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**NORTHERN CHEYENNE TRIBE LOGO HERE**

**TITLE VII – CRIMINAL OFFENSES**

TABLE OF CONTENTS

CHAPTER 1 GENERAL PROVISIONS ..... 2

CHAPTER 2 DEFENSES..... 4

CHAPTER 3 INCHOATE OFFENSES ..... 6

CHAPTER 4 CRIMES AGAINST PERSONS ..... 7

CHAPTER 5 HUMAN TRAFFICKING..... 23

CHAPTER 6 SEX OFFENDER REGISTRATION ..... 27

CHAPTER 7 CRIMES AGAINST PROPERTY ..... 28

CHAPTER 8 CRIMES AGAINST THE PUBLIC ORDER ..... 35

CHAPTER 9 OFFENSES INVOLVING GOVERNMENTAL PROCESSES ..... 51

CHAPTER 10 TRAFFIC OFFENSES ..... 58

# DRAFT- FOR PUBLIC COMMENT ONLY

## CHAPTER 1. GENERAL PROVISIONS

### SECTIONS

7.1.1 Criminal Offenses Based on Voluntary Conduct.....	2
7.1.2 States of Mind.....	2
7.1.3 Burden of Proof.....	2
7.1.4 Serious Bodily or Physical Injury..	2
7.1.5 Minor .....	3
7.1.6 Bureau of Indian Affairs Enforcement Authority .....	3
7.1.7 Liability .....	3
7.1.8 Offense Classes.....	3

#### 7.1.1 Criminal Offenses Based on Voluntary Conduct

No person shall be convicted of an offense except based on conduct which includes a voluntary act or the omission to perform an act of which the defendant is physically capable. Unless otherwise provided in this Code with respect to a particular offense, an offense is established only if a person acts intentionally with respect to the offense.

#### 7.1.2 Mental States States of Mind

A. Intentional or intentionally.  
~~Purposefully~~ A defendant's state of mind is intentional with respect to result or to conduct if the defendant's conscious objective is to engage in such conduct or to cause such a result.

B. *Knowingly.* A person acts knowingly if he/she is aware of his/her conduct or that the circumstance exists or that it is highly probable that such result will be caused by his/her conduct.

C. *Negligent.* Conduct is negligent if, with respect to a result or to a circumstance, a person should be aware of a substantial and

unjustifiable risk that such a result will occur or that such a circumstance exists, and his/her conduct involves a significant deviation from the standard of care that a reasonable person would observe.

D. *Reckless.* Conduct is reckless if, with respect to a result or to a circumstance, a person consciously disregards a substantial risk that such result will occur or that such a circumstance exists, and the risk is of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the situation.

#### 7.1.3 Burden of Proof

A. The Tribe has the burden of proving each element of an offense beyond a reasonable doubt.

A. Whenever the defendant introduces sufficient evidence of a defense to support a reasonable belief as to the existence of that defense, the Tribe has the burden of disproving such defense beyond a reasonable doubt, unless this Code expressly requires otherwise.

#### 7.1.4 Serious Bodily or Physical Injury

Serious bodily or physical injury means injury to the body that:

A. Creates a substantial risk of death;

B. Causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

C. At the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or

**Commented [BB1]:** Prior version:

7-1-3. Burden of Proof.

A. Burden of Presumption of Innocence.

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

2. By "Element of the offense" is meant:

a. The conduct, attendant circumstances or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; plus

b. the culpable mental state required.

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

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impairment of the function or process of a bodily member or organ.

### **7.1.5 Minor**

A minor is defined as any person under the age of eighteen (18). A minor may also be referred to as a child.

### **7.1.6 Bureau of Indian Affairs Enforcement Authority**

The Northern Cheyenne Tribal Council authorizes the Bureau of Indian Affairs to enforce this Title and the offenses in this Title.

### **7.1.7 Liability**

#### **A. *Acts and Omissions to Act***

1. The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which he or she is physically capable of performing.

2. Possession is an act within the meaning of this section if there was knowing control of the thing possessed for a sufficient time to be able to terminate control.

B. *Culpability.* A person is not guilty of an offense unless he/she acted purposely, knowingly, negligently, or recklessly as required with respect to each material element of the offense.

#### **C. *Corporations and Unincorporated Associations.***

1. A person is legally accountable for any conduct he performs or causes to

be performed in the name of a corporation or unincorporated association or on its behalf to the same extent as if it were performed in his/her own name or behalf.

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

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

### **7.1.8 Offense Classes**

A. Offenses are divided into 3 classes, which are denominated and subject to maximum penalties, as follows:

1. Class A, for which a maximum penalty of one (1) year imprisonment, a fine of \$5,000.00, **or both**, may be imposed.

2. Class B, for which a maximum penalty of six months' imprisonment, a fine of ~~\$1,000.00~~ **\$2,500.00**, or both, may be imposed.

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3. Class C, for which a maximum penalty of a ~~\$200.00~~ **\$1000.00** fine may be imposed.

B. In addition to the penalties set forth above, the Court may order restitution in an amount and manner to be set by the Court considering the nature of the crime and the convicted person’s ability to pay the restitution.

C. In addition to the penalties set forth above, the Court may order a person convicted of a violent crime to turn in firearms, explosives, and other weapons, and to not acquire such weapons for a maximum of one (1) year based upon a finding that the convicted person represents a credible threat to the physical safety of the victim, or the victim’s family or associates, or any person involved in the legal process that led to a conviction. Violation of any such order is a Class B offense.

**CHAPTER 2. DEFENSES**

**SECTIONS**

7.2.1 Ignorance or Mistake ..... 4  
7.2.2 Public Duty ..... 4  
7.2.3 Intoxication ..... 4  
7.2.4 Mental Disease or Defect ..... 5  
7.2.5 Duress ..... 5  
7.2.6 Self-Defense ..... 5  
7.2.7 Defense of Others ..... 5  
7.2.8 Defense of Property ..... 5  
7.2.9 Use of Deadly Force ..... 6  
7.2.10 Entrapment ..... 6

~~7.2.1. Justification.~~

~~Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justified and is an affirmative~~

~~defense provided that the harm or evil sought to be avoided by such conduct is no greater than that sought to be prevented by the law defining the offense charged and the actor did not recklessly or negligently bring about the situation requiring his conduct. The fact that conduct is justifiable as specified in this Code does not abolish or impair any civil right or remedy which might arise from such conduct.~~

**7.2.1 Ignorance or Mistake**

A. Ignorance or mistake as to a matter of fact or law is a defense if:

- 1. The ignorance or mistake negates the necessary mental state required for the commission of an offense; or
- 2. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

B. Whenever in this Code an offense depends on a child being below 14 years of age, it is no defense that the defendant did not know the child’s age, or reasonably believed the child to be older than 14 years of age. When criminality depends on the child’s being below a critical age other than 12 years of age, it is an affirmative defense for the defendant to prove that he/she reasonably believed the child to be above the critical age.

**7.2.2 Public Duty**

Conduct is justified and an affirmative defense when it is required or authorized by law.

**7.2.3 Intoxication**

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A. Intoxication is not a defense unless it negates an element of the offense.

B. When negligence or recklessness establishes an element of the offense, self-induced intoxication is no defense.

C. Intoxication does not constitute a mental disease or defect within the meaning of Section 7.2.4.

~~D. Intoxication which is (a) not self-induced, or (b) the result of intoxication excessive in degree given the amount of intoxicant, to which the actor does not know he is susceptible, is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its wrongfulness or to conform his conduct to the requirements of the law.~~

### 7.2.4 Mental Disease or Defect

A. A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect the person lacks substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of law.

B. As used in this Section, the terms mental disease or defect do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

### 7.2.5 Duress

It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he/she was coerced to do so by the use of, or a threat to use, unlawful force against his/her person or the person of

another, which a person of reasonable firmness in his/her situation would have been unable to resist and the actor did not recklessly or negligently place him/herself in a situation in which it was probable he/she would be subject to duress.

### 7.2.6 Self-Defense

A. The use of reasonable force is a defense when a person reasonably believes that such force is immediately necessary to protect him/herself.

B. The use of reasonable force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant regardless of whether the conduct of the public servant is lawful is not a defense unless the actions of the public servant are clearly excessive.

### 7.2.7 Defense of Others

The use of force to defend a third person is a defense if the defendant:

A. reasonably believes that the person whom he/she seeks to protect would be justified in using such protective force; and

B. reasonably believes that intervention is necessary for the protection of such other person.

### 7.2.8 Defense of Property

The use of force, other than deadly force, is a defense if the defendant reasonably believes that such force is necessary to prevent or terminate conduct which the defendant reasonably believes to be the commission or attempted commission of a crime involving trespass, damage to, or theft of property.

#### Commented [BB2]: Not included:

2. A person is not justified in using force under the circumstances specified in subsection (A)(1) of this section if he:

- a. Initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant;
- b. Is attempting to commit, committing, or fleeing after the commission of an offense; or
- c. Was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force.

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## 7.2.9 Use of Deadly Force

The use of deadly force is a defense only where the defendant reasonably believes that such force is necessary to protect him/herself or another person against death, serious bodily harm, kidnaping, a sexual act as defined in 7.4.12.A.1 compelled by force or threat, or to prevent or terminate the commission or attempted commission of arson.

## 7.2.10 Entrapment

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

- A. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
- B. Employing methods of persuasion or inducement which creates a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

## CHAPTER 3. INCHOATE OFFENSES

### SECTIONS

7.3.1 Criminal Complicity and Solicitation .....	6
7.3.2 Conspiracy .....	6
7.3.3 Attempt .....	7

### 7.3.1 Criminal Complicity and Solicitation

A. A person may be convicted of an offense based upon the conduct of another person when:

1. acting with the state of mind sufficient for the commission of the offense, the defendant causes another person to engage in such conduct;
2. with the intent that an offense be committed, the defendant solicits, requests, commands, induces or intentionally aids another person to engage in such conduct; or
3. having a legal duty as a law enforcement officer to prevent the offense, the defendant fails to make proper effort to do so.

B. The penalty for being an accomplice to a crime is the same as the penalty for being a principal in the crime.

C. A person is not liable under this Section for the conduct of another if he/she terminates his/her complicity prior to the commission of the offense and gives timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

### 7.3.2 Conspiracy

A. A person commits the offense of conspiracy when, with the purpose that an offense be committed, he/she agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such an agreement has been committed by him/her or by a co-conspirator.

**Commented [BB3]:** Deleted:  
A. The defense afforded by this section shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.  
B. Except as provided in subsection (B) of this section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the Court and not by the jury. Evidence of past offenses shall be admissible only if the defendant takes the stand in his own defense.

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B. It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

1. Has not been prosecuted or convicted;
2. Has been convicted of a different offense;
3. Is not amenable to justice;
4. Has been acquitted; or
5. Lacked the capacity to commit the offense.

C. A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

**7.3.3 Attempt**

A. A person is guilty of an attempt to commit a crime who intentionally ~~knowingly, negligently or recklessly~~ does or omits to do anything which, under the circumstances as the defendant believes them to be, is an act or omission constituting a substantial step toward the commission of a crime.

B. A person who engages in conduct designed to aid another person to commit a crime which would establish complicity under subsection A if the crime were committed by such other person is guilty of an attempt to commit the crime, although the crime is not actually committed or attempted.

C. Conduct is not criminal which could only be characterized as an attempt to commit a crime which is itself defined solely in terms of attempt.

D. The penalty for an attempted crime is the same as the penalty for the completed crime.

~~E. Proof of the completed offense does not bar conviction for the attempt.~~

**CHAPTER 4. CRIMES AGAINST PERSONS**

**SECTIONS**

7.4.1 Murder ..... 8

7.4.2 Manslaughter ..... 8

7.4.3 Negligent Homicide ..... 8

7.4.4 Causing or Aiding Suicide ..... 9

7.4.5 Kidnapping ..... 9

7.4.6 Harboring A Child ..... 9

7.4.7 False Imprisonment ..... 9

7.4.8 Custodial Interference ..... 10

7.4.9 Indecent Exposure ..... 10

7.4.10 Stalking ..... 10

7.4.11 Sexual Assault ..... 10

7.4.12 Aggravated Sexual Assault ..... 11

7.4.13 Aggravated Sexual Assault of a Child ..... 11

7.4.14 Sexual Exploitation of a Child ..... 12

7.4.15 Provisions Applicable to Sex Offenses ..... 14

7.4.16 Aggravated Assault ..... 15

7.4.17 Simple Assault ..... 15

7.4.18 Assault with Bodily Fluid ..... 15

7.4.19 Assault by Strangling ..... 16

7.4.20 Criminal Endangerment ..... 16

7.4.21 Negligent Endangerment ..... 16

7.4.22 Abuse of a Child ..... 16

7.4.23 Aggravated Abuse of a Child ..... 17

7.4.24 Endangering the Welfare of a Child ..... 17

7.4.25 Brain Assault of a Child ..... 17

7.4.26 Endangering an Unborn Child - Substance Abuse ..... 18

7.4.27 Criminal Child Endangerment ..... 18

7.5.28 Neglect of a Child ..... 18

7.4.29 Abandonment of a Child ..... 19

**DRAFT- FOR PUBLIC COMMENT ONLY**

7.4.30 Elder Abuse ..... 19  
7.4.31 Bigamy ..... 19  
7.4.32 Incest ..... 19  
7.4.33 Failure to Send Minor to  
School ..... 20  
7.4.34 Partner or Family Member Assault  
(Domestic Abuse) ..... 20  
7.4.35 Enhanced Penalty for Offenses in  
Conjunction with Partner or Family Member  
Assault ..... 22  
7.4.36 Intimidation ..... 22  
7.4.37 Harassment ..... 23

~~7.4.1. Criminal Homicide.~~

- ~~A. A person commits the offense of  
criminal homicide if he purposely,  
knowingly, or negligently causes the  
death of another human being.~~
- ~~B. Criminal homicide is deliberate  
homicide, mitigated deliberate homicide,  
or negligent homicide.~~
- ~~1. Criminal Homicide constitutes  
Deliberate Homicide if:~~
- ~~a. It is committed purposely or  
knowingly; or~~
- ~~b. It is committed while the  
offender is engaged in or is an  
accomplice in the commission of  
an attempt to commit, or flight  
after committing or attempting to  
commit robbery, sexual  
intercourse without consent,  
arson, burglary, kidnapping,  
felonious escape, or any other  
felony which involves the use of  
or threat of physical force or  
violence against any individual.~~

~~2. Criminal homicide constitutes  
mitigated deliberate homicide when  
a homicide which would otherwise  
be deliberate is committed under the  
influence of extreme mental or  
emotional stress for which there is  
reasonable explanation or excuse.  
The reasonableness of such  
explanation or excuse shall be  
determined from the viewpoint of a  
reasonable person in the actor's  
situation.~~

~~3. Criminal homicide constitutes  
negligent homicide when it is  
committed negligently.~~

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

**7.4.1 Murder**

**A. Whoever intentionally causes the  
death of another human being commits  
murder.**

**B. Murder is a Class A Offense.**

**7.4.2 Manslaughter**

**A. A person who recklessly causes the  
death of another human being commits  
manslaughter.**

**B. Manslaughter is a Class A Offense.**

**7.4.3 Negligent Homicide**



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A. A person who negligently causes the death of another human being commits negligent homicide.

B. Negligent homicide is a Class A Offense.

### 7.4.4 Causing or Aiding Suicide

A. A person who intentionally causes or aids another person to commit or attempt to commit or attempt suicide commits causing or aiding suicide.

B. Causing or aiding suicide is a Class A Offense.

### 7.4.5 Kidnapping

~~A. A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.~~

~~B. Unlawful Restraint. A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains or causes to be restrained another so as to interfere substantially with his liberty.~~

A. Any person who by force, threat or deception:

1. removes another against his/her will from his/her place of residence or business or a substantial distance from the vicinity from where he/she is located; or

2. Confines another for a significant period against his/her will,

commits kidnapping.

B. Where the victim is 12 years of age or less, it shall be presumed that the removal or confinement was against the victim's will.

