcycle.
- 9. The property consists of a scroll, religious vestment, vessel or other item of property having

a value of at least one hundred dollars kept for or used in connection with religious worship in any building or structure.

10. The property consists of an access device which the person intends to use unlawfully to obtain telephone service.

Grand larceny in the fourth degree is a class E felony.

### **523 GRAND LARCENY IN THE THIRD DEGREE**

A Native American is guilty of grand larceny in the third degree when he steals property and when the value of the property exceeds three thousand dollars.

Grand larceny in the third degree is a class D felony.

### **524 GRAND LARCENY IN THE SECOND DEGREE**

A Native American is guilty of grand larceny in the second degree when he steals property and when:

1. The value of the property exceeds fifty thousand dollars; or
2. The property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will (a) cause physical injury to some person in the future, or (b) cause damage to property, or (c) use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

Grand larceny in the second degree is a class C felony.

### **525 GRAND LARCENY IN THE FIRST DEGREE**

A Native American is guilty of grand larceny in the first degree when he steals property and when the value of the property exceeds one million dollars.

Grand larceny in the first degree is a class B felony.

### **526 LARCENY; PLEADING AND PROOF**

1. Where it is an element of the crime charged that property was taken from the person or obtained by extortion, a complaint for larceny must so specify. In all other cases, complaint for larceny is sufficient if it alleges that the defendant stole property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which such property was stolen or the particular theory of larceny involved.
2. Proof that the defendant engaged in any conduct constituting larceny is sufficient to support any complaint for larceny other than one charging larceny by extortion. An indictment charging larceny by extortion must be supported by proof establishing larceny by extortion.

## 527 OFFENSES INVOLVING COMPUTERS; DEFINITION OF TERMS

The following definitions are applicable to this code except where different meanings are expressly specified:

1. "Computer" means a device or group of devices which, by manipulation of electronic, magnetic, optical or electrochemical impulses, pursuant to a computer program, can automatically perform arithmetic, logical, storage or retrieval operations with or on computer data, and includes any connected or directly related device, equipment or facility which enables such computer to store, retrieve or communicate to or from a person, another computer or another device the results of computer operations, computer programs or computer data.
2. "Computer program" is property and means an ordered set of data representing coded instructions or statements that, when executed by computer, cause the computer to process data or direct the computer to perform one or more computer operations or both and may be in any form, including magnetic storage media, punched cards, or stored internally in the memory of the computer.
3. "Computer data" is property and means a representation of information, knowledge, facts, concepts or instructions which are being processed, or have been processed in a computer and may be in any form, including magnetic storage media, punched cards, or stored internally in the memory of the computer.
4. "Computer service" means any and all services provided by or through the facilities of any computer communication system allowing the input, output, examination, or transfer, of computer data or computer programs from one computer to another.
5. "Computer material" is property and means any computer data or computer program which:
  - A. contains records of the medical history or medical treatment of an identified or readily identifiable individual or individuals. This term shall not apply to the gaining access to or duplication solely of the medical history or medical treatment records of a person by that person or by another specifically authorized by the person whose records are gained access to or duplicated; or
  - B. contains records maintained by the Nation or any political subdivision thereof which contains any information concerning a person, which because of name, number, symbol, mark or other identifier, can be used to identify the person and which is otherwise prohibited by law from being disclosed. This term shall not apply to the gaining access to or duplication solely of records of a person by that person or by another specifically authorized by the person whose records are gained access to or duplicated; or
  - C. is not and is not intended to be available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his or their consent and which accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.
6. "Uses a computer or computer service without authorization" means the use of a computer or computer service without the permission of, or in excess of the permission of, the owner

or lessor or someone licensed or privileged by the owner or lessor after notice to that effect to the user of the computer or computer service has been given by:

- A. giving actual notice in writing or orally to the user; or
  - B. prominently posting written notice adjacent to the computer being utilized by the user; or
  - C. a notice that is displayed on, printed out on or announced by the computer being utilized by the user. Proof that the computer is programmed to automatically display, print or announce such notice or a notice prohibiting copying, reproduction or duplication shall be presumptive evidence that such notice was displayed, printed or announced.
7. "Felony" as used in this section means any felony defined by Nation laws or any offense defined in the laws of any other jurisdiction for which a sentence to a term of imprisonment not to exceed one year is authorized.

#### **528 UNAUTHORIZED USE OF A COMPUTER**

A Native American is guilty of unauthorized use of a computer when he knowingly uses or causes to be used a computer or computer service without authorization and the computer utilized is equipped or programmed with any device or coding system, a function of which is to prevent the unauthorized use of said computer or computer system.

Unauthorized use of a computer is a class A misdemeanor.

#### **529 COMPUTER TRESPASS**

A Native American is guilty of computer trespass when he knowingly uses or causes to be used a computer or computer service without authorization and:

- 1. he does so with an intent to commit or attempt to commit or further the commission of any felony; or
- 2. he thereby knowingly gains access to computer material.

Computer trespass is a class E felony.

#### **530 COMPUTER TAMPERING IN THE SECOND DEGREE**

A Native American is guilty of computer tampering in the second degree when he uses or causes to be used a computer or computer service and having no right to do so he intentionally alters in any manner or destroys computer data or a computer program of another person.

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

### **531 COMPUTER TAMPERING IN THE FIRST DEGREE**

A Native American is guilty of computer tampering in the first degree when he commits the crime of computer tampering in the second degree and:

1. he does so with an intent to commit or attempt to commit or further the commission of any felony; or
2. he has been previously convicted of any crime under this section; or
3. he intentionally alters in any manner or destroys computer material; or
4. he intentionally alters in any manner or destroys computer data or a computer program in an amount exceeding one thousand dollars.

Computer tampering in the first degree is a class E felony.

### **532 UNLAWFUL DUPLICATION OF COMPUTER RELATED MATERIAL**

A Native American is guilty of unlawful duplication of computer related material when having no right to do so, he copies, reproduces or duplicates in any manner:

1. any computer data or computer program and thereby intentionally and wrongfully deprives or appropriates from an owner thereof an economic value or benefit in excess of two thousand five hundred dollars; or
2. any computer data or computer program with an intent to commit or attempt to commit or further the commission of any felony.

Unlawful duplication of computer related material is a class E felony.

### **533 CRIMINAL POSSESSION OF COMPUTER RELATED MATERIAL**

A Native American is guilty of criminal possession of computer related material when having no right to do so, he knowingly possesses, in any form, any copy, reproduction or duplicate of any computer data or computer program which was copied, reproduced or duplicated in violation of section 532 of this section, with intent to benefit himself or a person other than an owner thereof.

Criminal possession of computer related material is a class E felony.

### **534 OFFENSES INVOLVING COMPUTERS; DEFENSES**

In any prosecution:

1. under section 528 or 529 of this chapter, it shall be a defense that the defendant had reasonable grounds to believe that he had authorization to use the computer;
2. under section 530 or 531 of this chapter it shall be a defense that the defendant had reasonable grounds to believe that he had the right to alter in any manner or destroy the computer data or the computer program;

3. under section 532 of this chapter it shall be a defense that the defendant had reasonable grounds to believe that he had the right to copy, reproduce or duplicate in any manner the computer data or the computer program.

### **535 ROBBERY; DEFINED**

Robbery is forcible stealing. A person forcibly steals property and commits robbery when, in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of:

1. Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or
2. Compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.

### **536 ROBBERY IN THE THIRD DEGREE**

A Native American is guilty of robbery in the third degree when he forcibly steals property.

Robbery in the third degree is a class D felony.

### **537 ROBBERY IN THE SECOND DEGREE**

A Native American is guilty of robbery in the second degree when he forcibly steals property and when:

1. He is aided by another person actually present; or
2. In the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:
  - A. Causes physical injury to any person who is not a participant in the crime; or
  - B. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

Robbery in the second degree is a class C felony.

### **538 ROBBERY IN THE FIRST DEGREE**

A Native American is guilty of robbery in the first degree when he forcibly steals property and when, in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:

1. Causes serious physical injury to any person who is not a participant in the crime; or
2. Is armed with a deadly weapon; 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, robbery in the second degree, robbery in the third degree or any other crime.

Robbery in the first degree is a class B felony.

### **539 MISAPPLICATION OF PROPERTY**

1. A Native American is guilty of misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that the same will be returned to the owner at a future time, he loans, leases, pledges, pawns or otherwise encumbers such property without the consent of the owner thereof in such manner as to create a risk that the owner will not be able to recover it or will suffer pecuniary loss.
2. In any prosecution under this section, it is a defense that, at the time the prosecution was commenced, (a) the defendant had recovered possession of the property, unencumbered as a result of the unlawful disposition, and (b) the owner had suffered no material economic loss as a result of the unlawful disposition.

Misapplication of property is a class A misdemeanor.

### **540 UNAUTHORIZED USE OF A VEHICLE IN THE THIRD DEGREE**

A Native American is guilty of unauthorized use of a vehicle in the third degree when:

1. Knowing that he does not have the consent of the owner, he takes, operates, exercises control over, rides in or otherwise uses a vehicle. A person who engages in any such conduct without the consent of the owner is presumed to know that he does not have such consent; or
2. Having custody of a vehicle pursuant to an agreement between himself or another and the owner thereof whereby he or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, he intentionally uses or operates the same, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or
3. Having custody of a vehicle pursuant to an agreement with the owner thereof whereby such vehicle is to be returned to the owner at a specified time, he intentionally retains or withholds possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

For purposes of this section "a gross deviation from the agreement" shall consist of, but not be limited to, circumstances wherein a person who having had custody of a vehicle for a period of fifteen days or less pursuant to a written agreement retains possession of such vehicle for at least seven days beyond the period specified in the agreement and continues such possession for a period of more than two days after service or refusal of attempted service of a notice in person or by certified mail at an address indicated in the agreement stating (i) the date and time at which the vehicle was to have been returned under the agreement; (ii) that the

owner does not consent to the continued withholding or retaining of such vehicle and demands its return.

Unauthorized use of a vehicle in the third degree is a class A misdemeanor.

#### **541 UNAUTHORIZED USE OF A VEHICLE IN THE SECOND DEGREE**

A Native American is guilty of unauthorized use of a vehicle in the second degree when:

He commits the crime of unauthorized use of a vehicle in the third degree as defined in subdivision one of section 540 of this Code and has been previously convicted of the crime of unauthorized use of a vehicle in the third degree as defined in subdivision one of section 540 or second degree within the preceding ten years.

Unauthorized use of a vehicle in the second degree is a class E felony.

#### **542 UNLAWFUL USE OF SECRET SCIENTIFIC MATERIAL**

A Native American is guilty of unlawful use of secret scientific material when, with intent to appropriate to himself or another the use of secret scientific material, and having no right to do so and no reasonable ground to believe that he has such right, he makes a tangible reproduction or representation of such secret scientific material by means of writing, photographing, drawing, mechanically or electronically reproducing or recording such secret scientific material.

Unlawful use of secret scientific material is a class E felony.

#### **543 UNAUTHORIZED USE OF A VEHICLE IN THE FIRST DEGREE**

A Native American is guilty of unauthorized use of a vehicle in the first degree when knowing that he does not have the consent of the owner, he takes, operates, exercises control over, rides in or otherwise uses a vehicle with the intent to use the same in the course of or the commission of a class A, class B, class C or class D felony or in the immediate flight therefrom. A person who engages in any such conduct without the consent of the owner is presumed to know he does not have such consent.

Unauthorized use of a vehicle in the first degree is a class D felony.

#### **544 AUTO STRIPPING IN THE SECOND DEGREE**

A Native American is guilty of auto stripping in the second degree when:

1. He removes or intentionally destroys or defaces any part of a vehicle, other than an abandoned vehicle, as defined in subdivision one of section 172 of the Vehicle and Traffic Code, without the permission of the owner; or
2. He removes or intentionally destroys or defaces any part of an abandoned vehicle, except that it is a defense to such charge that such person was authorized to do so pursuant to law or by permission of the owner.

Auto stripping in the second degree is a class A misdemeanor.

#### **545 AUTO STRIPPING IN THE FIRST DEGREE**

A Native American is guilty of auto stripping in the first degree when he commits the offense of auto stripping in the second degree and when he has been previously convicted within the last five years of either auto stripping in the second degree.

Auto stripping in the first degree is a class E felony.

#### **546 THEFT OF SERVICES**

A Native American is guilty of theft of services when:

1. He obtains or attempts to obtain a service, or induces or attempts to induce the supplier of a rendered service to agree to payment therefor on a credit basis, by the use of a credit card, debit card, or medical assistance card which he knows to be stolen.
2. With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids or attempts to avoid such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false. A person who fails or refuses to pay for such services is presumed to have intended to avoid payment therefor; or
3. With intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such transportation service which has been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay; or
4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, including, without limitation, cable television service, or any gas, steam, sewer, water, electrical, telegraph or telephone service which is provided for a charge or compensation, he obtains or attempts to obtain such service for himself or another person or avoids or attempts to avoid payment therefor by himself or another person by means of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) offering for sale or otherwise making available, to anyone other than the provider of a telecommunications service for such service provider's own use in the provision of its service, any telecommunications decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming or individually addressed switching imposed by the provider of any such telecommunications service to restrict the delivery of such service, or (c) any misrepresentation of fact which he knows to be false, or (d) any other artifice, trick, deception, code or device. For the purposes of this subdivision the telecommunications decoder or descrambler described in paragraph (b) above or the device described in paragraph (d) above shall not include any non-decoding and non-descrambling channel frequency converter or any television receiver type-accepted by the federal communications commission. In any prosecution under this subdivision, proof that telecommunications equipment, including, without limitation, any cable television converter, descrambler, or related equipment, has been tampered with or otherwise intentionally prevented from performing its functions of control of service delivery without the consent of

the supplier of the service, or that telecommunications equipment, including, without limitation, any cable television converter, descrambler, receiver, or related equipment, has been connected to the equipment of the supplier of the service without the consent of the supplier of the service, shall be presumptive evidence that the resident to whom the service which is at the time being furnished by or through such equipment has, with intent to avoid payment by himself or another person for a prospective or already rendered service, created or caused to be created with reference to such equipment, the condition so existing. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved. In any prosecution under this subdivision, proof that any telecommunications decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming or individually addressed switching imposed by the provider of any such telecommunications service to restrict the delivery of such service, has been offered for sale or otherwise made available by anyone other than the supplier of such service shall be presumptive evidence that the person offering such equipment for sale or otherwise making it available has, with intent to avoid payment by himself or another person of the lawful charge for such service, obtained or attempted to obtain such service for himself or another person or avoided or attempted to avoid payment therefor by himself or another person; or

