

TITLE II
CHAPTER 1
TRIBAL OFFENSES

Part 1

General Preliminary Provisions

2-1-101. Purpose and construction. The provisions of this Chapter shall be construed in accordance with Tribal customs as well as to achieve the following general principles and purposes:

- (1) to forbid and prevent the commission of offenses and give fair warning of conduct which is declared to be an offense;
- (2) to adequately define the conduct and mental state which constitute an offense and to safeguard permitted conduct;
- (3) to prescribe penalties which are proportionate to the seriousness of the offense and which permit recognition of differing rehabilitative needs of individual offenders while at the same time recognizing the need of the entire Reservation Community to protect itself from offenders;
- (4) to prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons; and
- (5) to protect any Tribal member or other person residing on the Reservation whose health or welfare may be adversely affected or threatened due to abuse, neglect or exploitation by family, household members, or other person in a legal or contractual position of providing physical, mental, or medical assistance and support to the affected person.

2-1-102. Civil actions not barred. The Code of Tribal Offenses does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered. Civil injury is not merged into the criminal offense.

2-1-103. Exclusiveness of offenses. No conduct constitutes an offense unless so declared by this Code of Tribal Offenses, by any Tribal ordinance, or by specific Montana law incorporated by reference into this Code of Tribal Offenses. The elements of any offense as contained in this code are the sole elements required for conviction in Tribal Court. Extraneous elements required by other jurisdictions shall not be considered by the judge or jury in reaching a verdict of guilt or innocence. However, this provision does not affect the power of the Tribal Court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

2-1-104. Prosecution for multiple offenses. When the conduct of an offender establishes the commission of more than one offense, the offender may be prosecuted separately for each offense. The offender, however, may not be convicted of more than one offense if:

- (1) one offense is included in the other;
- (2) one offense consists only of conspiracy or some other form of preparation for committing the offense;
- (3) inconsistent findings of fact are required to establish the commission of the offenses;

(4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(5) the offense is defined to prohibit a continuing course of conduct and the offender's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

2-1-105. Limitation on prosecutions based on same transaction. No person, once convicted of a crime falling within the jurisdiction of the State of Montana or the Tribes shall be punished for the identical act in the courts of the other jurisdiction, but shall be accorded the doctrine of former jeopardy as if the separate jurisdictions were one.

2-1-106. Lesser included offenses. (1) An offender may be convicted of an offense included in an offense charged without having been specifically charged with the lesser included offense. An offense is included when:

(a) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) it consists of attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or

(c) it differs from the offense charged only in that it is a less serious injury or risk of injury to the same person, property, or Tribal interest, or a lesser kind of culpability suffices to establish its commission.

(2) The Tribal Court need not charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting the defendant of the lesser included offense.

2-1-107. Burden of proof. The defendant in a criminal proceeding is presumed to be innocent until each element of the offense with which the defendant is charged is proved beyond a reasonable doubt. In the absence of such proof, the defendant shall be acquitted.

2-1-108. Classification of offenses: exclusive and concurrent jurisdiction. Offenses shall be designated as Class A, Class B, Class C, Class D, or Class E offenses. The Tribes shall exercise exclusive jurisdiction over Class A, Class B, Class C, and Class D offenses. The Tribes shall exercise concurrent jurisdiction with the State of Montana over Class E offenses where the State has a comparable offense in its code, and exclusive jurisdiction if the State has no comparable offense.

2-1-109. Time limitations. (1) Unless otherwise specified by statute:

(a) prosecution for any Class A, Class B, Class C, or Class D offense must be commenced within one year after the alleged offense is committed;

(b) prosecution for any Class E offense must be commenced within two years after the alleged offense is committed;

(c) if the victim is a minor or has a mental disorder at the time the offense occurred, prosecution must be commenced within one year after the legal disability terminates.

(2) The period of limitation does not run under the following conditions:

(a) during any period in which the offender is not usually and publicly residing within this Reservation or is beyond the jurisdiction of the Tribal Court;

(b) during any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(c) during a prosecution pending against the offender for the same conduct even if the prosecution is dismissed.

(3) An offense is committed either when every element occurs or, if the offense is based upon a continuing course of conduct, when the course of conduct is terminated. The time starts to run on the day after the offense is committed.

(4) A prosecution is commenced when a complaint is filed.