C. Any natural or adoptive parent who by force, threat, or deception, or without knowledge or agreement of the child's custodian, removes that parent's child from the physical custody of any person who has custody of the child pursuant to a court order, and keeps that child for a significant period, is guilty of kidnapping. In determining whether a period of time is significant for purposes of this subsection, the Court must evaluate the surrounding facts and circumstances, including without limitation the age of the child and the length of previous authorized visits with the offender. In a particular case, a relatively brief period may be considered insignificant.

D. Kidnapping is a Class A Offense.

### 7.4.6 Harboring A Child

A. Whoever removes, confines, harbors or keeps a minor or other incompetent without the consent of a parent, guardian or other person responsible for general supervision of the welfare of the minor or other incompetent commits harboring a child; provided however, that no person shall be guilty of harboring a child who notifies a law enforcement officer of the child's whereabouts.

B. Harboring a child is a Class B Offense for the first offense, and a Class A Offense for each subsequent offense.

### 7.4.7 False Imprisonment

A. A person who intentionally makes or causes the unlawful arrest, imprisonment or

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detention of an- other person commits false imprisonment if the offender knows or reasonably should have known that the arrest, imprisonment or detention is without lawful authority.

B. False imprisonment is a Class A Offense.

### **7.4.8 Custodial Interference**

A. A person commits the offense of custodial interference if, knowing that the person has no legal right to do so, the person takes, entices, or withholds from lawful custody any child, incompetent person or other person entrusted by authority of law to the custody of another person or institution.

B. Custodial interference is a Class A Offense.

### **7.4.9 Indecent Exposure**

A. A person who exposes his/her genitals or other intimate parts under circumstances likely to cause affront or alarm is commits indecent exposure.

B. Indecent exposure is a Class ~~C~~ **B** offense, except that second and subsequent offenses shall be a Class A offense.

### **7.4.10 Stalking**

A. A person commits the offense of stalking if the person intentionally causes another person substantial emotional distress, fearing for the safety of self or others, or reasonable apprehension of bodily injury or death by repeatedly:

1. following the stalked person, or persons defined as a “partner” or

“family member” in Section 7.4.34; or

2. harassing, threatening, or intimidating the stalked person in person or by third party, by electronic communication or monitoring, by mail, or by other action, devise or method.

B. Stalking is a Class B offense. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

C. Upon presentation of credible evidence of a violation of this section, an order may be granted restraining a person from engaging in the activity described in subsection 1.

D. Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person intentionally followed, harassed, threatened, or intimidated the stalked person.

### **7.4.11 Sexual Assault**

A. A person who intentionally subjects another person to any sexual contact without consent commits the offense of sexual assault.

B. Sexual contact means any intentional touching of the sexual or other intimate parts of the person of another, for the purpose of arousing or gratifying the sexual desire of either party, whether clothed or unclothed, with no valid medical purpose.

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C. A person convicted of sexual assault commits a Class B offense.

### 7.4.12 Aggravated Sexual Assault ~~Rape~~

A. A person who intentionally subjects another person to any sexual contact without consent commits the offense of aggravated sexual assault if:

1. The sexual contact involved sexual intercourse, which means penetration of the vulva, anus, or mouth, of one person by the penis of another person, penetration of the vulva or the anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient;

2. the defendant compels the other person to submit by force or by any threat that would render a person of reasonable firmness incapable of resisting;

3. the defendant inflicts bodily injury upon anyone in the course of committing sexual assault. *Bodily injury* shall mean physical pain, illness, or any impairment of physical condition and includes mental illness or impairment;

4. the defendant has substantially impaired the other person's power to appraise or control the person's conduct by

administering or employing, without the other person's knowledge, intoxicants, drugs or another similar substance ~~with intent to prevent resistance;~~

5. the other person is unconscious;

6. the defendant knows that the other person submits because the other person falsely supposes the defendant to be someone else;

7. the defendant knows that the other person submits suffers from a mental disease or defect which renders that person incapable of understanding the nature of his/her conduct; or

8. the other person is in official custody or otherwise detained in a hospital, prison, or other similar institution and the defendant has supervisory or disciplinary authority over the detained person.

B. A person convicted of aggravated sexual assault commits a Class A offense.

### 7.4.13 Aggravated Sexual Assault of a Child

A. A person who commits sexual assault as defined in Section 7.4.11 where

1. the victim is 14 years of age or younger, or

2. the victim is 15 or 16 years of age and the offender is 3 or more years older than the victim, or

**Commented [BB4]:** These sections replace the current Section 7-4-7:

7-4-7. Sexual Offenses.

A. Rape:

1. A male person who has intercourse with a female is guilty of rape if:

a. He compels her to submit by force or by the threat of death, serious bodily injury, extreme pain, or kidnapping to be inflicted on her or anyone else;

b. He compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution;

c. He has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance;

d. He knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct;

e. The female is unconscious or he knows that she is unaware that a sexual act is being committed upon her or that she submits because she falsely supposes that he is her husband; or

f. The female is under the age of 16 years.

2. Sexual intercourse includes intercourse as defined in 7-1-8 (F) with some penetration, however slight; emission is not required.

3. Rape is a Class A offense.

B. Deviant Sexual Intercourse:

1. A person is guilty of deviant sexual intercourse if he engages in deviate sexual intercourse, or causes another to engage in deviate sexual intercourse and if:

a. He compels the other person to participate by force or by the threat of death, serious bodily injury, extreme pain or kidnapping to be inflicted on anyone;

b. He compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution;

c. He has substantially impaired the other person's power to appraise or control his conduct by administering or employing without his knowledge drugs, intoxicants or other means for the purpose of preventing resistance;

d. He knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct or he knows that the other person is unconscious or submits because he is unaware that a sexual act is being committed on him; or

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3. The victim is under 18 years of age and where any one of the following additional factors is present:

- a. the offender is the natural or adoptive parent, grandparent, sibling, aunt, or uncle of the victim;
- b. the offender has temporary or permanent care, custody, control, or supervision over the victim;
- c. there were repeated assaults over a period of time; or
- d. force or threats were employed during the assault.

commits aggravated sexual assault of a child.

B. Aggravated sexual assault of a child is a Class A offense.

### **7.4.14 Sexual Exploitation of a Child**

A. A person commits the offense of a sexual exploitation of a child if the person:

1. intentionally employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;
2. intentionally photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;
3. intentionally, by any means of communication, including electronic

communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

4. intentionally processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

5. intentionally possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

6. finances any of the activities described in subsections A.1 through A.4 and A.7, knowing that the activity is of the nature described in those subsections;

7. possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

8. intentionally travels within, from or to the Reservation with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or

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9. intentionally coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from or to the Reservation with the intention of engaging in sexual conduct, actual or simulated.

B. Sexual exploitation of a child is a Class A offense.

C. An offense is not committed under subsections A.4 through A.7 if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the Court and/or a law enforcement or corrections agency.

D. As used in this section, the following definitions apply:

1. Electronic communication means a sign, signal, writing, image, sound, data of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

2. Sexual conduct means:

- a. Actual or simulated;
- b. sexual intercourse, whether between persons of the same or opposite sex;
- c. penetration of the vagina or rectum by any object, except

when done as part of a recognized medical procedure;

d. bestiality;

e. masturbation;

f. sadomasochistic abuse;

g. lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person;

h. defecation or urination for the purpose of the sexual stimulation of the viewer; or

i. depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

3. Simulated means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

4. Visual medium means:

- a. any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

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b. any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

### **7.4.15 Provisions Applicable to Sex Offenses**

#### **A. *Minimum Penalties.***

1. An offender convicted of Aggravated Sexual Assault, Aggravated Sexual Assault of a Child or Sexual Exploitation of a Child shall be required to serve a mandatory minimum jail sentence of at least ninety (90) days and shall be fined not less than \$500.00.

2. An offender convicted a second time of Aggravated Sexual Assault, Aggravated Sexual Assault of a Child or Sexual Exploitation of a Child shall be required to serve a mandatory minimum jail sentence of at least six (6) months and shall be fined not less than \$1,000.00.

3. An offender convicted of any subsequent offenses of Aggravated Sexual Assault, Aggravated Sexual Assault of a Child or Sexual Exploitation of a Child shall be required to serve a mandatory minimum jail sentence of one (1) year and shall be fined \$5,000.00. The mandatory minimum sentences under

this provision may not be suspended or deferred. This provision shall not limit the authority of a sentencing judge to impose a more severe sentence for first or second offenders, up to the maximum allowed by law.

#### **B. *Statute of Limitations.***

1. A prosecution for a Class A sexual offense may be commenced within seven (7) years after the victim reaches the age of eighteen (18) years old if the victim was less than eighteen (18) years old at the time the offense occurred.

2. A civil action for recovery of damages for injuries suffered by a minor as a result of a sexual offense must be commenced not later than seven (7) years after the victim reaches the age of eighteen (18).

#### **C. *Consent.***

1. A person fourteen (14) years of age or younger does not have the legal capacity to consent.

2. Force, fear, or threat alone, as well as any form of incapacity, is sufficient to show lack of consent.

#### **D. *Evidence of Victim's Behavior.***

1. No evidence concerning the sexual conduct of the victim is admissible in prosecutions involving a sexual offense except evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

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2. Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

3. Resistance by the victim is not required to establish lack of consent.

### **7.4.16 Aggravated Assault**

A. A person commits an aggravated assault if he/she:

1. intentionally causes serious bodily injury to another; or

2. intentionally causes bodily injury to another with a deadly weapon; or

~~3. purposely or knowingly causes reasonable apprehension of serious bodily injury in another by use of a weapon.~~

4. recklessly causes serious bodily injury to another under circumstances manifesting indifference to the value of human life; or

5. knowingly causes bodily injury to another while in custody in a criminal detention facility. [*Ord. DOI-009 (2019)*]

B. Aggravated assault is a Class A offense.

### **7.4.17 Simple Assault**

A. A person commits a simple assault if he/she:

1. Intentionally ~~or knowingly~~ causes bodily injury to another; or

2. recklessly or negligently causes bodily injury to another with a deadly weapon;

3. attempts by physical menace to put another in fear of serious bodily harm; or

4. by physical menace causes another to harm himself/herself.

B. Simple assault is a Class B offense.

### **7.4.18 Assault with Bodily Fluid**

A. A person commits the offense of assault with a bodily fluid if the person intentionally causes one of the person's bodily fluids to make physical contact with a law enforcement officer, a staff person of a correctional or detention facility, or emergency responder or health care provider performing emergency services in the course and scope of the occupation:

1. during or after an arrest for a criminal offense;

2. while the person is incarcerated in or being transported to or from a jail or detention facility, or health care facility; or

3. if the person is a minor, while the youth is detained in or being transported to or from a jail or detention or correctional facility, health care facility or shelter care facility.

B. Assault with a bodily fluid is a Class A offense.

C. As used in this section, the following definitions apply:

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1. *Bodily fluid* means any bodily secretion, including without limitation feces, urine, blood, and saliva.

2. *Health care provider* means a person who is licensed, certified, or otherwise authorized by law to provide health care in the ordinary course of business or practice of a profession.

3. *Emergency responder* means a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency medical technician, emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith renders emergency care or assistance at a crime scene or the scene of an emergency or accident.

### **7.4.19 Assault by Strangling**

A. A person commits assault by strangling if he/she:

1. intentionally or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether such conduct results in any visible injury and regardless of whether there is any intent to kill or protractedly injure the victim; or

2. intentionally or recklessly impeding the normal breathing of a person by covering the mouth of the

person, the nose of the person, or both, regardless of whether such conduct results in any visible injury and regardless of whether there is any intent to kill or protractedly injure the victim.

B. Assault by strangling is a Class B offense.

### **7.4.20 Criminal Endangerment**

A. A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment.

B. For the purposes of this section, *knowingly* means that the person is aware of the high probability that the conduct in which he or she is engaging, whatever the conduct may be, will cause substantial risk of death or serious bodily injury to another.

C. Criminal endangerment is a Class B offense.

### **7.4.21 Negligent Endangerment**

A. A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.

B. Negligent endangerment is a Class C offense.

### **7.4.22 Abuse of a Child**

A. A parent, guardian or other person legally responsible for the care and welfare of a child under 18 years of age who engages in the abuse of that child or fails to make reasonable efforts to prevent the infliction of



## DRAFT- FOR PUBLIC COMMENT ONLY

abuse by another of that child commits abuse of a child

B. Child abuse is when someone under the age of 18 years of age has suffered or is likely in the immediate future to suffer physical or emotional injury because of any person inflicting or failing to make reasonable efforts to prevent the infliction of such injury, including without limitation excessive corporal punishment or act of sexual abuse or molestation.

C. Abuse of a child is a Class B offense for the first offense and a Class A for all subsequent offenses.

### 7.4.23 Aggravated Abuse of a Child

A. A person commits extreme abuse of a child under 18 years of age if that person:

1. inflicts serious bodily or physical injury to a child; or
2. fails to make reasonable efforts to prevent the infliction of serious bodily or physical injury to a child.

B. Aggravated abuse of a child is a Class A offense.

### 7.4.24 Endangering the Welfare of a Child

A. Any parent, guardian or other person legally responsible for the care and welfare of a child under 18 years of age commits the offense of endangering the welfare of a child if the parent, guardian, or other person intentionally endangers the child's welfare by violating a duty of care, protection or support.

B. Any parent, guardian or other person legally responsible for the care and welfare of a child under 18 years of age, whether or not the parent, guardian, or other person is supervising the welfare of the child, commits the offense of endangering the welfare of children if the parent, guardian, or other person intentionally contributes to the delinquency of a child less than:

1. 18 years old by:
  - a. supplying or encouraging the use of an intoxicating substance by the child; or
  - b. assisting, promoting, or encouraging the child to enter a place of prostitution; or
2. 16 years old by assisting, promoting, or encouraging the child to:
  - a. abandon the child's place of residence without the consent of the child's parents or a guardian; or
  - b. engage in sexual conduct.

C. Endangering the welfare of a child is a Class A offense. [*Ord. DOI-012 (2020)*]

### 7.4.25 Brain Assault of a Child

A. A person is guilty of brain assault of a child when, being 18 years of age or more, such person intentionally or recklessly causes serious physical injury to the brain of a child less than 5 years old by shaking the child, or by slamming or throwing the child to impact the child's head on a hard surface or object. For purposes of this section, serious physical

**Commented [BB5]:** Replaces prior language:  
7-5-3

B. Endangering the Welfare of a Child:

1. A person is guilty of endangering the welfare of a child if he is a parent, guardian, or other person supervising the welfare of a child under 18 years of age and he knowingly endangers the child's Welfare by violating a duty of care, protection or support or by intentionally leaving or abandoning a child without care or by neglecting to care for a child in any manner which threatens serious harm to the physical, emotional or well – being of the child.

7-5-6 Contributing to the Delinquency of a Minor.

A. A person commits the offense of contributing to the delinquency of a minor if he knowingly:

1. Sells or gives explosives to a child under the age of majority except as authorized under proper tribal ordinances;
2. Sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;
3. Sells or gives alcoholic beverages to a person under 18 years of age; or
4. Being a junk dealer, pawnbroker, or second hand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

Contributing to the delinquency of a minor is a Class B offense.

## **DRAFT- FOR PUBLIC COMMENT ONLY**

injury includes without limitation subdural, intracranial or retinal hemorrhaging.

B. Reckless assault of a child is a Class A offense.

### **7.4.26 Endangering an Unborn Child - Substance Abuse**

A. A person who knows she is pregnant commits endangering an unborn child by:

1. intentionally inhaling, injecting, ingesting or otherwise introducing into her bloodstream any illegal substances, drugs, non-prescribed prescription drugs, intoxicants, or any other dangerous drug as defined in Sections 7.8.13 to 7.8.17 knowing that she is pregnant;
2. intentionally ingesting alcoholic beverages so as to raise her blood alcohol content a significant measurable level knowing she is pregnant; or
3. obtaining narcotics without notifying the medical provider that she is pregnant.

B. Refusal to submit to analysis of breath, blood or urine upon the request of a law enforcement officer having probable cause to suspect violation of this section shall be prima facie evidence of guilt.