5. With intent to avoid payment by himself or another person of the lawful charge for any telephone service which is provided for a charge or compensation he (a) sells, offers for sale or otherwise makes available, without consent, an existing, canceled or revoked access device; or (b) uses, without consent, an existing, canceled or revoked access device. For purposes of this subdivision access device means any telephone calling card number, credit card number, account number or personal identification number that can be used to obtain telephone service.
6. With intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device, he tampers with such device or with other equipment related thereto, or in any manner attempts to prevent the meter or device from performing its measuring function, without the consent of the supplier of the service. In any prosecution under this subdivision, proof that a meter or related equipment has been tampered with or otherwise intentionally prevented from performing its measuring function without the consent of the supplier of the service shall be presumptive evidence that the person to whom the service which is at the time being furnished by or through such meter or related equipment has, with intent to avoid payment by himself or another person for a prospective or already rendered service, created or caused to be created with reference to such meter or related equipment, the condition so existing. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved; or
7. He knowingly accepts or receives the use and benefit of service, including gas, steam or electricity service, which should pass through a meter but has been diverted therefrom, or which has been prevented from being correctly registered by a meter provided therefore, or which has been diverted from the pipes, wires or conductors of the supplier thereof. In any prosecution under this subdivision proof that service has been intentionally diverted from passing through a meter, or has been intentionally prevented from being correctly registered by a meter provided therefor, or has been intentionally diverted from the pipes, wires or conductors of the supplier thereof, shall be presumptive evidence that the person who

accepts or receives the use and benefit of such service has done so with knowledge of the condition so existing; or

8. With intent to obtain, without the consent of the supplier thereof, gas, electricity, water, steam or telephone service, he tampers with any equipment designed to supply or to prevent the supply of such service either to the community in general or to particular premises; or
9. With intent to avoid payment of the lawful charge for admission to any theater or concert hall, or with intent to avoid payment of the lawful charge for admission to or use of a chair lift, gondola, rope-tow or similar mechanical device utilized in assisting skiers in transportation to a point of ski arrival or departure, he obtains or attempts to obtain such admission without payment of the lawful charge therefor.
10. Obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not entitled to the use thereof, and with intent to derive a commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.
11. With intent to avoid payment by himself or another person of the lawful charge for use of any computer or computer service which is provided for a charge or compensation he uses, causes to be used or attempts to use a computer or computer service and avoids or attempts to avoid payment therefor. In any prosecution under this subdivision proof that a person overcame or attempted to overcome any device or coding system a function of which is to prevent the unauthorized use of said computer or computer service shall be presumptive evidence of an intent to avoid payment for the computer or computer service. Theft of services is a class A misdemeanor, provided, however, that theft of cable television service as defined by the provisions of paragraphs (a), (c) and (d) of subdivision four of this section, and having a value not in excess of one hundred dollars by a person who has not been previously convicted of theft of services under subdivision four of this section is a violation, that theft of services under subdivision nine of this section by a person who has not been previously convicted of theft of services under subdivision nine of this section is a violation and provided further, however, that theft of services of any telephone service under paragraph (a) or (b) of subdivision five of this section having a value in excess of one thousand dollars or by a person who has been previously convicted within five years of theft of services under paragraph (a) of subdivision five of this section is a class E felony.

#### **547 UNLAWFUL USE OF CREDIT CARD, DEBIT CARD OR MEDICAL ASSISTANCE CARD**

A Native American is guilty of unlawful use of credit card, debit card or medical assistance card when in the course of obtaining or attempting to obtain property or a service, he uses or displays a credit card, debit card or medical assistance card which he knows to be revoked or cancelled.

Unlawful use of a credit card, debit card or medical assistance card is a class A misdemeanor.

#### **548 FRAUDULENTLY OBTAINING A SIGNATURE**

A Native American is guilty of fraudulently obtaining a signature when, with intent to defraud or injure another or to acquire a substantial benefit for himself or a third person, he obtains the signature of a person to a written instrument by means of any misrepresentation of fact which he knows to be false.

Fraudulently obtaining a signature is a class A misdemeanor.

**549 JOSTLING**

A Native American is guilty of jostling when, in a public place, he intentionally and unnecessarily:

1. Places his hand in the proximity of a person's pocket or handbag; or
2. Jostles or crowds another person at a time when a third person's hand is in the proximity of such person's pocket or handbag.

Jostling is a class A misdemeanor.

**550 FRAUDULENT ACCOSTING**

1. A Native American is guilty of fraudulent accosting when he accosts a person in a public place with intent to defraud him of money or other property by means of a trick, swindle or confidence game.
2. A Native American who, either at the time he accosts another in a public place or at some subsequent time or at some other place, makes statements to him or engages in conduct with respect to him of a kind commonly made or performed in the perpetration of a known type of confidence game, is presumed to intend to defraud such person of money or other property.

Fraudulent accosting is a class A misdemeanor.

**551 FORTUNE TELLING**

A Native American is guilty of fortune telling when, for a fee or compensation which he directly or indirectly solicits or receives, he claims or pretends to tell fortunes, or holds himself out as being able, by claimed or pretended use of occult powers, to answer questions or give advice on personal matters or to exorcise, influence or affect evil spirits or curses; except that this section does not apply to a person who engages in the above-described conduct as part of a show or exhibition solely for the purpose of entertainment or amusement.

Fortune telling is a class B misdemeanor.

**552 CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIFTH DEGREE**

A Native American is guilty of criminal possession of stolen property in the fifth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.

Criminal possession of stolen property in the fifth degree is a class A misdemeanor.

**553 CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FOURTH DEGREE**

A Native American is guilty of criminal possession of stolen property in the fourth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when:

1. The value of the property exceeds one thousand dollars; or
2. The property consists of a credit card or debit card; or
3. He is a collateral loan broker or is in the business of buying, selling or otherwise dealing in property; or
4. The property consists of one or more firearms, rifles and shotguns; or
5. The value of the property exceeds one hundred dollars and the property consists of a motor vehicle, other than a motorcycle; or
6. The property consists of a scroll, religious vestment, vessel or other item of property having a value of at least one hundred dollars kept for or used in connection with religious worship.

Criminal possession of stolen property in the fourth degree is a class E felony.

**554 CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE THIRD DEGREE**

A Native American is guilty of criminal possession of stolen property in the third degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the value of the property exceeds three thousand dollars.

Criminal possession of stolen property in the third degree is a class D felony.

**555 CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**

A Native American is guilty of criminal possession of stolen property in the second degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the value of the property exceeds fifty thousand dollars.

Criminal possession of stolen property in the second degree is a class C felony.

**556 CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIRST DEGREE**

A Native American is guilty of criminal possession of stolen property in the first degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner, and when the value of the property exceeds one million dollars.

Criminal possession of stolen property in the first degree is a class B felony.

**557 CRIMINAL POSSESSION OF STOLEN PROPERTY; PRESUMPTIONS**

1. A Native American who knowingly possesses stolen property is presumed to possess it with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.
2. A collateral loan broker or a person in the business of buying, selling or otherwise dealing in property who possesses stolen property is presumed to know that such property was stolen if he obtained it without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess it.
3. A Native American who possesses two or more stolen credit cards or debit cards is presumed to know that such credit cards or debit cards were stolen.
4. A Native American who possesses three or more tickets or equivalent instrument for air transportation service, which tickets or instruments were stolen by reason of having been obtained from the issuer or agent thereof by the use of one or more stolen or forged credit cards, is presumed to know that such tickets or instruments were stolen.

**558 CRIMINAL POSSESSION OF STOLEN PROPERTY; NO DEFENSE**

In any prosecution for criminal possession of stolen property, it is no defense that:

1. The Native American who stole the property has not been convicted, apprehended or identified; or
2. The defendant stole or participated in the larceny of the property; or
3. The larceny of the property did not occur in this state.

**559 CRIMINAL POSSESSION OF STOLEN PROPERTY; CORROBORATION**

1. A Native American charged with criminal possession of stolen property who participated in the larceny thereof may not be convicted of criminal possession of such stolen property solely upon the testimony of an accomplice in the larceny unsupported by corroborative evidence tending to connect the defendant with such criminal possession.
2. Unless inconsistent with the provisions of subdivision one of this section, a person charged with criminal possession of stolen property may be convicted thereof solely upon the testimony of one from whom he obtained such property or solely upon the testimony of one to whom he disposed of such property.

**560 DEFINITIONS**

As used in sections 521, 562, 563 and 564, the following terms have the following definitions:

1. The term "trademark" means any word, name, symbol, or device, or any combination thereof adopted and used by a person to identify goods made by a person and which distinguish them from those manufactured or sold by others which is in use and which is registered, filed or recorded under the laws of a state or is registered in the principal register of the United States patent and trademark office.



2. The term "counterfeit trademark" means a spurious trademark or an imitation of a trademark that is:
  - A. used in connection with trafficking in goods; and
  - B. used in connection with the sale, offering for sale or distribution of goods that are identical with or substantially indistinguishable from a trademark as defined in subdivision one of this section.

The term "counterfeit trademark" does not include any mark used in connection with goods for which the person using such mark was authorized to use the trademark for the type of goods so manufactured or produced by the holder of the right to use such mark or designation, whether or not such goods were manufactured or produced in the United States or in another country, and does not include imitations of trade dress or packaging such as color, shape and the like unless those features have been registered as trademarks as defined in subdivision one of this section.

3. The term "traffic" means to transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or to obtain control of with intent to so transport, transfer, or otherwise dispose of.
4. The term "goods" means any products, services, objects, materials, devices or substances which are identified by the use of a trademark.

#### **561 TRADEMARK COUNTERFEITING IN THE THIRD DEGREE**

A Native American is guilty of trademark counterfeiting in the third degree when, with the intent to deceive or defraud some other person or with the intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods, he or she manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark, or possesses a trademark knowing it to be counterfeit for the purpose of affixing it to any goods.

Trademark counterfeiting in the third degree is a class A misdemeanor.

#### **562 TRADEMARK COUNTERFEITING IN THE SECOND DEGREE**

A Native American is guilty of trademark counterfeiting in the second degree when, with the intent to deceive or defraud some other person or with the intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods, he or she manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark, or possesses a trademark knowing it to be counterfeit for the purpose of affixing it to any goods, and the value of such goods, or trademark exceeds one thousand dollars.

Trademark counterfeiting in the second degree is a class E felony.

#### **563 TRADEMARK COUNTERFEITING IN THE FIRST DEGREE**

A Native American is guilty of trademark counterfeiting in the first degree when, with the intent to deceive or defraud some other person, or with the intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods, he or she manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark, or possesses a trademark knowing it to be counterfeit for the purpose of affixing it to any goods, and the value of such goods or trademark exceeds one hundred thousand dollars.

Trademark counterfeiting in the first degree is a class C felony.

#### **564 SEIZURE AND DESTRUCTION OF GOODS BEARING COUNTERFEIT TRADEMARKS**

Any goods manufactured, sold, offered for sale, distributed or produced in violation of this chapter may be seized by any police officer, who must deliver the same to the judge before whom the person arrested is required to be taken. The judge must, upon arraignment of the defendant, determine whether the goods had been manufactured, sold, offered for sale, distributed or produced in violation of this section, and upon a finding that the goods had been manufactured, sold, offered for sale, distributed, or produced in violation of this section, shall cause such articles to be delivered to the Nation Prosecutor. Upon conviction of the defendant, the Nation Prosecutor must cause to be destroyed the articles in respect whereof the defendant stands convicted, and which remain in the possession and control of the Nation Prosecutor. Destruction shall not include auction, sale or distribution of the items in their original form.

### **G. OFFENSES INVOLVING FRAUD**

#### **565 FORGERY; DEFINITIONS OF TERMS**

1. "Written instrument" means any instrument or article, including computer data or a computer program, containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.
2. "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof. An endorsement, attestation, acknowledgment or other similar signature or statement is deemed both a complete written instrument in itself and a part of the main instrument in which it is contained or to which it attaches.
3. "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.
4. "Falsely make." A person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof.
5. "Falsely complete." A person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.
6. "Falsely alter." A person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered

form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

7. "Forged instrument" means a written instrument which has been falsely made, completed or altered.

#### **566 FORGERY IN THE THIRD DEGREE**

A Native American is guilty of forgery in the third degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument.

Forgery in the third degree is a class A misdemeanor.

#### **567 FORGERY IN THE SECOND DEGREE**

A Native American is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

1. A deed, will, codicil, contract, assignment, commercial instrument, credit card, or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or
2. A public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or
3. A written instrument officially issued or created by a public office, public servant or governmental instrumentality; or
4. Part of an issue of tokens, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services; or
5. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

Forgery in the second degree is a class D felony.

#### **568 FORGERY IN THE FIRST DEGREE**

A Native American is guilty of forgery in the first degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

1. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality; or
2. Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property.

Forgery in the first degree is a class C felony.

**569 CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE THIRD DEGREE**

A Native American is guilty of criminal possession of a forged instrument in the third degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses a forged instrument.

Criminal possession of a forged instrument in the third degree is a class A misdemeanor.

**570 CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE SECOND DEGREE**

A Native American is guilty of criminal possession of a forged instrument in the second degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in section 574.

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

**571 CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE SECOND DEGREE; PRESUMPTION**

A Native American who possesses two or more forged instruments, each of which purports to be a credit card or debit card, as those terms are defined in subdivisions seven and eight of section 516, is presumed to possess the same with knowledge that they are forged and with intent to defraud, deceive or injure another.

**572 CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE FIRST DEGREE**

A Native American is guilty of criminal possession of a forged instrument in the first degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in section 568.

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

**573 CRIMINAL POSSESSION OF A FORGED INSTRUMENT; NO DEFENSE**

In any prosecution for criminal possession of a forged instrument, it is no defense that the defendant forged or participated in the forgery of the instrument in issue; provided that a person may not be convicted of both criminal possession of a forged instrument and forgery with respect to the same instrument.

**574 CRIMINAL POSSESSION OF FORGERY DEVICES**

A Native American is guilty of criminal possession of forgery devices when:

1. He makes or possesses with knowledge of its character any plate, die or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments; or
2. With intent to use, or to aid or permit another to use, the same for purposes of forgery, he makes or possesses any device, apparatus, equipment or article capable of or adaptable to such use.

Criminal possession of forgery devices is a felony.

**575 CRIMINAL SIMULATION**

A Native American is guilty of criminal simulation when:

1. With intent to defraud, he makes or alters any object in such manner that it appears to have an antiquity, rarity, source or authorship which it does not in fact possess; or
2. With knowledge of its true character and with intent to defraud, he utters or possesses an object so simulated.

Criminal simulation is a class A misdemeanor.

