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Chapter 1. General Provisions

Subchapter A. General Provisions

Sec. 101. Reserved.

Sec. 102. 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 thereto.

Sec. 103. States of Mind.

(a) "intentional". 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) "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.

(c) "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.

Sec. 104. Burden of proof.

(a) The Tribes have the burden of proving each element of an offense beyond a reasonable doubt.

(b) Whenever the defendant introduces sufficient evidence of a defense to support a reasonable belief as to the existence of that defense, the Tribes have the burden of disproving such defense beyond a reasonable doubt, unless this Code or another ordinance expressly requires the defendant to prove the defense by a preponderance of evidence.

Sec. 105-109. Reserved

Subchapter B. Defenses

Sec. 110. 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 the age of twelve (12) 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 twelve (12) years of age. When criminality depends on the child's being below a critical age other than twelve (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.

Sec. 111. Intoxication.

(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, in itself, constitute a mental disease or defect within the meaning of Section 112.

Sec. 112. 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, he/she 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.

Sec. 113. Self-defense.

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

(b) A person is not justified in using 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; but clearly excessive force on the part of the public servant may be resisted.

(c) A person is not justified in using force if the conduct of the person against whom force is used was provoked by the defendant himself/herself with the intent to cause physical injury to that other person.

Sec. 114. Defense of others.

The use of force in order to defend a third person is a defense if:

(a) the defendant reasonably believes that the person whom he/she seeks to protect would be justified in using such protective force; and

(b) the defendant has not, by provocation or otherwise, forfeited the right of self-defense; and

(c) the defendant reasonably believes that intervention is necessary for the protection of such other person.

Sec. 115. 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.

Sec. 116. 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 himself/herself or another person against death, serious bodily harm, kidnaping, a sexual act as defined in Section 220 compelled by force or threat, or to prevent or terminate the commission or attempted commission of arson.

Subchapter C. Inchoate Offenses

Sec. 120. 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; or

(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.

Sec. 121. Attempts.

(a) A person is guilty of an attempt to commit a crime who intentionally 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 Section 120(a) (2) 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.

Chapter 2. Crimes Against Persons

Subchapter A. Homicide and related offenses

Sec. 201. Murder.

Whoever intentionally causes the death of another human being is guilty of murder.

Murder is a felony.

Sec. 202. Manslaughter.

A person who recklessly causes the death of another human being is guilty of manslaughter. Manslaughter is a felony.

Sec. 203. Negligent homicide.

A person who negligently causes the death of another human being is guilty of negligent homicide. Negligent homicide is a felony.

Sec. 204. Causing or aiding suicide.

A person who intentionally causes another person to commit or attempt to commit suicide by force, duress or deception, or aids or solicits another to commit or attempt to commit suicide, is guilty of causing or aiding suicide. Causing or aiding suicide is a Class A misdemeanor.

Subchapter B. Kidnaping and Related Offenses

Sec. 210. Kidnaping.

(1) Any person who by force, threat or deception:

(a) 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

(b) confines another for a significant period against his/her will is guilty of kidnaping. Where the victim is twelve (12) years of age or less, it shall be presumed that the removal or confinement was against the victim's will.

(2) 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 kidnaping. In determining whether a period of time is significant for purposes of this subsection, the Court must evaluate the surrounding facts and circumstances, including but not limited to 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 significant. Kidnaping is a felony.

(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86.)

Sec. 211. Harboring a child.

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 is guilty of 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.

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

Sec. 212. False imprisonment.

A person who intentionally makes or causes the unlawful arrest, imprisonment or detention of another person is guilty of false imprisonment if the defendant knows or reasonably should have known that the arrest, imprisonment or detention is without lawful authority.

False imprisonment is a Class A misdemeanor.

Subchapter C. Sexual Offenses

Sec. 220. Rape.

A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of rape if:

(a) 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; or

(b) the defendant or someone else, with the defendant's knowledge, has substantially impaired the other person's power to appraise or control that person's conduct by administering or employing, without the other person's knowledge, intoxicants, drugs or another similar substance with intent to prevent resistance; or

(c) the other person is unconscious; or

(d) the defendant knows that the other person submits because the other person falsely supposes the defendant to be someone else, unless the defendant is the spouse of the other person; or

(e) the other person is under twelve (12) years of age; or

(f) the defendant knows that the other person suffers from a mental disease or defect which renders that person incapable of understanding the nature of his/her conduct, unless the defendant is the spouse of the other person; or

(g) 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.

"Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or the mouth and the anus, or contact between any foreign instrument held or controlled by the offender and the vulva or the anus of the victim. For the purposes of this Code, sexual contact between the penis or a foreign instrument and the vulva, or between the penis and the mouth, or between the penis or a foreign instrument and the anus, occurs upon penetration, however slight. Emission is not required. Rape is a felony.

(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86.)

Sec. 221. Statutory rape.

A person eighteen (18) years of age or over who engages in a sexual act (as defined in Section 220) with another person who is between the ages of twelve (12) and fifteen (15) years, inclusive, is guilty of statutory rape.

Statutory rape is a Class A misdemeanor.

Sec. 222. Indecent exposure.

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

Indecent exposure is a Class B misdemeanor, except that second and subsequent offenses shall be a Class A misdemeanor.

Sec. 223. Prostitution and patronizing a prostitute.

A person who:

(a) is an inmate of a house of prostitution, manages a house of prostitution, or is otherwise engaged in sexual activity as a business; or

(b) solicits another person to hire a prostitute or commit an act of prostitution; or

(c) loiters in view of any public place with the intent of being hired to engage in sexual activity; or

(d) hires a prostitute to engage in sexual activity or enters or remains in a house of prostitution with intent to engage in sexual activity is guilty of prostitution or patronizing a prostitute.

"Sexual activity" means sexual act or sexual contact as those terms are defined in Section 220 and 226.

Prostitution or patronizing a prostitute is a Class B misdemeanor, unless the prostitute is less than seventeen (17) year of age, in which case it is a felony.

Sec. 224. Stalking.

A. A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

1. following the stalked person; or
2. harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or by other action, devise or method.

B. Stalking is a Class A misdemeanor. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned for a term of not less than three months, or fined an amount not to exceed \$500, or both. 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 violation of this section, an order may be granted restraining a person from engaging in the activity described in subsection A.

D. For the purpose of determining the number of convictions under this section "conviction" means:

1. a judgement of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury, or by a court of competent jurisdiction authorized to try the case without a jury;

2. a conviction in another jurisdiction for a violation of a statute similar to this section; or

3. a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this jurisdiction or another jurisdiction for violation of a statute similar to this section, which forfeiture has not been vacated.

E. 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 purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.

(AMENDED AS PER RESOLUTION NO. 2303-94-11, DATED NOVEMBER 21, 1994.)

Sec. 225. Adultery.

A person who engages in a sexual act as defined in Section 220 with another person, either of whom is married to a third person, is guilty of adultery.

No prosecution shall be instituted under this Section except on the complaint of the spouse of an alleged offender, and the prosecution shall not be commenced later than one (1) year from commission of the offense.

Adultery is a Class B misdemeanor.

Sec. 226. Sexual assault.

A person who intentionally has sexual contact with another, or who causes such other person to have sexual contact with the defendant, is guilty of sexual assault if:

- (a) 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; or

- (b) the other person is under sixteen (16) years of age; or

- (c) 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.

"Sexual contact" means any intentional touching of the sexual or other intimate parts of the person, whether clothed or unclothed, with no valid medical purpose.

Sexual assault is a Class A misdemeanor.

(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86. AND RESOLUTION NO. 1540-2007-4, DATED 04/09/07)

Sec. 227. Aggravated sexual assault of a child.

Any person who commits sexual assault as defined in Section 226 of this Title where the victim is under eighteen (18) years of age and where any one of the following additional factors is present:

- (a) the victim is under sixteen (16) years of age;
- (b) the offender is the natural or adoptive parent, grandparent, sibling, aunt, or uncle of the victim;
- (c) the offender has temporary or permanent care, custody, control, or supervision over the victim;
- (d) there were repeated assaults over a period of time;
- (e) force or threats were employed during the assault is guilty of aggravated sexual assault of a child.

Aggravated sexual assault of a child is a felony.

(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86 AND RESOLUTION NO. 1541-2007-4 DATED 04/09/07.)

Sec. 228. Sexual exploitation of a child.

Any person who allows, encourages, or forces a child to:

- (a) Solicit for or engage in prostitution; or
- (b) engage in filming, photographing, videotaping, posing, modeling, or performing before a live audience, where such acts involve exhibition of the child's genitals or any sexual act or contact with the child as defined in Sections 220 and 226 of this Title, and any person who engages in the distribution of such films, photographs, or videotapes, is guilty of sexual exploitation of a child.

Sexual exploitation of a child is a felony.

(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86.)

Sec. 229. Registration of Sexual Offenders.

(a)(1) A person convicted in the Fort Peck Court for offenses of any of Sections 220, 221, 222, 226, 227, and/or 228 shall be required to notify within ten days the Fort Peck Tribe police of their residential address, whether upon their conviction and release from Court, or as a condition for release from the tribal jail, and regardless of whether released on probation or for having finished their jail sentence. The requirement of registration with the Fort Peck Tribal Police shall endure for the remainder of his/her life, or until ceasing to live within the exterior boundaries of the Fort Peck Indian Reservation. Failure to register shall be convicted as a felony, punishable as per VII CCOJ 501(1).

(2) Before releasing a sexual offender from custody or confinement the official in charge of such custody or confinement,

(A) shall again notify the sexual offender orally and in writing of the sexual offender's duty to register under this Section; and

(B) shall obtain from the sexual offender and record with the Fort Peck Reservation Police and the law enforcement of Roosevelt, Valley, Daniels, and Phillips Counties the registration

materials appropriate for that offender. The Police of Wolf Point and Poplar shall be notified.

(3) Any conviction under another Tribe's, State, or Federal law the same or reasonably equivalent in substance to VII CCOJ, Sections 220, 221, 222, 226, 227, and/or 228 shall incur the requirement on the sexual offender of the duty to register within ten days of their making residence within the exterior boundaries of the Fort Peck Indian Reservation, and must register with the Fort Peck Tribal Police, or the police of the area of any address changes for the balance of the offender's life.