C. Endangering an unborn child is a Class B offense.

### **7.4.27 Criminal Child Endangerment**

A. A person commits the offense of criminal child endangerment if the person intentionally or negligently causes

substantial risk of death or serious bodily injury to a child under 18 years of age by:

1. failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening condition;
2. placing a child in the physical custody of another who the person knows has previously intentionally or knowingly caused bodily or physical injury or sexual assault to a child;
3. manufacturing or distributing dangerous drugs in a place where a child is present;
4. driving a motor vehicle while under the influence of alcohol and/or any drugs in violation of Section 7.10.10 with a child in the vehicle; or
5. failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic failure to thrive or similar diagnosis.

B. Criminal child endangerment is a Class A offense.

C. A person may not be charged under subsection A.2 or A.3 if the person placed the child in the other person's custody pursuant to a court order.

D. For purposes of this Section, nonorganic failure to thrive means inadequate physical growth that is a result of insufficient nutrition and is not secondary to a diagnosed medical condition.

### **7.5.28 Neglect of a Child**

## DRAFT- FOR PUBLIC COMMENT ONLY

A. A parent, guardian or person legally responsible for the care and welfare of a child under 18 years of age who fails to provide such food, clothing, shelter, medical attention, hygiene, education, or supervision as the child for development, although the parent or custodian had sufficient resources to furnish such needs or has refused Tribal or other assistance for furnishing such needs, and such failure is likely to result in serious bodily injury or emotional harm to the child as determined by appropriate medical or professional persons, is guilty of the offense of neglect of a child.

B. Neglect of a child is a Class B offense.

### 7.4.29 Abandonment of a Child

A. A parent, guardian or person legally responsible for the care and welfare of a child under 18 years of age who abandons that child as defined in Section 3.1.2 of this Code is guilty of abandonment of a child.

B. Abandonment of a child is a Class B offense for the first offense and a Class A offense for all subsequent offenses.

### 7.4.30 Elder Abuse

A. A person commits the offense of elder abuse by knowingly or purposely, physically or mentally, abusing or exploiting an elder person.

1. *Exploiting* means the unjust use of an individual's money or property for another's advantage by means of duress, menace, fraud or undue influence.

2. *Abusing* means to inflict physical or mental injury to deprive an elder person of food, shelter, clothing, or services necessary to maintain the health, welfare and safety of the elder person.

3. *Elder person* means a Tribal member or other person residing on the Reservation who is:

- a. 60 years of age or older;
- b. Determined by the Tribal Court to be an elder; or
- c. At least 45 years of age and unable to protect herself or himself from abuse, neglect, or exploitation because of a mental disorder or physical impairment, or frailties or dependencies brought about by age or disease or alcoholism.

B. Elder abuse is a Class B offense.

### **7.4.31 Bigamy**

A. A person is guilty of bigamy if, knowing that he/she has a husband or wife or knowing that the other person has a husband or wife, he/she purports to marry another person.

B. It shall be a defense if the defendant proves by a preponderance of the evidence that he/she reasonably believed that he/she and the other person were eligible to marry

C. Bigamy is a Class B offense.

### **7.4.32 Incest**

**Commented [BB6]:** Replaces Prior Section: 7-5-7 Elderly Protection [*Amended by Ords. 14(88), 18(89)*]

A.A person who purposely, knowingly or negligently exploits or abuses or neglects any elderly person shall be prosecuted for a violation of this Ordinance.

B.Elderly Protection is a Class B offense.

C.Definition:

1.“Exploits” means to use the money or property of an elderly person for one's own advantage by means of duress, menace, fraud, or undue behavior.

2.“Abuses” means to inflict physical or mental injury or to deprive an elderly person of food, shelter, clothing or services necessary to maintain the health of the elderly person.

3.“Neglect” means the failure of a guardian, employee of any public facility, or any other person legally responsible for an elderly person's welfare, by failing to provide food, shelter, clothing, or services necessary to maintain the health of the elderly person.

4.“Elderly person” is a person who is at least 60 years of age.

## DRAFT- FOR PUBLIC COMMENT ONLY

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

B. Incest is a Class A offense.

### **7.4.33 Failure to Send Minor to School**

Any person who shall, without good cause, neglect or refuse to send a minor under that person's care to school shall be guilty of failure to send minor to school which is a Class C offense. This section shall not apply to minors who have graduated from high school.

### **7.4.34 Partner or Family Member Assault (Domestic Abuse)**

A. A person commits the offense of partner or family member assault if the person:

1. intentionally causes bodily or physical injury to a partner or family member;
2. negligently causes bodily or physical injury to a partner or family member with a weapon; or
3. intentionally causes reasonable apprehension of bodily or physical injury in a partner or family member.

B. For the purpose of this section, the following definitions apply:

1. Family member means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

2. Partners means spouses, former spouses, persons similarly situated to a spouse, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

3. Spouse means a person with whom the victim is currently living or who has lived with the victim in the past, regardless of whether they are or were married, or a person with whom the victim has a child in common, regardless of whether they were married or had lived together.

C. Partner and family member assault is a Class A offense.

D. *Sentencing*

1. A person convicted of a first offense for partner or family member assault shall be jailed for not less than 30 days and fined not less than \$500.00.

2. A person convicted a second time for partner or family member

## **DRAFT- FOR PUBLIC COMMENT ONLY**

assault shall be jailed for not less than 90 days and fined not less than \$1,000.00.

3. A person convicted for the third or subsequent times shall be jailed for not less than 180 days and fined not less than \$2,000.00.

4. Restitution to the victim shall be ordered by the Judge when appropriate.

5. Twenty-five sessions of mandatory counseling shall include education on violence and learning non-violent behavior. This counseling may be ordered for up to one year by the Judge with progress reports to be made no less than monthly.

6. If alcohol or drugs were involved in the offense, a chemical dependency evaluation and complete cooperation with recommendations for treatment shall be ordered by the judge.

E. *Mandatory Arrest.*

1. A Police officer shall immediately arrest, without having to obtain an arrest warrant, and take into custody any person whom the officer has probable cause to believe has committed the crime of partner or family member assault. The victim need not sign a complaint. The officer shall make the arrest even though an arrest may be against the expressed wishes of the victim.

2. An officer, under this section, is not required to arrest both parties when he/she believes that parties have assaulted one another. The officer shall arrest the person whom he/she believes to have been the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider (i) the intent to protect the victims of domestic abuse under this section; (ii) the comparative extent of injuries inflicted, or serious threats creating fear of physical injury; and (iii) the history of domestic abuse between the persons involved.

F. *Filing a Complaint.* The police officer making the arrest for partner or family member assault shall sign the complaint and include a detailed report of the circumstances of the arrest and any available statements from witnesses or victims. The victim may be utilized in a prosecution as a witness, if the victim is willing. Otherwise, the arresting officer shall testify as the prime witness in the prosecution. Any spousal privilege not to testify as a husband and wife shall not apply in a prosecution under this section.

G. *Victim's Rights.* The victim of partner or family member assault shall be informed by the arresting police office of the local shelter, and shall see that the victim contact is made with that shelter; and shall inform the victim that a protection order is available against the abuser, that an order can be obtained ordering the abuser from the household, school or business of the victim, that an order can be obtained awarding temporary custody of minor children to the

## **DRAFT- FOR PUBLIC COMMENT ONLY**

victim, and that the abuser can be ordered to pay support to the victim and minor children regardless if the victim is male or female.

H. *Reports.* In cases where a police officer is called to a scene in which partner or family member assault is suspected, but in the discretion of the police officer, no arrest is made by the officer, the officer shall write and file a written report explaining the reason for not making an arrest.

I. *Holding Time and Bail.* Any person arrested for partner or family member assault shall be held without bail for not less than 24 hours and more than 36 hours mandatory cooling off period. No bail schedule shall be set until the time period expires. Bail put forth cannot be forfeited in lieu of court appearance. Appearance at court before a Judge is mandatory. Those arrested and charged under this section shall not be released from custody except at arraignment.

J. *Education of Public Officials.* All judges, prosecutors, and police officers shall be trained to implement this section with at least one eight-hour initial session given by a domestic abuse specialist. In addition, all personnel shall have a minimum of four hours of refresher and update training in domestic abuse each year.

### **7.4.35 Enhanced Penalty for Offenses in Conjunction with Partner or Family Member Assault**

A. If someone convicted under Section 7.4.34 is also convicted of any of the acts listed in subsection B of this Section and the acts are done at or very near to the same time as the incident of abuse for which the defendant was convicted, then the defendant

shall be considered to have committed subsequent offense for the purpose of imposing the enhanced penalty in subsection 7.4.34.D.2

B. The acts are:

1. Assault Offenses; Aggravated assault, Simple assault, Intimidation;
2. Criminal trespass
3. Criminal mischief
4. Stalking;
5. Theft;
6. Carrying a concealed dangerous weapon, Unlawful discharge of firearms;
7. Abuse of a child, Neglect of a child, Abandonment of a child.

C. Very near to the same time shall be defined as within 24 hours of the partner or family member assault

D. If the Tribal Prosecutor intends to seek this enhanced punishment, the Tribal Prosecutor shall file notice of this intention in the charging document.

### **7.4.36 Intimidation**

A. A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he/or she communicates to another, under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

# DRAFT- FOR PUBLIC COMMENT ONLY

1. Inflict physical harm on the person threatened or any other person;
2. Subject any person to physical confinement or restraint;
3. Commit any criminal offense;
4. Accuse any person of an offense;
5. Expose any person to hatred, contempt or ridicule; or
6. Take action as a public official against anyone or anything, withhold official action, or cause such action or withholding.

B. A person commits the offense of intimidation if he/or she intentionally communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

C. Intimidation is a Class A offense. [Ord. DOI-012 (2020)]

## **7.4.37 Harassment**

A. A person is guilty of harassment when a person by means of any persistent threatening, insulting, or demeaning gesture or physical conduct, including any intentional written, verbal, or electronic communication or threat directed at a person that causes a person physical harm, damages a person's property, or places a person in reasonable fear of harm to the person or the person's property. Harassment or includes retaliation against a victim or witness who reports information about an act of harassment or intimidation.

B. Harassment is a Class B offense; however, if any of the actions listed in subsection A result in serious bodily injury, attempted suicide or suicide of the victim, the perpetrator(s) will be convicted of a Class A offense.

## **CHAPTER 5. HUMAN TRAFFICKING**

[Ord. DOI-011 (2024)]

### **SECTIONS**

7.5.1	Definitions .....	23
7.5.2	Labor Trafficking .....	24
7.5.3	Labor Trafficking of a Minor .....	25
7.5.4	Sex Trafficking .....	25
7.5.5	Sex Trafficking of a Minor .....	26
7.5.6	Penalties and Sentencing .....	26
7.5.7	Treatment.....	26

### **7.5.1 Definitions**

A. *Human Trafficking* means either sex or labor trafficking as defined in Sections 7.5.2– 7.5.5.

B. *Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of the debtor's personal services, or those of a person under the debtor's control as a security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

C. *Forced labor or services* means labor or services that are performed or provided by another individual and are obtained or maintained through any one or more of the following:

**Commented [BB7]:** This is a new section for Title VII but the content is identical to Ord. DOI-011 (2024)

## **DRAFT- FOR PUBLIC COMMENT ONLY**

1. Threat, either implicit or explicit, scheme, plan, or pattern, or other action intended to cause the victim to believe that if they did not perform or provide the labor or services, that the victim or another individual would suffer bodily harm or physical restraint; that any fact tending or alleged fact tending to cause shame or to subject any person to hatred, contempt, or ridicule would be exposed

2. Physically restraining or threatening to physically restrain a person;

3. Abuse or threatened abuse of the legal process;

4. Knowingly destroying, concealing, confiscating, removing or possessing any actual or purported passport or other immigration document;

5. Knowingly destroying, concealing, confiscating, removing, or possessing any actual or purported domestic documents such as driver's license, social security card, birth certificate, or legal documents proving identity or citizenship; and/or

6. Use of blackmail.

D. *Slavery* means controlling a person through force, fraud, or coercion to exploit said person.

E. *Minor* means any Persons under the age of 18.

F. *Prostitution* means the performance for hire, or offering or agreeing to perform for hire, where there is an exchange of anything of value, or an offer to exchange anything of value for the following acts:

1. Sexual intercourse; or
2. Sexual contact

G. *Sexual intercourse* means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.

H. *Sexual contact* means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

I. *John/Jane Doe* means a defendant/suspect whose identity is unknown.

J. *Victim restitution* means any payment of victim's documented cost for medical treatment, counseling, substance abuse treatment, or any financial damage caused by the act of human trafficking regardless of the race of the victim.

### **7.5.2 Labor Trafficking**

The promotion, recruitment, enticement, harboring, facilitation, transportation,



## **DRAFT- FOR PUBLIC COMMENT ONLY**

obtaining, or receipt of a person by any means (including without limitation electronic or telephonic) for the purpose of debt bondage, forced labor or services, or slavery, or practices similar to slavery is prohibited. A person is guilty of labor trafficking if the individual:

A. Benefits financially or receives anything of value from knowing participation in labor trafficking, or knowing or having reason to know it is derived from an act of labor trafficking, or:

B. Promotes, recruits, entices, harbors, facilitates, transports, obtains, or receives by any means another person knowing that person may be subjected to labor trafficking; or

C. Attempts or conspires or has the intent to promote, recruit, entice, harbor, facilitate, transport, obtain, or receive by any means another person knowing that person may be subjected to labor trafficking.

### **7.5.3 Labor Trafficking of a Minor**

The promotion, recruitment, enticement, harboring, facilitation, transportation, obtaining, or receipt of a person under the age of 18 by any means (including without limitation electronic or telephonic) for the purpose of debt bondage, forced labor, or services, or slavery or practices similar to slavery, is prohibited. A person is guilty of labor trafficking of a minor if the individual:

A. Benefits financially or receives anything of value from knowing participation in labor trafficking, or knowing or having reason to know it is derived from an act of labor trafficking of a minor;

B. Promotes, recruits, entices, harbors, facilitates, transports, obtains, or receives by any means another person under the age of 18, knowing that person may be subjected to labor trafficking; or

C. Attempts or conspires or has the intent to promote, recruit, entice, harbor, facilitate, transport, obtain, or receive by any means another person under the age of 18, knowing that person may be subjected to labor trafficking

There is no limitation on the time in which a charge may be filed or prosecution may commence for any offense under this Code involving a victim who is under 18 years of age at the time of the alleged offense.

The Tribe shall file a criminal complaint against a “John/Jane Doe” where there is physical evidence (forensic interview/examination, DNA, fingerprints, false name given, etc.) that a child is a victim of a human trafficking crime but where the perpetrator is unknown.

### **7.5.4 Sex Trafficking**

The promotion, recruitment, enticement, harboring, facilitation, transportation, obtaining, or receipt of any sexual act (sexual intercourse or contact) from a person over the age of 18 by any means (including without limitation electronic or telephonic), for the purpose of prostitution or practices similar to prostitution. A person is guilty of sex trafficking if the individual:

A. Benefits financially or receives anything of value from knowing participation in sex trafficking of a person over the age of

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18, or knowing or having reason to know it is derived from an act of sex trafficking.

B. Promotes, recruits, entices, harbors, facilitates, transports, obtains, or receives by any means another person over the age of 18, knowing that person may be subjected to sex trafficking; or

C. Attempts or conspires or has the intent to promote, recruit, entice, harbor, facilitate, transport, obtain, or receive by any means another person over the age of 18, knowing that person may be subjected to sex trafficking.

### **7.5.5 Sex Trafficking of a Minor**

The promotion, recruitment, enticement, harboring, facilitation, transportation, obtaining, or receipt of any sexual act (sexual intercourse or contact) from a person under the age of 18 by any means (including without limitation electronic or telephonic), for the purpose of prostitution or practices similar to prostitution is prohibited. A person is guilty of sex trafficking of a minor if the individual commits or benefits from any one or more of the following:

A. Benefits financially or receives anything of value from knowing participation in sex trafficking of a person under the age of 18, or knowing or having reason to know it is derived from an act of sex trafficking.