2-1-110. Sentencing. (1) A person convicted of an offense may be sentenced as follows:

(a) for a conviction of a Class A offense heard in Tribal Traffic Court, the offender may only be sentenced to pay a fine or some other sentence not involving imprisonment;

(b) for a conviction of a Class B offense, the offender may be sentenced to imprisonment for a period not to exceed 10 days, or a fine not to exceed \$100, or both, unless another sentence is specified by statute;

(c) for a conviction of a Class C offense, the offender may be sentenced to imprisonment for a period not to exceed 60 days, or a fine not to exceed \$250, or both, unless another sentence is specified by statute;

(d) for a conviction of a Class D offense, the offender may be sentenced to imprisonment for a period not to exceed 180 days, or a fine not to exceed \$500, or both, unless another sentence is specified by statute; or

(e) for conviction of a Class E offense, the offender may be sentenced to imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000, or both, unless another sentence is specified by statute;

(2) The fines listed above may be imposed in addition to any amounts ordered paid as restitution.

(3) Any person adjudged guilty of an offense under this Code shall be sentenced in accordance with this section and Section 2-2-1203, unless otherwise specified.

2-1-111. Mental state. A person is not guilty of an offense unless the person acts purposely, knowingly, or negligently, as the Code may provide, with respect to each element of the offense, or unless the person's acts constitute an offense involving strict liability.

2-1-112. Strict liability. A person may be guilty of an offense without having the requisite mental state only if the Code provision defining the offense clearly indicates the Council's purpose to impose strict liability for the conduct described.

2-1-113. Temporary orders of protection. (1) Whether or not the Tribal Prosecutor files a complaint charging the offense, a person may apply to the Tribal Court for an order of protection if the Prosecutor has reason to believe that a person is a victim of one of the following offenses committed by a person over whom the Tribal Court has jurisdiction: abuse of an elderly or vulnerable person, assault, aggravated assault, intimidation, domestic abuse, criminal endangerment, negligent endangerment, unlawful restraint, kidnaping, aggravated kidnaping, arson, stalking, sexual assault, incest, or sexual intercourse without consent.

(2) The petition for a protective order against a suspected offender shall be accompanied by an affidavit of the alleged victim setting out facts constituting sufficient reason to believe that the suspected offender has committed one of the offenses listed in subsection (1).

(3) The petition may request an order of protection containing any or all of the following provisions for relief of the alleged victim:

- (a) prohibiting the suspected offender from assaulting, threatening, abusing, harassing, following, stalking, or disturbing the peace of the alleged victim;
 - (b) directing the suspected offender to avoid any contact with the alleged victim by staying at least 500 yards from the person, residence, work place, or vehicle of the alleged victim and from the children of the alleged victim and the children's school or daycare facility;
 - (c) directing the suspected offender to avoid any contact with identified family members of the alleged victim or any identified witness to or other identified victim of the suspected offense;
 - (d) directing the suspected offender to refrain from taking, hiding, selling, transferring, or disposing of any property in which the alleged victim has an interest;
 - (e) directing the suspected offender to give the alleged victim possession of necessary personal property;
 - (f) prohibiting the suspected offender from removing any children of the alleged victim from the jurisdiction of the Court; or
 - (g) granting temporary custody of children of the alleged victim solely to the alleged victim.
- (4) Upon a finding that the alleged victim is in danger of harm if the Court does not act immediately, the Court shall issue a temporary order of protection granting some or all of the relief requested and such other relief as may be appropriate in the circumstances. The protective order shall not apply to contacts initiated by the petitioning alleged victim.
- (5) Within 14 days from the date the Court issues a temporary protection order, a hearing must be conducted. At the hearing, the Court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent. *(Rev. 4-15-03)*

2-1-114. Definitions. Unless otherwise specified in a particular section, the following general definitions shall apply in this Chapter:

- (1) "Abuse" includes, but is not limited to:
 - (a) the infliction of physical or mental injury; or
 - (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of a person.
- (2) "Acts" has its usual and ordinary meaning and includes any voluntary bodily movement, any form of communication, and when relevant, a failure or omission to take action.
- (3) "Another" means a person or persons, as defined in this Code, other than the offender.
- (4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage.
- (5) "Bodily harm" or "bodily injury" means physical pain, illness or any impairment of physical condition.
- (6) "Citation" means a written direction that is issued by a law enforcement officer and that requests a person to appear before the court at a stated time and place to answer a charge for the alleged commission of an offense.
- (7) "Cohabit" means to live together in an arrangement whereby the parties voluntarily assume the rights, duties and obligations which are normally manifested by married persons.