**576 CRIMINAL POSSESSION OF AN ANTI-SECURITY ITEM**

A Native American is guilty of criminal possession of an anti-security item, when with intent to steal property at a retail mercantile establishment he knowingly possesses in such an establishment an item designed for the purpose of overcoming detection of security markings or attachments placed on property offered for sale at such an establishment.

Criminal possession of an anti-security item is a class B misdemeanor.

**577 UNLAWFULLY USING SLUGS; DEFINITIONS OF TERMS**

The following definitions are applicable to sections 578 and 579:

1. "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle designed (a) to receive a coin or bill or a token made for the purpose, and (b) in return for the insertion or deposit thereof, automatically to offer, to provide, to assist in providing or to permit the acquisition of some property or some service.
2. "Slug" means an object or article which, by virtue of its size, shape or any other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill or token.
3. "Value" of a slug means the value of the coin, bill or token for which it is capable of being substituted.

**578 UNLAWFULLY USING SLUGS IN THE SECOND DEGREE**

A Native American is guilty of unlawfully using slugs in the second degree when:

1. With intent to defraud the owner of a coin machine, he inserts or deposits a slug in such machine; or
2. He makes, possesses or disposes of a slug with intent to enable a person to insert or deposit it in a coin machine.

Unlawfully using slugs in the second degree is a class B misdemeanor.

**579 UNLAWFULLY USING SLUGS IN THE FIRST DEGREE**

A Native American is guilty of unlawfully using slugs in the first degree when he makes, possesses or disposes of slugs with intent to enable a person to insert or deposit them in a coin machine, and the value of such slugs exceeds one hundred dollars.

Unlawfully using slugs in the first degree is a class E felony.

**580 FORGERY OF A VEHICLE IDENTIFICATION NUMBER**

A Native American is guilty of forgery of a vehicle identification number when:

1. He knowingly destroys, covers, defaces, alters or otherwise changes the form or appearance of a vehicle identification number on any vehicle or component part thereof, except tires; or
2. He removes any such number from a vehicle or component part thereof, except as required by the provisions of the vehicle and traffic law; or
3. He affixes a vehicle identification number to a vehicle, except in accordance with the provisions of the vehicle and traffic law.

Forgery of a vehicle identification number is a class E felony.

**581 ILLEGAL POSSESSION OF A VEHICLE IDENTIFICATION NUMBER**

A Native American is guilty of illegal possession of a vehicle identification number when:

1. He knowingly possesses a vehicle identification number label, sticker or plate which has been removed from the vehicle or vehicle part to which such label, sticker or plate was affixed by the manufacturer in accordance with the provisions of the federal motor vehicle and information cost savings act (15 U.S.C. section 1901, et seq.) and regulations promulgated thereunder or in accordance with the provisions of the vehicle and traffic law; or
2. He knowingly possesses a vehicle or vehicle part to which is attached a vehicle identification number label, sticker or plate or on which is stamped or embossed a vehicle identification number which has been destroyed, covered, defaced, altered or otherwise changed, or a vehicle or vehicle part from which a vehicle identification number label, sticker or plate has been removed, which label, sticker or plate was affixed in accordance with the provisions of the federal motor vehicle and information cost savings act (15 U.S.C. section 1901, et seq.) or regulations promulgated thereunder, except when he has complied with the provisions of the vehicle and traffic law and regulations promulgated thereunder; or
3. He knowingly possesses a vehicle, or part of a vehicle to which by law or regulation must be attached a vehicle identification number, either (a) with a vehicle identification number label, sticker, or plate which was not affixed by the manufacturer in accordance with the provisions of the federal motor vehicle and information cost savings act (15 U.S.C. section 1901, et seq.) or regulations promulgated thereunder, or in accordance with the provisions of the vehicle and traffic law or regulations promulgated thereunder, or (b) on which is affixed, stamped or embossed a vehicle identification number which was not affixed, stamped or embossed by the manufacturer, or in accordance with the provisions of the federal motor

vehicle and information cost savings act (15 U.S.C. section 1901, et seq.) or regulations promulgated thereunder or in accordance with the provisions of the vehicle and traffic law or regulations promulgated thereunder.

Illegal possession of a vehicle identification number is a class E felony.

#### **582 ILLEGAL POSSESSION OF A VEHICLE IDENTIFICATION NUMBER; RESUMPTIONS**

1. A Native American is presumed to knowingly possess a vehicle or vehicle part in violation of subdivision two of section 581, when he possesses any combination of five such whole vehicles or individual vehicle parts, none of which are attached to or contained in the same vehicle.
2. A Native American is presumed to knowingly possess a vehicle or vehicle part in violation of subdivision three of section 581 when he possesses any combination of five such whole vehicles or individual vehicle parts, none of which are attached to or contained in the same vehicle.

#### **583 DEFINITIONS OF TERMS**

The following definitions are applicable to this chapter:

1. "Enterprise" means any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political or governmental activity.
2. "Business record" means any writing or article, including computer data or a computer program, kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity.
3. "Written instrument" means any instrument or article, including computer data or a computer program, containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

#### **584 FALSIFYING BUSINESS RECORDS IN THE SECOND DEGREE**

A Native American is guilty of falsifying business records in the second degree when, with intent to defraud, he:

1. Makes or causes a false entry in the business records of an enterprise; or
2. Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or
3. Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law or by the nature of his position; or

4. Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

Falsifying business records in the second degree is a class A misdemeanor.

#### **585 FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**

A Native American is guilty of falsifying business records in the first degree when he commits the crime of falsifying business records in the second degree, and when his intent to defraud includes intent to commit another crime or to aid or conceal the commission thereof.

Falsifying business records in the first degree is a class E felony.

#### **586 FALSIFYING BUSINESS RECORDS; DEFENSE**

In any prosecution for falsifying business records, it is an affirmative defense that the defendant was a clerk, bookkeeper or other employee who, without personal benefit, merely executed the orders of his employer or of a superior officer or employee generally authorized to direct his activities.

#### **587 TAMPERING WITH PUBLIC RECORDS IN THE SECOND DEGREE**

A Native American is guilty of tampering with public records in the second degree when, knowing that he does not have the authority of anyone entitled to grant it, he knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant.

Tampering with public records in the second degree is a Class A misdemeanor.

#### **588 TAMPERING WITH PUBLIC RECORDS IN THE FIRST DEGREE**

A Native American is guilty of tampering with public records in the first degree when, knowing that he does not have the authority of anyone entitled to grant it, and with intent to defraud, he knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant.

Tampering with public records in the first degree is a class D felony.

#### **589 OFFERING A FALSE INSTRUMENT FOR FILING IN THE SECOND DEGREE**

A Native American is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.



## **590 OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE**

A Native American is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision thereof, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

Offering a false instrument for filing in the first degree is a class E felony.

## **591 ISSUING A FALSE CERTIFICATE**

A Native American is guilty of issuing a false certificate when, being a public servant authorized by law to make or issue official certificates or other official written instruments, and with intent to defraud, deceive or injure another person, he issues such an instrument, or makes the same with intent that it be issued, knowing that it contains a false statement or false information.

Issuing a false certificate is a class E felony.

## **592 ISSUING A FALSE FINANCIAL STATEMENT**

A Native American is guilty of issuing a false financial statement when, with intent to defraud:

1. He knowingly makes or utters a written instrument which purports to describe the financial condition or ability to pay of some person and which is inaccurate in some material respect; or
2. He represents in writing that a written instrument purporting to describe a person's financial condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas he knows it is materially inaccurate in that respect.

Issuing a false financial statement is a class A misdemeanor.

## **593 INSURANCE FRAUD; DEFINITION OF TERMS**

The following definitions are applicable to this chapter:

1. "Insurance policy" has the meaning assigned to insurance contract by subsection (a) of section one thousand one hundred one of the New York insurance law except it shall include reinsurance contracts, purported insurance policies and purported reinsurance contracts.
2. "Statement" includes, but is not limited to, any notice, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test result, and other evidence of loss, injury or expense.
3. "Person" includes any individual, firm, association or corporation.
4. "Personal insurance" means a policy of insurance insuring a natural person against any of the following contingencies:

- A. loss of or damage to real property used predominantly for residential purposes and which consists of not more than four dwelling units, other than hotels, motels and rooming houses;
- B. loss of or damage to personal property which is not used in the conduct of a business;
- C. losses or liabilities arising out of the ownership, operation, or use of a motor vehicle, predominantly used for non-business purposes;
- D. other liabilities for loss of, damage to, or injury to persons or property, not arising from the conduct of a business;
- E. death, including death by personal injury, or the continuation of life, or personal injury by accident, or sickness, disease or ailment, excluding insurance providing disability benefits pursuant to workers' compensation.

A policy of insurance which insures any of the contingencies listed in paragraphs (a) through (e) of this subdivision as well as other contingencies shall be personal insurance if that portion of the annual premium attributable to the listed contingencies exceeds that portion attributable to other contingencies.

- 5. "Commercial insurance" means insurance other than personal insurance.

#### **594 INSURANCE FRAUD; DEFINED**

A fraudulent insurance act is committed by any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer or purported insurer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he knows to: (i) contain materially false information concerning any fact material thereto; or (ii) conceal, for the purpose of misleading, information concerning any fact material thereto.

#### **595 INSURANCE FRAUD IN THE FIFTH DEGREE**

A Native American is guilty of insurance fraud in the fifth degree when he commits a fraudulent insurance act.

Insurance fraud in the fifth degree is a class A misdemeanor.

#### **596 INSURANCE FRAUD IN THE FOURTH DEGREE**

A Native American is guilty of insurance fraud in the fourth degree when he commits a fraudulent insurance act and thereby wrongfully takes, obtains or withholds, or attempts to wrongfully take, obtain or withhold property with a value in excess of one thousand dollars.

Insurance fraud in the fourth degree is a class E felony.

**597 INSURANCE FRAUD IN THE THIRD DEGREE**

A Native American is guilty of insurance fraud in the third degree when he commits a fraudulent insurance act and thereby wrongfully takes, obtains or withholds, or attempts to wrongfully take, obtain or withhold property with a value in excess of three thousand dollars.

Insurance fraud in the third degree is a class D felony.

**598 INSURANCE FRAUD IN THE SECOND DEGREE**

A Native American is guilty of insurance fraud in the second degree when he commits a fraudulent insurance act and thereby wrongfully takes, obtains or withholds, or attempts to wrongfully take, obtain or withhold property with a value in excess of fifty thousand dollars.

Insurance fraud in the second degree is a class C felony.

**599 INSURANCE FRAUD IN THE FIRST DEGREE**

A Native American is guilty of insurance fraud in the first degree when he commits a fraudulent insurance act and thereby wrongfully takes, obtains or withholds, or attempts to wrongfully take, obtain or withhold property with a value in excess of one million dollars.

Insurance fraud in the first degree is a class B felony.

**600 COMMERCIAL BRIBING IN THE SECOND DEGREE**

A Native American is guilty of commercial bribing in the second degree when he confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs.

Commercial bribing in the second degree is a class A misdemeanor.

**601 COMMERCIAL BRIBING IN THE FIRST DEGREE**

A Native American is guilty of commercial bribing in the first degree when he confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs, and when the value of the benefit conferred or offered or agreed to be conferred exceeds one thousand dollars and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars.

Commercial bribing in the first degree is a class E felony.

**602 COMMERCIAL BRIBE RECEIVING IN THE SECOND DEGREE**

An employee, agent or fiduciary is guilty of commercial bribe receiving in the second degree when, without the consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs.

Commercial bribe receiving in the second degree is a class A misdemeanor.

**603 COMMERCIAL BRIBE RECEIVING IN THE FIRST DEGREE**

An employee, agent or fiduciary is guilty of commercial bribe receiving in the first degree when, without the consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs, and when the value of the benefit solicited, accepted or agreed to be accepted exceeds one thousand dollars and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars.

Commercial bribe receiving in the first degree is a class E felony.

**604 BRIBERY OF LABOR OFFICIAL; DEFINITION OF TERM**

As used in this chapter, "labor official" means any duly appointed representative of a labor organization or any duly appointed trustee or representative of an employee welfare trust fund.

**605 BRIBING A LABOR OFFICIAL**

A Native American is guilty of bribing a labor official when, with intent to influence a labor official in respect to any of his acts, decisions or duties as such labor official, he confers, or offers or agrees to confer, any benefit upon him.

Bribing a labor official is a class D felony.

**606 BRIBING A LABOR OFFICIAL; DEFENSE**

In any prosecution for bribing a labor official, it is a defense that the defendant conferred or agreed to confer the benefit involved upon the labor official as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion.

**607 BRIBE RECEIVING BY A LABOR OFFICIAL**

A labor official is guilty of bribe receiving by a labor official when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence him in respect to any of his acts, decisions, or duties as such labor official.

Bribe receiving by a labor official is a class D felony.

**608 BRIBE RECEIVING BY A LABOR OFFICIAL; NO DEFENSE**

The crimes of (a) bribe receiving by a labor official, and (b) larceny committed by means of extortion, attempt to commit the same, coercion or attempt to commit coercion, are not mutually exclusive, and it is no defense to a prosecution for bribe receiving by a labor official that, by reason of the same conduct, the defendant also committed one of such other specified crimes.

## **609 SPORTS BRIBERY AND TAMPERING; DEFINITIONS OF TERMS**

As used in this chapter:

1. "Sports contest" means any professional or amateur sport or athletic game or contest viewed by the public.
2. "Sports participant" means any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team.
3. "Sports official" means any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest.
4. "Pari-mutuel betting" is such betting as is authorized by law.
5. "Pari-mutuel horse race" means any horse race upon which betting is conducted by law.

## **610 SPORTS BRIBING**

A Native American is guilty of sports bribing when he:

1. Confers, or offers or agrees to confer, any benefit upon a sports participant with intent to influence him not to give his best efforts in a sports contest; or
2. Confers, or offers or agrees to confer, any benefit upon a sports official with intent to influence him to perform his duties improperly.

Sports bribing is a class D felony.

## **611 SPORTS BRIBE RECEIVING**

A Native American is guilty of sports bribe receiving when:

1. Being a sports participant, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he will thereby be influenced not to give his best efforts in a sports contest; or
2. Being a sports official, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he will perform his duties improperly.

Sports bribe receiving is a class E felony.

## **612 TAMPERING WITH A SPORTS CONTEST IN THE SECOND DEGREE**

A Native American is guilty of tampering with a sports contest when, with intent to influence the outcome of a sports contest, he tampers with any sports participant, sports official or with any animal or equipment or other thing involved in the conduct or operation of a sports contest in a manner contrary to the rules and usages purporting to govern such a contest.

Tampering with a sports contest in the second degree is a class A misdemeanor.