B. Promotes, recruits, entices, harbors, transports, obtains, or receives by any means another person under the age of 18, knowing that person may be subjected to sex trafficking; or

C. Attempts or conspires or has the intent to promote recruit, entice, harbor,

transport, obtain, or receive by any means another person under the age of 18, knowing that person may be subjected to sex trafficking.

There is no limitation on the time in which a charge may be filed, or prosecution may commence for any offense under this code involving a victim who is under 18 years of age at the time of the alleged offense.

The Tribe shall file a criminal complaint against a “John/Jane Doe” where there is physical evidence (forensic interview/examination, DNA, fingerprints, false name given, etc.) that a child is a victim of a human trafficking crime but where the perpetrator is unknown.

### **7.5.6 Penalties and Sentencing**

Human Trafficking is a Class A offense.

Victim Restitution is mandatory.

### **7.5.7 Treatment**

A. Upon the defendant’s guilty plea or conviction of a violation of any offense under this Code, the Judge may order an assessment of the defendant by a probation officer or other qualified service provider to ascertain a correct treatment plan for the defendant. If the victim was a minor, the Judge shall order an assessment of the defendant by a probation officer or other qualified service provider to ascertain a correct treatment plan for the defendant.

B. Upon the recommendation by the probation officer or other qualified assessment personnel, the court may order treatment, including but not limited to, substance abuse counseling, mental health,

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parenting, anger management, sexual offender treatment, or job training and make this order part of the defendant’s probation or release. Failure to complete the term of probation or release shall constitute probation or release violation and may subject the defendant to incarceration or other sanctions.

C. Upon the defendant’s guilty plea or conviction of a violation of any offense under this Code, the Judge may order an assessment of the victim by a qualified service provider. The victim may choose to not participate in the evaluation. Upon recommendations by a qualified service provider, treatment in the form of, but not limited to, substance abuse counseling, mental health, parenting, anger management, or job training may be ordered by the Court. All expenses actually incurred will be assessed as victim’s restitution and will be the responsibility of the defendant to pay. The victim may choose to not accept or participate in the services.

**CHAPTER 6. SEX OFFENDER REGISTRATION [Res. DOI-175 (2015)]**

**SECTIONS**

7.6.1 Northern Cheyenne Tribal Sex Offender Registration Code ..... 27  
7.6.2 Failure to Register as a Sex Offender ..... 27  
7.6.3 Hindrance of Sex Offender Registration ..... 28

**7.6.1 Northern Cheyenne Tribal Sex Offender Registration Code**

The Tribe has enacted a separate Sex Offender Registration Code, which may be amended from time to time. The provisions of this chapter shall be interpreted with

reference to the Tribe’s Sex Offender Registration Code and the federal Sex Offender Registration and Notification Act (46 U.S.C. 16901 et seq.).

**7.6.2 Failure to Register as a Sex Offender**

A. A person commits failure to register as a sex offender if that person is required to register as a sex offender and fails to follow any of the provisions of Northern Cheyenne Tribal Sex Offender Registration Code.

B. Failure to register as a sex offender is a Class A offense.

C. Penalties.

1. A person convicted of failure to register as a sex offender is subject to a period of incarceration of not less than 180 days in custody nor more than one (1) year maximum possible term of incarceration and a fine of \$2,500 per violation. The convicted sex offender shall not be afforded early release, commutation, pardon, parole, or release on any other basis. Each sentence shall be served in custody in the entirety.

2. Each violation of a provision of the Northern Cheyenne Tribal Sex Offender Registration Code by a person not subject to the Court’s criminal jurisdiction shall be subject to a civil penalty enforceable by any means not prohibited by federal law, including but not limited to the issuance of civil penalties, restitution, forfeiture or civil contempt.

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3. A violation of a provision of the Northern Cheyenne Tribal Sex Offender Registration Code by a person who is not a member of the Northern Cheyenne Tribe may be subject to exclusion from the Reservation.

**7.6.3 Hindrance of Sex Offender Registration**

A. A person is commits hindrance of sex offender registration if he/she:

1. knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of the Northern Cheyenne Tribal Sex Offender Registration Code;

2. knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex of- fender about, or to arrest the sex offender for, noncompliance with the requirements of the Northern Cheyenne Tribal Sex Offender Registration Code; or

3. provides information to a law enforcement agency regarding a sex offender which the person knows to be false.

B. Hinderance of a sex offender registration is a Class B offense.

**CHAPTER 7. CRIMES AGAINST PROPERTY**

**SECTIONS**

7.7.1 Arson ..... 28

7.7.2 Reckless Burning..... 28  
7.7.3 Burglary ..... 29  
7.7.4 Criminal Trespass..... 29  
7.7.5 Criminal Damage..... 30  
7.7.6 Theft..... 30  
7.7.7 Robbery ..... 32  
7.7.8 Criminal Mischief..... 32  
7.7.9 Injury to Public Property ..... 32  
7.7.10 Unlawful Use of a Protected Archaeological Resource ..... 33  
7.7.11 Unauthorized Use of Vehicle ..... 33  
7.7.12 Forgery ..... 33  
7.7.13 Livestock Offenses ..... 33  
7.7.14 Barrier Offense ..... 34  
7.7.15 Gate Offense..... 34  
7.7.16 Buffalo Herd Offense ..... 34

**7.7.1 Arson**

A. A person who starts or maintains a fire or causes an explosion with intent to destroy or damage property, including without limitation a building, motor vehicle, crop or timber, of another is guilty of arson.

B. Arson is a Class A offense.

**7.7.2 Reckless Burning [Ord. 7(90)]**

A. It shall be a criminal offense for any person who kindles a fire in or near any forest, timber, rangeland or other flammable material upon land within the exterior boundaries of the Northern Cheyenne Reservation and then leaves said fire without totally extinguishing the same, or permits or suffers said fire to spread beyond his control, or leaves or suffers said fire to burn unattended.

B. Reckless burning is a Class B offense.

C. A person convicted of reckless burning shall be made to make complete

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restitution including resource loss, suppression and rehabilitation costs.

D. *Permits Required.*

1. Agricultural burning (weeds, stubble field, irrigation ditches, etc.) in excess of one (1) acre will require a burning permit.

2. Recreational fires (i.e., campfires) and residential fires (burn barrels, trash piles, etc.) will be excluded from this section if conducted under safe burning conditions.

3. Traditional fires (sweat lodges, sundances, etc.) will be excluded from this section at all times.

4. A burning permit shall be valid for a maximum of one (1) year, expiring December 31, and shall be issued by the Bureau of Indian Affairs and/or Tribal Forestry Department, and shall constitute permission to burn as described in this subsection.

E. The Tribal President shall have the authority to ban all fires (agricultural, recreational, residential, traditional, etc.) and to ban the sale and use of fireworks during high fire danger conditions.

### 7.7.3 Burglary

A. A person who enters a building, or separately secured or occupied portion thereof, with intent to commit a crime therein commits a burglary, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter. ~~It is an~~

~~affirmative defense to a prosecution for burglary that the building or structure was abandoned.~~

1. Burglary is a Class A offense.

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

1. Burglary of a vehicle is a Class A offense.

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

### 7.7.4 Simple **Criminal** Trespass

A. A person who, knowing that he/she is without legal authority to do so:

1. enters or remains on any land or in any building; or

2. enters or remains in any place as to which notice against trespass is given by:

a. actual communication to the defendant;

b. posting in a manner reasonably likely to come to the attention of intruders; or

c. fencing or other enclosure manifestly designed to exclude intruders,

is guilty of criminal trespass.

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B. Criminal trespass is a Class ~~C~~B offense.

~~C. It is an affirmative defense to simple trespass that:~~

~~1. The property was open to the public when the actor entered or remained and he had not been informed that he should leave or not enter; or~~

~~2. The actor's conduct did not substantially interfere with the owner's use of the property and the actor left the property when asked to do so.~~

D. A person who, between the hours of 11 PM and 5 AM, enters into and remains in any public park, recreation area, powwow ground, rodeo ground, or any other unoccupied land held in trust for the Tribe within the exterior boundaries of the Reservation, and whose conduct does not constitute criminal trespass under Section 7.7.4.A., is guilty of criminal trespass to trust land. This subsection shall not apply to persons engaged in lawful business or responding to an emergency.

E. Criminal trespass to trust land is a Class C offense. [*Ord. DOI-011 (2016)*]

### 7.7.5 Criminal Damage

A. A person commits criminal damage by:

1. defacing, damaging, or in any way changing the appearance of any Tribally-owned building;

2. defacing, damaging, or in any way changing the appearance of any Tribal structure, sacred site, holy grounds, or place used for worship or any religious purpose; or

3. defacing or damaging any building, structure or place used as a school or as an educational facility; or

4. defacing, damaging, or tampering with any cemetery, mortuary, or personal property of the cemetery or mortuary or other facility used for the purpose of burial or memorializing the dead.

B. Criminal damage is a Class A offense.

C. A person convicted of criminal damage must be ordered to make restitution in an amount and manner to be set by the Court. The Court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the Court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of the Court's jurisdiction over the convicted person.

### 7.7.6 Theft

A. A person who takes any of the following actions commits theft:

1. intentionally takes, exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;

## DRAFT- FOR PUBLIC COMMENT ONLY

2. intentionally obtains the property of another by misrepresentation or deception;

3. intentionally obtains the property of another by threat or extortion;

4. receives, retains or disposes of the property of another knowing that it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner;

5. controls property of another that the defendant knows to have been lost, mislaid, or delivered under a mistake, and with intent to deprive the owner thereof, and fails to take reasonable measures to restore the property to a person entitled to have it;

6. intentionally obtains services, known by the defendant to be available only for compensation, by avoiding payment for the services, or, having control over the disposition of services of another to which he/she is not entitled, knowingly diverts those services to the defendant's own benefit or to the benefit of another not entitled thereto;

7. intentionally gives false information to obtain welfare/public benefits, knowingly fails to correct misinformation that enables obtaining welfare/public benefits, or accepts and uses welfare/public benefits to which the person knows he/she is not entitled;

8. intentionally disposes of, uses, or transfers any interest in property which has been entrusted to the defendant as a parent or guardian of a minor, or for any other reason, for other than the purpose or purposes for which the property was placed in trust; or

9. Intentionally misbrands or alters any brand or mark on any livestock or another person,

is guilty of theft.

B. Conduct denominated "theft" in this Section constitutes a single offense embracing the several offenses heretofore known as embezzlement, extortion, fraud, larceny, receiving stolen property, misbranding, welfare offense, and the like.

C. It is an affirmative defense to prosecution for theft that the defendant:

1. Acted under an honest claim of right to the property or service involved or that the defendant had a right to acquire or control the property as defendant did; or

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

D. ~~It is no defense that:~~

1. ~~The theft was from the actor's spouse, except that misappropriation of household and personal effects or other property normally accessible to both spouses, is theft only if it occurs~~

**Commented [BB8]:** Deleted:

2. Deception occurs when a person:
- Creates or reinforces a false impression, including false oppression as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
  - Prevents another from acquiring information which would affect his judgment of a transaction;
  - Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
  - Fails to disclose a lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers and consideration for the property obtained, whether such impediment is or is not valid or is or is not a matter of official record.
3. The term "deceive" does not, however, include matters having no pecuniary significance, or mere puffing or statements unlikely to deceive ordinary persons in the group addressed.

**Commented [BB9]:** Deleted:

- Extortion occurs when a person threatens to:
- Inflict bodily injury on anyone or commit any other criminal offense;
  - Accuse anyone of a criminal offense;
  - Expose any secret tending to subject any person to hatred, attempt or ridicule, or to impair his credit or business reputation;
  - Take or withhold action as an official, or cause an official to take or withhold action;
  - Bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group and whose interests the actor purports to act;

**Commented [BB10]:** Deleted:

2. The requisite knowledge or belief is presumed in the case of a person who:
- Is found in possession or control of other properties stolen on a separate occasion;
  - Has received stolen property in another transaction within the year proceeding the transaction charge; or
  - Being a dealer in property of the sort received, acquires it for a consideration which he knows or should know is far below its reasonable value.

**Commented [BB12]:** Moved from Livestock Offenses /Misbranding, 7-10-4

**Commented [BB11]:** Deleted:

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

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~~after the parties have stopped living together; or~~

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

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

E. Theft of ~~\$500.00~~ \$1,000.00 or more is a Class A offense. Theft of less than ~~\$500.00~~ \$1,000.00 but more than ~~\$100.00~~ \$1,000.00 is a Class B offense. Theft of less than ~~\$100.00~~ \$500.00 is a Class C offense.

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

### 7.7.7 Robbery

A. A person commits a robbery if, in the commission of a theft he/she:

1. inflicts or attempts to inflict bodily injury upon another; or
2. threatens or menaces another with immediate bodily injury.
- ~~3. Commits or threatens to commit a Class A or Class B offense.~~

B. An act shall be deemed “in the commission of a theft” if it occurs in an

attempt to commit a theft or in flight after the attempt or commission of a theft.

C. Robbery is a Class A offense.

### 7.7.8 Criminal Mischief

A. A person commits the offense of criminal mischief if the person intentionally or recklessly:

1. injures, damages, or destroys any property of another or public property without the property owner’s consent;
2. tampers with property of another or public property so as to endanger or interfere with persons or property or its use without the property owner’s consent; or
3. damages or destroys property with the purpose to defraud an insurer.

B. Property as used in this section includes livestock and domestic animals.

C. Criminal mischief resulting in a victim’s loss of \$1,000.00 or more is a Class A offense. Criminal mischief resulting in a victim’s loss of less than \$1,000.00 is a Class B offense.

### 7.7.9 Injury to Public Property

A. A person commits injury to public property if he/she:

1. intentionally damages any Tribal or other public property; or
2. intentionally causes a substantial interruption or impairment of a public service.

**Commented [BB13]:** Replaced:  
7-6-6 Aggravated Trespass.

A. A person is guilty of aggravated trespass if he enters or remains unlawfully on trust or non-trust property on which he is not otherwise privileged to enter or remain and:

1. Accomplishes such entry by an act of force or violence or the use of key or similar device which provides entry and which device the actor is not authorized or privileged to use for such purpose;
2. Intends to cause or causes annoyance or injury to any person thereon or damage to any property thereon;
3. Intends to commit or commits an offense thereon; or
4. Is reckless as to whether his presence will cause fear for the safety of another.

B. Aggravated Trespass is a Class B offense.



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B. Injury to public property resulting in a loss of \$1,000.00 or more is a Class A offense. Injury to public property resulting in a loss of less than \$1,000.00 is a Class B offense.

### **7.7.10 Unlawful Use of a Protected Archaeological Resource**

A. It is an unlawful use of a protected archaeological resource to sell, barter, exchange, purchase, offer to sell or transport any protected archaeological resource.

B. As used in this section, *protected archaeological resource* means any material remains of past human life or activities which are of archaeological interest and at least 100 years old, including, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, funerary items, ceremonial items or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered protected archaeological resources unless found in archaeological context.

C. Unlawful use of a protected archaeological resource is a Class A offense.

### **7.7.11 Unauthorized Use of Vehicle**

A. A person commits unauthorized use of a vehicle if the person operates an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without the owner's consent.

B. Unauthorized Use of Vehicle is a Class B offense.

### **7.7.12 Forgery**

A. ~~A person is guilty of forgery if, he with intent to defraud, falsely signs, execute, or alters any written instrument. A person who knowingly and falsely makes, completes, executes, authenticates, issues, transfers or alters any writing commits forgery.~~

B. Forgery is a Class B offense. Forgery resulting in a victim's loss of \$1,000.00 or more is a Class A offense. Forgery resulting in a victim's loss of less than \$1,000.00 is a Class B offense.