(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or persons, or the same property.

(9) "Conduct" means an act or series of acts and the accompanying mental state.

(10) "Conviction" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.

(11) "Deceit" means:

(a) creating or confirming in another an impression which is false and which the offender does not believe to be true;

(b) failing to correct a false impression which the offender previously had created or confirmed;

(c) preventing another from acquiring information pertinent to the disposition of the property involved;

(d) selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is of value or is not a matter of official record; or

(e) promising performance which the offender does not intend to perform or knows will not be performed. Mere failure to perform, without additional evidence, is not conclusive proof that the offender did not intend to perform.

(12) "Deprive" means to withhold the property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value; or

(c) with the purpose to restore it only upon payment of a reward or other compensation.

(13) "Felony" means a Class E offense.

(14) "Force" means the infliction, attempted infliction, or threatened infliction of bodily harm by a person, or the commission or threat of any other crime by a person against the complainant or another which causes the complainant to reasonably believe that the person has the present ability to execute the threat, thereby causing the complainant to submit.

(15) "Harm" means the loss, disadvantage, or injury or anything so regarded by the individual affected, including loss, disadvantage, or injury to any person or entity in which the individual has a recognized interest.

(16) "Intoxicating substance" means any drug or any alcoholic beverage, including but not limited to any beverage containing $\frac{1}{2}$ of 1% or more of alcohol by volume, which, when used in sufficient quantities, ordinarily or commonly produces intoxication.

(17) "Involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not consciously or habitually a product of the effort or determination of the actor.

(18) "Knowingly" – A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(19) "Law enforcement officer" means any person who by virtue of his or her office of public or Tribal employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his or her authority.

(20) "Mental Disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

(21) "Misdemeanor" means a Class A, Class B, Class C, or Class D offense.

(22) "Negligently" A person acts negligently with respect to an element of an offense when the person should be aware of a substantial and unjustifiable risk that the element presently exists or will result from his or her conduct. The risk must be of such a nature and degree that the person's failure to perceive it involves a gross deviation from the standard of care that a reasonable person would observe in the same situation, considering the nature and purpose of the person's conduct and the circumstances known to her or him.

(23) "Obtain or exert unauthorized control" means a person acting without lawful authority:

(a) tries to bring about a transfer of interest or possession in property, whether to the offender or to another; or

(b) tries to secure the performance of labor or services, whether for the offender's benefit or the benefit of another; or

(c) takes, carries away, sells, conveys or transfers title to, interest in or possession of property.

(24) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business regardless of whether a person is actually present. Each unit of a building consisting of 2 or more units separately secured or occupied is a separate occupied structure.

(25) "Offense" means a crime for which a sentence of labor, time in jail, a fine, restitution, or other penalty provided by law may be imposed.

(26) "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of a crime, or any other detention for law enforcement purposes.

(27) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(28) "Person" an individual, association, corporation, partnership, or other legal entity.

(29) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(30) "Premises" includes land, buildings, and appurtenances thereto.

(31) "Property" means anything of value to the owner. Property includes but is not limited to:

(a) real estate, money and commercial instruments;

(b) written instruments representing or embodying rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(c) things growing on, or affixed to, or found on land, or part of or affixed to any building;

(d) birds, fish, livestock and other animals ordinarily kept in a state of confinement; and

(e) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine–or–human–readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(32) "Property of another" means real or personal property in which a person other than the offender or a government has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(33) "Protective order" is a court order restraining a person from engaging in the commission or continuance of some act which may result in irreparable harm to another.

(34) "Public place" means any place to which the public has access.

(35) "Purposely". A Person acts purposely with respect to a result or to conduct described by a statute defining an offense when:

(a) if the element of the offense involves the nature of his or her conduct or a result thereof, it is his or her conscious object to engage in conduct of that nature or to cause such a result; and

(b) if the element of the offense involves the attendant circumstances, he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist.

(36) "Reasonable apprehension" is deemed to exist in any situation where a person knowingly points a firearm at or in the direction of another person, whether or not the offender believes the firearm to be loaded. In all other circumstances, "reasonable apprehension" is a question of fact to be determined by the trier of fact.

(37) "Restitution" means a requirement, as a condition of a sentence, that an offender repay the victim or the Tribes in money or services.

(38) "Serious bodily harm" or "serious bodily injury" means bodily injury which creates a risk of death, causes serious permanent or protracted loss or impairment of the function or process of any bodily member or organ, causes permanent disfigurement, or causes a serious mental disorder.