(A) Additionally, an offender convicted in Federal Court and sentenced to Federal jail shall obtain a risk level rating from a Tribally approved psychologist within forty days of the offender's taking residence within the boundaries of the Fort Peck Indian Reservation, and a reevaluation every six months thereafter in perpetuity, or until a Court finding that the offender need no longer be registered.. The offender shall attend all sessions requested by the psychologist in pursuit of assessing the offender's risk level rating. Refer to Subsection (d) establishing offender's recidivist risk levels. The offender may request financial assistance for this psychological assessment from Tribal health services. When a released Federal offender appears at the Poplar Police Station or mails notice to the Tribal Police of their residence within the Fort Peck Reservation, the Tribal Police shall inform the offender both orally and in writing of the risk level assessment requirement.

(4) Registration requirements:

(A) There shall be a State and Tribal world wide web site containing the registered notices of all current sexual offenders within the boundaries of the Fort Peck Reservation;

(B) There shall be a publicly available binder with the Tribal Police Department Office listing the sexual offenders in their jurisdiction;

(C) The registered notice shall contain a current picture of the offender, state the risk level of that offender, and follow the notice requirements for that risk category as per Subsection (d)(1) through (3) of this Section.

(D) Required restraints. The required post-conviction restraints are the same whether the offender's sentence is complete or the offender is on probation or parole, and are the same whether for a State, Tribal, or Federal conviction. Refer to Subsection (b)(1)(C)(aa) for these required restraints.

(E) A sexual offender residing within the exterior boundaries of the Fort Peck Indian Reservation shall give the Fort Peck Police notice of an intention to move outside the Reservation as soon as the decision to move is made. The Fort Peck Reservation Police, within 3 days after receipt of being informed the convicted sexual offender is moving outside the Fort Peck Reservation, shall forward to law enforcement agencies having jurisdiction over the new address notification of the sexual offender's new address, and shall cooperate in furnishing the appropriate public records.

(b) Fort Peck Tribal Court duties:

(1) Mandatory duties:

(A) Before sentencing, the offender shall obtain a sexual offender evaluation from a Tribally approved psychologist or from a State or Tribal family and child welfare agency for purposes of obtaining a repeat offender risk level assessment. Copies of the assessment shall be filed with the Court and used to determine the restraints and therapies ordered for that offender;

(B) At sentencing, the judge shall orally and by writing inform the offender of the duty to register with Fort Peck Tribal Police in Poplar, as well as the county police for the county in

which the offender intends to reside. The offender shall provide a current picture of him/herself; and

(C) After sentencing, notice of a person's conviction of a sexual offense in Tribal Court, or in any jurisdiction, shall be published in a weekly newspaper of general circulation for four consecutive weeks, and posted at the Tribal Office, Tribal Court, Police Department(s) and in all post offices on or near the reservation. The notice shall contain a picture of the offender accurately reflecting his/her current appearance, and shall state the contents of the appropriate standardized risk level (see Subsection (d)). (aa) Post sentence mandatory restraints and therapy: The Court shall order an offender to undergo a psychological evaluation at least every six months for purposes of updating the recidivist risk level of that offender. For high risk level offenders (Subsection (d)(3)), it is advised a chaperone be assigned in perpetuity.

(2) Elective restraint and therapy orders: The Court may additionally order the convicted offender to comply with any reasonable terms of post-sentence restraints and therapy, including but not limited to any of the following:

(A) Restrictions on employment or occupation, to protect the class of classes of persons that are likely victims of further offenses by the defendant;

(B) Restriction from being physically present on or near schools, playgrounds, day care centers, elderly residential facilities, and other specific locations;

(C) Prohibition against the use of alcoholic beverages and other chemical substances; and being present in business establishments where alcoholic beverages are the chief item of sales;

(D) Requiring the offender to abide by the requirements of a therapy plan with a Tribally approved psychologist, and may order the offender to pay a portion of the costs of such treatment utilizing a means based sliding scale;

(E) Required regular appearances before a regularly convened Tribal Council of Elders who shall witness and hear what the offender is doing to comply with the directed restraints imposed on him/herself, what efforts the offender is taking for employment, education, and community participation, and what restitutionary measures to the offender's victims the offender is or has done.

(F) To maintain a chaperone with the duties enumerated in Subsection (e) of this Section.

(c) Alterations of registration term:

(1) Reduction: Although the default duration for offenders' registration periods shall be the remainder of the offender's life, the duration may be limited by the positive progress of the offender, as measured by all the evaluators for that particular offender as evidenced by affidavit and/or testimony.

The offender must petition the Fort Peck Court for a reduction of the registration requirement's duration.

(A) The Court in the first five years shall not reduce the registration period below two years. From the fifth to the tenth years, the Court shall not reduce the registration period below a total of five years. Once ten years of registration have passed without additional sexual offenses, the Court may reduce the registration by any amount.

(B) The offender must demonstrate in the hearing that he/she is no longer a sexual threat to anyone, and can be trusted in the absence of the supervisory registration placed on him/her to never commit a sexual offense again. There shall be the complete absence of credible

evidence introduced to the contrary in order for the offender to be eligible for a reduction in registration period.

(2) Enhancement: An offender who has not had a reduction of the registration period and reoffends shall, in addition to the sentence specific to that sexual offense, also receive an elevated risk level and an increased mandatory contracted psychological therapy requirement. A re-offending offender who has had a reduced registration period shall revert to a lifetime registration requirement, with no opportunity for reduction, as well as the above increased requirements. The Court may at its discretion order an increase to the chaperone period.

(d) Standardized recidivist risk levels of offenders. A risk level describing the probability that individual has of continuing sexually offensive behaviors shall be made either before sentencing in the Fort Peck Tribal Court, or within forty days of a federal offender's arrival within the boundaries of the Fort Peck Reservation. The risk assessment shall be used to determine any elective restraints the Tribal Court may impose on the offender. The amount of information that can be released about an offender depends on the risk level assigned to that person. Under no circumstances shall the names of victims be released; documents must be reformed to eliminate personal victim information.

(1) A low risk individual may not need a multi-year chaperone assigned to him/her and is not likely to re-offend; however, a six month initial period of chaperone requirement is strongly recommended for purposes of ensuring the offender complies with therapy and restraint requirements and helping to find employment for the offender. A low level of risk of repeat offenses shall require that only basic status information is registered with the police and available to the public: their name, residential address, and the title of the Section/ Statute offended which necessitated the person having to register.

(2) A medium risk individual may re-offend and may merit assigning a chaperone to the offender for a number of years. A medium level of risk of repeat offenses shall require the basic information as above to be available to the public, plus disclosure of any substance dependency documentation, indications of the offender's violent tendencies, any additional restraints placed on the offender, and the names of the offender's chaperone and probation officer.

(3) A high risk individual is advised to be assigned a chaperone indefinitely, with the assignment appealable by hearing with the Fort Peck Tribal Court. A high level of risk of repeat offenses shall require registration and availability to the public of everything listed for a medium level of risk, plus progress comments from the offender's probation officer and/or psychological sessions, and a list of all past residences from the past ten years.

(e) Chaperones. An upstanding member of the community or family of the offender may serve as a chaperone. A chaperone shall live with the offender and must ensure that:

(1) The offender complies with all therapy, restraint, and registration requirements.

(2) The offender is never left alone around a Minor or a person having the characteristics of the victim(s) of the offender. The chaperone shall quickly remove an offender who receives physical contact from a potential victim.

(3) The offender shall not enter alone secluded rooms or places where potential victims may be present. This includes portions of the offender's residence, outdoor places that are blocked from plain view, public bathrooms, and any other place where potential victims could or are found to be present.

(4) Whenever the offender is in the presence of people having characteristics of potential

victims, the chaperone shall be particularly attentive to the offender's actions and location.

(5) Chaperone should encourage the offender to take the personal responsibility to remove him/herself from situations that produce the temptation to re-offend.

(6) Chaperone shall remove the offender from situations in which the chaperone can see the offender is beginning or is engaged in inappropriate behavior. The chaperone shall call for an arrest of the offender where the situation is of a seriousness to justify arrest.

(7) Chaperone shall keep therapists, probation officer, and other supervisors of the offender informed of the continuing behavior of the offender: whether the offender is making effort to reform and use self control, is apathetic/ambivalent to therapy efforts, or is actively showing signs of recidivism.

(f) Definitions:

(1) "Sexual offender" or "offender" as used in this Section means a person convicted of a sexual offense.

(2) "Sexual Offense" means any violation of VII CCOJ, Sections 220, 221, 222, 226, 227, or 228, unless the act occurred between two consenting persons 16 years of age or older.

(AMENDED AS PER RESOLUTION NO. 1062-92-6, DATED JUNE 8, 1992, AS PER RESOLUTION NO. 1180-94-5, DATED MAY 23, 1994, AND AS PER RESOLUTION NO.821-2002- 8, DATED AUGUST 12, 2002.)

Subchapter D. Assault and Related Offenses

Sec. 230. Aggravated assault.

Whoever;

(a) intentionally causes serious bodily injury to another; or

(b) intentionally causes bodily injury to another with a deadly weapon; or

(c) recklessly causes serious bodily injury to another under circumstances

manifesting indifference to the value of human life is guilty of aggravated assault. Aggravated assault is a felony.

Sec. 231. Simple assault.

A person who

(a) intentionally causes bodily injury to another; or

(b) recklessly or negligently causes bodily injury to another with a deadly weapon;

or

(c) attempts by physical menace to put another in fear of serious bodily harm, or

by physical menace causes another to harm himself/herself is guilty of an assault. Simple assault is a Class A misdemeanor.

(AMENDED AS PER RESOLUTION NO. 1444-96-8, DATED 08/26/96.)

Sec. 232. 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:

(1) A law enforcement officer, a staff person of a correctional or detention facility, or a health care provider, including a health care provider performing

emergency services, while the health care provider is acting in the course and scope of the health care provider's profession and occupation:

- (A) during or after an arrest for a criminal offense;
- (B) while the person is incarcerated in or being transported to or from a jail or detention facility, or health care facility; or
- (C) 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; or

(2) An emergency responder.