### **7.7.13 Livestock Offenses**

A. A person is guilty of a livestock offense if he/she commits any of the following offenses:

1. Knowingly or negligently permits his livestock to graze or trespass on the property or permitted grazing area of another without the permission to do so;
2. Knowingly or negligently refuses to sell, dispose of or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock;
3. Knowingly or negligently fails to treat or dispose of a sick animal where there is a substantial danger of infecting other livestock;
4. Fails to dip, inoculate or otherwise treat livestock in the manner which the Northern

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Cheyenne Tribal Council or its designated representative shall direct,

5. Makes a false report of livestock owned; or

6. Purposely obstructs or interferes with a livestock roundup.

B. Livestock found to be in violation of this section may be impounded at the time an arrest is made and may be impounded without prior notice to the owner if a Court so orders, upon receipt of evidence that such animals are grazing upon the property or permitted grazing area of another on the Reservation and that immediate action is necessary to protect such interests from harm. Impounded animals for trespass shall be assessed at \$1.00 per head for damages per day and at \$1.00 per head per day for forage consumed by said impounded animals, the charges being payable to the person or entity whose forage was consumed. Where animals are impounded with or without ownership known and are not claimed or the owner refuses to pay the impoundment and trespass assessments within ten (10) days of the impoundment, the Northern Cheyenne Court shall arrange for transportation to and sale of the animals at a public livestock market. The costs of the roundup, impoundment and sale will be immediately deducted and paid from the receipts of the sale of the animals. The owner of the animals who has refused to pay the charges against the animals will be delivered the balance remaining from the sale of the impounded animals less costs and charges. All unbranded animals that are sold and the money taken in will be returned to the Tribal Treasurer.

C. Livestock offenses are a Class A Offense.

### **7.7.14 Barrier Offense**

A. It shall be unlawful for any person to cut, move, alter, or destroy a barrier, fence, boundary marker, gate or other divisional marker without prior consent of the owner.

B. Any person violating this section will be required to pay and make restitution for all damages done the owner, lessee or permit holder by way of the fence or barrier or marker being destroyed, cut, moved or altered in addition to all other penalties authorized by law.

C. Barrier offense is a Class B offense.

### **7.7.15 Gate Offense**

A. A person is guilty of gate offense is he/she opens and does not close any previously closed gate which crosses any roadway.

B. Gate offense is a Class C offense.

### **7.7.16 Buffalo Herd Offense**

A. It shall be unlawful for any person to kill, harass, disturb, chase, **hunt, maim, damage, or otherwise interfere with** any buffalo or bison owned **or managed** by the Northern Cheyenne Tribe.

B. It shall be unlawful for any person to enter into fenced or otherwise marked areas designed for the grazing, keeping, or use of buffalo or bison without express permission of the Tribal Council.

C. Buffalo herd offense is a Class ~~A~~ **B** offense.

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D. Official management and control actions authorized by the Tribal Council and undertaken by buffalo or wildlife management officials, and law enforcement/emergency management/first responders responding to law enforcement/public safety concerns are exempt from this section and such actions shall be lawful.

**CHAPTER 8. CRIMES AGAINST THE PUBLIC ORDER**

**SECTIONS**

7.8.1 Carrying Concealed Weapon ..... 35  
7.8.2 Possession of Stun Gun or Taser .. 36  
7.8.3 Possession of Explosives ..... 36  
7.8.4 Use of Dangerous Weapons by Children..... 36  
7.8.5 Unlawful Discharge of Firearms... 36  
7.8.6 Carrying a Weapon in a Prohibited Place ..... 37  
7.8.7 Possession or Allowing Possession of Weapon on School Property ..... 38  
7.8.8 Sale, Transportation, Possession or Placement of a Destructive Device ..... 38  
7.8.9 Unauthorized Possession of Substances with Intent to Make Destructive Device ..... 39  
7.8.10 Possession of Intoxicating Beverage ..... 39  
7.8.11 Furnishing of Alcoholic Beverage. 39  
7.8.12 Intoxication ..... 39  
7.8.13 Sale of Dangerous Drugs ..... 39  
7.8.14 Possession of Dangerous Drugs.... 40  
7.8.15 Production or Manufacture of Dangerous Drugs ..... 41  
7.8.16 Possession of Precursors to Dangerous Drugs ..... 41  
7.8.17 Abuse of Toxic Substances..... 42  
7.8.18 Seizures and Forfeitures Related to Drugs ..... 42  
7.8.19 Drug Paraphernalia ..... 45

7.8.20 Imitation Dangerous Drug Offenses ..... 46  
7.8.20 Unlawful Sale of Prescription Medication ..... 47  
7.8.21 Drug/Wellness Court Program..... 47  
7.8.22 Disorderly Conduct..... 47  
7.8.23 Cruelty to Animals..... 48  
7.8.24 Spying by Electronic Device ..... 48  
7.8.25 Privacy in Communications..... 48  
7.8.26 Unlawful Gambling ..... 49  
7.8.27 Contributing to The Delinquency of A Minor ..... 49  
7.8.28 Obscenity ..... 49  
7.8.29 Sanitation Offense..... 50  
7.8.30 Maintaining a Public Nuisance .... 50  
7.8.31 Littering..... 51

**7.8.1 Carrying Concealed Weapon**

~~A. A person is guilty of carrying a concealed weapon if, he shall go about in a public place armed with a dangerous weapon concealed upon his person, unless he has a signed permit by a judge of the Northern Cheyenne Tribal Court. The weapon so carried may be confiscated by the court.~~  
Whoever carries, concealed about his/her person any weapon, unless the weapon is carried with specific governmental approval, commits carrying a concealed weapon.

1. *Weapon, as used in this Chapter, means any type of firearm, any type of knife, a sword, a straight razor, throwing star, nunchucks, brass or other metal knuckles, stun gun, taser or an object indistinguishable from a firearm, such that a reasonable person, without specialized training in firearms, would conclude that it appears to be a firearm. The term also includes any other article or*

## **DRAFT- FOR PUBLIC COMMENT ONLY**

instrument possessed with the purpose to commit a criminal offense.

2. With specific governmental approval means the lawful possession of a firearm under the terms of a permit authorizing the carrying of concealed weapons that are issued by any tribal government, state government, or by the government of the United States, on the condition that the person carrying a weapon pursuant to such permit is not engaged in committing, or preparing to commit, any criminal offense as defined in this Code.

B. Carrying a concealed weapon is a Class B offense.

C. In addition to the penalty prescribed for such an offense, any person convicted of carrying a concealed weapon may be ordered by the Court to forfeit any such weapon to the Tribe.

### **7.8.2 Possession of Stun Gun or Taser**

A. It shall be unlawful for any person under the age of 21 to possess a stun gun or taser.

B. Stun gun or taser, as used in this Chapter, means

1. a device designed to propel darts or other projectiles attached to wires that, on contact, will deliver an electrical pulse capable of incapacitating a person; or

2. an electroshock weapon that uses electrical current to disrupt

voluntary control of muscles causing neuromuscular incapacitation.

C. Possession of stun gun or taser is a Class B offense. Possession of a gun or taser while committing a Class A offense is a Class A offense.

### **7.8.3 Possession of Explosives**

A. Whoever possesses, transports or controls any nitroglycerin, dynamite or other dangerous explosive, unless such explosive is possessed in the prosecution of or to affect a lawful purpose, commits possession of explosives.

B. Possession of explosives is a Class B offense.

### **7.8.4 Use of Dangerous Weapons by Children**

A. A parent, guardian or other person legally responsible for the care and welfare of a child under 16 years of age, and knowingly allows such child to carry or use in public any dangerous weapon as defined in Section 7.8.1.A.1, except when such child is in the company and under the direct control of such parent, guardian, or other adult person authorized by the parent or guardian, is guilty of use of dangerous weapons by children.

B. Use of a dangerous weapon by children is a Class B offense.

### **7.8.5 Unlawful Discharge of Firing a Firearms Offense**

A. Whoever discharges a firearm:

1. within 500 yards of an occupied building, unless the

## DRAFT- FOR PUBLIC COMMENT ONLY

defendant is entitled to possession of the building, authorized to do so by a person entitled to possession, or is a law enforcement officer in the performance of duty;

2. within the limits of any town, community, or village, with the exception of a law enforcement officer in the performance of duty;

3. from inside any vehicle, with the exception of a law enforcement officer in the performance of duty; or

4. across any road, trail, track or path.

commits unlawful discharge of firearms.

D. Unlawful discharge of firearms is a Class B A offense. In addition to the penalty prescribed for such an offense, any person convicted of unlawful discharge of firearms may be ordered by the Court to forfeit the firearm that was discharged to the Tribe.

B. A Police officer shall immediately arrest, without having to obtain an arrest warrant, and take into custody any person whom the officer has probable cause to believe has committed the crime of unlawful discharge of firearms.

C. Those arrested and charged under this section shall not be released from custody except at arraignment.

### 7.8.6 Carrying a Weapon in a Prohibited Place

A. A person who intentionally carries a weapon, taser, stun gun or explosive in any of

the following prohibited places commits carrying a weapon in a prohibited place:

1. any Tribal government building;

2. any United States government building;

3. any Chief Dull Knife College building; or

4. any bank, credit union, savings and loan institution, or similar institution during normal business hours. It is not an offense under this section to carry a weapon while:

a. using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or

b. at or near a branch office of an institution in a grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

B. This Section does not apply to a law enforcement officer in the performance of duty.

C. It is not a defense that the person had a valid permit to carry a concealed weapon.

D. Carrying a weapon in a prohibited place is a Class B offense. In addition to the penalty prescribed for such an offense, any person convicted of carrying a weapon in a

## **DRAFT- FOR PUBLIC COMMENT ONLY**

prohibited place may be ordered by the Court to forfeit the firearm so carried to the Tribe.

### **7.8.7 Possession or Allowing Possession of Weapon on School Property**

A. A person commits the offense of possession of a weapon on school property if the person intentionally carries or stores a weapon, stun gun, taser, or explosive on the campus or property of any school that children under the age of 18 attend.

B. A parent, guardian or other person legally responsible for the care and welfare of a child under the age of 18 commits the offense of allowing possession of a weapon on property of any school children under the age of 18 attend if the parent or guardian intentionally permits the child to carry or store a weapon, stun gun, taser, or explosive on school property.

1. Subsection A does not apply to a law enforcement officer in the performance of duty.

2. Subsection A does not apply to any person carrying or storing a weapon for a special purpose when permission is obtained from the governing body of the school, however, no one may carry a concealed weapon on school property who does not have a valid concealed weapon permit issued by a lawful jurisdiction.

C. Possession or allowing possession of a weapon on school property is a Class A offense. In addition to the penalty prescribed for such an offense, any person convicted

under this section may be ordered by the Court to forfeit the weapon to the Tribe.

### **7.8.8 Sale, Transportation, Possession or Placement of a Destructive Device**

1. Any person who knowingly sells, offers for sale, transports or possesses any destructive device, or who places a destructive device to endanger health, life or property, commits a violation of this Section.

2. Violation of this Section is a Class A offense.

3. This section shall not apply to:

a. any law enforcement officer acting in the performance of duty; or

b. any person who possesses a valid seller's or user's permit issued by the United States government for explosive or destructive devices.

4. *Destructive device*, as used in Sections 7.8.8 and 7.8.9 means any box, package, contrivance, bomb, grenade, explosive missile, launching device, or an apparatus containing an explosive, flammable, poisonous or other dangerous or harmful weapon or substance which is created to explode, ignite or throw forth its contents after passage of time, when moved, handled, fired or opened. The term does not include fireworks sold for community celebration in the State of Montana or on the Reservation.

## DRAFT- FOR PUBLIC COMMENT ONLY

### 7.8.9 Unauthorized Possession of Substances with Intent to Make Destructive Device

A. Any person who, without first obtaining a permit from a government agency with authority to issue such permit, possesses any substance or material with the intent to make a destructive device violates this Section.

B. Violation of this Section is a Class B offense.

### 7.8.10 Possession of ~~Liquor~~ Intoxicating Beverage

A. A person who intentionally or knowingly possesses or transports an intoxicating beverage of 0.5% alcohol or more commits unlawful possession of an intoxicating beverage.

B. Possession of an intoxicating beverage is a Class C offense. At the discretion of the Court, any person found guilty of violating this Section and found to be addicted to alcohol may be ordered to receive rehabilitative treatment.

C. This Section does not apply to the lawful transport of such beverages through the Northern Cheyenne Reservation.

### 7.8.11 Furnishing of Alcoholic Beverage ~~Manufacture or Delivery of Liquor~~

A. Any person that intentionally or knowingly manufactures, produces, sells, gives, delivers, or otherwise furnishes an alcoholic beverage of 0.5% alcohol or more to any person commits furnishing of alcoholic beverage.

1. *Deliver* means the actual or constructive transfer of possession of any alcoholic beverage as described above, with or without consideration, whether or not there is an agency relationship.

2. The possession of 12 or more bottles or cans of beverages with an alcohol content of 10% or greater, or the possession of 24 or more bottles or cans of beverages with an alcohol content of less than 10% shall give rise to the rebuttable presumption that the person possessed such quantity of alcoholic beverages intending to deliver or furnish the same to others.

B. Furnishing of alcoholic beverage is a Class A-C offense. If the person receiving the alcoholic beverage is under 21 years of age, it is a Class B offense.

### 7.8.12 Intoxication [Ord. DOI-012 (2020)]

A. Any person found publicly under the influence of an alcoholic beverage or controlled substance commits intoxication.

B. Intoxication is a Class C offense.

### 7.8.13 Sale of Dangerous Drugs [Ord. DOI-011(2016); Ord. DOI-015 (2019)]

A. Whoever knowingly sells, transfers, distributes, or otherwise furnishes any dangerous drug, or possesses dangerous drugs with intent to sell, transfer, distribute, or otherwise furnish dangerous drugs, commits sale of dangerous drugs.

1. As used in this Chapter, *dangerous drug* means any article or substance which contains any

## **DRAFT- FOR PUBLIC COMMENT ONLY**

quantity of a substance classified as belonging to Schedules I, II, or III of the Federal Controlled Substance Act 21 USC § 801 *et seq.* including preparations thereof being sold, transferred or otherwise furnished for physiological and psychoactive effects, which are chemically equivalent or identical with any of the substances referred to above, unless such substance was obtained pursuant to a valid prescription or order from a licensed medical or health practitioner as defined by 21 U.S.C. § 802(21), while acting in the course of their professional practice.

2. Peyote in the Native American Church shall not be considered a controlled substance or drug under this Chapter.

B. Sale of dangerous drugs is a Class A offense.

C. In addition to mandatory drug treatment for any conviction under this Section,

1. there shall be a mandatory minimum sentence of 6 months' imprisonment and \$1,000 fine for the first conviction under this Section, and a mandatory minimum sentence of 1 year and \$5,000 fine for each subsequent conviction; or

2. any person who was an adult at the time of sale and or transfer and who is convicted of unlawful sale of dangerous drugs to a anyone under 18 years of age shall be sentenced to a mandatory 1 year imprisonment and a

fine of \$5,000 for the first and any subsequent convictions.

3. Any person convicted under this Section who is over 18 years of age and not an enrolled member of the Tribe may also be permanently banished from the Reservation.

### **7.8.14 Possession of Dangerous Drugs [Ord. DOI-011(2016); Ord. DOI-015 (2019); Ord. DOI-016 (2019)]**

A. A person commits possession of dangerous drugs if he/she possesses or uses any of the dangerous drugs defined in Section 7.8.13.A.1 of this Code.

B. Possession of dangerous drugs is a Class A offense, except that an offense solely involving less than one (1) ounce of marijuana is a Class C offense with a maximum fine of \$25.00.

C. In addition to mandatory drug treatment for any Class A conviction under this Section,

1. there shall be a mandatory minimum sentence of 6 months' imprisonment and \$1,000 fine for the first conviction under this Section, and a mandatory minimum sentence of 1 year imprisonment and \$2,000 fine for the second conviction, and a mandatory minimum sentence of 1 year and \$5,000 fine for each subsequent conviction.

2. Any person convicted under this Section who is over 18 years of age and not an enrolled member of the Tribe may also be permanently banished from the Reservation.



## **DRAFT- FOR PUBLIC COMMENT ONLY**

### **7.8.15 Production or Manufacture of Dangerous Drugs**

A. A person commits production or manufacture of dangerous drugs if the person intentionally or knowingly produces, manufactures, prepares, cultivates, compounds, or processes the dangerous drugs defined in Section 7.8.13.A.1 of this Code.