**613 TAMPERING WITH A SPORTS CONTEST IN THE FIRST DEGREE**

A Native American is guilty of tampering with a sports contest in the first degree when, with intent to influence the outcome of a pari-mutuel horse race:

1. He affects any equine animal involved in the conduct or operation of a pari-mutuel horse race by administering to the animal in any manner whatsoever any controlled substance listed in section thirty-three hundred six of the New York public health law; or
2. He knowingly enters or furnishes to another person for entry or brings into this state for entry into a pari-mutuel horse race, or rides or drives in any pari-mutuel horse race any running, trotting or pacing horse, mare, gelding, colt or filly under an assumed name, or deceptively out of its proper class, or that has been painted or disguised or represented to be any other or different horse, mare, gelding, colt or filly from that which it actually is; or
3. He knowingly and falsely registers with the jockey club, United States trotting association, American quarter horse association or national steeplechase and hunt association a horse, mare, gelding, colt or filly previously registered under a different name; or
4. He agrees with one or more persons to enter such misrepresented or drugged animal in a pari-mutuel horse race. A person shall not be convicted of a violation of this subdivision unless an overt act is alleged and proved to have been committed by one of said persons in furtherance of said agreement.

Tampering with a sports contest in the first degree is a class E felony.

**614 IMPAIRING THE INTEGRITY OF A PARI-MUTUEL BETTING SYSTEM IN THE SECOND DEGREE**

A Native American is guilty of impairing the integrity of a pari-mutuel betting system in the second degree when, with the intent to obtain either any payment for himself or for a third person or with the intent to defraud any person he:

1. Alters, changes or interferes with any equipment or device used in connection with pari-mutuel betting; or
2. Causes any false, inaccurate, delayed or unauthorized data, impulse or signal to be fed into, or transmitted over, or registered in or displayed upon any equipment or device used in connection with pari-mutuel betting.

Impairing the integrity of a pari-mutuel betting system in the second degree is a class E felony.

**615 IMPAIRING THE INTEGRITY OF A PARI-MUTUEL BETTING SYSTEM IN THE FIRST DEGREE**

A Native American is guilty of impairing the integrity of a pari-mutuel betting system in the first degree when, with the intent to obtain either any payment for himself or for a third person or with the intent to defraud any person, and when the value of the payment exceeds one thousand five hundred dollars he:

1. Alters, changes or interferes with any equipment or device used in connection with

pari-mutuel betting; or

2. Causes any false, inaccurate, delayed or unauthorized data, impulse or signal to be fed into, or transmitted over, or registered in or displayed upon any equipment or device used in connection with pari-mutuel betting.

Impairing the integrity of a pari-mutuel betting system in the first degree is a class D felony.

#### **616 RENT GOUGING IN THE THIRD DEGREE**

A Native American is guilty of rent gouging in the third degree when, in connection with the leasing, rental or use of real property, he solicits, accepts or agrees to accept from a person some consideration of value, less than two hundred fifty dollars, in addition to lawful rental and other lawful charges, upon an agreement or understanding that the furnishing of such consideration will increase the possibility that any person may obtain or renew the lease, rental or use of such property, or that a failure to furnish it will decrease the possibility that any person may obtain or renew the same.

Rent gouging in the third degree is a class B misdemeanor.

#### **617 RENT GOUGING IN THE SECOND DEGREE**

A Native American is guilty of rent gouging in the second degree when, in connection with the leasing, rental or use of real property, he solicits, accepts or agrees to accept from a person some consideration of value, of two hundred fifty dollars or more, in addition to lawful rental and other lawful charges, upon an agreement or understanding that the furnishing of such consideration will increase the possibility that any person may obtain or renew the lease, rental or use of such property, or that a failure to furnish it will decrease the possibility that any person may obtain or renew the same.

Rent gouging in the second degree is a class A misdemeanor.

#### **618 RENT GOUGING IN THE FIRST DEGREE**

A Native American is guilty of rent gouging in the first degree when, in the course of a scheme constituting a systematic ongoing course of conduct in connection with the leasing, rental or use of three or more apartment units, the rental price of which is regulated pursuant to the provisions of federal, state or local law, he solicits, accepts or agrees to accept from one or more persons in three separate transactions some consideration of value, knowing that such consideration is in addition to lawful rental and other lawful charges established pursuant to the provisions of such federal, state or local law, and upon an agreement or understanding that the furnishing of such consideration will increase the possibility that any person may obtain or renew the lease, rental or use of such property, or that a failure to furnish it will decrease the possibility that any person may obtain or renew same, and thereby obtains such consideration from one or more persons.

Rent gouging in the first degree is a class E felony.

#### **619 FRAUD IN INSOLVENCY**

1. As used in this section, "administrator" means an assignee or trustee for the benefit of creditors, a liquidator, a receiver or any other person entitled to administer property for the benefit of creditors.
2. A Native American is guilty of fraud in insolvency when, with intent to defraud any creditor

and knowing that proceedings have been or are about to be instituted for the appointment of an administrator, or knowing that a composition agreement or other arrangement for the benefit of creditors has been or is about to be made, he

- A. conveys, transfers, removes, conceals, destroys, encumbers or otherwise disposes of any part of or any interest in the debtor's estate; or
- B. obtains any substantial part of or interest in the debtor's estate; or
- C. presents to any creditor or to the administrator any writing or record relating to the debtor's estate knowing the same to contain a false material statement; or
- D. misrepresents or fails or refuses to disclose to the administrator the existence, amount or location of any part of or any interest in the debtor's estate, or any other information which he is legally required to furnish to such administrator.

Fraud in insolvency is a class A misdemeanor.

#### **620 FRAUD INVOLVING A SECURITY INTEREST**

A Native American is guilty of fraud involving a security interest when, having executed a security agreement creating a security interest in personal property securing a monetary obligation owed to a secured party, and:

- 1. Having under the security agreement both the right sale or other disposition of the property and the duty to account to the secured party for the proceeds of disposition, he sells or otherwise disposes of the property and wrongfully fails to account to the secured party for the proceeds of disposition; or
- 2. Having under the security agreement no right of sale or other disposition of the property, he knowingly secretes, withholds or disposes of such property in violation of the security agreement.

Fraud involving a security interest is a class A misdemeanor.

#### **621 FRAUDULENT DISPOSITION OF MORTGAGED PROPERTY**

A Native American is guilty of fraudulent disposition of mortgaged property when, having theretofore executed a mortgage of real or personal property or any instrument intended to operate as such, he sells, assigns, exchanges, secretes, injures, destroys or otherwise disposes of any part of the property, upon which the mortgage or other instrument is at the time a lien, with intent thereby to defraud the mortgagee or a purchaser thereof.

Fraudulent disposition of mortgaged property is a class A misdemeanor.



## **622 FRAUDULENT DISPOSITION OF PROPERTY SUBJECT TO A CONDITIONAL SALE CONTRACT**

A Native American is guilty of fraudulent disposition of property subject to a conditional sale contract when, prior to the performance of the condition of a conditional sale contract and being the buyer or any legal successor in interest of the buyer, he sells, assigns, mortgages, exchanges, secretes, injures, destroys or otherwise disposes of the goods subject to the conditional sale contract under claim of full ownership, with intent thereby to defraud another.

Fraudulent disposition of property subject to a conditional sale contract is a class A misdemeanor.

## **623 ISSUING A BAD CHECK; DEFINITIONS OF TERMS**

The following definitions are applicable to this chapter:

1. "Check" means any check, draft or similar sight order for the payment of money which is not post-dated with respect to the time of utterance.
2. "Drawer" of a check means a person whose name appears thereon as the primary obligor, whether the actual signature be that of himself or of a person purportedly authorized to draw the check in his behalf.
3. "Representative drawer" means a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor.
4. "Utter." A person "utters" a check when, as a drawer or representative drawer thereof, he delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to such check. One who draws a check with intent that it be so delivered is deemed to have uttered it if the delivery occurs.
5. "Pass." A person "passes" a check when, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and uttered by another, he delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect thereto.
6. "Funds" means money or credit.
7. "Insufficient funds." A drawer has "insufficient funds" with a drawee to cover a check when he has no funds or account whatever, or funds in an amount less than that of the check; and a check dishonored for "no account" shall also be deemed to have been dishonored for "insufficient funds."

## **624 ISSUING A BAD CHECK**

A Native American is guilty of issuing a bad check when:

1. (a) As a drawer or representative drawer, he utters a check knowing that he or his principal, as the case may be, does not then have sufficient funds with the drawee to cover it, and (b) he intends or believes at the time of utterance that payment will be refused by the drawee upon presentation, and (c) payment is refused by the drawee upon presentation; or

2. (a) He passes a check knowing that the drawer thereof does not then have sufficient funds with the drawee to cover it, and (b) he intends or believes at the time the check is passed that payment will be refused by the drawee upon presentation, and (c) payment is refused by the drawee upon presentation.

Issuing a bad check is a class B misdemeanor.

#### **625 ISSUING A BAD CHECK; PRESUMPTIONS**

1. When the drawer of a check has insufficient funds with the drawee to cover it at the time of utterance, the subscribing drawer or representative drawer, as the case may be, is presumed to know of such insufficiency.
2. A subscribing drawer or representative drawer, as the case may be, of an ultimately dishonored check is presumed to have intended or believed that the check would be dishonored upon presentation when:
  - A. The drawer had no account with the drawee at the time of utterance; or
  - B. (i) The drawer had insufficient funds with the drawee at the time of utterance, and (ii) the check was presented to the drawee for payment not more than thirty days after the date of utterance, and (iii) the drawer had insufficient funds with the drawee at the time of presentation.
3. Dishonor of a check by the drawee and insufficiency of the drawer's funds at the time of presentation may properly be proved by introduction in evidence of a notice of protest of the check, or of a certificate under oath of an authorized representative of the drawee declaring the dishonor and insufficiency, and such proof shall constitute presumptive evidence of such dishonor and insufficiency.

#### **626 ISSUING A BAD CHECK; DEFENSES**

In any prosecution for issuing a bad check, it is an affirmative defense that:

1. The defendant or a person acting in his behalf made full satisfaction of the amount of the check within ten days after dishonor by the drawee; or
2. The defendant, in acting as a representative drawer, did so as an employee who, without personal benefit, merely executed the orders of his employer or of a superior officer or employee generally authorized to direct his activities.

#### **627 FALSE ADVERTISING**

A person is guilty of false advertising when, with intent to promote the sale or to increase the consumption of property or services, he makes or causes to be made a false or misleading statement in any advertisement or publishes any advertisement in violation of code three of the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended; addressed to the public or to a substantial number of persons; except that, in any prosecution under this section, it is an affirmative defense that the allegedly false or misleading statement was not knowingly or recklessly made or caused to be made.

False advertising is a class A misdemeanor.

#### **628 CRIMINAL IMPERSONATION IN THE SECOND DEGREE**

A Native American is guilty of criminal impersonation in the second degree when he:

1. Impersonates another and does an act in such assumed character with intent to obtain a benefit or to injure or defraud another; or
2. Pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit or to injure or defraud another; or
3. (a) Pretends to be a public servant, or wears or displays without authority any uniform, badge, insignia or facsimile thereof by which such public servant is lawfully distinguished, or falsely expresses by his words or actions that he is a public servant or is acting with approval or authority of a public agency or department; and (b) so acts with intent to induce another to submit to such pretended official authority, to solicit funds or to otherwise cause another to act in reliance upon that pretense.

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

#### **629 CRIMINAL IMPERSONATION IN THE FIRST DEGREE**

A Native American is guilty of criminal impersonation in the first degree when he:

1. Pretends to be a police officer, or wears or displays without authority, any uniform, badge or other insignia or facsimile thereof, by which such police officer is lawfully distinguished or expresses by his words or actions that he is acting with the approval or authority of any police department; and
2. So acts with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon said pretense and in the course of such pretense commits or attempts to commit a felony.

Criminal impersonation in the first degree is a class E felony.

#### **630 UNLAWFULLY CONCEALING A WILL**

A Native American is guilty of unlawfully concealing a will when, with intent to defraud, he conceals, secretes, suppresses, mutilates or destroys a will, codicil or other testamentary instrument.

Unlawfully concealing a will is a class E felony.

#### **631 CRIMINAL USURY IN THE SECOND DEGREE**

A Native American is guilty of criminal usury in the second degree when, not being authorized or permitted by law to do so, he knowingly charges, takes or receives any money or other property as interest on the loan or forbearance of any money or other property, at a rate exceeding twenty-five per cent per annum or the equivalent rate for a longer or shorter period.

Criminal usury in the second degree is a class E felony.

**632 CRIMINAL USURY IN THE FIRST DEGREE**

A Native American is guilty of criminal usury in the first degree when, not being authorized or permitted by law to do so, he knowingly charges, takes or receives any money or other property as interest on the loan or forbearance of any money or other property, at a rate exceeding twenty-five per cent per annum or the equivalent rate for a longer or shorter period and either the actor had previously been convicted of the crime of criminal usury or of the attempt to commit such crime, or the actor's conduct was part of a scheme or business of making or collecting usurious loans.

Criminal usury in the first degree is a class C felony.

**633 POSSESSION OF USURIOUS LOAN RECORDS**

A Native American is guilty of possession of usurious loan records when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article used to record criminally usurious transactions prohibited by section 631.

Possession of usurious loan records is a class A misdemeanor.

**634 UNLAWFUL COLLECTION PRACTICES**

A Native American is guilty of unlawful collection practices when, with intent to enforce a claim or judgment for money or property, he knowingly sends, mails or delivers to another person a notice, document or other instrument which has no judicial or official sanction and which in its format or appearance, simulates a summons, complaint, court order or process, or an insignia, seal or printed form of a federal, state or local government or an instrumentality thereof, or is otherwise calculated to induce a belief that such notice, document or instrument has a judicial or official sanction.

Unlawful collection practices is a class B misdemeanor.

**635 SCHEME TO DEFRAUD IN THE FIRST DEGREE**

A Native American is guilty of making a false statement of credit terms when he knowingly and willfully violates the provisions of code two of the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended, by understating or failing to state the interest rate required to be disclosed, or by failing to make or by making a false or inaccurate or incomplete statement of other credit terms in violation of such act.

Making a false statement of credit terms is a class A misdemeanor.

**636 SCHEME TO DEFRAUD IN THE SECOND DEGREE**

1. A Native American is guilty of a scheme to defraud in the second degree when he (a) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons; or (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain an existing, canceled or revoked access device from more than one person by false or fraudulent pretenses, representations or promises and so obtains an existing, canceled or revoked access device from one or more of such persons. For purposes of this subdivision access device means any telephone calling card number, credit card number, account number or personal identification number that can be used to obtain telephone service.
2. In any prosecution under this section, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property, but it shall not be necessary to prove the identity of any other intended victim.