(39) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party or for the purpose of satisfying the defendant's aggressive impulses.

(40) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party or for the purpose of satisfying the defendant's aggressive impulses. Any penetration, however slight, is sufficient.

(41) "Solicit" or "solicitation" means to command, authorize, urge, incite, request or advise another to commit an offense.

(42) "Statute" means any Tribal Code section, Tribal ordinance, or adopted section of the Montana Code Annotated.

(43) "Tamper" means to interfere with something improperly, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(44) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on any person, or on the property of another;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) falsely accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business reputation of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take an unauthorized action as an official against anyone or anything, withhold an official action, or cause the withholding of an official action; or

(i) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(45) "Tribes" refers to the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

(46) "Underage person" means a person who is below the age designated by the particular section of the statute.

(47) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,000 by the standards set forth in subsection (a), its value is considered to be an amount less than \$1,000.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(48) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provisions for transport of an operator.

(49) "Weapon" means any instrument, firearm, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily harm.

(50) "Witness" means any person whose testimony is desired in any official proceeding or in any investigation.
(Rev. 1-27-00) (Rev. 4-15-03)

Part 2

Liability Principles

2-1-201. Conduct and result. (1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and

(b) any additional causal requirements imposed by the specific code provision are satisfied.

(2) If knowingly or purposely causing a result is an element of an offense and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the final result differs from the contemplated result only in the respect that a different person or different property is affected or that the injury or harm caused is less than originally contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury is different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense and the offender is not aware or should not have been aware of the probable result, negligence can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or the gravity of the offense.

2-1-202. Voluntary act. An element of every offense is a voluntary act, which includes an omission to perform a duty which the person is mentally, physically and financially capable of performing.

2-1-203. Responsibility. A person who is in an intoxicated or drugged condition is criminally responsible for her or his conduct unless such conduct is involuntarily produced and deprives the person of the capacity to appreciate the criminality of the conduct or to conform her or his conduct to the requirements of the law.

2-1-204. Accountability. (1) A person is legally accountable for the conduct of another when:

(a) having a mental state described by the code provision defining the offense, the person causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

(b) the code provision defining the offense makes the person accountable;

(c) either before or during the commission of an offense with the purpose to promote or facilitate such commission, the person solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense.

(2) However, a person is not accountable if:

(a) the person is a victim of the offense committed; or

(b) before the commission of the crime the person terminates her or his efforts to promote or facilitate the commission of the crime and takes steps to negate the effect or otherwise prevent the commission of the offense.

(3) A person may not be found guilty of an offense on the testimony of one responsible or legally accountable for the same offense unless that testimony is corroborated by other evidence that in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense, tends to connect the defendant with the commission of the offense.

Part 3

Affirmative Defenses and Justifiable Use of Force

2-1-301. Consent. (1) The complainant's or victim's consent to the performance of the conduct constituting an offense or to the result is an affirmative defense which must be proved by the defendant by a preponderance of the evidence.

(2) Consent is ineffective if:

(a) it is given by a person who is not legally authorized to approve of the conduct constituting an offense;

(b) it is given by a person who by reason of youth, mental impairment, or mental incapacitation is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged;

(c) it is induced by force, duress, or deception; or (d) it is against public policy to permit the conduct or the resulting harm, even though consent was given.

2-1-302. Compulsion. A person is not guilty of an offense by reason of conduct which he or she performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if he or she reasonably believes that death or serious bodily harm will be inflicted upon him or her if he or she does not perform such conduct. Compulsion is an affirmative defense which must be proved by the defendant by a preponderance of the evidence.

2-1-303. Entrapment. A person is not guilty of an offense if his or her conduct is incited or induced by a public servant or his or her agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his or her agent merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated. Entrapment is an affirmative defense which must be proved by the defendant by a preponderance of the evidence.

2-1-304. Self-defense. (1) A person is justified in the use of force or threat to use force against another when and to the extent the person reasonably believes that such conduct is necessary to:

(a) defend herself or himself or another against such other's imminent use of unlawful force;

(b) prevent or terminate such other's unlawful entry into or attack upon an occupied structure; or

(c) prevent or terminate the offender's trespass on, or other tortious or criminal interference with, either real or personal property lawfully in the person's possession, or which the person has a legal duty to protect, or in the possession of another who is a family or household member.