B. Production or manufacture of dangerous drugs is a Class A offense.

C. There shall be a mandatory minimum sentence of 6 months' imprisonment and \$1,000 fine for the first conviction under this Section, and a mandatory minimum sentence of 1 year and \$5,000 fine for each subsequent conviction.

D. Any person not an enrolled member of the Tribe over 18 years of age convicted under this Section may also be permanently banished from the Reservation.

### **7.8.16 Possession of Precursors to Dangerous Drugs**

A. A person commits unlawful possession of precursors to dangerous drugs if he/she possesses any of the following substances or combinations of the following, if there is evidence that he/she possessed them with the intent of manufacturing dangerous drugs.

B. Precursor means the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture of dangerous

drugs. Suspect precursors include but are not limited to:

1. phenyl-2-propanone (phenylacetone);
2. piperidine in conjunction with cyclohexanone;
3. ephedrine [methamphetamine precursor];
4. lead acetate;
5. methylamine;
6. methylformamide;
7. n-methylephedrine;
8. phenylpropanolamine;
9. pseudoephedrine;
10. anhydrous ammonia;
11. hydriodic acid;
12. red phosphorus;
13. iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus; and
14. lithium in conjunction with anhydrous ammonia.

C. Possession of precursor to dangerous drugs is a Class A offense.

D. There shall be a mandatory minimum sentence of 6 months' imprisonment and \$1,000 fine for the first conviction under this Section, and a mandatory minimum sentence of 1 year and \$5,000 fine for each subsequent conviction.

## DRAFT- FOR PUBLIC COMMENT ONLY

E. Any person convicted under this Section who is over 18 years of age and not an enrolled member of the Tribe may also be permanently banished from the Reservation.

### **7.8.17 Abuse of Toxic Substances**

A. A person commits abuse of a toxic substance if he/she inhales or ingests or possesses with the purpose to inhale or ingest, for the purposes of altering his/her mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation.

B. For purposes of this Section, toxic substances include, but are not limited to, glue, fingernail polish, paint, paint thinners, petroleum products, aerosol propellants, or chemical solvents containing toluene, benzene, xylene, any nitrate, butyl nitrate, nitrous oxide, or other aromatic hydrocarbon, or any other similar substance declared to, or known to have, potential for abuse and/or toxic effect on the central nervous system.

C. Abuse of toxic substances is a Class C offense.

### **7.8.18 Seizures and Forfeitures Related to Drugs**

A. The following property is subject to forfeiture to the Northern Cheyenne Tribal Court:

1. All drugs seized pursuant to this Chapter.
2. All money, raw materials, products, and equipment of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding processing,

production, delivering, importing, or exporting any drug in violation of Sections 7.8.13 to 7.8.17.

3. All property used or intended for use as a container for anything listed in A.1. or A.2. above.

4. All conveyances which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything listed in A.1. or A.2. above.

5. All conveyances in which a drug is unlawfully kept, deposited, or concealed.

6. All books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used or intended for use in violation of Sections 7.8.13 to 7.8.17.

7. All equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a drug.

8. Everything of value furnished or intended to be furnished in exchange for a drug in violation of this Chapter; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to

## **DRAFT- FOR PUBLIC COMMENT ONLY**

facilitate any violation of Sections 7.8.13 to 7.8.17.

9. All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of Sections 7.8.13 to 7.8.17 punishable by a year or more imprisonment.

B. Exceptions to forfeiture.

1. Except for drugs seized pursuant to this Chapter, property forfeiture may not be sought relating to violations of Sections 7.8.13 to 7.8.17 that are Class B or C offenses.

2. No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party to or knowledgeable of a violation of Sections 7.8.13 to 7.8.17.

3. No conveyance is subject to forfeiture under this Section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his/her knowledge or consent.

4. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the

secured party if he/she neither had knowledge of nor consented to any violation of this section.

C. When property may be seized.

1. A law enforcement officer who has probable cause to make an arrest for a violation of Sections 7.8.13 to 7.8.17, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a drug or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a drug shall seize the conveyance so used or intended to be used. The officer shall hold a conveyance so seized as evidence until a forfeiture is declared or release is ordered.

2. All property subject to forfeiture under this Section may be seized by a law enforcement officer under a search warrant issued by the Tribal Court. Seizure without a warrant may be made if:

a. the seizure is made incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administration inspection warrant;

b. the property subject to seizure has been the subject of a prior judgment in favor of the Tribe in a criminal proceeding or a forfeiture

## DRAFT- FOR PUBLIC COMMENT ONLY

proceeding based on this Code;

c. the law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety;

d. the law enforcement officer has probable cause to believe that the property was issued or is intended to be used in violation of a crime; or

e. the law enforcement officer has probable cause to believe that the property will be removed from the Northern Cheyenne Reservation if not seized at that time.

### D. Forfeiture of property.

1. Petition to institute forfeiture proceedings:

a. Any law enforcement officer or agency that seizes any property pursuant to this Section shall, no later than 45 days after conviction, file a civil petition to institute forfeiture proceedings with the clerk of the Tribal Court.

b. The clerk shall issue a summons at the request of the petitioning party who shall cause the same to be served upon all owners or claimants of the property.

2. Answer to allegations concerning the use of property:

a. Within 20 days after the service of the petition and summons, the owner or claimant of the property shall file an answer to the allegations.

b. No extension of time for filing the answer may be granted, and failure to answer within the specified time bars the owner or claimant from presenting any evidence at any subsequent hearing.

3. Procedure following answer or expiration of time for answering:

a. There is a rebuttable presumption of forfeiture of property.

b. If an answer to the petition is not filed within 20 days after the service of the petition and summons, the Court, upon motion, shall order the property forfeited to the Tribe.

c. If an answer is timely filed, the forfeiture proceeding shall be set for hearing, without a jury, not more than 60 days after the answer is filed.

4. Proof required or permitted at hearing to rebut the presumption of forfeiture:

## DRAFT- FOR PUBLIC COMMENT ONLY

a. An owner of the property, who has an answer on file, must prove either:

1. that the conveyance was not used for the purpose charged; or

2. that the use of the property occurred without his/her knowledge or consent.

b. A claimant of a secured interest in the property, who has an answer on file, must prove that his/her interest is bona fide and that it was created without the knowledge that the property was being used or was to be used for the purpose charged.

E. Disposition of property following hearing.

1. If the Court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, it shall order the property released to the owner of record.

2. If the Court finds that the property was used for the purpose charged with the knowledge or consent of the owner, the property shall be disposed of as follows:

a. If proper proof of his/her claim is presented at the hearing by the holder of a

security interest, the Court shall order the property released to the holder of the security interest with all title, right, and interest to the owner extinguished. If the value of the property is more than the security interest, the additional value shall be returned to the Northern Cheyenne Tribal Court.

b. If there is no security interest, the Court shall order the property forfeited to the Tribe.

3. Forfeited property may be retained for official Tribal Government use as determined by the Tribal President.

4. In the event forfeited property is sold, the net proceeds of the sale must be remitted to the Treasurer of the Northern Cheyenne Tribe to be divided equally and used for official governmental purposes by the following:

a. One-half to the Tribal Court Account.

b. One-half to the Northern Cheyenne Criminal Investigations or other Tribally-run law enforcement agency to be used for drug enforcement purposes.

**7.8.19 Drug Paraphernalia [Ord. DOI-011(2016)]**

## **DRAFT- FOR PUBLIC COMMENT ONLY**

A. It shall be unlawful for any person to possess, sell, trade, bargain or offer for sale drug paraphernalia.

1. *Drug paraphernalia* means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this Chapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body.

2. In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the existence and scope of legitimate uses of the item in the community, and/or expert testimony concerning its use, may be considered.

B. This section shall not apply to:

1. any person authorized by applicable law to manufacture, possess, or distribute such items; or

2. any item that is traditionally intended for use with tobacco products.

C. Violation of this Section is a Class B offense.

### **7.8.20 Imitation Dangerous Drug Offenses**

A. A person commits sale of an imitation dangerous drug if he/she intentionally sells, barter, exchange, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug.

B. A person commits the offense of possession of an imitation dangerous drug with purpose to sell if he/she possesses with purpose to sell any imitation dangerous drug.

C. A person commits the offense of criminal advertisement of an imitation dangerous drug if he/she intentionally places in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

D. A person commits the offense of criminal manufacture of an imitation dangerous drug if he/she intentionally manufactures, prepares, or cultivates any imitation dangerous drug.

E. A conviction of any offense under subsections A through D is a Class A offense.

F. Imitation dangerous drug means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to stimulate the effect of a dangerous drug and the appearance of which, including the color, shape, size and markings, would lead a reasonable person to believe that the substance is a dangerous drug.

G. This Section does not apply to:

## **DRAFT- FOR PUBLIC COMMENT ONLY**

1. a person authorized by rules adopted by a state board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;
2. law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and
3. a person registered to sell or possess with the purpose to sell imitation dangerous drugs for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

### **7.8.20 Unlawful Sale of Prescription Medication**

- A. A person or business licensed to sell medication that requires a prescription from a medical provider that knowingly sells or transfers prescription medication in the absence of a bona fide prescription commits unlawful sale of prescription medication.
- B. A person not licensed to sell medication that requires a prescription from a medical provider and sells prescription medication commits unlawful sale of prescription medication.
- C. Unlawful sale of prescription medication is a Class A offense.

### **7.8.21 Drug/Wellness Court Program**

Nothing in this Chapter shall limit the authority of the Court to develop and issue incentives, sanctions, sentences, and/or penalties for violations of this Code that follow the guidelines and policies of the

Court's established drug court/healing to wellness court program(s) or any similar diversion program intended to support individuals whose substance/alcohol use dependency contributes to the individual's criminal activity.

### **7.8.22 Disorderly Conduct**

A. A person commits disorderly conduct if he/she, with intent to harass, alarm or annoy another person, or in reckless disregard of the fact that another person is harassed, annoyed or alarmed by his/her behavior:

1. engages in fighting, or in violent or threatening behavior;
2. makes loud, unusual or unreasonable noise;
3. obstructs vehicular or pedestrian traffic, or the use of a public facility;
4. disturbs any lawful assembly or public meeting or event;
5. persistently follows another person; or
6. creates a hazardous or extremely offensive condition by any act which serves no legitimate purpose.

B. A person commits disorderly conduct if he/she knowingly violates any curfew mandate ordained by the Tribal Council. [*Ord. DOI-012 (2020)*].

C. The standards which shall be considered in determining whether a noise is

## **DRAFT- FOR PUBLIC COMMENT ONLY**

unreasonable under subsection A.2. shall include the following:

1. the volume of noise;
2. the duration of the noise;
3. whether the noise is recurrent;
4. whether the nature of the noise is usual or unusual;
5. whether the noise is produced by a commercial or noncommercial activity;
6. the density of the inhabitation of the area within which the noise emanates;
7. the time of the day or night the noise occurs; and
8. the public benefit derived from the source of the noise.

D. Disorderly conduct is a Class B offense. [*Ord. DOI-012 (2020)*]

### **7.8.23 Cruelty to Animals**

A. Whoever intentionally or recklessly subjects any domesticated animal to cruel mistreatment is guilty of cruelty to animals.

B. Cruelty to animals is a Class C offense for the first offense and a Class B offense for every subsequent offense.

### **7.8.24 Spying by Electronic Device**

A. It is unlawful for any person to intentionally cause an electronic device to enter the property of another to secretly spy or attempt to spy into any governmental or private building, structure, or other enclosure without lawful governmental authority.

B. Unlawful spying by electronic device is a Class B offense.

### **7.8.25 Privacy in Communications**

A. A person commits the offense of violating privacy in communications if the person intentionally:

1. With the intent to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

2. Records or causes to be recorded a conversation by use of hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection A.2. does not apply to:

- a. elected or appointed public officials or public employees when the transcription or recording is done in the performance of official duty;
- b. persons speaking at public meetings;
- c. persons given warning of the transcription or recording, or



## **DRAFT- FOR PUBLIC COMMENT ONLY**

if one person provides the warning, either party may record; or

d. a government law enforcement or health care agency if the recording is of a health care emergency telephone communication made to the facility or agency.

B. The first conviction of violating privacy in communications is a Class B offense and any subsequent conviction is a Class A offense.

### **7.8.26 Unlawful Gambling**

A. A person is guilty of unlawful gambling who

1. Conducts a wagering pool or lottery for his/her own profit; or

2. Receives wagers for or on behalf of another person for his/her own profit; or

3. Alone or with others owns, controls, manages, or finances a gambling business; or

4. Knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house; or

5. Maintains and operates an unlicensed Class II or Class III gaming device for his/her own profit.

B. Gambling is a Class A offense.

C. Unlawful gambling does not include:

1. Lawful contests of speed, strength, or endurance in which awards are made only to entrants or to the owners of entrants;

2. Traditional social and cultural games (such as hand games) of the Tribe;

3. Lawful business transactions;

4. Bingo, raffles or other like activities conducted by a religious, charitable, or other non-profit organization; or

5. Any gaming activity licensed by the Tribe pursuant to the Northern Cheyenne Tribal Gaming Ordinance DOI-028 (2011).

### **7.8.27 Contributing to The Delinquency of A Minor**

Any person, including any parent or other person with lawful custody of a minor, who intentionally, negligently, or recklessly causes, encourages, contributes to or aids a minor in committing a criminal offense is guilty of a Class A offense.

### **7.8.28 Obscenity**

A. An adult commits the offense of obscenity when, with knowledge of the obscene nature of the material, the person intentionally:

1. sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, recording, video or other representation or embodiment of the obscene to any minor;

## **DRAFT- FOR PUBLIC COMMENT ONLY**

2. presents, directs or participates in an obscene activity with a minor;

3. publishes, exhibits, or otherwise makes available anything obscene to a minor;

4. performs an obscene act or otherwise presents an obscene exhibition of the person's body to anyone under 18 years of age;

5. creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under 18 years of age; or

6. advertises or otherwise promotes the sale of obscene material or materials represented or held out by the person to be obscene.

B. Obscene means a representation or description of sexual acts, masturbation, excretory functions, or lewd exhibition of genitals, actual, simulated, or animation, that appeals to the prurient interest in sex based on contemporary community standard and lacks serious literary, artistic, political, or scientific value.

C. In any prosecution for an offense under this section, evidence is admissible to show:

1. the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

2. the artistic, literary, scientific, educational, or other merits of the material;

3. the degree of public acceptance of the material in the community;

4. the appeal to prurient interest or absence of that appeal in advertising or other promotion of the material; or

5. the purpose of the author, creator, publisher, or disseminator

D. Obscenity is a Class A offense.

### **7.8.29 Sanitation Offense**

A. A person commits a sanitation offense if he/she fails to properly dispose of all body wastes, garbage, trash or other waste materials.

B. Sanitation offense is a Class B offense.

C. The Court has discretion to take any action deemed necessary under the circumstances to safeguard the health or well-being of any community, family, person or property to remedy a sanitation offense.

### **7.8.30 Maintaining a Public Nuisance**

A. A person commits maintaining a public nuisance if, acting in such a manner or creating a situation which may be adjudicated a general nuisance, or permitting property under his/her control to fall into a condition as to injure or endanger the safety, health, comfort or property of his/her neighbors.

B. Maintaining a public nuisance is a Class C offense.

C. The Court has discretion to take any action deemed necessary under the circumstances to safeguard the health or

**DRAFT- FOR PUBLIC COMMENT ONLY**

well-being of any community, family, person or property to remedy a public nuisance.

**7.8.31 Littering**

A. A person is guilty of littering if he/she:

1. Throws, dumps, or places upon any roadway, upon the land or property of another, or upon Tribal land or property, garbage, junk, trash, debris, refuse, or any substance of any nature whatsoever which mars the appearance or detracts from the cleanliness of an area; or
2. Throws or deposits upon any roadway any glass bottles, glass, nails, tacks, wire or any other substance likely to injure any person, animal or vehicle upon such roadway; or
3. Stores or keeps any unserviceable vehicle, appliance or implement within any town or village, unless he has a permit from a Tribal authority to maintain a junkyard; or
4. Allows any abandoned building to remain on land he owns or controls within any town or village, unless he has a permit from a Tribal authority allowing him to maintain an abandoned building.