Scheme to defraud in the second degree is a class A misdemeanor.

**637 SCHEME TO DEFRAUD IN THE FIRST DEGREE**

1. A Native American is guilty of a scheme to defraud in the first degree when he: (a) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons; or (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons.
2. In any prosecution under this section, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property, but it shall not be necessary to prove the identity of any other intended victim.

Scheme to defraud in the first degree is a class E felony.

**638 SCHEME TO DEFRAUD THE STATE BY UNLAWFULLY SELLING PRESCRIPTIONS**

A Native American is guilty of a scheme to defraud the state by unlawfully selling prescriptions when he or she engages, with intent to defraud the state, in a scheme constituting a systematic, ongoing course of conduct to make, sell, deliver for sale or offer for sale one or more prescriptions and so obtains goods or services from the state with a value in excess of one thousand dollars or causes the state to reimburse another in excess of one thousand dollars for the delivery of such goods or services.

Scheme to defraud the state by unlawfully selling prescriptions is a class A misdemeanor.

## **H. BRIBERY INVOLVING PUBLIC SERVANTS AND RELATED OFFENSES**

### **639 BRIBERY IN THE THIRD DEGREE**

A Native American is guilty of bribery in the third degree when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servants vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery in the third degree is a class D felony.

### **640 BRIBERY IN THE SECOND DEGREE**

A Native American is guilty of bribery in the second degree when he confers, or offers or agrees to confer; any benefit valued in excess of ten thousand dollars upon a public servant upon an agreement or understanding that such public servants vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery in the second degree is a class C felony.

### **641 BRIBERY IN THE FIRST DEGREE**

A Native American is guilty of bribery in the first degree when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article 103 of the penal code or an attempt to commit any such class A felony.

Bribery in the first degree is a class B felony.

### **642 BRIBERY; DEFENSE**

In any prosecution for bribery, it is a defense that the defendant conferred or agreed to confer the benefit involved upon the public servant involved as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion.

### **643 BRIBE RECEIVING IN THE THIRD DEGREE**

A public servant is guilty of bribe receiving in the third degree when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the third degree is a class D felony.

### **644 BRIBE RECEIVING IN THE SECOND DEGREE**

A public servant is guilty of bribe receiving in the second degree when he solicits, accepts or agrees to accept any benefit valued in excess of ten thousand dollars from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the second degree is a class C felony.

**645 BRIBE RECEIVING IN THE FIRST DEGREE**

A public servant is guilty of bribe receiving in the first degree when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in article 103 of the penal code or an attempt to commit any such class A felony.

Bribe receiving in the first degree is a class B felony.

**646 BRIBE RECEIVING; NO DEFENSE**

1. The crimes of (a) bribe receiving, and (b) larceny committed by means of extortion, attempt to commit the same, coercion and attempt to commit coercion, are not mutually exclusive, and it is no defense to a prosecution for bribe receiving that, by reason of the same conduct, the defendant also committed one of such other specified crimes.
2. It is no defense to a prosecution pursuant to the provisions of this article that the public servant did not have power or authority to perform the act or omission for which the alleged bribe, gratuity or reward was given.

**647 REWARDING OFFICIAL MISCONDUCT IN THE SECOND DEGREE**

A Native American is guilty of rewarding official misconduct in the second degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant.

Rewarding official misconduct in the second degree is a class E felony.

**648 REWARDING OFFICIAL MISCONDUCT IN THE FIRST DEGREE**

A Native American is guilty of rewarding official misconduct in the first degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony.

Rewarding official misconduct in the first degree is a class C felony.

**649 RECEIVING REWARD FOR OFFICIAL MISCONDUCT IN THE SECOND DEGREE**

A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct in the second degree is a class E felony.

**650 RECEIVING REWARD FOR OFFICIAL MISCONDUCT IN THE FIRST DEGREE**

A public servant is guilty of receiving reward for official misconduct in the first degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article 103 of the penal law or the attempt to commit any such class A felony.

Receiving reward for official misconduct in the first degree is a class C felony.

**651 GIVING UNLAWFUL GRATUITIES**

A Native American is guilty of giving unlawful gratuities when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Giving unlawful gratuities is a class A misdemeanor.

**652 RECEIVING UNLAWFUL GRATUITIES**

A public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Receiving unlawful gratuities is a class A misdemeanor.

**653 BRIBE GIVING FOR PUBLIC OFFICE**

A Native American is guilty of bribe giving for public office when he confers, or offers or agrees to confer, any money or other property upon a public servant upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe giving for public office is a class D felony.

**654 BRIBE RECEIVING FOR PUBLIC OFFICE**

A public servant is guilty of bribe receiving for public office when he solicits, accepts or agrees to accept any money or other property from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

Bribe receiving for public office is a class D felony.



**655 ESCAPE AND OTHER OFFENSES RELATING TO CUSTODY; DEFINITIONS OF TERMS**

The following definitions are applicable to this article:

1. "Detention Facility" means any place used for the confinement, pursuant to an order of a court, of a person (a) charged with or convicted of an offense, or (b) charged with being or adjudicated a youthful offender, person in need of supervision or juvenile delinquent, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court.
2. "Custody" means restraint by a public servant pursuant to an authorized arrest or an order of a court.
3. "Contraband" means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation or order.
4. "Dangerous contraband" means contraband which is capable of such use as may endanger the safety or security of a detention facility or any person therein.

**656 ESCAPE IN THE THIRD DEGREE**

A Native American is guilty of escape in the third degree when he escapes from custody.

Escape in the third degree is a class A misdemeanor.

**657 ESCAPE IN THE SECOND DEGREE**

A Native American is guilty of escape in the second degree when:

1. He escapes from a detention facility; or
2. Having been arrested for, charged with or convicted of a class C, class D or class E felony, he escapes from custody; or
3. Having been adjudicated a youthful offender, which finding was substituted for the conviction of a felony, he escapes from custody.

Escape in the second degree is a class E felony.

**658 ESCAPE IN THE FIRST DEGREE**

A Native American is guilty of escape in the first degree when:

1. Having been charged with or convicted of a felony, he escapes from a detention facility; or
2. Having been arrested for, charged with or convicted of a class A or class B felony, he escapes from custody; or
3. Having been adjudicated a youthful offender, which finding was substituted for the conviction of a felony, he escapes from a detention facility.

Escape in the first degree is a class D felony.

**659 PROMOTING PRISON CONTRABAND IN THE SECOND DEGREE**

A Native American is guilty of promoting prison contraband in the second degree when:

1. He knowingly and unlawfully introduces any contraband into a detention facility; or
2. Being a Native American confined in a detention facility, he knowingly and unlawfully makes, obtains or possesses any contraband.

Promoting prison contraband in the second degree is a class A misdemeanor.

**660 PROMOTING PRISON CONTRABAND IN THE FIRST DEGREE**

A Native American is guilty of promoting prison contraband in the first degree when:

1. He knowingly and unlawfully introduces any dangerous contraband into a detention facility; or
2. Being a person confined in a detention facility, he knowingly and unlawfully makes, obtains or possesses any dangerous contraband.

Promoting prison contraband in the first degree is a class D felony.

**661 RESISTING ARREST**

A Native American is guilty of resisting arrest when he intentionally prevents or attempts to prevent a police officer or peace officer from affecting an authorized arrest of himself or another person.

Resisting arrest is a class A misdemeanor.

**662 HINDERING PROSECUTION; DEFINITION OF TERM**

As used in Sections 663, 664, and 665, a person "renders criminal assistance" when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a Native American who he knows or believes has committed a crime or is being sought by law enforcement officials for the commission of a crime, or with intent to assist a person in profiting or benefiting from the commission of a crime, he:

1. Harbors or conceals such person; or
2. Warns such person of impending discovery or apprehension; or
3. Provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
4. Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or

5. Suppresses, by any act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or
6. Aids such person to protect or expeditiously profit from an advantage derived from such crime.

### **663 HINDERING PROSECUTION IN THE THIRD DEGREE**

A Native American is guilty of hindering prosecution in the third degree when he renders criminal assistance to a person who has committed a felony.

Hindering prosecution in the third degree is a class A misdemeanor.

### **664 HINDERING PROSECUTION IN THE SECOND DEGREE**

A Native American is guilty of hindering prosecution in the second degree when he renders criminal assistance to a person who has committed a class B or class C felony.

Hindering prosecution in the second degree is a class E felony.

### **665 HINDERING PROSECUTION IN THE FIRST DEGREE**

A Native American is guilty of hindering prosecution in the first degree when he renders criminal assistance to a person who has committed a class A felony, knowing or believing that such person has engaged in conduct constituting a class A felony.

Hindering prosecution in the first degree is a class D felony.

### **666 PERJURY AND RELATED OFFENSES; DEFINITIONS OF TERMS**

The following definitions are applicable to this article:

1. "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated.
2. "Swear" means to state under oath.
3. "Testimony" means an oral statement made under oath in a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer the oath or cause it to be administered.
4. "Oath required by law." An affidavit, deposition or other subscribed written instrument is one for which an "oath is required by law" when, absent an oath or swearing thereto, it does not or would not, according to statute or appropriate regulatory provisions, have legal efficacy in a court of law or before any public or governmental body, agency or public servant to whom it is or might be submitted.
5. "Swear falsely." A person "swears falsely" when he intentionally makes a false statement which he does not believe to be true (a) while giving testimony, or (b) under oath in a

subscribed written instrument. A false swearing in a subscribed written instrument shall not be deemed complete until the instrument is delivered by its subscriber, or by someone acting in his behalf, to another person with intent that it be uttered or published as true.

6. "Attesting officer" means any notary public or other person authorized by law to administer oaths in connection with affidavits, depositions and other subscribed written instruments, and to certify that the subscriber of such an instrument has appeared before him and has sworn to the truth of the contents thereof.
7. "Jurat" means a clause wherein an attesting officer certifies, among other matters, that the subscriber has appeared before him and sworn to the truth of the contents thereof.

#### **667 PERJURY IN THE THIRD DEGREE**

A Native American is guilty of perjury in the third degree when he swears falsely.

Perjury in the third degree is a class A misdemeanor.

#### **668 PERJURY IN THE SECOND DEGREE**

A Native American is guilty of perjury in the second degree when he swears falsely and when his false statement is (a) made in a subscribed written instrument for which an oath is required by law, and (b) made with intent to mislead a public servant in the performance of his official functions, and (c) material to the action, proceeding or matter involved.

Perjury in the second degree is a class E felony.

#### **669 PERJURY IN THE FIRST DEGREE**

A Native American is guilty of perjury in the first degree when he swears falsely and when his false statement (a) consists of testimony, and (b) is material to the action, proceeding or matter in which it is made.

Perjury in the first degree is a class D felony.

#### **670 PERJURY; PLEADING AND PROOF WHERE INCONSISTENT STATEMENTS INVOLVED**

Where a Native American has made two statements under oath which are inconsistent to the degree that one of them is necessarily false, where the circumstances are such that each statement, if false, is perjurally so, and where each statement was made within the jurisdiction of this state and within the period of the statute of limitations for the crime charged, the inability of the people to establish specifically which of the two statements is the false one does not preclude a prosecution for perjury, and such prosecution may be conducted as follows:

1. The indictment or information may set forth the two statements and, without designating either, charge that one of them is false and perjurally made.
2. The falsity of one or the other of the two statements may be established by proof or a showing of their irreconcilable inconsistency.
3. The highest degree of perjury of which the defendant may be convicted is determined by

hypothetically assuming each statement to be false and perjurious. If under such circumstances perjury of the same degree would be established by the making of each statement, the defendant may be convicted of that degree at most. If perjury of different degrees would be established by the making of the two statements, the defendant may be convicted of the lesser degree at most.

#### **671 PERJURY; DEFENSE**

In any prosecution for perjury, it is an affirmative defense that the defendant retracted his false statement in the course of the proceeding in which it was made before such false statement substantially affected the proceeding and before it became manifest that its falsity was or would be exposed.

#### **672 PERJURY; NO DEFENSE**

It is no defense to a prosecution for perjury that:

1. The defendant was not competent to make the false statement alleged; or
2. The defendant mistakenly believed the false statement to be immaterial; or
3. The oath was administered or taken in an irregular manner or that the authority or jurisdiction of the attesting officer who administered the oath was defective, if such defect was excusable under any statute or rule of law.

#### **673 MAKING AN APPARENTLY SWORN FALSE STATEMENT IN THE SECOND DEGREE**

A Native American is guilty of making an apparently sworn false statement in the second degree when (a) he subscribes a written instrument knowing that it contains a statement which is in fact false and which he does not believe to be true, and (b) he intends or believes that such instrument will be uttered or delivered with a jurat affixed thereto, and (c) such instrument is uttered or delivered with a jurat affixed thereto.

Making an apparently sworn false statement in the second degree is a class A misdemeanor.

#### **674 MAKING AN APPARENTLY SWORN FALSE STATEMENT IN THE FIRST DEGREE**

A Native American is guilty of making an apparently sworn false statement in the first degree when he commits the crime of making an apparently sworn false statement in the second degree, and when (a) the written instrument involved is one for which an oath is required by law, and (b) the false statement contained therein is made with intent to mislead a public servant in the performance of his official functions, and (c) such false statement is material to the action, proceeding or matter involved.

Making an apparently sworn false statement in the first degree is a class E felony.

#### **675 MAKING A PUNISHABLE FALSE WRITTEN STATEMENT**

A Native American is guilty of making a punishable false written statement when he knowingly makes a false statement, which he does not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable.

Making a punishable false written statement is a class A misdemeanor.

**676 PERJURY AND RELATED OFFENSES; REQUIREMENT OF CORROBORATION**

In any prosecution for perjury, except a prosecution based upon inconsistent statements pursuant to section 670, or in any prosecution for making an apparently sworn false statement, or making a punishable false written statement, falsity of a statement may not be established by the uncorroborated testimony of a single witness.

**677 BRIBING A WITNESS**

A Native American is guilty of bribing a witness when he confers, or offers or agrees to confer, any benefit upon a witness or a person about to be called as a witness in any action or proceeding upon an agreement or understanding that (a) the testimony of such witness will thereby be influenced, or (b) such witness will absent himself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.

Bribing a witness is a class D felony.

**678 BRIBE RECEIVING BY A WITNESS**

A witness or a person about to be called as a witness in any action or proceeding is guilty of bribe receiving by a witness when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that (a) his testimony will thereby be influenced, or (b) he will absent himself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.

Bribe receiving by a witness is a class D felony.

**679 TAMPERING WITH A WITNESS IN THE FOURTH DEGREE**

A Native American is guilty of tampering with a witness when, knowing that a person is or is about to be called as a witness in an action or proceeding, (a) he wrongfully induces or attempts to induce such person to absent himself from, or otherwise to avoid or seek to avoid appearing or testifying at, such action or proceeding, or (b) he knowingly makes any false statement or practices any fraud or deceit with intent to affect the testimony of such person.