(b) A person convicted under this section shall be guilty of a Class A misdemeanor, punishable pursuant to VII CCOJ 501(2).

(c) As used in this section, the following definitions apply:

(1) "Bodily fluid" means any bodily secretion, including but not limited to 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.

Subchapter E. Crimes Against the Family

Sec. 240. Abuse of a child.

Any person having the responsibility for the care and welfare of a child under eighteen (18) years of age who engages in the abuse of that child or fails to make reasonable efforts to prevent the infliction of abuse by another of that child shall be guilty of abuse of a child. An abused child is a child who has suffered or is likely in the immediate future to suffer physical and/or emotional harm as a result of any person inflicting or failing to make reasonable efforts to prevent the infliction of physical and/or emotional injury upon a child, including excessive corporal punishment or act of sexual abuse or molestation.

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

(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86 AND AS PER RESOLUTION NO. 1566-88-11, DATED 11/10/88.)

Sec. 241. Neglect of a child.

Any person having the responsibility for the care and welfare of a child under eighteen (18) years of age who neglects that child as defined in Title IX, Section 102(d) of this Code shall be guilty of neglect of a child.

Neglect of a child is a Class A misdemeanor for the first offense and a felony for all subsequent offenses.

(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86 AND AS PER RESOLUTION NO. 1567-88-11, DATED 11/10/88.)

Sec. 242. Abandonment of a child.

Any person having the responsibility for the care and welfare of a child under eighteen (18) years of age who abandons that child as defined in Title IX, Section 102(c) of this Code is guilty of abandonment of a child.

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

(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86 AND AS PER RESOLUTION NO. 1568-88-11, DATED 11/10/88.)

Sec. 243. Reserved.

Sec. 244. Severe physical domestic abuse.

Any person who intentionally causes bodily injury of any kind to a family member or household member commits the offense of severe physical domestic abuse, punishable as a felony, as per VII CCOJ 501(1) . By evidence admissible to the Fort Peck Tribal Court, the impact on the victim of domestic abuse of any cuts, bruises, or scrapes, any broken bones, internal hemorrhaging of any kind, or evidence of head and/or brain trauma, shall be considered clear evidence of severe physical domestic abuse. For purposes of this Section, "family member or household member" means a person, any person, residing with the accused, and 'residing' means residence in that domicile of a 24 hour period or more.

(1) The law enforcement officer(s) first arriving to a domestic abuse situation who finds probable cause and/or clear evidence of severe physical domestic abuse must make an arrest. Whenever possible, two or more law enforcement officers shall respond to a domestic abuse call, and if only one officer responds, an explanation in the written report of the incident shall explain why two officers were not present. Those arrested and charged with domestic abuse shall not be released from custody except at arraignment as described in VI CCOJ 402.

(2) All domestic abuse calls shall be reported by law enforcement to the appropriate child and social service public agencies within twelve hours of responding to the call, and standard procedures shall include forwarding of a confidential written report from the responding police officer to the appropriate child and social service public agency within 48 hours.

(3) The law enforcement agents who report to the scene and the social service agents who interview the victim subsequent to and within 72 hours of the violence shall make a written report, and shall photograph the victim if he/she gives written consent. Such evidence shall, unless shown otherwise, be fully admissible to the Fort Peck Tribal Court. Evidence of treatment for such injuries may be used to substantiate their existence, but shall not be the sole criterion.

(4) There shall be no monetary penalty for a conviction of severe physical domestic abuse, and there shall be no jail sentences of less than four months. Any jail sentence less than a full year shall be accompanied by probation for a duration to be determined by the Court. Each incident and each victim for which a defendant is found culpable shall be counted as a separate violation of this Section.

(A) Conviction under this Section for abuse of a pregnant woman, or committing

the offense while Minor children are in the dwelling, shall result in the maximum jail term of one year.

(B) For a defendant with no prior convictions of any form of domestic abuse, the Judge is recommended to require mandatory counseling in any of the following types of programs. The defendant may be ordered to pay a portion of the costs of such treatment utilizing a means based sliding scale. The assistive programs may include but are not limited to:

- * A Tribally approved anger management program, either as a one-on-one series of sessions with a mental health professional or as part of a series of group meetings;

- * A Tribally approved drug and/or alcohol treatment program, either as a one-on-one series of sessions with a mental health professional or as part of a series of group meetings;

- * A series of meetings administered by an appointed probation officer with a career and academic advisor to determine what the defendant can do to enhance and market his/her life and work skills;

- * Meetings administered by an appointed probation officer with a financial advisor to talk about ways to budget income, spend wisely, and plan for future needs.

- * Mandatory attendance to regularly scheduled evening witnessing meetings with Council of Tribal Elders in which the defendant must publicly present what he/she is doing to be a positive member of his/her family and community, so long as such meetings are convened not less often than once a month, and at least ten Elders have committed to be in attendance;

- * Enrollment in a Tribally approved multi-week or multi-month wilderness survival skills and/or outdoor work program.

- * Out-of-Court meetings with a Council of Elders, the victim(s), and the victim(s) family for compensation, reconciliation, and apology purposes.

(C) For a defendant with one or more prior convictions of any form of domestic abuse, the inclusion by the sentencing judge of any form of counseling is permissible but must be based on a factual findings and/or the statements of the defendant to the judge that would leave the judge to believe the individual would garnish benefit and behavioral change from any of such programs.

Sec. 245. Domestic abuse.

A person who attempts by physical menace to put a family member or household member in fear of serious bodily harm, or by physical menace causes another to harm himself/herself, is guilty of domestic abuse. For the purposes of this Section, "family member or household member" means a person residing with the accused, and 'residing' means a residence in that domicile of one 24 hour period or more.

(1) Conviction for domestic abuse shall be punishable as a Class A misdemeanor, as per VII CCOJ 501(2) and specifically to this Section, there shall not be a monetary penalty. Any jail sentence less than three months shall be accompanied by a temporary restraining order that fills the balance of a full three months. Each incident and each victim for which a defendant is found culpable shall be counted as a separate violation of this Section.

(2) All domestic abuse calls shall be reported by law enforcement to the appropriate child and social service public agencies within twelve hours of responding to the call, and standard

procedures shall include forwarding of a confidential written report from the responding police officer to the appropriate child and social service public agency within 48 hours. Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, but he/she does not make an arrest, he/she shall file a written report with the Chief of Police setting forth the reason or reasons for his/her decisions.

(3) The provisions of Section 244(4)(A) through (C) shall apply with equal weight for a conviction of domestic abuse.

(AS PER RESOLUTION NO.821-2002-8, DATED AUGUST 12, 2002.)

Sec. 246. Added punishment for offenses in conjunction with domestic abuse and severe physical domestic abuse.

Any of the following acts for which an abuser is proved by evidence properly admissible to the Fort Peck Tribal Court as having done at or very near to the same time as the abuse upon the family or household member for which the abuser was convicted shall be considered to have committed an additional offense, punishable as a felony, as per VII CCOJ 501(1), and the Court may order jail sentences to run concurrently with the jail sentence incurred by infractions of Sections 244 and 245 of this Title. 'Very near to the same time' shall be defined as within 24 hours of the severe physical domestic abuse or domestic abuse. The acts are, but not limited to:

- (1) Arson;
- (2) Assault Offenses: Aggravated assault, Simple assault, and Intimidation;
- (3) Burglary, or Breaking and entering;
- (4) Destruction of personal or real property, Vandalism;
- (5) Homicide offenses: Murder, Non-negligent manslaughter, Negligent homicide, and Justifiable homicide;
- (6) Kidnaping, Abduction;
- (7) Sex Offenses: Forcible rape, Forcible sodomy, Sexual assault with an object, and Aggravated sexual assault of a child, and Stalking;
- (8) Theft and Conversion of personal property;
- (9) Carrying a concealed dangerous weapon, Unlawful discharge of firearms;
- (10) Abuse of a child, Neglect of a child, and Abandonment of a child;
- (11) Criminal trespass on real property.

(AS PER RESOLUTION NO.821-2002-8, DATED AUGUST 12, 2002.)

Sec. 247. Duties of law enforcement officer to victim of domestic or family violence: notice to victim upon law enforcement's arrival to domestic violence situation .

(a) Whenever a law enforcement officer reports to the scene of an incidence of domestic abuse, if the victim is present, the officer shall advise the victim of the availability of a battered persons/at risk shelter and the other child and family services in the community. Domestic abuse is defined in the first paragraphs of both Sections 244 and 245 of this Title. The law enforcement officer shall give the victim a copy of the following statement:

IF YOU ARE A VICTIM OF DOMESTIC ABUSE OR FEEL UNSAFE IN THIS HOUSE, YOU ARE STRONGLY ENCOURAGED TO REMOVE YOURSELF AND ANY PEOPLE DEPENDENT ON YOU FROM THE SOURCE OF DANGER, OR ELSE BE PERSISTENT IN MAKING SURE THE DANGER IS REMOVED FROM YOUR HOUSE.

YOU MUST NOT ALLOW YOURSELF TO CONTINUE TO BE HARMED. YOU MAY ASK

THE POLICE PERSON WHO GAVE THIS TO YOU TO TAKE YOU AND YOUR DEPENDANTS TO A DOMESTIC VIOLENCE SAFE HOUSE, TO THE FORT PECK CRISIS CENTER, OR THE POLICE STATION.

ALLOWING YOURSELF AND ANY CHILDREN IN YOUR HOME TO CONTINUE BEING NEAR A SOURCE OF PHYSICAL AND EMOTIONAL DAMAGE IS NEGLIGENCE ON YOUR PART, AND IS BASIS FOR LEGAL ACTION TO BE BROUGHT AGAINST YOU BY TRIBAL AND STATE CHILD AND FAMILY PROTECTIVE SERVICES.

If you are a victim of domestic abuse you may ask the tribal prosecutor to file criminal charges against your abuser, but to effectively punish your abuser, you must cooperate with the Tribal Prosecutor by explaining to her/him the facts relevant to the abuse you received in this incident.