B. Littering is a Class B offense.

**CHAPTER 9 OFFENSES INVOLVING GOVERNMENTAL PROCESSES**

**SECTIONS**

7.9.1	Bribery .....	51
7.9.2	Interfering with Elections .....	52
7.9.3	Protection of Government Officials, Employees and Law Enforcement Officers .....	52
7.9.4	Harming A Police Dog .....	53
7.9.5	Hindering Law Enforcement .....	53
7.9.6	Failure to Heed Emergency Lights .....	53
7.9.7	Eluding .....	53
7.9.8	Resisting Arrest .....	53
7.9.9	Perjury .....	54
7.9.10	Tampering with Witness.....	54
7.9.11	Tampering with Evidence.....	54
7.9.12	Criminal Contempt .....	55
7.9.13	Violation of a Temporary or Permanent Order of Protection .....	55
7.9.14	Escape.....	55
7.9.15	False Reports to a Law Enforcement, Fire or Emergency Officer .	56
7.9.16	Impersonation of Public Servant .	56
7.9.17	Obstructing Justice .....	56
7.9.18	Public Health Offense.....	57
7.9.19	Retaliation for Past Official Action .....	57
7.9.20	Official Misconduct.....	57

**7.9.1 Bribery**

A. Whoever intentionally offers, gives, or agrees to give to another, or solicits, accepts, or agrees to accept from another, anything of value as consideration:

1. to influence the recipient's official action as a public servant, or
2. to induce the recipient's violation of a known legal duty as a public servant,

is guilty of bribery.

## **DRAFT- FOR PUBLIC COMMENT ONLY**

B. Bribery is a Class B offense.

C. For purposes of this Section, value means one or more items that in the aggregate are worth at least \$100.

D. It is not a defense to prosecution under this Section that a person whom the actor sought to influence or induce was not qualified to act in the desired way due to lack of authority, jurisdiction or any other reason.

### **7.9.2 Interfering with Elections**

A. A person is guilty of interfering with elections who:

1. coerces, threatens, injures or intimidates another person with respect to voting, qualifying to vote, qualifying or campaigning as or for a candidate for elective office, or qualifying or acting as an election official, in any primary, special, or general election of the Tribe; or

2. in connection with any election of the Tribe, knowingly makes or induces any false voting registration; or

3. in connection with any election of the Tribe, offers, gives, or agrees to give anything of pecuniary value to another person as consideration for the recipient's voting or withholding his/her vote or voting for or against any candidate or issue or for such conduct by another; or

4. solicits, accepts, or agrees to accept anything of pecuniary value as

consideration for conduct prohibited under Subsections A.2. or A.3 or

5. otherwise obstructs or interferes with the lawful conduct of an election of the Tribe or registration therefor.

B. Community meals presented by a candidate which are open to the entire community are not unlawful under this Section.

C. Interfering with elections in violation of subsections A.1., A.2., A.3., or A.4. is a Class A offense.

D. Interfering with elections in violation of subsection A.5. is a Class B offense.

### **7.9.3 Protection of Government Officials, Employees and Law Enforcement Officers**

A. A person violates this section who forcibly assaults, intimidates or interferes with:

1. any judge, court employee, witness or juror of any court created by the Tribe, the United States, or the State of Montana;

2. any elected or appointed official or employee of the Tribe, the United States or the State of Montana; or

3. any law enforcement officer.

B. Assault as used in this Section is defined in Chapter 4.

C. Intimidation as used in this Section means communicating, with the purpose to

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cause another to perform or to omit the performance of any act, under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

1. inflict physical harm on the person threatened or any other person; or
2. subject any person to physical confinement or restraint.

D. Interfere as used in this Section means preventing or delaying the performance of official duties without lawful authority.

E. Law enforcement officer means a person who by virtue of the person's office or public employment carries out law enforcement duties.

F. Violation of this Section is a Class A offense.

### **7.9.4 Harming A Police Dog**

A. A person commits the offense of harming a police dog if the person intentionally kills or injures a police dog being used by a:

1. law enforcement officer in discharging or attempting to discharge a legal duty in a reasonable and proper manner; or
2. person while the person is under the control of and acting under the direction of an officer of an official law enforcement agency during the performance of the

agency's law enforcement or search and rescue duties.

B. Harming a police dog is a Class B offense.

### **7.9.5 Hindering Law Enforcement**

A. A person is guilty of hindering law enforcement if he/she intentionally interferes with, hinders, delays or prevents the discovery, arrest, prosecution, conviction, or punishment in any way of himself/herself or another for the commission of an offense.

B. Hindering law enforcement is a Class B offense.

### **7.9.6 Failure to Heed Emergency Lights [Ord. DOI-009 (2019)]**

A. A person commits the offense of failure to heed police emergency lights if the operator does not stop for police officers in the performance of their duties.

B. Failure to heed emergency lights is a Class A offense.

### **7.9.7 Eluding [Ord. DOI-009 (2019)]**

A. A person commits the offense of eluding a police officer if the operator of a vehicle operates any vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a police officer who is lawfully in pursuit.

B. Eluding is a Class A offense.

### **7.9.8 Resisting Arrest**

A. Whoever, with the intent to prevent a law enforcement officer from effecting an arrest:

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1. flees from a law enforcement officer after being told by an officer that he/she is under arrest;
2. uses or threatens to use physical force or violence against the law enforcement officer or another; or
3. creates a substantial risk of bodily harm to the officer or any other person, or employs means justifying substantial force to overcome the resistance

commits resisting arrest.

B. It is a defense to resisting arrest if the force was clearly excessive and could have led to serious injury of the person law enforcement is attempting to arrest.

C. Resisting arrest is a Class B offense for the first and Class A offense for the second offense and subsequent offenses.

### **7.9.9 Perjury**

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

B. Perjury is a Class A B offense.

### **7.9.10 Tampering with Witness**

A. A person is guilty of tampering with witnesses if:

1. Believing that an official proceeding or investigation is

pending or about to be instituted, he/she attempts to induce or otherwise cause a person to:

- a. Testify or inform falsely;
- b. Withhold any testimony, information, document or thing;
- c. Avoid legal process summoning him/her to testify or supply evidence; or
- d. Absent him/herself from any proceeding or investigation to which he has been legally summoned;

2. He/she harms another by an unlawful act in retaliation for anything done by another in his/her capacity as a witness or informant; or

3. He/she solicits, accepts or agrees to accept any benefit in consideration of his/her doing any of the things specified in this section.

B. Tampering with a witness is a Class A offense.

### **7.9.11 Tampering with Evidence**

A. A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he/she:

1. Alters, destroys, conceals or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

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2. Makes, presents or uses any record, document, or thing knowing it to be false and with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

B. Tampering with evidence is a Class B offense.

### **7.9.12 Criminal Contempt**

A. Criminal contempt may be declared by any judge of the Northern Cheyenne Tribe for:

1. misbehavior of any person in a court proceeding; or
2. disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

B. Criminal contempt is a Class C offense.

### **7.9.13 Violation of a Temporary or Permanent Order of Protection [Ord. DOI-009 (2019); Ord. DOI-012 (2020)]**

A. A person commits the offense of violating an order of protection when he/she:

1. Is the subject of a protection order issued by any court;
2. Has notice of the order; and
3. Engages in any conduct proscribed by the protection order or fails to meet any requirement of the protection order.

B. Protection order means any order issued by any court of competent jurisdiction to protect person(s) by proscribing and/or

requiring certain conduct of another. A protection order may include a temporary protection order as provided under Section 4.4.9 of this Code and may also be known or referred to as a restraining order.

C. Violation of a protection order is a Class A offense.

D. Violation of a protection order, including any prohibition against entering a residence, is not excused by the consent or permission of the person whom the protection order is intended to protect or any other person.

E. All provisions of a protection order shall remain in full force and effect until the order terminates or is modified by a court of competent jurisdiction.

F. Procedural requirements. In the event a law enforcement officer is aware of a violation of a protection order, the officer shall submit a report of such violation and any statement from the object of the protection order to the Tribal Court as promptly as possible and take any other appropriate action to protect the object of the protection order. Upon receipt of such report, the Tribal Court shall issue a warrant for the arrest of the person who violated the protection order upon finding that the order was violated.

### **7.9.14 Escape**

A. A person who unlawfully removes himself/herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period is guilty of escape.

## **DRAFT- FOR PUBLIC COMMENT ONLY**

B. Official detention does not include supervision of probation or parole, or constraint incidental to release on bail.

C. Escape is a Class A offense.

### **7.9.15 False Reports to a Law Enforcement, Fire or Emergency Officer**

A. A person commits the offense of giving false reports to a law enforcement, fire or emergency officer by intentionally:

1. giving false information with the purpose to implicate another; or
2. reporting to an incident knowing that the alleged offense or incident did not occur.

B. False reports to law enforcement, fire or emergency officer is a Class B offense.

The second and any subsequent conviction is a Class A offense.

### **7.9.16 Impersonation of Public Servant**

A. A person commits the offense of impersonating a public servant if the person falsely pretends to hold a position in the public service with the purpose to induce another individual to submit to the pretended official authority or otherwise to act in reliance upon that pretense to the individual's prejudice.

B. Impersonating a public servant is a Class B offense, except that impersonating a law enforcement officer is a Class A offense. [Ord. DOI-012 (2020)]

### **7.9.17 Obstructing Justice**

A. A person commits the offense of obstructing justice if the person knowingly:

1. harbors or conceals an offender;

2. warns an offender of impending discovery or arrest, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

3. provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or arrest;

4. prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or arrest of an offender;

5. suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or arrest of an offender;

6. aids an offender who is subject to official detention to escape from official detention; or

7. produces, transfers, or possesses a false identification document with intent to deceive as to his/her real identity.

B. For the purpose of this Section, an offender means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

C. False identification document means a document of a type intended or commonly



## **DRAFT- FOR PUBLIC COMMENT ONLY**

accepted for the purposes of identification of individuals that

1. is not issued by or under the authority of a governmental entity; or
2. was issued by or under the authority of a governmental entity but was subsequently altered for purposes of deceit; or
3. was issued by or under the authority of a governmental entity but contains identifying information belonging to a person other than the person producing, transferring or possessing the document.

D. Conviction under this section is a Class A offense.

### **7.9.18 Public Health Offense [Ord. DOI-012 (2020)]**

- A. A person is guilty of a public health offense if he/she:
1. Violates any rules or regulations enforced by the Department of Public Health, or United States Public Health Service Division of Indian Health, as adopted by Tribal Council ordinances, or any Indian group, organization, or committee for tribal celebrations or gatherings or
  2. Violates any Tribal Council ordinances or resolution prohibiting or requiring conduct pertaining to public health and/or the health, safety and welfare of Tribal members and other residents living within the

exterior boundaries of the Northern Cheyenne Reservation.

- B. Public health offense is a Class B offense.
- C. The Court has discretion to take any action deemed necessary under the circumstances to safeguard the health or well-being of any community, family, person or property to remedy a sanitation offense.

### **7.9.19 Retaliation for Past Official Action**

- A. A person commits retaliation for past official action if he/she harms any person by any unlawful act in retaliation for anything done lawfully by another person in his/her capacity as a public official.
- B. Retaliation for past official action is a Class B offense.

### **7.9.20 Official Misconduct**

- A. A person commits official misconduct if:
1. Being a public official, and with intent to benefit himself or herself or another person or harm another person, knowingly commits an unauthorized act which purports to be an act of his/her office, or knowingly refrains from performing a nondiscretionary duty imposed on him/her by law or clearly inherent in the nature of his/her office; or
  2. Being a public official and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his/her office or from another public servant., which

**DRAFT- FOR PUBLIC COMMENT ONLY**

information has not been made public, he/she:

- a. Acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or
- b. Speculates or wagers on the basis of such action or information; or
- c. knowingly aids another to do any of the foregoing.

B. Official misconduct is a Class B offense.

**CHAPTER 10. TRAFFIC OFFENSES**

**SECTIONS**

7.10.1 Purpose ..... 58  
7.10.2 Jurisdiction ..... 58  
7.10.3 Definitions ..... 59  
7.10.4 Traffic Violations Procedures ..... 60  
7.10.5 Safety Belt Required ..... 60  
7.10.6 Speeding Prohibited ..... 61  
7.10.7 Use of Radar – Evidence Admissible ..... 62  
7.10.8 Arrest Without a Warrant in Radar Cases ..... 62  
7.10.9 Erection of Signs ..... 62  
7.10.10 Driving While Under the Influence of Alcohol or Controlled Substance..... 62  
7.10.11 Reckless Driving..... 63  
7.10.12 Aggravated Reckless Driving ..... 63  
7.10.13 Failure to Yield to an Emergency Vehicle ..... 63  
7.10.14 Failure to Stop for School Bus..... 63  
7.10.15 Unlawful Operation by Minor ..... 64  
7.10.16 Injury to or Removal of Sign Marker..... 64  
7.10.17 Abandonment of Motor Vehicle .. 64

7.10.18 Accident Involving Damage to Vehicle ..... 66  
7.10.19 Duty in the Event of an Accident. 66  
7.10.20 Accident Reports to the Police..... 67  
7.10.21 Leaving the Scene of an Accident 67  
7.10.22 Disposition of Fines and Forfeitures..... 67

**7.10.1 Purpose**

The purpose of the Northern Cheyenne Traffic Code is to implement safeguards for persons living within and passing through the Northern Cheyenne Reservation while driving any motorized vehicle. This Chapter will give authority and responsibility to the law enforcement agencies recognized by the Northern Cheyenne Tribe and Reservation to enforce the Northern Cheyenne traffic offenses in this Chapter.

**7.10.2 Jurisdiction**

A. Law enforcement authorities on the Reservation recognized by the Northern Cheyenne Tribal Council are authorized to enforce this Chapter. Federal officials, including the United States Department of Justice and Department of the Interior are hereby authorized to enforce this Chapter.

B. Police officers may make reasonable inspection of vehicle registration receipts and other documents required to be carried in or for a vehicle traveling on the public highways and other public roads of Montana and through the Northern Cheyenne Reservation.

C. Whenever any police officer finds a vehicle standing upon a highway in violation of any of the traffic laws of the Northern Cheyenne Tribal Council, such officer or highway patrolman is hereby authorized to

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move such vehicle or require the driver or other person in charge of the vehicle to move the same to a position off the paved or main-traveled part of such highway.

### **7.10.3 Definitions**

A. ATV means a motorized off-highway vehicle including but not limited to four-wheelers, e-bikes, and dirt bikes.

B. Controlled substance means a substance classified as belonging to Schedules I, II, or III of the Federal Controlled Substance Act 21 USC § 801 et seq. including preparations thereof being sold, transferred or otherwise furnished for physiological and psychoactive effects, which are chemically equivalent or identical with any of the substances referred to above.

C. *Driver* shall mean every person who drives or is in actual physical control of a vehicle.

D. Emergency response vehicle means any ambulance, fire department, law enforcement or civil defense vehicle or other vehicle used primarily for emergency purposes.

E. *Highway* shall mean the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for the purpose of vehicular travel.

F. *Intersection* shall mean the area embraced within the prolongation or connection of the lateral curb lines or if non-curbed then the lateral boundary lines of the roadways of two highways which join one another at or approximately at right angles or the area within which vehicles traveling upon

different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty (30) feet or more apart, then crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty (30) feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

G. *Motor Vehicle* shall mean every vehicle propelled by its own power and designed primarily to transport persons or property upon Federal, State and Tribal highways.

H. *Motorcycle* shall mean a motor vehicle having not more than three wheels in contact with the ground.

I. *Official traffic control devices* shall mean all signs, signals, markings and devices not inconsistent with this title, placed or erected by the authority of the Northern Cheyenne Tribal Council or official having jurisdiction, for the purposes of regulating, warning or guiding traffic.