(2) A person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes such force is necessary to prevent imminent death or serious bodily harm to herself or himself or another person.

(3) The defendant has the burden of producing sufficient evidence to raise a reasonable doubt of his or her culpability when the defendant raises self-defense as an affirmative defense.

2-1-305. Use of force by aggressor. Self-defense is not available to a person who (1) is attempting to commit, committing, or escaping after the commission of an offense; or

(2) knowingly or purposely provokes the use of force against herself or himself, unless:

(a) such force is so great that the person reasonably believes there is imminent danger of death or serious bodily harm and the person has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or,

(b) in good faith, the person withdraws from physical contact with the assailant and clearly indicates to the assailant the desire to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

2-1-306. Use of deadly force. A law enforcement officer, or any person acting under the officer's command to aid and assist, is justified in using deadly force when the officer is performing a legal duty or the execution of legal process and reasonably believes the use of force is necessary to protect herself or himself or others from imminent danger to life.

2-1-307. Resisting arrest. A person is not authorized to use force to resist arrest which the person knows is being made by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person believes the arrest is unlawful and the arrest is in fact unlawful.

Part 4

Inchoate Offenses

2-1-401. Conspiracy. (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, the person agrees with another to the commission of the offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by the person or by a co-conspirator.

(2) (a) "Act in furtherance" is any course of conduct which makes it more probable than not that an act towards the commission of an offense will occur and the person's present conduct is not terminated.

(b) Proof of an "act in furtherance" may be drawn from the circumstances surrounding the involved parties' actions and does not require direct proof of an agreement.

(3) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

(a) has not been prosecuted or convicted;

(b) has been convicted of a different offense;

(c) is not amenable to justice;

(d) has been acquitted; or

(e) lacked the capacity to commit the offense.

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

2-1-402. Solicitation. (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

2-1-403. Attempt. (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, the person does any act towards the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of attempt shall be punished not to exceed the maximum sentence provided for the offense attempted.

(4) A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of the criminal purpose, the person avoided the commission of the offense attempted by abandoning the criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

Part 5

Offenses Involving Damage to the Person

2-1-501. Homicide. (1) A person commits the offense of homicide by purposely, knowingly, or negligently causing the death of another human being.

(2) Homicide is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-502. Aiding or soliciting suicide. (1) A person commits the offense of aiding or soliciting a suicide by purposely aiding or assisting another in taking his or her own life.

(2) The fact suicide was not successfully carried out is not a defense.

(3) Aiding or soliciting suicide is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-503. Assault. (1) A person commits the offense of assault by:

(a) knowingly or purposely causing bodily harm to another;

(b) negligently causing bodily harm to another with a weapon;

(c) knowingly or purposely making physical contact of an insulting or provoking nature with an individual; or

(d) knowingly or purposely causing reasonable apprehension of bodily harm in another.

(2) "Reasonable apprehension" is deemed to exist in any situation where a person knowingly points a firearm at or in the direction of another person, whether or not the person pointing the firearm believes the firearm to be loaded. In all other circumstances "reasonable apprehension" is a question of fact to be determined by the trier of fact.

(3) Except as provided in subsection (4), assault is a Class D offense over which the Tribes have exclusive jurisdiction.

(4) If the victim is less than 14 years old and the offender is an adult, the assault is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-504. Aggravated assault. (1) A person commits the offense of aggravated assault by knowingly or purposely causing:

(a) serious bodily harm to another;

(b) bodily harm to another with a weapon;

(c) reasonable apprehension of serious bodily harm in another by use of a weapon; or

(d) bodily harm to a law enforcement officer or a person who is responsible for the care or custody of a prisoner.

(2) Aggravated assault is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-505. Intimidation. (1) A person commits the offense of intimidation by attempting to have another person perform or refrain from performing a specific act by threatening, under circumstances producing a fear that the threat will be carried out, to:

(a) inflict bodily harm on the person threatened or any other person;

(b) subject any person to physical confinement or restraint; or

(c) commit any Class E offense.

(2) Intimidation is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-506. Mistreating prisoners. (1) A person commits the offense of mistreating prisoners, if, being responsible for the care or custody of a prisoner, he purposely or knowingly,

(a) assaults or otherwise injures a prisoner; or

(b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner; or

(c) violates any civil right of a prisoner.

(2) Mistreating prisoners is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-507. Negligent vehicular assault. (1) A person who negligently operates a motor vehicle under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, and who causes bodily injury to another, commits the offense of negligent vehicular assault.