You have the right to go to Court and file a petition requesting any of the following civil orders for relief, but you must go to the Wolf Point Tribal Court building to make them happen. Under Chapter 4, Title 8 of the Fort Peck Comprehensive Code of Justice (CCOJ), you can ask for:

(a) A temporary restraining order's (TRO) purpose is to force your abuser from being in your presence, but is only for a maximum of ten days, and can only be enforced if you inform the police when the abuser violates the restraining order, and sign an affidavit which you must ensure the police deliver to the Tribal Court so that your abuser can be arrested. Violation of a temporary restraining order is punishable by jail of up to three months and a \$500 fine, following Title 7 CCOJ Sections 426(b) and 427. While the TRO is in effect, you should keep a copy of its Order with you at all times.

(b) After you have received a temporary restraining order against your abuser, the way to continue the restraint against your abuser after the expiration of the TRO is with a preliminary injunction, as per Title 8, Section 403 CCOJ. A preliminary injunction can order the abuser to avoid contact with you and your family from the time the TRO expires until the abuser goes to trial, and the punishment for violation of the injunction is a jail sentence of up to three months and a \$500 fine, as per Title 7, CCOJ Section 426(b). This is what must happen to create an injunction:

1) At the hearing for creating the TRO, or while the TRO is in force, inform the judge or court clerk you will want an injunction hearing.

2) The Court Clerk for the Tribal Court will mail to you the date for the injunction hearing.

3) You must attend the injunction hearing and present to the Court the reasons why the injunction should be placed against your abuser. Your abuser may appear at this hearing and attempt to avoid having an injunction ordered, or to modify it.

(c) If you have asked the prosecutor to bring charges, the Court Clerk will set a date for the criminal lawsuit against your abuser. You may attend the criminal proceedings against your abuser. The criminal public prosecutor should inform you of pretrial hearing and hearing time and dates, the status of litigation progress, and should accept your input as to whether your abuser could be trusted or deserve a probation, parole, or a reduced, mitigated jail sentence.

Elective Civil Actions. You may file a complaint with the Fort Peck Tribal Court in Wolf Point against your abuser for the tortious battery, if you were physically injured; or assault, if you were threatened and had the impression you were going to be hurt; and for the intentional infliction of emotional distress.

(b) For the temporary or permanent custody of your children, you may file a complaint in

the Wolf Point, Fort Peck Tribal Court Under Section 304 or 304a of Title 10, CCOJ. Section 304 also provides that the Court may order child support payments to be made to the non-custodial parent.

Contacts:

Tribal Crisis Center, 7th and West Cascade: 653-1494

State of Montana Public Health and Human Services, Child and Family Services, 324 Main, Wolf Point: 653-3520

Wolf Point Tribal Court, P.O. Box 1133, Wolf Point, MT 59201: 653-2280

Wolf Point Police non-emergency, 201 4th Ave. S.: 653-1093

Poplar Police non-emergency, 406 2d Ave. W.: 768-3711

Tribal Police non-emergency, 416½ 2 Ave. S., Wolf Point: 653-3556

(b) Law enforcement with jurisdiction in the Fort Peck Reservation are expected to keep updated copies of this notice in their patrol vehicles, and to ensure the phone numbers and addresses are current and up to date.

(c) Law enforcement officers responding to calls alleging domestic or family violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

(1) Confiscating any weapons involved in the alleged violence;

(2) Transporting or arranging transport for the victim and dependents of the victim to a safehouse/shelter, hospital, police station, or a friend or relative's residence.

(3) Assisting the victim and dependents in removing essential personal effects; see also VIII CCOJ 402(7).

(AMENDED AS PER RESOLUTION NO. 1251-88- 9, DATED 09/12/88.)

Sec. 248. Determination by law enforcement officer of primary aggressor and the power to arrest.

(a) If a law enforcement officer has probable cause (defined in VI CCOJ 201(c)) to believe a person has committed an offense of severe physical domestic abuse, as per Section 244 of this Title, whether the offense was committed in or outside the presence of the officer, the law enforcement officer shall presume that arresting and charging the person is the appropriate response.

(b) When a law enforcement officer receives complaint of domestic or family violence from two or more opposing persons of the same residence, the officer shall evaluate the situation to determine who is the primary aggressor. The officer need only arrest the primary aggressor. Factors for determining the primary aggressor include:

(1) Prior complaints of family and domestic abuse from that residence: who made them, what was alleged;

(2) The relative severity of injuries inflicted to the people present;

(3) The likelihood of future injury to each person; and

(4) Whether one of the persons acted in self defense.

(c) The law enforcement officer shall use professional methods at all times, and shall not threaten a person in order to shirk an obligation to make an arrest or to compel an arrest. See VII CCOJ 120(a)(3). An officer shall not base an arrest decision on purely the request of a victim to do so, or on the officer's perception of the willingness of a victim or witness to testify or otherwise participate in a judicial proceeding.

(AS PER RESOLUTION NO.821-2002-8, DATED AUGUST 12, 2002.)

Sec. 249. Judicial solutions to domestic abuse victim's recalcitrant entrapment .

(ELIMINATED PER RESOLUTION NO. 481-2003-11, DATED 11/25/03.)

Sec. 250. Spousal privileges inapplicable in criminal proceedings involving domestic abuse.

(a) The following evidentiary privileges do not necessarily apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving domestic or family violence perpetrated by the other spouse:

- (1) The privilege of confidential communication between spouses.
- (2) The testimonial privilege of spouses.

(b) It shall be an election of the Court to decide if the situation merits suspension of any of such spousal privileges.

(AS PER RESOLUTION NO.821-2002-8, DATED AUGUST 12, 2002.)

Sec. 251 Elder Abuse

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

(b) "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.

(c) "Older person" means a Tribal member or other person residing on the Reservation who is:

- (1) 60 years of age or older;
- (2) determined by the Tribal Court to be an elder; or
- (3) 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.

(d) Elder abuse is a Class A misdemeanor.

(AS PER RESOLUTION NO. 51-2003-11, DATED NOVEMBER 25, 2003.)

Sec. 252-299. Reserved.

Chapter 3. Crimes Against Property

(AMENDED AS PER RESOLUTION NO. 890-96-5, DATED 05/13/96.)

Subchapter A. Arson

Sec. 301. Arson.

A person who starts or maintains a fire or causes an explosion with intent to destroy or damage a building or occupied structure, motor vehicle, field, crop or standing timber of another is guilty of arson.

Arson is a felony.

Sec. 302-309. Reserved.

Subchapter B. Burglary and Related Offenses

Sec. 310. Burglary.

A person who enters a building or occupied structure, or separately secured or occupied

portion thereof, with intent to commit a crime therein is guilty of burglary, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter.

Burglary is a felony.

Sec. 311. Criminal trespass.

Whoever knowing that he/she is not licensed or privileged to do so:

(a) enters or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof; or

(b) enters or remains in any place as to which notice against trespass is given by:

(1) actual communication to the defendant;

(2) posting in a manner reasonably likely to come to the attention of

intruders; or

(3) fencing or other enclosure manifestly designed to exclude intruders; or

(c) intentionally allows livestock to occupy or graze on the lands of another person is guilty of criminal trespass.

Criminal trespass is a Class A misdemeanor if the defendant enters or remains in any building or occupied structure, and otherwise is a Class B misdemeanor.

Sec. 312-319. Reserved.

Subchapter C. Theft and Related Crimes

Sec. 320. Theft.

Whoever:

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

(b) intentionally obtains the property of another by misrepresentation or deception; or

(c) intentionally obtains the property of another by threat; or

(d) receives, retains or disposes of the property of another knowing that it has been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner; or

(e) comes into control of property of another that the defendant knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with intent to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it; or

(f) 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; or

(g) 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

(h) intentionally misbrands or alters any brand or mark on any livestock or another person is guilty of theft.

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, and the like.

Theft is a felony if the amount involved exceeds five hundred dollars (\$500.00). Otherwise, it is a Class A misdemeanor, except that theft by an unemancipated minor of an item or items of less than twenty dollars (\$20.00) in value is a Class B misdemeanor.

Sec. 321. Robbery.

Whoever, in the course of committing or attempting to commit a theft, or while fleeing from the commission or attempted commission of a theft:

- (a) inflicts or attempts to inflict bodily injury upon another; or
- (b) threatens or menaces another with immediate bodily injury is guilty of robbery.

Robbery is a felony.

Sec. 322. Criminal mischief.

Whoever intentionally or recklessly:

- (a) damages intangible property of another; or
- (b) tampers with tangible property of another so as to endanger person or property

is guilty of criminal mischief.

Criminal mischief is a Class A misdemeanor if the defendant intentionally causes pecuniary loss in excess of one hundred dollars (\$100.00). Otherwise, it is a Class B misdemeanor.

Sec. 323. Injury to public property.

Whoever, without proper authority, intentionally, recklessly or negligently:

- (a) uses or injures any Tribal or other public property; or
- (b) causes a substantial interruption or impairment of a public service is guilty of

injury to public property.

Injury to public property is a Class A misdemeanor if the defendant causes pecuniary loss in excess of one hundred dollars (\$100.00); otherwise, it is a Class B misdemeanor.

Sec. 324. Issuing bad checks.

Whoever issues any check, draft or order upon any bank or other depository knowing that there are not sufficient funds in the defendant's account to pay such check, draft or order in full upon presentation is guilty of issuing bad checks.

Issuing bad checks shall be a Class B misdemeanor, except that a third or subsequent offense shall be a Class A misdemeanor.

Sec. 325-329. Reserved.

Subchapter D. Forgery

Sec. 330. Forgery.

Whoever, with intent to deceive or harm the Tribes or any other person

- (a) knowingly and falsely makes, completes, executes, authenticates, issues, transfers or alters any writing; or
- (b) knowingly utters a forged writing is guilty of forgery.

Forgery is a felony if the amount involved exceeds one hundred dollars (\$100.00).

Otherwise, it is a Class A misdemeanor.

Sec. 331-339. Reserved.

Subchapter E. Subsidized Tribal Permits and Leases

Sec. 340. Violation of subsidized tribal permits and leases.