J. *Operator* shall mean a person who is in actual physical control of a motor vehicle.

K. *Owner* shall mean the person who holds the legal title to a vehicle.

L. *Pedestrian* shall mean every person or any person afoot.

M. Police Department means the law enforcement agency authorized by the Northern Cheyenne Tribal Council to provide

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## DRAFT- FOR PUBLIC COMMENT ONLY

primary law enforcement/patrol services to the Reservation.

N. *Police Officer or Law Enforcement Officer* shall mean every law enforcement officer authorized by the Northern Cheyenne Tribe to enforce this Chapter.

O. *Registration* shall mean a registration certificate and registration plates issued under the laws of a state or tribe pertaining to the registration of motor vehicles.

P. *Roadway means any highway, road, alley, lane, or other public or private place adapted and fitted for public travel that is in common use by the public.*

Q. *Right-of-way* shall mean the privilege of the immediate use of the roadway.

R. *School bus* shall mean every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

S. *Stop* means complete cessation from movement when required.

T. *Street* shall mean the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for the purpose of vehicular travel.

U. *Traffic* means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using any roadways for purposes of travel.

V. *Traffic-control signal* means any device, whether manually, electrically or

mechanically operated, by which traffic is alternately directed to stop and proceed.

W. *Tribe* shall mean the Northern Cheyenne Tribe.

### **7.10.4 Traffic Violations Procedures ~~Duty Upon Making Arrest~~ ~~Power to Fix and Accept Bail.~~**

Officers making an arrest shall deliver to the offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to appear before the Northern Cheyenne Tribal Court. The bonded officer may accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the notice. If the officer accepts bail, he shall give a signed receipt to the offender setting forth the amount received. The officer shall deliver the bail money to the Police Department for deposit into an appropriate account. The bail/bond monies shall be counted after each officer shift for justification. After filing of the complaint, and appearance of the defendant, the Judge of the Court shall assume jurisdiction and may set further appearance bond.

The Northern Cheyenne Rules of Civil Procedure, Title 4 of this Code, shall apply to such proceedings. The Tribal Court shall construe liberally the applicable Rules as needed to secure a just, speedy and inexpensive determination. No jury trial shall be available for such actions. The Court may adopt via rule additional procedures as needed for the just, speedy and inexpensive disposition of traffic offenses.

### **7.10.5 Safety Belt Required**

## **DRAFT- FOR PUBLIC COMMENT ONLY**

A. Each driver and passenger of a motor vehicle operated upon a highway or street shall wear a properly adjusted and fastened safety belt.

B. This Section does not apply if the motor vehicle being driven is a bus, school bus, taxicab, motorcycle, or other motor vehicle not required to be equipped with safety belts under federal law.

C. Failure to wear a safety belt is a civil offense of the driver of the involved motor vehicle.

D. Failure to wear a safety belt shall be a primary offense and shall, by itself, not be probable or just cause to stop and detain a vehicle.

### **7.10.6 Speeding Prohibited**

A. Every person operating or driving a vehicle of any character on a highway shall drive in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the actual and potential hazards then existing.

B. Where no special hazard exists that requires lower speed for compliance with subsection A, any speed not in excess of the posted speed limit for that area shall be lawful; but, it is illegal for any person to drive at any speed in excess of the posted speed limit for that area.

C. The posted speed limit shall not apply to vehicles when operated with due regard for safety under the direction of law enforcement in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire

departments when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies. This exemption shall not, however, protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

D. Any person who drives a number of miles per hour ("mph") in excess of the maximum speed limit as posted as provided in this section, or at a speed greater than is reasonable and proper under conditions then existing is guilty of speeding and upon conviction thereof shall be sentenced to court costs and a fine associated with the mph over the posted speed limit as follows:

1. 1-10 MPH Over Posted Speed Limit: \$20

2. 11-20 MPH Over Posted Speed Limit: \$40

3. 20-30 MPH Over Posted Speed Limit: \$60

4. Any person who drives a number of miles per hour in excess of the maximum speed limit as posted in a construction zone shall be subject to a doubled fine.

E. Starting one day before the Annual July 4th Pow-wow and ending the day after the Pow-wow of each year, a 35 mph speed limit shall be vigorously enforced by the local authorities and law enforcement on the paved road between Lame Deer and the Northern Cheyenne Pow-wow complex. Violators of this speed limit will be issued a warning for their first violation and shall be fined \$5.00 for each violation thereafter.

## **DRAFT- FOR PUBLIC COMMENT ONLY**

F. A citation procedure shall be utilized by the Police Department so each person who is stopped has the option to pay a bond at the time the Police stop is initially made or they may elect to go to court and appear before the a Judge to await a hearing on the speeding violation.

G. In every charge of a violation of any speed regulation the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven and the speed applicable within the district or at the location.

### **7.10.7 Use of Radar – Evidence Admissible**

The speed of any motor vehicle may be measured by the use of radio microwaves or other electrical device. The results of such measurements shall be accepted as evidence of the speed of such motor vehicle in Tribal Court or other legal proceedings where the speed of the motor vehicle is at issue.

### **7.10.8 Arrest Without a Warrant in Radar Cases**

A. The driver of any such motor vehicle may be arrested without a warrant under this Chapter provided the arresting officer is in uniform or displays his/her badge of authority and has either:

1. Observed the recording of the speed of the vehicle by radio microwaves or other electrical device; or
2. Received, from the officer who has observed the speed of the vehicle recorded by the radio microwaves or other electrical device,

a radio message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded.

B. The arrest without warrant of any such driver must be made immediately after such observation or radio message and as a result of uninterrupted pursuit.

### **7.10.9 Erection of Signs**

A. No operator of a motor vehicle may be arrested or cited for speeding under Section 7.10.6.D. unless signs have been placed at a conspicuous place upon a highway or street or townsite or community within the boundaries of the Northern Cheyenne Reservation.

B. The Police Department shall erect and maintain appropriate signs giving such notice of such use.

### **7.10.10 Driving While Under the Influence of Alcohol or Controlled Substance**

A. A person who is under the influence of alcohol or a controlled substance while driving or in physical control of a motor vehicle to a degree which renders him/her incapable of safely driving, or has an alcohol concentration of 0.08 or more by weight, or any detectable level of a controlled substance in the person's body, is guilty of driving under the influence.

B. In any prosecution for a violation of this Section, the presence of alcohol or a controlled substance may be shown by chemical analysis of the defendant's bodily

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## **DRAFT- FOR PUBLIC COMMENT ONLY**

substances using an intoxilyzer or similar breath alcohol testing device, or a blood or urine test. In addition to the results of chemical analysis, other competent evidence may be introduced on the question of whether the defendant was under the influence of alcohol or a controlled substance.

C. Chemical analysis of a person's blood, breath or urine for the purpose of determining any measured amount or detected presence of alcohol or controlled substance in the person's body shall be administered at the direction of the arresting officer having reasonable grounds to believe that the person was in violation of this Section

D. If the person under arrest refuses upon the request of a police officer to submit to chemical analysis under this Section, such person shall be presumed to be in violation of this Section. This presumption is rebuttable.

E. Driving under the influence is a Class A offense.

### **7.10.11 Reckless Driving**

A. A person is guilty of a reckless driving offense if he/she drives any motorized vehicle in a knowing, willful or wanton disregard for his/her safety or the safety of others or property.

B. Reckless driving is a Class B offense.

### **7.10.12 Aggravated Reckless Driving [Ord. DOI-011(2016)]**

A. A person commits aggravated reckless driving if he/she drives a vehicle in willful or wanton disregard for the safety of

persons or property and causes and/or inflicts injury upon the person of another.

B. Aggravated reckless driving is a Class A offense.

### **7.10.13 Failure to Yield to an Emergency Vehicle**

A. Upon the immediate approach of an emergency response vehicle making an audible or visual signal, the driver of every other vehicle shall immediately yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway or roadway clear of any intersection and shall stop and remain in such position until the emergency response vehicle has passed, except when otherwise directed by a law enforcement officer.

B. All persons in operational control of a motor vehicle upon a highway or roadway shall comply with any lawful order of a Police Officer to bring his motor vehicle to a stop, to drive to the edge or curb of the highway or roadway, or to otherwise alter or control the movement or position of his motor vehicle.

C. Failure to yield to an emergency vehicle is a Class B offense.

### **7.10.14 ~~Passing a~~ Failure to Stop for School Bus**

A. Every driver of a motor vehicle, approaching from whatever direction, shall stop before reaching a school bus with its flashing red lights and stop sign extended and which is either loading or unloading school children.

## **DRAFT- FOR PUBLIC COMMENT ONLY**

B. Failure to stop for a school bus is punishable as follows:

1. A fine of not less than \$200.00 but not more than \$1,000.00 and up to 6 months' imprisonment, and
2. Impoundment of the motor vehicle used in committing the offense under this Section until all imposed fines and towing charges are paid.

### **7.10.15 Unlawful Operation by Minor**

A. If a minor is found to have violated any provision of this Chapter, the Court may:

B. Impose a fine not to exceed \$50.00;

C. ~~Revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court~~ Issue an order prohibiting the minor from operating any motor vehicle for a fixed period of time; and

D. Order any motor vehicle owned or operated by such minor to be impounded by the Tribe for such time, not exceeding 60 days, as shall be fixed by the Court. However, if the Court finds that the operation of such motor vehicle was without the vehicle owner's consent, then such vehicle shall not be impounded.

E. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child shall be impounded until the fine shall be paid, or may order that the minor's driving privileges be suspended until payment of said fine; but no child shall be committed to or held in any detention

facility or jail by reason of nonpayment of such fine.

### **7.10.16 Injury to or Removal of Sign Marker**

A. No person shall, without lawful authority, attempt to or in fact alter, deface, injure knock down or remove any official traffic-control device or signal or any inscription, shield or signals thereon or any part thereof.

B. Violation of this section is a Class C offense

### **7.10.17 Abandonment of Motor Vehicle**

A. Any motor vehicle which is

1. left for a period of 48 hours or more on a highway within the Northern Cheyenne Reservation, or

2. for a period of 5 consecutive days or more on

a. any town or community street on the Reservation;

b. private property, without the consent of the owner; or

c. any property owned or leased by the Northern Cheyenne Tribe,

shall be considered abandoned and subject to removal by local authorities.

B. The Northern Cheyenne Police Department or other law enforcement agency recognized by the Tribal Council may use its own equipment or personnel and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and



## **DRAFT- FOR PUBLIC COMMENT ONLY**

facilities for those purposes. The cost of removal and preservation is to be made up by the registered owner before release of such vehicle, or the vehicle may be sold at a sale so designated by the Chief of Police.

1. At the request of the owner in lawful possession or control of the private property, the Chief of Police may remove the vehicle and hold it. The vehicle is not to be released until storage costs are paid at the rate of \$2.00 per day plus any other charges against it.

2. All vehicles so removed must be held in a secured lot or garage not open to the general public so as to preserve the vehicle in approximately the same condition it was in when removed.

C. *Notice to Owner.* Upon removal of any abandoned vehicle, law enforcement officials shall inspect an abandoned vehicle for evidence of ownership, and shall make a reasonable effort to learn or determine its ownership and any liens of record.

1. If the name and address of the owner and/or lien holder of the vehicle are ascertained, the officer shall notify the owner and/or lien holder by certified or registered mail of the impoundment and location of the vehicle.

2. If the name and address of the owner and/or lien holder cannot be ascertained, notice shall be posted at the Little Wolf Tribal building, or a newspaper of general circulation in the county in which the vehicle was

abandoned, which notice may contain multiple listings. The notice shall specify that the owner or lien holder may redeem the vehicle upon presenting satisfactory proof of ownership or right to possession, and payment of the civil penalty and expenses of removing and storing the vehicle as provided in subsection F not more than 30 days after the date of notice; otherwise the vehicle will be sold in accordance with the provisions of this Chapter.

D. *Reclaiming the Vehicle.* The owner, lienholder or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the Chief of Police satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation and custody of the vehicle. He shall not be required to pay storage charges for a period longer than ninety (90) days.

E. *Sale of Vehicle Not Reclaimed.* If the vehicle is not redeemed within 30 days after the date of notice as provided in subsection C, the vehicle may be sold or otherwise disposed of by the Police Department at public auction.

1. When any vehicle is sold, the Police Department's representative shall execute a certificate of sale in duplicate, deliver an original copy to the purchaser and retain the copy. The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle and

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a stipulation that no warranty is made as to the condition or title of the vehicle.

2. After any vehicle has been sold, the former owner or person entitled to possession has no further claim, right, title or interest in or to the vehicle.

F. *Penalty.* Any person who unlawfully abandons a motor vehicle; or owns a motor vehicle that is abandoned unlawfully, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25.00 or more than \$300.00 or by imprisonment for not less than 5 days or more than 90 days or by both fine and imprisonment, and shall be charged with the expenses of moving and storing the vehicle.

G. *Transmitting Return of Sale and Balance of Proceeds.* When any vehicle is sold as provided in subsection E, the Police Department shall transmit to the Northern Cheyenne Tribal Treasurer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

With the return of the sale, the Police Department shall transmit to the Northern Cheyenne Tribal Treasurer the balance of the proceeds of the sale after deducting the costs of the custody of the vehicle.

Upon receipt of the return of sale and such balance the Northern Cheyenne Tribal Treasurer shall keep a record of the receipt

and deposit the balance ~~in the police budget~~ in the Tribe's law enforcement fund.

### **7.10.18 Accident Involving Damage to Vehicle**

A. The driver of any motor vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to and in every event shall remain at the scene of such accident. Every stop shall be made without obstructing traffic more than is necessary.

B. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor and shall be punished by a fine upon conviction of \$20.00.

### **7.10.19 Duty in the Event of an Accident**

A. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to and in every event shall remain at the scene of such accident. Every stop shall be made without obstructing traffic more than is necessary.

B. Any person failing to stop or comply with subsection A shall be fined \$20.00.

C. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driver or attended by any person shall give his name, address and the registration number of

**Commented [BB16]:** Was 7-11-10-1 Accident Involving Damage to Vehicle

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the vehicle he/she is driving and upon request and if available exhibit his operator's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangement for the carrying, or the making of arrangements for the carrying of such persons to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary if such carrying is requested by the injured person.

D. Any person failing to stop or comply with subsection C may be fined \$20.00.

E. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements above. Every such stop shall be made without obstructing traffic more than is necessary.

F. Any person failing to stop or comply with the requirements of subsection E may be punished by imprisonment for not less than 30 days or more than 6 months or by a fine of not less than \$100.00 or more than \$500.00, or both.

### **7.10.20 Accident Reports to the Police**

A. The persons involved in an accident shall report such accident or accidents to the Northern Cheyenne Police or other law enforcement agencies having such

jurisdiction on the Northern Cheyenne Reservation.

B. A person failing to report as required above may be fined in an amount up to \$50.00 dollars or imprisoned for a period not to exceed ninety (90) days, or both.

### **7.10.21 Leaving the Scene of an Accident**

Any person involved in an accident or who witnessed an accident and who leaves such accident without reporting the said accident to the police may be fined not less than \$300.00 or imprisoned for a period of not less than ninety (90) days or both.

### **7.10.22 Disposition of Fines and Forfeitures**

A. All fines and forfeitures collected in the Court from persons apprehended or arrested by police officers for violations of the laws and regulations relating to the use of State and Tribal highways on the Northern Cheyenne Reservation and the operation of vehicles thereon must be deposited in the appropriate account. A separate account shall be established for traffic fines and forfeitures.

B. At the time of payment of any such fine or forfeitures, there shall be filed with the Clerk of the Court and the Northern Cheyenne Tribal Treasurer, a complete statement showing the total of the fines and forfeitures received or incurred, which statement shall give the title of the Court and cause and be subscribed to by the person or officer making payments.

C. Traffic fines and forfeitures shall be used in the purchase of docket books, printing of citation books for officers, receipt

**Commented [BB17]:** Was 7-11-10-2 Duty to Give Information and Render Aid.

**Commented [BB18]:** Was 7-11-10-3 Accidents Involving Death or Personal Injuries.

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books and the maintenance of police vehicles  
(gas, vehicle repairs, tune-ups, oil change).