Tampering with a witness in the fourth degree is a class A misdemeanor.

**680 TAMPERING WITH A WITNESS IN THE THIRD DEGREE**

A Native American is guilty of tampering with a witness in the third degree when, knowing that a person is about to be called as a witness in a criminal proceeding:

1. He wrongfully compels or attempts to compel such person to absent himself from, or otherwise to avoid or seek to avoid appearing or testifying at such proceeding by means of instilling in him a fear that the actor will cause physical injury to such person or another person; or
2. He wrongfully compels or attempts to compel such person to swear falsely by means of instilling in him a fear that the actor will cause physical injury to such person or another person.

Tampering with a witness in the third degree is a class E felony.

**681 TAMPERING WITH A WITNESS IN THE SECOND DEGREE**

A Native American is guilty of tampering with a witness in the second degree when he:

1. Intentionally causes physical injury to a person for the purpose of obstructing, delaying, preventing or impeding the giving of testimony in a criminal proceeding by such person or another person or for the purpose of compelling such person or another person to swear falsely; or
2. He intentionally causes physical injury to a person on account of such person or another person having testified in a criminal proceeding.

Tampering with a witness in the second degree is a class D felony.

**682 TAMPERING WITH A WITNESS IN THE FIRST DEGREE**

A Native American is guilty of tampering with a witness in the first degree when:

1. He intentionally causes serious physical injury to a person for the purpose of obstructing, delaying, preventing or impeding the giving of testimony in a criminal proceeding by such person or another person or for the purpose of compelling such person or another person to swear falsely; or
2. He intentionally causes serious physical injury to a person on account of such person or another person having testified in a criminal proceeding.

Tampering with a witness in the first degree is a class B felony.

**683 EMPLOYER UNLAWFULLY PENALIZING WITNESS**

Any Native American who is the victim of a crime upon which an accusatory instrument is based or is subpoenaed to attend a criminal action as a witness pursuant the Oneida Indian Nation Rules of Criminal Procedure and who notifies his employer of his intent to appear as a witness prior to the day of his attendance, shall not on account of his absence from employment by reason of such witness service be subject to discharge or penalty except as hereinafter provided. Upon request of the employer, the party who sought the testimony shall provide verification of the employee's service as a witness. An employer may, however, withhold wages of any such employee attending a criminal action as a witness during the period of such attendance. The subjection of an employee to discharge or penalty on account of his absence from employment by reason of his required attendance as a witness at a criminal action shall constitute a class B misdemeanor.

**684 INTIMIDATING A VICTIM OR WITNESS IN THE THIRD DEGREE**

A Native American is guilty of intimidating a victim or witness in the third degree when, knowing that another person possesses information relating to a criminal transaction and other than in the course of that criminal transaction or immediate flight therefrom, he:

1. Wrongfully compels or attempts to compel such other person to refrain from communicating such information to any court, prosecutor, or police officer by means of instilling in him a fear that the actor will cause physical injury to such other person or another person; or

2. Intentionally damages the property of such other person or another person for the purpose of compelling such other person or another person to refrain from communicating, or on account of such other person or another person having communicated, information relating to that criminal transaction to any court, grand jury, prosecutor, or police officer.

Intimidating a victim or witness in the third degree is a class E felony.

#### **685 INTIMIDATING A VICTIM OR WITNESS IN THE SECOND DEGREE**

A Native American is guilty of intimidating a victim or witness in the second degree when, other than in the course of that criminal transaction or immediate flight therefrom, he:

1. Intentionally causes physical injury to another person for the purpose of obstructing, delaying, preventing or impeding the communication by such other person or another person of information relating to a criminal transaction to any court, grand jury, prosecutor, or police officer or for the purpose of compelling such other person or another person to swear falsely; or
2. Intentionally causes physical injury to another person on account of such other person or another person having communicated information relating to a criminal transaction to any court, grand jury, prosecutor, police officer or peace officer; or
3. Recklessly causes physical injury to another person by intentionally damaging the property of such other person or another person, for the purpose of obstructing, delaying, preventing or impeding such other person or another person from communicating, or on account of such other person or another person having communicated, information relating to a criminal transaction to any court, grand jury, prosecutor, or police officer.

Intimidating a victim or witness in the second degree is a class D felony.

#### **686 INTIMIDATING A VICTIM OR WITNESS IN THE FIRST DEGREE**

A Native American is guilty of intimidating a victim or witness in the first degree when, other than in the course of that criminal transaction or immediate flight therefrom, he:

1. Intentionally causes serious physical injury to another person for the purpose of obstructing, delaying, preventing or impeding the communication by such other person or another person of information relating to a criminal transaction to any court, grand jury, prosecutor, police officer or peace officer or for the purpose of compelling such other person or another person to swear falsely; or
2. Intentionally causes serious physical injury to another person on account of such other person or another person having communicated information relating to a criminal transaction to any court, grand jury, prosecutor, police officer.

Intimidating a victim or witness in the first degree is a class B felony.



**687 BRIBING A JUROR**

A Native American is guilty of bribing a juror when he confers or offers or agrees to confer, any benefit upon a juror upon an agreement or understanding that such juror's vote, opinion, judgment, decision or other action as a juror will thereby be influenced.

Bribing a juror is a class D felony.

**688 BRIBE RECEIVING BY A JUROR**

A juror is guilty of bribe receiving by a juror when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, decision or other action as a juror will thereby be influenced.

Bribe receiving by a juror is a class D felony.

**689 TAMPERING WITH A JUROR IN THE SECOND DEGREE**

A Native American is guilty of tampering with a juror in the second degree when, prior to discharge of the jury, he:

1. confers, or offers or agrees to confer, any payment or benefit upon a juror or upon a third person acting on behalf of such juror, in consideration for such juror or third person supplying information in relation to an action or proceeding pending or about to be brought before such juror; or
2. acting on behalf of a juror, accepts or agrees to accept any payment or benefit for himself or for such juror, in consideration for supplying any information in relation to an action or proceeding pending or about to be brought before such juror and prior to his discharge.

Tampering with a juror in the second degree is a class B misdemeanor.

**690 TAMPERING WITH A JUROR IN THE FIRST DEGREE**

A Native American is guilty of tampering with a juror in the first degree when, with intent to influence the outcome of an action or proceeding, he communicates with a juror in such action or proceeding, except as authorized by law.

Tampering with a juror in the first degree is a class A misdemeanor.

**691 MISCONDUCT BY A JUROR IN THE SECOND DEGREE**

A Native American is guilty of misconduct by a juror in the second degree when, in relation to an action or proceeding pending or about to be brought before him and prior to discharge, he accepts or agrees to accept any payment or benefit for himself or for a third person in consideration for supplying any information concerning such action or proceeding.

Misconduct by a juror in the second degree is a violation.

## **692 MISCONDUCT BY A JUROR IN THE FIRST DEGREE**

A juror is guilty of misconduct by a juror in the first degree when, in relation to an action or proceeding pending or about to be brought before him, he agrees to give a vote, opinion, judgment, decision or report for or against any party to such action or proceeding.

Misconduct by a juror in the first degree is a class A misdemeanor.

## **693 TAMPERING WITH PHYSICAL EVIDENCE; DEFINITIONS OF TERMS**

The following definitions are applicable to Section 694:

1. "Physical evidence" means any article, object, document, record or other thing of physical substance which is or is about to be produced or used as evidence in an official proceeding.
2. "Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence may properly be received.

## **694 TAMPERING WITH PHYSICAL EVIDENCE**

A Native American is guilty of tampering with physical evidence when:

1. With intent that it be used or introduced in an official proceeding or a prospective official proceeding, he (a) knowingly makes, devises or prepares false physical evidence, or (b) produces or offers such evidence at such a proceeding knowing it to be false; or
2. Believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent such production or use, he suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person.

Tampering with physical evidence is a class E felony.

## **695 COMPOUNDING A CRIME**

1. A Native American is guilty of compounding a crime when:
  - A. He solicits, accepts or agrees to accept any benefit upon an agreement or understanding that he will refrain from initiating a prosecution for a crime; or
  - B. He confers, or offers or agrees to confer, any benefit upon another person upon an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.
2. In any prosecution under this section, it is an affirmative defense that the benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

Compounding a crime is a class A misdemeanor.

**696 CRIMINAL CONTEMPT IN THE SECOND DEGREE**

A Native American is guilty of criminal contempt in the second degree when he engages in any of the following conduct:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of the court, in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority; or
2. Breach of the peace, noise, or other disturbance, directly tending to interrupt the court's proceedings; or
3. Intentional disobedience or resistance to the lawful process or other mandate of the court; or
4. Contumacious and unlawful refusal to be sworn as a witness in a court proceeding or, after being sworn, to answer any legal and proper interrogatory; or
5. Knowingly publishing a false or grossly inaccurate report of a court's proceeding; or
6. Intentional failure to obey any mandate, process or notice, issued pursuant to rules adopted pursuant to any such statute or to any special statute establishing commissioners of jurors and prescribing their duties or who refuses to be sworn as provided therein; or
7. On or along a public street or sidewalk within a radius of two hundred feet of any building established as a courthouse, he calls aloud, shouts, holds or displays placards or signs containing written or printed matter, concerning the conduct of a trial being held in such courthouse or the character of the court or jury engaged in such trial or calling for or demanding any specified action or determination by such court or jury in connection with such trial.

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

**697 CRIMINAL CONTEMPT IN THE FIRST DEGREE**

A Native American is guilty of criminal contempt in the first degree when he contumaciously and unlawfully refuses to be sworn as a witness before a grand jury, or, when after having been sworn as a witness before a grand jury, he refuses to answer any legal and proper interrogatory. Criminal contempt in the first degree is a class E felony.

**698 CRIMINAL CONTEMPT; PROSECUTION AND PUNISHMENT**

Adjudication for criminal contempt under subdivision A of section seven hundred fifty of the judiciary law shall not bar a prosecution for the crime of criminal contempt under Section 696 based upon the same conduct but, upon conviction thereunder, the court, in sentencing the defendant shall take the previous punishment into consideration.

**699 BAIL JUMPING IN THE THIRD DEGREE**

A Native American is guilty of bail jumping in the third degree when by court order he has been released from custody or allowed to remain at liberty, either upon bail or upon his own recognizance, upon condition that he will subsequently appear personally in connection with a criminal action or proceeding, and when he does not appear personally on the required date or voluntarily within thirty days thereafter.

Bail jumping in the third degree is a class A misdemeanor.

**700 BAIL JUMPING IN THE SECOND DEGREE**

A Native American is guilty of bail jumping in the second degree when by court order he has been released from custody or allowed to remain at liberty, either upon bail or upon his own recognizance, upon condition that he will subsequently appear personally in connection with a charge against him of committing a felony, and when he does not appear personally on the required date or voluntarily within thirty days thereafter.

Bail jumping in the second degree is a class E felony.

**701 BAIL JUMPING IN THE FIRST DEGREE**

A Native American is guilty of bail jumping in the first degree when by court order he has been released from custody or allowed to remain at liberty, either upon bail or upon his own recognizance, upon condition that he will subsequently appear personally in connection with an indictment pending against him which charges him with the commission of a class A or class B felony, and when he does not appear personally on the required date or voluntarily within thirty days thereafter.

Bail jumping in the first degree is a class D felony.

**702 FAILING TO RESPOND TO AN APPEARANCE TICKET**

1. A Native American is guilty of failing to respond to an appearance ticket when, having been personally served with an appearance ticket, as defined in subdivision two, based upon his alleged commission of a crime, he does not appear personally in the court in which such appearance ticket is returnable on the return date thereof or voluntarily within thirty days thereafter.
2. As used in this section, an appearance ticket means a written notice, whether referred to as a summons or by any other name, issued by a police officer, peace officer or other non-judicial public servant authorized by law to issue the same, directing a designated person to appear in a designated court at a designated future time in connection with a criminal action to be instituted in such court with respect to his alleged commission of a designated offense.
3. This section does not apply to any case in which an alternative to response to an appearance ticket is authorized by law and the actor complies with such alternative procedure.

Failing to respond to an appearance ticket is a violation.

**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

houses and hotels not constituting rooms or apartments designed for actual residence.

2. "Transportation facility" means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations and all appurtenances thereto.

### **773 RIOT IN THE SECOND DEGREE**

A Native American is guilty of riot in the second degree when, simultaneously with four or more other persons, he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm.

Riot in the second degree is a class A misdemeanor.

### **774 RIOT IN THE FIRST DEGREE**

A Native American is guilty of riot in the first degree when (a) simultaneously with ten or more other persons he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm, and (b) in the course of and as a result of such conduct, a person other than one of the participants suffers physical injury or substantial property damage occurs.

Riot in the first degree is a class E felony.

### **775 INCITING TO RIOT**

A Native American is guilty of inciting to riot when he urges ten or more persons to engage in tumultuous and violent conduct of a kind likely to create public alarm.

Inciting to riot is a class A misdemeanor.

### **776 UNLAWFUL ASSEMBLY**

A Native American is guilty of unlawful assembly when he assembles with four or more other persons for the purpose of engaging or preparing to engage with them in tumultuous and violent conduct likely to cause public alarm, or when, being present at an assembly which either has or develops such purpose, he remains there with intent to advance that purpose.

Unlawful assembly is a class B misdemeanor.

### **777 CRIMINAL ANARCHY**

A Native American is guilty of criminal anarchy when (a) he advocates the overthrow of the existing form of government of the Oneida Indian Nation by violence, or (b) with knowledge of its contents, he publishes, sells or distributes any document which advocates such violent overthrow, or (c) with knowledge of its purpose, he becomes a member of any organization or group which advocates such violent overthrow.

Criminal anarchy is a class E felony.

## **778 DISORDERLY CONDUCT**

A Native American is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

Disorderly conduct is a violation.

### **778-a FAILURE TO OBEY A LAWFUL DIRECTION OF A POLICE OFFICER**

A Native American who fails to obey a lawful direction of a police officer is guilty of a misdemeanor.

### **778-b IMPEDING THE MOVEMENT OF A POLICE OFFICER**

A Native American who intentionally impedes, or blocks, the movement of a police officer or police vehicle is guilty of a misdemeanor.

### **778-c OBSTRUCTING GOVERNMENTAL ADMINISTRATION**

A Native American is guilty of obstructing governmental administration when he intentionally obstructs or otherwise hampers any administration of law or other government functions, including preventing or attempting to prevent a police officer or other government official from performing his designated duties, by means of physical force, intimidation, interference, or any other independently unlawful act. Interference by a Native American with radio, telephone, television, or other telecommunications systems owned or operated by the Oneida Indian Nation or any governmental subdivision thereof with the intention of obstructing governmental administration is prohibited under this statute. Release of a dangerous animal by a Native American with the intent that such animal obstruct governmental administration is prohibited under this statute.