Any lessee of a tribal lease, or any permittee of a tribal permit, who, subleases or assigns, or otherwise transfers, or attempts to sublease, or assign, or otherwise transfer, directly or indirectly, any of the lessee's or permittee's rights or benefits under the lease or permit, shall be guilty of a Class A offense.

(AMENDED AS PER RESOLUTION NO. 890-96-5, DATED 05/13/96.)

Subchapter F. Void Liens

Sec. 350. Void Liens.

Any person who files a lien created by State law, including without limitation agricultural and mechanics liens, against any property of the Tribes or of any Indian, which property is located on the Reservation, shall be guilty of a Class A offense.

(ADOPTED AS PER RESOLUTION NO. 2643-97-4, DATED 04/25/97.)

Chapter 4. Crimes Against the Public Order

Subchapter A. Explosives and Weapons Offenses

Sec. 401. Carrying concealed dangerous weapon.

Whoever carries, concealed about his/her person, any of the following weapons, unless they are carried with specific governmental approval, is guilty of carrying a concealed dangerous weapon:

(a) any blackjack, billy, bludgeon, metal knuckles, or any knife with a blade over four (4) inches long or other sharp or dangerous instrument usually employed in the attack or defense of a person; or

(b) any gun or dangerous firearm, whether loaded or unloaded.

Carrying a concealed weapon is a Class A misdemeanor. In addition to the penalty prescribed for such an offense, any person convicted of carrying a concealed weapon may be ordered by the Fort Peck Tribal Court to forfeit any such weapon to the Tribes.

(AMENDED AS PER RESOLUTION NO. 2275-2005-10, DATED 10/24/05)

Sec. 402. Possession of explosives.

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

Possession of explosives is a Class A misdemeanor. In addition to the penalty prescribed for such an offense, any person convicted of possession of explosives may be ordered by the Fort Peck Tribal Court to forfeit any such explosives to the Tribes.

Sec. 403. Use of dangerous weapons by children.

Whoever is a parent, guardian, or other person having charge or custody of any minor under fifteen (15) years of age, and knowingly allows such child to carry or use in public any

dangerous weapon as defined in Section 401, 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.

Use of a dangerous weapon by children is a Class A misdemeanor. In addition to the penalty prescribed for such an offense, any person convicted of use of a dangerous weapon by children may be ordered by the Fort Peck Tribal Court to forfeit any such weapon to the Tribes.

(AMENDED AS PER RESOLUTION NO. 2276-2005-10, DATED 10/24/05.)

Sec. 404. Unlawful discharge of firearms.

(a) Whoever discharges firearms within five hundred (500) yards of an occupied building or structure, unless the defendant is entitled to possession of the building or structure or authorized to do so by a person entitled to possession, is guilty of unlawful discharge of firearms, with the exception of a police officer in the performance of duty.

(b) Whoever discharges firearms within the limits of a city or town, with the exception of a police officer in the performance of duty, is guilty of unlawful discharge of firearms.

Unlawful discharge of firearms is a Class A misdemeanor. In addition to the penalty prescribed for such an offense, any person convicted of unlawful discharge of firearms may be ordered by the Fort Peck Tribal Court to forfeit any such firearm to the Tribes.

Sec. 405-409. Reserved.

Subchapter B. Alcohol, Drugs and Related Offenses

Sec. 410. Unlawful possession of an open vessel containing an intoxicating beverage in a public place.

(a) A person who possesses in a public place on the Reservation an open vessel containing an intoxicating beverage, or causes or allows to be opened or broken in a public place a vessel containing an intoxicating beverage, or consumes in a public place any portion of an intoxicating beverage contained in such an open vessel, is guilty of unlawful possession of an open vessel of an intoxicating beverage.

(b) For purposes of this Section, 410-A, and 411 of this Title, "intoxicating beverages" shall mean any potable compound that contains more than point five percent (.5%) alcohol.

(c) The term "public place" shall include, but not be limited to, streets, parks, playgrounds, and other unenclosed areas, and schools, stores, and tribal buildings. It shall not include restaurants or other establishments that are permitted by law to serve intoxicating beverages.

(d) Unlawful possession of an intoxicating beverage in a public place is a Class B misdemeanor, punishable pursuant VII CCOJ 501(3).

(e) Conviction of a non-violent Minor offender. Either in the alternative or in addition, the presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

(AMENDED AS PER RESOLUTION NO. 3305-87- 10, DATED 10/12/87, RESOLUTION NO. 2084C-89- 3, DATED 03/13/89 , and RESOLUTION NO. 2646-97-4, DATED 04/25/97.)

Sec. 410-A. Unlawful possession of intoxicating beverages by those younger than

twentyone years of age.

A person who is under the age of twenty-one, and purchases or has in his/her possession any intoxicating beverage, is guilty of unlawful possession of intoxicating beverages.

(1) Unlawful possession of intoxicating beverages by those under the age of twenty-one as a first time offender shall be a Class B misdemeanor, punishable pursuant VII CCOJ 501(3), and a Class A misdemeanor for the second and any subsequent offenses, punishable pursuant VII CCOJ 501(2).

(2) Additionally, any person found in violation of this Section while in physical control of a motor vehicle shall incur the following penalties:

(A) First offense: Drivers's License confiscated by the Court for not less than thirty (30) days and not more than ninety (90) days, and/or a fine of not less than twenty-five dollars (\$25.00).

(B) Second offense: Driver's license confiscated by the Court for not less than sixty (60) days, and not more than one hundred-twenty (120) days, and/or a fine of not less than fifty dollars (\$50.00).

(C) Third offense: Driver's license confiscated by the Court for between ninety (90) and three-hundred-and-sixty-five (365) days, and a mandatory fine of two-hundred-fifty dollars (\$250.00).

(3) Conviction of a non-violent Minor offender. Either in the alternative or in addition, the presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

Sec. 411. Unlawful sales, gifts, deliveries or otherwise furnishing alcoholic beverages to a minor, or a person who is actually, or visibly, or obviously, or apparently intoxicated.

Any person or entity that sells, gives, delivers, or otherwise furnishes or procures an alcoholic beverage to or for a person under twenty-one years of age, or to or for a person who is actually, or visibly, or obviously, or apparently intoxicated is guilty of a Class A misdemeanor, punishable pursuant to VII CCOJ 501(2), and specifically:

(1) A mandatory minimum sentence shall be given for a person offending this section a second time of sixty (60) days in the Fort Peck Tribal Jail, and for a third and thereafter offender of this section, ninety (90) days shall be prescribed in the Fort Peck Tribal Jail.

(2) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

(AMENDED AS PER RESOLUTION NO. 2646-97-4, DATED 04/25/97.)

Sec. 411-A. Prohibition of serving alcohol between two a.m. and 8 a.m. on commercial properties of Fort Peck Tribal trust land.

The serving and consumption of any intoxicating substance between 2 a.m. and 8 a.m. on a commercial premises that is Fort Peck Tribal trust land is prohibited. Infraction of this Section is punishable as a Class B misdemeanor, punishable pursuant VII CCOJ 501(3).

Sec. 412. Unlawful possession or consumption of tobacco by persons under the age of 18 years.

Any person under eighteen (18) years of age, who knowingly possesses or consumes cigarettes, chewing tobacco, or other tobacco products, commits the offense of possession or consumption of tobacco.

(1) A Minor found in violation of this section shall have a mandatory fine of twenty dollars (\$20.00) for the first offense, no less than a forty dollar (\$40.00) fine for the second offense, and no less than one hundred dollars (\$100.00) for the third or subsequent offense.

(2) A Minor on the third or subsequent offense may be adjudicated on a petition alleging the youth to be delinquent youth under the provisions set out in IX CCOJ 102(g), and for any violation of this section the Court may render a disposition under IX CCOJ 306(d), and/or to recommend the youth's participation in the Fort Peck Wellness Court pursuant Section 419 of this Title.

(AMENDED AS PER RESOLUTION NO. 807-98-9, DATED 9/15/98.)

Sec. 412-A. Unlawful sales, gifts, deliveries or otherwise furnishing tobacco to or for a Minor.

Excepting any family member, any person or business that sells, gives, delivers, or otherwise furnishes or procures tobacco in any form to a Minor is guilty of a Class A misdemeanor, punishable pursuant VII CCOJ 501(2), and specifically:

(1) A mandatory minimum sentence shall be given for a person offending this section a second time of twenty (20) days in the Fort Peck Tribal Jail, and for a third and thereafter offender of this section, sixty (60) days shall be prescribed in the Fort Peck Tribal Jail.

(A) 'Family' shall be defined as grandparents, parents, aunts, uncles, first cousins, children, grandchildren, and siblings.

(2) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

Sec. 413. Unlawful sale of dangerous drugs.

(a) Whoever knowingly: sells marijuana; any narcotic drug, including any substance containing opium, coca leaves, cocaine derivatives; any opiate or any substance, compound or derivative thereof; any salt; compound, isomer; derivative; or preparation; including amphetamines and methamphetamine; MDMA (3,4-methylenedioxymethamphetamine; popularly known as ecstasy); ketamine; GHB (gammahydroxybutyrate); Rohypnol (flunitrazepam); and LSD (lysergic acid diethylamide); and other substances as defined in Chapter 13, Title 21 USC 812 and Sections 50-32-221-233 Montana Code Annotated, and preparations thereof being sold for physiological and psychoactive effects, which are chemically equivalent or identical with any of the substances referred to above is guilty of unlawful sale of dangerous drugs.

(b) Unlawful sale of drugs shall be a felony, punishable pursuant VII CCOJ 501(1).

(1) There shall be a mandatory minimum sentence of six (6) months imprisonment and a two thousand, five hundred dollar (\$2,500.00) fine for the first (1st) conviction under this Section for the sale of drugs, and a mandatory minimum sentence of one (1) year imprisonment and a five

thousand dollar (\$5,000.00) fine for the second (2nd) and each subsequent conviction for the sale of dangerous drugs.

(A) As an exception to the above, the presiding Judge may, for Defendants who, by evidence properly admissible in a court of law, demonstrate alcohol and/or drug dependency, and have never before participated in a multi-day drug and/or alcohol treatment program, give the convicted Defendant a reduced sentence in exchange for the written agreement by the Defendant to participate in a Tribally approved drug and/or alcohol treatment program, and to abide by the program's advice once having completed it.

(B) For Defendants who are found to have completed one or more drug and/or alcohol treatment programs as part of an order from a previous offense of this Section or of another jurisdiction's law substantively the same as this Section 413, but have failed to abide by the advice for abstinence or temperance, a reduction of sentence shall only be available upon a strong showing that the offender will benefit from therapy, as testified to by a social worker who can document a pattern of positive behavior modification subsequent to the prior failed therapy. (2) A person who was an adult at the time of sale and who is convicted of unlawful sale of dangerous drugs to a minor shall be sentenced to a mandatory of (1) year imprisonment and a fine of five thousand dollars (\$5,000.) For the first and any subsequent convictions.

(3) Any person convicted under this section of distributing, possessing with intent to distribute, or manufacturing a dangerous drug in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 1000 feet of a public or private youth center, public swimming pool, or video arcade facility, shall be considered to have committed a felony, punishable pursuant VII CCOJ 501(1).

(4) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

(AMENDED AS PER RESOLUTION NO. 2084C-89- 3, DATED 03/13/89.) (AMENDED AS PER RESOLUTION NO. 50-2003-11, DATED 11/25/03.)

Sec. 413-A. Unlawful possession of dangerous drugs.

A person commits the offense of unlawful possession of dangerous drugs if she/he possesses any of the dangerous drugs defined in Section 413(a) of this Title.

(1) A person convicted under this section shall be guilty of a Class A misdemeanor, punishable pursuant VII CCOJ 501(2), and taking into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 413(b)(1)(A) and (B) of this Title.

(2) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

Sec. 413-B. Unlawful possession of dangerous drugs with intent to sell.

(a) Where probable cause, as defined in VI CCOJ 201(c), and law enforcement investigation provide evidence of an intent to sell dangerous drugs, a person commits the offense of unlawful possession of dangerous drugs with intent to sell if she/he possesses any of the dangerous drugs defined in Section 413(a) of this Title.

(b) A person convicted under this section shall be guilty of a felony, punishable pursuant VII CCOJ 501(1), and taking into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 413(b)(1)(A) and (B) of this Title. Additionally there shall:

(1) be a mandatory minimum sentence of six (6) months imprisonment and a fine of two thousand, five hundred dollars (\$2,500.00) for the second and each subsequent conviction.

(2) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

Sec. 414. Unlawful possession of toxic substances.

(a) A person commits the offense of unlawful possession 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) A person convicted under this section shall be guilty of a Class A misdemeanor, punishable pursuant VII CCOJ 501(2) and taking into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 413(b)(1)(A) and (B).

(1) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

(c) Definitions. 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 have potential for abuse and/or toxic effect on the central nervous system.

Sec. 415. Unlawful production or manufacture of dangerous drugs.

(a) A person commits the offense of unlawful production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes the dangerous drugs listed in Section 413(a) of this Title.

(b) Conviction under this Section shall be a felony, punishable pursuant VII CCOJ 501(1), and specifically:

(1) there shall be a mandatory minimum sentence of six (6) months imprisonment and a two thousand, five hundred dollar (\$2,500.00) fine for the first conviction under this Section; and:

(2) a mandatory minimum sentence of one year imprisonment and a fine of five thousand dollars. (\$5,000.00 for the second and each subsequent conviction.

(3) Additionally, the Judge shall take into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 413(b)(1)(A) and (B) of this Title.

(4) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this statute shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

(c) Impact on environment. Conviction by evidence properly admissible in a court of law that containers, byproducts, and precursor chemicals dumped on Fort Peck Tribal trust land were dumped there by a certain individual or individuals shall, with reference to XIV CCOJ 201(a)(c) and (d), and 202(a)(b) and (f), be punishable as a class A misdemeanor pursuant VII CCOJ 501(2).

Sec. 415-A. Unlawful possession of precursors to dangerous drugs .

(a) A person commits the offense of unlawful possession of precursors to dangerous drugs if he/she possesses any of the following substances or combinations of the following, and is shown by evidence admissible in a court of law to possess them with the intent of manufacturing dangerous drugs.

(b) Definition. "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:

- (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;
- (14) lithium in conjunction with anhydrous ammonia.

(c) Conviction under this Section shall be a felony, punishable pursuant Title VII Section 501(1), and specifically:

(1) there shall be a mandatory minimum sentence of six (6) months imprisonment and a two thousand, five hundred dollar (\$2,500.00) fine for the first conviction under this Section; and:

(2) a mandatory minimum sentence of one year imprisonment and a fine of five thousand dollars. (\$5,000.00 for the second and each subsequent conviction.

(3) Additionally, the Judge shall take into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 108(2)(a)(i) and (ii) of this Title.

(4) Conviction of a non-violent Minor offender. The presiding judge over a hearing

or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

Sec. 416. Forfeiture of assets aiding in a drug crime.

(a) Any person convicted of a violation of any Sections of Subchapter C of Chapter 1 of this Title punishable by imprisonment for up to one year shall forfeit to the Fort Peck Tribes, irrespective of any provision of State law:

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of Section 413 of this Title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over the continuing criminal enterprise.

(b) The court, in imposing a sentence on such person, shall order, in addition to any other sentence imposed pursuant to this Subchapter B of this Title, that the person forfeit to the Fort Peck Tribes any property described in this subsection, but not to exceed a total fair market value of five thousand dollars (\$5,000.00) for any one infraction of this Section. Proceeds from forfeited property shall be specifically placed in the annual budget of that police department dedicated to funding investigations of illegal drug presence within the Fort Peck Tribal boundaries. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

Sec. 417. Illegal to sell, trade, or bargain in drug paraphernalia.

(a) In general, it is unlawful for any person:

(1) to possess, sell, trade, bargain, or offer for sale drug paraphernalia;

(2) to use the mails or any other facility of interstate commerce to transport drug paraphernalia; or

(3) to import or export drug paraphernalia.

(4) "Drug paraphernalia" defined. The term "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 Subchapter. 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, including:

(A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(B) water pipes;

(C) carburetion tubes and devices;

(D) smoking and carburetion masks;

(E) roach clips: meaning objects used to hold burning material, such as a

marihuana cigarette, that has become too small or too short to be held in the hand;

(F) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(G) chamber pipes;

(H) carburetor pipes;

(I) electric pipes;

(J) air-driven pipes;

(K) chillums;

(L) bongs;

(M) ice pipes or chillers;

(N) wired cigarette papers;

(O) cocaine freebase kits; or

(P) syringes of any size, with or without a needle attached.

(b) Penalties: Conviction under this Section shall be a class A misdemeanor, punishable pursuant VII CCOJ 501(2), and specifically, any drug paraphernalia involved in any violation of subsection (1) of this Section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Additionally, the Judge shall take into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 108(b)(1)(A) and (B) of this Title. Any such paraphernalia may be held by the arresting police as potential evidence, or destroyed, or delivered to the state crime lab of Montana, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(c) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

(d) Matters considered in determination of what constitutes drug paraphernalia. In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate uses of the item in the community; and

(8) expert testimony concerning its use.

(e) Exemptions. This section shall not apply to:

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with

tobacco products, including any pipe, paper, or accessory.

(AMENDED AS PER RESOLUTION NO. 774-2006-7 DATED 07/10/06)

Sec. 418. Unauthorized use, possession, dispensing, and acquisition of prescription drugs.

(a) Within the exterior boundaries of the Fort Peck Reservation, businesses and their employees, including public and private hospital dispensaries, with the requisite federal and state licenses to buy and sell prescription drugs shall only sell such controlled drugs if the customer presents the original of a prescription signed by a licensed and authorized physician or medical provider, and the pharmacist or pharmacy employees shall request photo identification from the customer to verify that the customer is the same person as for whom the prescription from the physician/ medical provider was made.

(1) Any business or employee of such business operating as a pharmacy that knowingly sells prescription drugs in the absence of a bona fide prescription, or sells anything other than, and in any other dosage, than what was prescribed, if convicted, shall be guilty of a felony, punishable pursuant VII CCOJ 501(1), for each offense of this Section.

(2) Any customer to a business operating as a pharmacy that knowingly attempts or succeeds in obtaining prescription drugs using a forged, copied, stolen, or fictitious prescription, if convicted, shall be guilty of a felony, punishable pursuant VII CCOJ 501(1), for each offense of this Section.

(3) Additionally, the Judge shall take into account the possible mitigation of drug and/or alcohol treatment, as set out in Section 413(b)(1)(A) and (B).

(4) Conviction of a non-violent Minor offender. The presiding judge over a hearing or trial in which a Minor is convicted of offending this Section shall take into consideration the sentencing guidelines set forth in Section 419 of this Title, and recommend them as the punishment where the Wellness Court and other alternative sentencing would be reasonably deemed capable of helping the convicted Minor.

Sec. 419. Sentencing of Minors: Fort Peck Tribal Wellness Court and 'cultural diversion programs'.

(a) Wellness Court.

(1) Minors convicted for the first time under any of Sections 410-411, 412-414, 415-A, 417, and/or 418 of this Title may, at the presiding judge's discretion but in preference to the adult punishments prescribed specifically in each of those Sections, be recommended by the judge to participate with their parent(s) or guardian(s) in the Fort Peck Tribal Wellness Court.

For minors who are first time offenders participation in the Wellness Court may be recommended, in conjunction with and/or subsequent to:

(A) detention in the Fort Peck Juvenile Detention Facility for a period to be determined by the Court; and/or

(B) a drug/alcohol treatment program, including commitment to a Tribal detoxification facility, where appropriate, following XI CCOJ 204.

(2) Minors who are second time offenders of any of Sections 410-411, 412-414, 415-A, 417, and/or 418 of this Title may be ordered, in conjunction with and subsequent to, up to four months detention in the Fort Peck Juvenile Detention Facility, for offenses otherwise punishable as felonies, and up to two months for offenses otherwise punishable as Class A misdemeanors, to be participants, along with their parent(s) or guardian(s) in the Fort Peck Tribal Wellness Court.