Obstructing governmental administration is a misdemeanor.

## **779 DISRUPTION, OR DISTURBANCE OF RELIGIOUS SERVICE**

A Native American is guilty of aggravated disorderly conduct, who makes unreasonable noise or disturbance while at a lawfully assembled religious service or within one hundred feet thereof, with intent to cause annoyance or alarm or recklessly creating a risk thereof.

Aggravated disorderly conduct is a class A misdemeanor.

**780 HARASSMENT IN THE FIRST DEGREE**

A Native American is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury.

Harassment in the first degree is a class B misdemeanor.

**781 HARASSMENT IN THE SECOND DEGREE**

A Native American is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places; or
3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.
4. [Repealed]
5. [Redesignated]

Harassment in the second degree is a violation.

**782 AGGRAVATED HARASSMENT IN THE SECOND DEGREE**

A Native American is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she:

1. Communicates, or causes a communication to be initiated by mechanical or electronic means or otherwise, with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm; or
2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or
3. Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of the race, color, religion or national origin of such person; or
4. Commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 780 of this Code within the preceding ten years.



Aggravated harassment in the second degree is a class A misdemeanor.

### **783 AGGRAVATED HARASSMENT IN THE FIRST DEGREE**

A Native American is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, because of the race, color, religion or national origin of such person he:

1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious corporation law and maintained for purposes of religious instruction, and the damage to the premises exceeds fifty dollars; or
2. Commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision three of section 782 of this Code and has been previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 782 or he has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years.

Aggravated harassment in the first degree is a class E felony.

### **784 LOITERING**

A Native American is guilty of loitering when he:

1. Loiters, remains or wanders about within the territorial jurisdiction of the Oneida Indian Nation for the purpose of begging; or
2. Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia, other than at Turning Stone Casino or any other gambling enterprise run by the Oneida Indian Nation; or
3. Loiters or remains in a public place for the purpose of engaging, or soliciting another person to engage, in deviate sexual intercourse or other sexual behavior of a deviate nature; or
4. Being masked or in any manner disguised by unusual or unnatural attire or facial alteration, loiters, remains or congregates in a public place with other persons so masked or disguised, or knowingly permits or aids persons so masked or disguised to congregate in a public place; except that such conduct is not unlawful when it occurs in connection with a masquerade party or like entertainment if, when such entertainment is held in a city which has promulgated regulations in connection with such affairs, permission is first obtained from the police or other appropriate authorities; or
5. Loiters or remains in or about school grounds, a college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same; or
6. Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services, or for the purpose of entertaining persons by

singing, dancing or playing any musical instrument; or

7. Loiters or remains in any transportation facility, or is found sleeping therein, and is unable to give a satisfactory explanation of his presence.

Loitering is a violation.

#### **785 LOITERING IN THE FIRST DEGREE**

A Native American is guilty of loitering in the first degree when he loiters or remains in any place with one or more persons for the purpose of unlawfully using or possessing a controlled substance, as defined in section 706 of this Code.

Loitering in the first degree is a class B misdemeanor.

#### **786 LOITERING FOR THE PURPOSE OF ENGAGING IN A PROSTITUTION OFFENSE**

1. For the purposes of this section, "public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or a motor vehicle in or on any such place.
2. Any Native American person who remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons, for the purpose of prostitution, or of patronizing a prostitute shall be guilty of a violation.
3. Any person who remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons, for the purpose of promoting prostitution is guilty of a class A misdemeanor.

#### **787 APPEARANCE WITHIN THE TERRITORIAL JURISDICTION OF THE ONEIDA INDIAN NATION UNDER THE INFLUENCE OF NARCOTICS**

A Native American is guilty of appearance within the territorial jurisdiction of the Oneida Indian Nation under the influence of narcotics when he appears in a public place within the territorial jurisdiction of the Oneida Indian Nation under the influence of narcotics to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

Appearance in public under the influence of narcotics is a violation.

**788 CRIMINAL NUISANCE IN THE SECOND DEGREE**

A Native American is guilty of criminal nuisance in the second degree when:

1. By conduct either unlawful in itself or unreasonable under all the circumstances, he knowingly or recklessly creates or maintains a condition which endangers the safety or health of a considerable number of persons; or
2. He knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

Criminal nuisance in the second degree is a class B misdemeanor.

**789 CRIMINAL NUISANCE IN THE FIRST DEGREE**

A Native American is guilty of criminal nuisance in the first degree when he knowingly conducts or maintains any premises, place or resort where persons come or gather for purposes of engaging in the unlawful sale of controlled substances, and thereby derives the benefit from such unlawful conduct.

Criminal nuisance in the first degree is a class E felony.

**790 FALSELY REPORTING AN INCIDENT IN THE THIRD DEGREE**

A Native American is guilty of falsely reporting an incident in the third degree when, knowing the information reported, conveyed or circulated to be false or baseless, he:

1. Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a crime, catastrophe or emergency under circumstances in which it is not unlikely that public alarm or inconvenience will result; or
2. Reports, by word or action, to an official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a catastrophe or emergency which did not in fact occur or does not in fact exist; or
3. Gratuitously reports to a law enforcement officer or agency (a) the alleged occurrence of an offense or incident which did not in fact occur; or (b) an allegedly impending occurrence of an offense or incident which in fact is not about to occur; or (c) false information relating to an actual offense or incident or to the alleged implication of some person therein.

Falsely reporting an incident in the third degree is a class B misdemeanor.

**791 FALSELY REPORTING AN INCIDENT IN THE SECOND DEGREE**

A Native American is guilty of falsely reporting an incident in the second degree when, knowing the information reported, conveyed or circulated to be false or baseless, he or she:

1. Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire or an explosion under circumstances in which it is not unlikely that public alarm or inconvenience will result;

2. Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire or an explosion which did not in fact occur or does not in fact exist; or
3. Reports, by word or action, to the statewide central register of child abuse and maltreatment, as defined in title six of article six of the social services law, an alleged occurrence or condition of child abuse or maltreatment which did not in fact occur or exist.

Falsely reporting an incident in the second degree is a class A misdemeanor.

## **792 FALSELY REPORTING AN INCIDENT IN THE FIRST DEGREE**

A Native American is guilty of falsely reporting an incident in the first degree when he:

1. commits the crime of falsely reporting an incident in the second degree as defined in section 791 of this Code, and has previously been convicted of that crime; or
2. commits the crime of falsely reporting an incident in the third degree as defined in subdivisions one and two of section 790 of this Code or falsely reporting an incident in the second degree as defined in subdivisions one and two of section 791 of this Code and another person who is an employee or member of any official or quasi-official agency having the function of dealing with emergencies involving danger to life or property; or who is a volunteer fire fighter with a fire department, fire company, or any unit thereof as defined in the volunteer fire fighters" benefit law; or who is a volunteer ambulance worker with a volunteer ambulance corporation or any unit thereof as defined in the volunteer ambulance workers" benefit law suffers serious physical injury or is killed in the performance of his or her official duties in traveling to or working at the location identified in such report.

Falsely reporting an incident in the first degree is a class E felony.

## **K. OFFENSES AGAINST PUBLIC SENSIBILITIES**

### **793 PUBLIC LEWDNESS**

A Native American is guilty of public lewdness when he intentionally exposes the private or intimate parts of his body in a lewd manner or commits any other lewd act (a) in a public place, or (b) in private premises under circumstances in which he may readily be observed from either a public place or from other private premises, and with intent that he be so observed.

Public lewdness is a class B misdemeanor.

### **794 EXPOSURE OF A PERSON**

A Native American is guilty of exposure if he appears in a public place in such a manner that the private or intimate parts of his body are unclothed or exposed. For purposes of this section, the private or intimate parts of a female person shall include that portion of the breast which is below the top of the areola. This section shall not apply to the breast feeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment.

Exposure of a person is a violation.

## **795 PROMOTING THE EXPOSURE OF A PERSON**

A Native American is guilty of promoting the exposure of a person when he knowingly conducts, maintains, owns, manages, operates or furnishes any public premise or place where a person in a public place appears in such a manner that the private or intimate parts of his body are unclothed or exposed. For purposes of this section, the private or intimate parts of a female person shall include that portion of the breast which is below the top of the areola. This section shall not apply to the breast feeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment.

Promoting the exposure of a person is a violation.

## **796 OFFENSIVE EXHIBITION**

A Native American is guilty of offensive exhibition when he knowingly produces, operates, manages or furnishes premises for, or in any way promotes or participates in, an exhibition in the nature of public entertainment or amusement in which:

1. A Native American competes continuously without respite for a period of more than eight consecutive hours in a dance contest, bicycle race or other contest involving physical endurance; or
2. A Native American is held up to ridicule or contempt by voluntarily submitting to indignities such as the throwing of balls or other articles at his head or body; or
3. A firearm is discharged or a knife, arrow or other sharp or dangerous instrument is thrown or propelled at or toward a person.

Offensive exhibition is a violation.

## **797 PUBLIC DISPLAY OF OFFENSIVE SEXUAL MATERIAL; DEFINITIONS OF TERMS**

The following definitions are applicable to section 798:

1. "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 discernible turgid state.
2. "Sexual conduct" means an act 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.
3. "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.
4. "Transportation facility" means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations and all appurtenances thereto.

## **798 PUBLIC DISPLAY OF OFFENSIVE SEXUAL MATERIAL**

A Native American is guilty of public display of offensive sexual material when, with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, wall, door, billboard, display board, viewing screen, moving picture screen, marquee or similar place, in such manner that the display is easily visible from or in any: public street, sidewalk or thoroughfare; transportation facility; or any place accessible to members of the public without fee or other limit or condition of admission such as a minimum age requirement and including but not limited to schools, places of amusement, parks and playgrounds but excluding rooms or apartments designed for actual residence; any pictorial, three-dimensional or other visual representation of a person or a portion of the human body that predominantly appeals to prurient interest in sex, and that:

1. depicts nudity, or actual or simulated sexual conduct or sado-masochistic abuse; or
2. depicts or appears to depict nudity, or actual or simulated sexual conduct or sado-masochistic abuse, with the area of the male or female subject's unclothed or apparently unclothed genitals, pubic area or buttocks, or of the female subject's unclothed or apparently unclothed breast, obscured by a covering or mark placed or printed on or in front of the material displayed, or obscured or altered in any other manner.

Public display of offensive sexual material is a Class A misdemeanor.

## **L. OFFENSES AGAINST THE RIGHT OF PRIVACY**

### **799 EAVESDROPPING; DEFINITIONS OF TERMS**

The following definitions are applicable to this article:

1. "Wiretapping" means the intentional overhearing or recording of a telephonic or telegraphic communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any instrument, device or equipment. The normal operation of a telephone or telegraph corporation and the normal use of the services and facilities furnished by such corporation pursuant to its tariffs or necessary to protect the rights or property of said corporation shall not be deemed "wiretapping."
2. "Mechanical overhearing of a conversation" means the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment.
3. "Telephonic communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications and such term includes any electronic storage of such communications.
4. "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.
5. "Electronic communication" means any transfer of signs, signals, writing, images, sounds,

data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system, but does not include:

- A. any telephonic or telegraphic communication; or
  - B. any communication made through a tone only paging device; or
  - C. any communication made through a tracking device consisting of an electronic or mechanical device which permits the tracking of the movement of a person or object; or
  - D. any communication that is disseminated by the sender through a method of transmission that is configured so that such communication is readily accessible to the general public.
6. "Intercepting or accessing of an electronic communication" and "intentionally intercepted or accessed" mean the intentional acquiring, receiving, collecting, overhearing, or recording of an electronic communication, without the consent of the sender or intended receiver thereof, by means of any instrument, device or equipment, except when used by a telephone company in the ordinary course of its business or when necessary to protect the rights or property of such company.
7. "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.
8. "Unlawfully" means not specifically authorized pursuant to article seven hundred or seven hundred five of the criminal procedure law.

## **800 EAVESDROPPING**

A Native American is guilty of eavesdropping when he unlawfully engages in wiretapping, mechanical overhearing of a conversation, or intercepting or accessing of an electronic communication.

Eavesdropping is a class E felony.

## **801 POSSESSION OF EAVESDROPPING DEVICES**

A Native American is guilty of possession of eavesdropping devices when, under circumstances evincing an intent to use or to permit the same to be used in violation of section 800, he possesses any instrument, device or equipment designed for, adapted to or commonly used in wiretapping or mechanical overhearing of a conversation.

Possession of eavesdropping devices is a class A misdemeanor.

## **802 FAILURE TO REPORT WIRETAPPING**

A telephone or telegraph corporation is guilty of failure to report wiretapping when, having knowledge of the occurrence of unlawful wiretapping, it does not report such matter to an appropriate law enforcement officer or agency.

Failure to report wiretapping is a class B misdemeanor.

### **803 DIVULGING AN EAVESDROPPING WARRANT**

A Native American is guilty of divulging an eavesdropping warrant when, possessing information concerning the existence or content of an eavesdropping warrant issued pursuant to article seven hundred of the criminal procedure law, or concerning any circumstances attending an application for such a warrant, he discloses such information to another person; except that such disclosure is not criminal or unlawful when made to a state or federal agency specifically authorized by law to receive reports concerning eavesdropping warrants, or when made in a legal proceeding, or to a law enforcement officer or agency connected with the application for such warrant, or to a legislative committee or temporary state commission, or to the telephone or telegraph corporation whose facilities are involved, or to any entity operating an electronic communications service whose facilities are involved.

Divulging an eavesdropping warrant is a class A misdemeanor.

### **804 TAMPERING WITH PRIVATE COMMUNICATIONS**

A Native American is guilty of tampering with private communications when:

1. Knowing that he does not have the consent of the sender or receiver, he opens or reads a sealed letter or other sealed private communication; or
2. Knowing that a sealed letter or other sealed private communication has been opened or read in violation of subdivision one of this section, he divulges without the consent of the sender or receiver, the contents of such letter or communication, in whole or in part, or a resume of any portion of the contents thereof; or
3. Knowing that he does not have the consent of the sender or receiver, he obtains or attempts to obtain from an employee, officer or representative of a telephone or telegraph corporation, by connivance, deception, intimidation or in any other manner, information with respect to the contents or nature thereof of a telephonic or telegraphic communication; except that the provisions of this subdivision do not apply to a law enforcement officer who obtains information from a telephone or telegraph corporation pursuant to section 806; or
4. Knowing that he does not have the consent of the sender or receiver, and being an employee, officer or representative of a telephone or telegraph corporation, he knowingly divulges to another person the contents or nature thereof of a telephonic or telegraphic communication; except that the provisions of this subdivision do not apply to such person when he acts pursuant to section 806.