(3) Repeat Minor offenders may be subject to the sentence parameters of VII CCOJ 501, and as specifically set out in each section of Sections 410-A, 411, 417, 418 or 412 through 415-A of this Title.

(4) Following IX CCOJ 102(a), a Minor is any Indian person under eighteen years of age.

(b) Cultural Diversion Programs. If programs meeting the approval of the Tribal Executive Board and designed with the purposes of:

(1) Connecting people, and especially at-risk youth, to the cultural values, traditions, and ways of life of the Assiniboine and Sioux Peoples; and

(2) Building the self-esteem, physical health, mental health, and moral integrity of the participants; then:

Such program shall be an acceptable alternative sentence for juvenile offenders, and may, depending on the program, even be considered for adult offenders. The program may be used by the Court to reduce imprisonment terms, as the sole punishment, or in conjunction with other treatment programs. Recidivist offenders shall not necessarily be disqualified from being ordered to participate in such programs. Such programs could include:

(A) Buffalo Ranch. Participants in this program would live for a year to five years on a ranch, in a supervised home, within the exterior boundaries of the Fort Peck Reservation, with the personal responsibility to raise a certain number of buffalo to be grown and sold for meat production.

(B) Self-sustaining farm. Participants living in supervised household(s) on a farm that attempts to grow the entirety of their food needs.

(C) Regular meetings and presentations to a Council of Elders. Participants must meet regularly, preferably with their family in attendance, and describe to and answer questions from the Council as to what they are doing for positive personal growth and learning, and helping others in positive efforts.

(D) Commitment to a Tribal detoxification center which provides therapy and medical supervision, particularly for where XI CCOJ 204 applies.

Subchapter C. Offenses Involving Governmental Processes

Sec. 420. Bribery.

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.

Bribery is a felony.

Sec. 421. Interfering with elections.

A person is guilty of interfering with elections who:

(a) 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 Assiniboine and Sioux Tribes; or

(b) in connection with any election of the Assiniboine and Sioux Tribes, makes or

induces any false voting registration; or

(c) in connection with any election of the Assiniboine and Sioux Tribes, 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

(d) solicits, accepts, or agrees to accept anything of pecuniary value as consideration for conduct prohibited under Subsections (b) or (c); or

(e) otherwise obstructs or interferes with the lawful conduct of an election of the Assiniboine and Sioux Tribes or registration therefor.

Interfering with elections in violation of Subsections (a), (b), (c) or (d) is a felony.

Interfering with elections in violation of subsection (e) is a Class A misdemeanor.

Sec. 422. Protection of members of the Tribal Executive Board, judges, tribal and federal officers and employees.

(a.) Whoever forcibly assaults, resists, opposes, intimidates, or interferes with (1) any member of the Tribal Executive Board, or (2) any Judge or Acting Judge of any court created by the Tribes, or created under authority of the United States, or (3) any officer or employee of the Tribes or of the United States, on account of the performance of official duties, or while such member, judge, officer or employee is engaged in official duties, shall be guilty of a felony.

(b.) Whoever forcibly assaults or intimidates any person who formerly served as a person designated in Subsection a. on account of the performance of official duties during such person's term of service, shall be guilty of a felony.

(c.) Whoever, in the commission of an act described in subsections a. and b., uses a deadly or dangerous weapon, shall be guilty of a felony for which a mandatory penalty of one year shall be imposed, plus a fine not to exceed \$5000.

(d.) Where the victim of an assault is against a person described in subsection a and b, it shall be no defense that the action of such person is contrary to law, so long as the action or failure to act is within the scope of such persons duties or employment.

(AMENDED AS PER RESOLUTION NO. 2302-94-11, DATED 11/21/96.)

Sec. 423. Assault of law officer or judicial officer.

(a) A person commits the offense of assault of a law enforcement officer or judicial officer if the person intentionally causes:

(1) bodily injury to a law enforcement officer or judicial officer;

(2) reasonable apprehension of serious bodily injury in a law enforcement officer or judicial officer by use of a weapon;

(3) bodily injury to a law enforcement officer or judicial officer with a weapon;

or

(4) serious bodily injury to a law enforcement officer or judicial officer.

(b) A person convicted under this section shall be guilty of a Class A misdemeanor, punishable pursuant to VII CCOJ 501(2).

(c) As used in this section, the following definitions apply:

(1) "Law enforcement officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or

- to make arrests for offenses while acting within the scope of the person's authority, including employees of any correctional or detention facility.
- (2) "Judicial officer" means judges of the Fort Peck Court and justices of the Fort Peck Court of Appeals.

Sec. 424. Hindering law enforcement.

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.

Hindering law enforcement is a Class A misdemeanor.

(AMENDED AS PER RESOLUTION NO. 3171-87-9, DATED 09/14/87 AND AS PER RESOLUTION NO. 2275-2005-10, DATED 10/24/05.)

Sec. 425. Perjury.

A person who, in any official proceeding of the Assiniboine and Sioux Tribes, 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. Falsification is material if it could have affected the course or outcome of the proceeding.

Perjury is a felony.

Sec. 426. Criminal contempt.

All courts of the Assiniboine and Sioux Tribes have power to punish for contempt of their authority the following offenses:

(a) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; or

(b) disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

Criminal contempt is a Class A misdemeanor.

Sec. 427. Violation of a Temporary Restraining Order.

(a) An individual who violates the orders of a temporary restraining order made by the Fort Peck Tribal Court under VIII CCOJ 401 commits a Class A misdemeanor, punishable by VII CCOJ 501(2). Conviction shall be punishable by not less than a month in the Tribal jail and a fine of up to \$500.

(b) Procedural requirements. At the hearing creating the Temporary Restraining Order (TRO), the Court shall instruct the moving party that it is that party's responsibility to promptly inform law enforcement of any infractions of the Order by the one restrained. The law enforcement shall maintain blank photocopies of a standardized affidavit stating that the one restrained violated the order against him/her, as per this VII CCOJ 427 and specifically VIII CCOJ 402. The affidavit shall include the date and time, which shall be filled in by the moving party or a law enforcement official at the station, and shall be signed by the moving party. The law enforcement shall then immediately deliver it to the Tribal Court, which shall issue an arrest warrant upon finding of necessary probable cause by law enforcement that the abuser did violate the TRO. The judges of the Tribal Court may issue an arrest warrant at any time on any day.

(AS PER RESOLUTION NO.821-2002-8, DATED AUGUST 12, 2002.)

Sec. 428. Resisting arrest.

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

(a) flees from a law enforcement officer after being told by an officer that he/she is under

arrest; or

(b) creates a substantial risk of bodily harm to the officer or any other person, or employs means justifying substantial force to overcome the resistance is guilty of resisting arrest.

The Court in its discretion may require the guilty defendant to make restitution to the police officer for property of the officer that was damaged as the result of the defendant's resistance.

A person is guilty of an offense under this Section regardless of whether the arrest resisted is lawful or unlawful; but clearly excessive force may be resisted.

Resisting arrest is a Class A misdemeanor.

Sec. 429. Escape.

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.

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

Escape is a felony.

Sec. 430. Tampering with witnesses or informants.

A person commits the offense of tampering with a witness or informant if, believing that an official proceeding or investigation is pending or about to be instituted, that person purposely attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document or thing;

(c) elude legal process summoning a witness or informant to testify or supply evidence; or

(d) absent himself or herself from any proceeding or investigation to which the witness or informant has been summoned.

An offense committed under this Section 429-A shall be a Class A misdemeanor.

(AMENDED AS PER RESOLUTION NO. 1147-92-7, DATED 07/13/92.)

Sec. 431. Threats and other improper influences in official matters.

An individual commits an offense under this section if that individual purposely:

(a) Coerces, threatens harm to, injures, or intimidates any person including any public servant, with the purpose to influence that person's decision, opinion, recommendation, vote, or exercise of discretion as a public servant, or voter, or in a judicial or administrative proceeding;

(b) As a juror, or officer in charge of a jury, receives or permits to be received, any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

Definition of juror. "Juror" means any person who is a member of any jury impaneled under authority of tribal law in any action or proceeding in the courts of the Assiniboine and Sioux Tribes. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror. For purposes of this Section 429-B a juror is a public servant. An offense under

this section shall be a

Class A misdemeanor.

(AMENDED AS PER SOLUTION NO. 1148-92-7, DATED 07/13/92.)

Subchapter D. Disorderly Conduct and Related Offenses

Sec. 440. Disorderly conduct.

Whoever, 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:

- (a) engages in fighting, or in violent, tumultuous, or threatening behavior;
- (b) makes unreasonable noise;
- (c) in a public place, uses abusive or obscene language, or makes an obscene gesture;
- (d) obstructs vehicular or pedestrian traffic, or the use of a public facility;
- (e) persistently follows another person in or about a public place or places;
- (f) solicits sexual activity as defined in Section 220 while loitering in a public place;

or

(g) creates a hazardous, physically, offensive, or seriously alarming condition by any act which serves no legitimate purpose is guilty of disorderly conduct.

Disorderly conduct is a Class A misdemeanor.

Sec. 441. Cruelty to animals.

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

Cruelty to animals is a Class B misdemeanor.

Sec. 442. Desecration of tribal flag.

A person who violates Title III (Governmental Organization), Section 105, shall be guilty of desecration of the tribal flag.

Desecration of the tribal flag is a Class A misdemeanor.

Subchapter E. Gambling

Sec. 450. Gambling.

(a) A person is guilty of 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.

Gambling is a Class A misdemeanor.

(b) 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; or

- (2) lawful business transactions; or
- (3) bingo, raffles or other like activities conducted by a religious, charitable, or other non-profit organization; or
- (4) any gaming activity licensed by the Tribes pursuant to Title XXVII.

(AMENDED AS PER RESOLUTION NO. 1301-92-8, DATED 08/04/92, and RESOLUTION NO. 690-98-8, DATED 08/06/98).

Subchapter F. Exploitation of minors and others

Sec. 460. 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 delinquent act or status offense, shall be guilty of a Class A misdemeanor.

Sec. 461. Failure to support dependent persons.

A person who persistently fails to provide support which the defendant can provide and knows he/she is legally obliged to provide to a spouse, child, whether born in or out of wedlock, or other dependent, is guilty of failure to support dependent persons.

Failure to support dependent persons is a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.

Sec. 462. Failure to send children to school.

A person who, without justification or excuse, fails to send any child under his/her care to school, is guilty of failure to send children to school. For the purposes of this Section, a child is any person under the age of eighteen (18) years who is or would be enrolled in the First (1st) through Twelfth (12th) grades. Students must remain in school until they are eighteen (18) years of age or receive a high school diploma or its equivalent.

Failure to send children to school is a Class B misdemeanor for the first offense, and a Class A misdemeanor for each subsequent offense.

(AMENDED AS PER RESOLUTION NO. 2884-87- 7, DATED 07/14/87 AND AS PER RESOLUTION NO. 3159-87-9, DATED 09/14/87.)

Sec. 463. Unlawful possession, or acquisition, or consumption of alcoholic beverages or intoxicating beverages by persons under the age of twenty-one .

A person under the age of twenty-one who purchases, or takes as a gift or treat, or otherwise acquires, or who consumes, or who possesses any alcoholic beverage is guilty of a Class B misdemeanor. In addition, all alcoholic beverages possessed in violation of this Section shall be forfeited to the Tribes, and disposed of in accordance with the order of the Court.

(AMENDED AS PER RESOLUTION NO. 2646-97-4, DATED 04/25/97).

Sec. 464. Misrepresentation of age in connection with alcoholic beverages .

Any person who misrepresents or misstates that person's age or the age of any other person, or who misrepresents or misstates that person's age through the presentation of any document purporting to show that person to be at least twenty-one years of age in order to purchase or otherwise acquire, or consume an alcoholic beverage, is guilty of a Class B misdemeanor.

(AMENDED AS PER RESOLUTION NO. 2646-97-4, DATED 04/25/97).

Sec. 465. Persons under twenty-one years of age prohibited from entering licensed premises.

Except as permitted in this section any person under twenty-one years of age entering or remaining in any licensed premises where alcoholic beverages are being sold or displayed, except (1) a restaurant, when accompanied by a parent or a legal guardian, or (2) if employed by a restaurant as a food waiter or waitress, busboy or busgirl, under the direct supervision of a person twenty-one or more years of age, or (3) if the person is a law enforcement officer entering the premises in the performance of official duties, or (4) to work as a musician under the direct supervision of a person twenty-one or more years of age, is guilty of a Class B misdemeanor.

Any licensee may keep a book and may require anyone who has shown documentary proof of age that substantiates that person's age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's signature.

(AMENDED AS PER RESOLUTION NO. 2646-97-4, DATED 04/25/97).

Sec. 466. Curfew.

All persons who are parents or legal guardians of any Indian child under the age of eighteen (18) shall cause such child to be within a private residence and off the streets between the hours of 11:00 p.m. and 5:00 a.m. on each night of the week, except when the child is accompanied by his/her parent or guardian or is attending or returning from a school or community function authorized by parent or guardian.

Violation of the above curfew section shall be:

First Offense: Diversion. The parent, legal guardian, or custodian of the child may be ordered to participate in a parenting skills class or family communications class as available. The minor child may be referred to family counseling, and/or rehabilitative community agency or activity.

Second Offense: *A mandatory fine of fifty dollars (\$50.00) shall be imposed.* Should parenting skills class, family communication skills, or any other counseling or intervention not be utilized prior to the second offense, the parent, legal guardian, or custodian of the minor child shall be ordered to successfully complete such counseling, class, or activity, and shall be ordered to participate in any and all rehabilitative and/or treatment efforts regarding said child.

Third Offense: Class A misdemeanor; maximum penalty of three months imprisonment, a mandatory fine of at least seventy-five dollars (\$75.00), but not more than five hundred dollars (\$500.00), or both imprisonment and/or fine may be imposed.

Community service may be utilized in lieu of fines.

The parent, guardian, legal custodian, or child shall be exempt from this offense if, the juvenile is on an emergency errand, or where the juvenile is on a reasonable, legitimate, and specific business or activity which is directed or permitted by his/her parent, guardian or adult person having custody or supervision of the minor.

It shall be the duty of any law enforcement officer to apprehend and take into custody any minor found to be in violation of this section, and to hold such minor until his or her parents, legal guardian, or custodian has been notified, at which time the child may be released to his or her parent or guardian. Such apprehended child may be charged under the Youth Code of the Fort Peck

Tribes as a "Status Offender" or "Child in Need of Supervision", and for the second and subsequent offense under the Youth Code as a "Delinquent Child".

(AMENDED AS PER RESOLUTION NO. 3365-87- 10, DATED 10/26/87, AS PER RESOLUTION NO. 3772-95-8, DATED 08/15/95, AND AS PER RESOLUTION NO. 1623-2003-5, DATED 05/27/2003.)

Sec. 467-469. Reserved.

Subchapter G. Violations of Regulatory Provisions

Sec. 470. Littering.

Whoever violates Section 201 of Title XIV (Health and Sanitation) shall be guilty of littering.

Littering shall be a Class B misdemeanor. Any person convicted of littering may also be ordered by the Court to immediately remove any destructive, injurious or unsightly material from the public right of way, public road or highway area.

Sec. 471. Sewage and waste disposal facilities.

(a) Any Indian found not in compliance with Sections 202 or 203 of Title XIV (Health and Sanitation) by a law enforcement officer shall be given a reasonable, specified time to make the necessary corrections. Any Indian still in violation after the specified period shall be guilty of criminal violation of sewage and waste disposal ordinances. Each day the condition exists after the expiration of the period allowed for making corrections shall constitute a separate offense.

(b) Any Indian preventing a law enforcement official from entering a premises, dwelling or housing structure pursuant to a warrant under Section 204 of Title XIV (Health and Sanitation) shall be guilty of criminal violation of sewage and waste disposal ordinances.

(c) Violation of sewage and waste disposal ordinances, as defined above, is a Class B misdemeanor.

Sec. 472. Restaurants and itinerant restaurants.

Whoever:

(a) after being given a reasonable time to correct violations under Section 304 of Title XIV (Health and Sanitation) fails to do so; or

(b) unreasonably fails to permit, or hinders, an inspection under Section 304 of Title XIV (Health and Sanitation); or

(c) continues to sell food or drink at an itinerant restaurant after being forbidden to do so under Section 305(c) of Title XIV (Health and Sanitation); or

(d) operates a restaurant or itinerant restaurant without the permit required by Chapter 3 of Title XIV (Health and Sanitation) or when the permit is suspended is guilty of criminal violation of the restaurant ordinance.

Criminal violation of the restaurant ordinance is a Class A misdemeanor.

Sec. 473. Entering closed areas.

(a) Whoever violates Section 404 of Title XIV (Health and Sanitation), or who, having been warned under Section 403(a) of Title XIV (Health and Sanitation), willfully fails or refuses to leave a closed area, shall be guilty of illegally entering a closed area.

(b) Illegally entering a closed area is a Class A misdemeanor.

(c) Any non-Indian who violates any provision of Chapter 4 of Title XIV (Health and

Sanitation) may be excluded from Tribal land by order of the Tribal Court after a hearing.

(d) If any person excluded pursuant to subsection (c) does not promptly obey the exclusion order, the Chairman of the Tribal Executive Board shall refer the case to the Superintendent of the Fort Peck Agency or the United States Attorney for action. If after a reasonable time no effective action has been taken to enforce the order, the Chairman shall refer the case to the legal counsel of the Tribes, who shall take the legal action deemed necessary.

Sec. 474. False and malicious petitions for involuntary commitment.

Any person filing a false and malicious petition to have another committed under Chapter 1 or Chapter 2 of Title XIV (Involuntary Commitment) shall be guilty of filing false commitment petitions. Filing false commitment petitions shall be a Class B misdemeanor. However, no person acting in good faith under said chapters shall be liable under civil or criminal law.

(AMENDED AS PER RESOLUTION NO. 1901-84- 12, DATED 12/11/84.)

Sec. 475-479. Reserved.

Subchapter H. Obscenity and Related Offenses

Sec. 480. Threatening letters and telephone calls.

Any person who, with the purpose to terrify, intimidate, threaten, or harass:

(1) communicates with any person by mail and uses any obscene language, suggests the performance of sexual acts, or threatens to inflict injury or physical harm on the person or property of any person, or transmits obscene material of a pictorial or photographic nature, or

(2) communicates with any person by telephone and uses any obscene language, suggests the performance of sexual acts, or threatens to inflict injury or physical harm on a person or property of any person, is guilty of sending threatening letters or making threatening telephone calls, respectively.

Threatening letters and telephone calls are a Class B misdemeanor.

For purposes of this Section, the term "obscene" shall mean any clearly offensive representation or description of sexual acts as defined in Section 220 of this Title, either actual or simulated, or any clearly offensive representation or description of masturbation, excretory functions, or exhibition of the genitals, which taken as a whole, appeals to an interest in sex considered lewd or indecent by prevailing community standards, and which lacks serious literary, artistic, political, or scientific value.

(AMENDED AS PER RESOLUTION NO. 1287-86-7, DATED 07/28/86.)

Subchapter I. Reserved

Sec. 490-499. Reserved.

Chapter 5. Penalties

Sec. 501. Penalties.

Offenses are divided into three (3) classes, which are denominated and subject to maximum penalties, as follows:

(1) Felony, for which a maximum penalty of one (1) years' imprisonment, a fine of five thousand dollars (\$5,000.00), or both, may be imposed.

(2) Class A misdemeanor, for which a maximum penalty of three months' imprisonment, a fine of five hundred dollars (\$500.00), or both, may be imposed.

(3) Class B misdemeanor, for which a maximum penalty of one hundred dollars (\$100.00) may be imposed.

(4) Offenders convicted of sexual exploitation, physical abuse, neglect, or abandonment of a child, or rape or sexual assault where the victim is under eighteen (18) years of age, must be ordered to pay at least a fifty dollar (\$50.00) fine. The fines so collected shall be placed in a special fund to be used, as determined by the Tribal Executive Board, for programs designed to alleviate the problems of physical and sexual abuse of children on the Fort Peck Indian Reservation.

(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86.)