Tampering with private communications is a class B misdemeanor.

### **805 UNLAWFULLY OBTAINING COMMUNICATIONS INFORMATION**

A Native American is guilty of unlawfully obtaining communications information when, knowing that he does not have the authorization of a telephone or telegraph corporation, he obtains or attempts to obtain, by deception, stealth or in any other manner, from such corporation or from any employee, officer or representative thereof:

1. Information concerning identification or location of any wires, cables, lines, terminals or other apparatus used in furnishing telephone or telegraph service; or



2. Information concerning a record of any communication passing over telephone or telegraph lines of any such corporation.

Unlawfully obtaining communications information is a class B misdemeanor.

#### **806 FAILING TO REPORT CRIMINAL COMMUNICATIONS**

1. It shall be the duty of a telephone or telegraph corporation, or an entity operating an electronic communications service, and of any employee, officer or representative thereof having knowledge that the facilities of such corporation or entity are being used to conduct any criminal business, traffic or transaction, to furnish or attempt to furnish to an appropriate law enforcement officer or agency all pertinent information within his possession relating to such matter, and to cooperate fully with any law enforcement officer or agency investigating such matter.
2. A Native American is guilty of failing to report criminal communications when he knowingly violates any duty prescribed in subdivision one of this section.

Failing to report criminal communications is a class B misdemeanor.

### **M. OFFENSES AGAINST PUBLIC SAFETY**

#### **807 DEFINITIONS**

As used in this Code, the following terms shall mean and include:

1. "Machine-gun" means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.
2. "Firearm silencer" means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearms to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearms.
3. "Firearm" means (a) any pistol or revolver; or (b) a shotgun having one or more barrels less than eighteen inches in length; or (c) a rifle having one or more barrels less than sixteen inches in length; or (d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches. For the purpose of this subdivision the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Firearm does not include an antique firearm.
4. "Switchblade knife" means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.
5. "Gravity knife" means any knife which has a blade which is released from the handle or

sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.

- a. "Pilum ballistic knife" means any knife which has a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.
6. "Dispose of" means to dispose of, give, give away, lease-loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.
7. "Deface" means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.
8. "Gunsmith" means any person, firm, partnership, corporation or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving or trueing, or who performs any mechanical operation on, any firearm or machine gun.
9. "Dealer in firearms" means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any pistol or revolver.
10. "Licensing officer" means Oneida Indian Nation Police Department.
11. "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.
12. "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.
13. "Cane Sword" means a cane or swagger stick having concealed within it a blade that may be used as a sword or stiletto.
14. "Chuka stick" means any device designed primarily as a weapon, consisting of two or more lengths of a rigid material joined together by a thong, rope or chain in such a manner as to allow free movement of a portion of the device while held in the hand and capable of being rotated in such a manner as to inflict serious injury upon a person by striking or choking. These devices are also known as nunchaku and centrifugal force sticks.
  - a. "Antique firearm" means: Any unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade.
15. "Loaded firearm" means any firearm loaded with ammunition or any firearm which is possessed by one who, at the same time, possesses a quantity of ammunition which may be used to discharge such firearm.

- a. "Electronic dart gun" means any device designed primarily as a weapon, the purpose of which is to momentarily stun, knock out or paralyze a person by passing an electrical shock to such person by means of a dart or projectile.
  - b. "Kung Fu star" means a disc-like object with sharpened points on the circumference thereof and is designed for use primarily as a weapon to be thrown.
  - c. "Electronic stun gun" means any device designed primarily as a weapon, the purpose of which is to stun, cause mental disorientation, knock out or paralyze a person by passing a high voltage electrical shock to such person.
- 16. "Certified not suitable to possess a rifle or shotgun" means that the director or physician in charge of any hospital or institution for mental illness, public or private, has certified to the superintendent of state police or to any organized police department of a county, city, town or village of this state, that a person who has been judicially adjudicated incompetent, or who has been confined to such institution for mental illness pursuant to judicial authority, is not suitable to possess a rifle or shotgun.
  - 17. "Serious offense" means any of the following offenses defined in the criminal law: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding escape from prison; disorderly conduct of sodomy or rape which was designated as a misdemeanor; any violation relating to narcotic drugs, and any violation relating to depressant and stimulant drugs fraudulent accosting; loitering; endangering the welfare of a child; issuing abortional articles; permitting prostitution; promoting prostitution in the third degree;
  - 18. "Armor piercing ammunition" means any ammunition capable of being used in pistols or revolvers containing a projectile or projectile core, or a projectile or projectile core for use in such ammunition, that is constructed entirely (excluding the presence of traces of other substances) from one or a combination of any of the following: tungsten alloys, steel, iron, brass, bronze, beryllium copper, or uranium.

**808 CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE**

A Native American is guilty of criminal possession of a weapon in the fourth degree when:

- 1. He possesses any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sand bag, sand club, wrist-brace type slingshot or slingshot, shirken or "Kung Fu star"; or
- 2. He possesses any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another; or
- 3. He knowingly has in his possession a rifle, shotgun or firearm in or upon a building or grounds used for educational purposes; or
- 4. He possesses a rifle or shotgun and has been convicted of a felony or serious offense; or

5. He possesses any dangerous or deadly weapon and is not a citizen of the United States; or
6. He is a person who has been certified not suitable to possess a rifle or shotgun, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer. Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, shall forthwith seize any rifle or shotgun possessed by such person. A rifle or shotgun seized as herein provided shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction.
7. He knowingly possesses a bullet containing an explosive substance designed to detonate upon impact.
8. He possesses any armor piercing ammunition with intent to use the same unlawfully against another.

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

#### **809 CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE**

A Native American is guilty of criminal possession of a weapon in the third degree when:

1. He commits the crime of criminal possession of a weapon in the fourth degree as defined in subdivision one, two, three or five of section 807, and has been previously convicted of any crime; or
2. He possesses any explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or
3. He knowingly has in his possession a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun; or
4. He possesses any loaded firearm. Such possession shall not, except as provided in subdivision one, constitute a violation of this section if such possession takes place in such person's home or place of business.
5. (i) He possesses twenty or more firearms; or  
(ii) he possesses a firearm and has been previously convicted of a felony or a class A misdemeanor defined in this code within the five years immediately preceding the commission of the offense and such possession did not take place in the person's home or place of business.

Criminal possession of a weapon in the third degree is a class D felony.

**810 CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE**

A Native American is guilty of criminal possession of a weapon in the second degree when he possesses a machine-gun or loaded firearm with intent to use the same unlawfully against another.

Criminal possession of a weapon in the second degree is a class C felony.

**811 CRIMINAL POSSESSION OF A DANGEROUS WEAPON IN THE FIRST DEGREE**

A Native American is guilty of criminal possession of a dangerous weapon in the first degree when he possesses any explosive substance with intent to use the same unlawfully against the person or property of another.

Criminal possession of a weapon in the first degree is a class B felony.

**812 UNLAWFUL POSSESSION OF WEAPONS BY PERSONS UNDER SIXTEEN**

It shall be unlawful for any person under the age of sixteen to possess any air-gun, spring-gun or other instrument or weapon in which the propelling force is a spring or air, or any gun or any instrument or weapon in or upon which any loaded or blank cartridges may be used, or any loaded or blank cartridges or ammunition therefor, or any dangerous knife; provided that the possession of rifle or shotgun or ammunition therefor by the holder of a hunting license or permit issued pursuant to the Nation Conservation Law and used in accordance with said law shall not be governed by this section.

A Native American who violates the provisions of this section shall be adjudged a juvenile delinquent.

**813 CRIMINAL USE OF A FIREARM IN THE SECOND DEGREE**

A Native American is guilty of criminal use of a firearm in the second degree when he commits any class C violent felony offense.

1. possesses a deadly weapon, if the weapon is a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged; or
2. displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

Criminal use of a firearm in the second degree is a class C felony.

**814 CRIMINAL USE OF A FIREARM IN THE FIRST DEGREE**

A Native American is guilty of criminal use of a firearm in the first degree when he commits any class B violent felony offense and he either:

1. possesses a deadly weapon, if the weapon is a loaded weapon from which a shot, readily capable of producing death or other serious injury may be discharged; or
2. displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

Criminal use of a firearm in the first degree is a class B felony.

**815 MANUFACTURE, TRANSPORT, DISPOSITION AND DEFACEMENT OF WEAPONS AND DANGEROUS INSTRUMENTS AND APPLIANCES**

1. Any Native American who manufactures or causes to be manufactured any machine-gun is guilty of a class D felony. Any person who manufactures or causes to be manufactured any switchblade knife, gravity knife, pilum ballistic knife, billy, blackjack, bludgeon, metal knuckles, Kung Fu star, chuka stick, sandbag, sandclub or slingshot is guilty of a class A misdemeanor.
2. Any Native American who transports or ships any machine-gun or firearm silencer, or who transports or ships as merchandise five or more firearms, is guilty of a class D felony. Any person who transports or ships as merchandise any firearm, switchblade knife, gravity knife, pilum ballistic knife, billy, blackjack, bludgeon, metal knuckles, Kung Fu star, chuka stick, sandbag or slingshot is guilty of a class A misdemeanor.
3. Any Native American who disposes of any machine-gun or firearm silencer is guilty of a class D felony. Any person who knowingly buys, receives, disposes of, or conceals a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun is guilty of a class D felony.
4. Any Native American who disposes of any of the weapons, instruments or appliances specified in subdivision one of section 808, except a firearm, is guilty of a class A misdemeanor, and he is guilty of a class D felony if he has previously been convicted of any crime.
5. Any Native American who disposes of any of the weapons, instruments, appliances or substances specified in section 812 to any other person under the age of sixteen years is guilty of a class A misdemeanor.
6. Any Native American who willfully defaces any machine-gun or firearm is guilty of a class D felony.

**816 CRIMINAL SALE OF A FIREARM IN THE THIRD DEGREE**

A Native American is guilty of criminal sale of a firearm in the third degree when he is not authorized pursuant to law to possess a firearm and he unlawfully either:

1. sells, exchanges, gives or disposes of a firearm to another person not authorized pursuant to law to possess a firearm; or
2. possesses a firearm with the intent to sell it.

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

**817 CRIMINAL SALE OF A FIREARM IN THE SECOND DEGREE**

A Native American is guilty of criminal sale of a firearm in the second degree when he unlawfully sells, exchanges, gives or disposes of to another ten or more firearms.

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

### **818 CRIMINAL SALE OF A FIREARM IN THE FIRST DEGREE**

A Native American is guilty of a criminal sale of a firearm in the first degree when he unlawfully sells, exchanges, gives or disposes of to another twenty or more firearms.

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

### **819 CRIMINAL SALE OF A FIREARM WITH THE AID OF A MINOR**

A Native American over the age of eighteen years of age is guilty of criminal sale of a weapon with the aid of a minor when a person under sixteen years of age knowingly and unlawfully sells, exchanges, gives or disposes of a firearm in violation of this article, and such person over the age of eighteen years of age, acting with the mental culpability required for the commission thereof, solicits, requests, commands, importunes or intentionally aids such person under sixteen years of age to engage in such conduct.

Criminal sale of a firearm with the aid of a minor is a class D felony.

### **820 PRESUMPTIONS OF POSSESSION, UNLAWFUL INTENT AND DEFAACEMENT**

1. The presence in any room, dwelling, structure or vehicle of any machine-gun is presumptive evidence of its unlawful possession by all persons occupying the place where such machine-gun is found.
2. The presence in any stolen vehicle of any weapon, instrument, appliance or substance specified in sections 807, 808, 809, 810, and 811 is presumptive evidence of its possession by all persons occupying such vehicle at the time such weapon, instrument, appliance or substance is found.
3. The presence in an automobile, other than a stolen one or a public omnibus, of any firearm, defaced firearm, defaced rifle or shotgun, firearm silencer, explosive or incendiary bomb, bombshell, gravity knife, switchblade knife, pilum ballistic knife, dagger, dirk, stiletto, billy, blackjack, metal knuckles, chuka stick, sandbag, sand club or slingshot is presumptive evidence of its possession by all persons occupying such automobile at the time such weapon, instrument or appliance is found, except under the following circumstances: (a) if such weapon, instrument or appliance is found upon the person of one of the occupants therein; (b) if such weapon, instrument or appliance is found in an automobile which is being operated for hire by a duly licensed driver in the due, lawful and proper pursuit of his trade, then such presumption shall not apply to the driver; or (c) if the weapon so found is a pistol or revolver and one of the occupants, not present under duress, has in his possession a valid license to have and carry concealed the same.
4. The possession by any person of the substance as specified in section 810 is presumptive evidence of possessing such substance with intent to use the same unlawfully against the person or property of another if such person is not licensed or otherwise authorized to possess such substance. The possession by any person of any dagger, dirk, stiletto, dangerous knife or any other weapon, instrument, appliance or substance designed, made or adapted for use primarily as a weapon, is presumptive evidence of intent to use the same unlawfully against another.
5. The possession by any person of a defaced machine-gun, firearm, rifle or shotgun is

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 cause 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.

## **PROVISIONS RELATING TO ANIMALS**

### **903 CRUELTY TO ANIMALS**

A Native American is guilty of cruelty to animals when, with no justifiable purpose, he or she:

1. intentionally kills or
2. intentionally causes serious physical injury to a companion animal.

Nothing contained in this section shall be construed to prohibit or interfere in any way with anyone lawfully engaged in hunting, trapping, or fishing, the dispatch of rabid or diseased animals, or the dispatch of animals posing a threat to human safety or other animals, where such action is otherwise legally authorized, or any properly conducted scientific tests, experiments, or investigations involving the use of living animals, performed or conducted in laboratories or institutions approved for such purposes by a body duly authorized to approve such use.

Cruelty to Animals is a misdemeanor.

### **904 AGGRAVATED CRUELTY TO ANIMALS**

A Native American is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she

1. intentionally kills or
2. intentionally causes serious physical injury to a companion animal with aggravated cruelty.

For purposes of this section, “aggravated cruelty” shall mean conduct which: (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner.

Nothing contained in this section shall be construed to prohibit or interfere in any way with anyone lawfully engaged in hunting, trapping, or fishing, the dispatch of rabid or diseased animals, or the dispatch of animals posing a threat to human safety or other animals, where such action is otherwise legally authorized, or any properly conducted scientific tests, experiments, or investigations involving the use of living animals, performed or conducted in laboratories or institutions approved for such purposes by a body duly authorized to approve such use.

Aggravated cruelty to animals is a felony.