(2) Negligent vehicular assault is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-508. Negligent endangerment. (1) A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.

(2) Negligent endangerment is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-509. Criminal endangerment. (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment.

(2) For the purposes of this Section, "knowingly" means that the person is aware of the high probability that the conduct in which he or she is engaging, whatever that conduct may be, will cause a substantial risk of death or serious bodily injury to another.

(3) Criminal endangerment is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-510. Stalking. (1) 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:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or by other action, device, or method.

(2) This section does not apply to an activity protected by the Tribal Constitution or the Indian Civil Rights Act.

(3) For the first offense, a conviction of stalking is a Class D offense over which the Tribes have exclusive jurisdiction. A second or subsequent offense or a first offense against a victim who was under the protection of a protective order directed at the offender, is a Class E offense over which the Tribes have concurrent jurisdiction

with the State of Montana. 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.

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

(5) For the purpose of determining the number of convictions under this section "conviction" means:

(a) a conviction as defined in Section 2-1-113(9).

(b) a conviction for violation of a statute of a state or tribe similar to this section.

(6) 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.

2-1-511. Abuse of an elderly or vulnerable person. (1) A person commits the offense of abuse of an elderly or vulnerable person by knowingly or purposely, physically or mentally, abusing or exploiting an elderly or vulnerable person.

(2) "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.

(3) "Elderly or vulnerable person" means a Tribal member or other person residing on the Reservation who is:

(a) 60 years of age or older;

(b) determined by the Tribal Court to be an elder; or

(c) otherwise 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.

(4) Abuse of an elderly or vulnerable person is a Class D offense over which the Tribes have exclusive jurisdiction. *(Rev. 4-15-03)*

2-1-512. Robbery. (1) A person commits the offense of robbery if, in the course of committing a theft, the person:

(a) inflicts bodily harm upon another;

(b) threatens to inflict bodily harm upon any person;

(c) purposely or knowingly puts any person in fear of immediate bodily harm; or

(d) commits or threatens to commit any Class E offense other than theft.

(2) "In the course of committing a theft" includes acts which occur in an attempt to commit theft, in the commission of a theft, or in flight after the attempt or commission of a theft.

(3) Robbery is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-513. Unlawful restraint. (1) A person commits the offense of unlawful restraint by knowingly or purposely, and without lawful authority, restraining another so as to interfere substantially with another's liberty.

(2) Unlawful restraint is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-514. Kidnapping. (1) A person commits the offense of kidnapping by knowingly or purposely, and without lawful authority, restraining another person by:

- (a) secreting or holding the person in a place of isolation; or
- (b) using or threatening to use physical force against the other person.

(2) Kidnaping is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-515. Aggravated kidnaping. (1) A person commits the offense of aggravated kidnaping if he or she knowingly or purposely and without lawful authority restrains another person by either secreting or holding him or her in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

- (a) to hold for ransom or reward or as a shield or hostage;
- (b) to facilitate commission of any felony or flight thereafter;
- (c) to inflict bodily injury on or to terrorize the victim or another; or
- (d) to interfere with the performance of any governmental or political function.

(2) Aggravated kidnaping is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-516. Terrorism. (1) A person commits the offense of terrorism when he or she knowingly or purposely:

- a) threatens to destroy or damage any structure, conveyance, or other real or personal property within the Reservation Boundaries;
- b) attempts or conspires to destroy or damage any structure, conveyance, or other real or personal property within the Reservation Boundaries; or
- c) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the reservation boundaries.

(2) Terrorism is a Class E offense over which the Tribes have exclusive jurisdiction.

Part 6

Sex Crimes

2-1-601. Sexual assault. (1) A person commits the offense of sexual assault by knowingly making sexual contact with another without consent.

(2) "Without consent", as used in this section and in section 2-1-602, means:

(a) the victim is compelled to submit by force against himself, herself, or another, or

(b) the victim is incapable of consent because he or she is:

(i) mentally defective or incapacitated;

(ii) physically helpless; or

(iii) less than 16 years old.

(c) As used in subsection (2)(a), the term "force" means:

(i) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(ii) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) Except as provided in subsection (4), sexual assault is a Class D offense over which the Tribes have exclusive jurisdiction.

(4) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender commits a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

(5) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

2-1-602. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent.

(2) Sexual intercourse without consent is a class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-603. Indecent exposure (1) A person who, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person, exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) Indecent exposure is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-604. Sexual abuse of children. (1) As used in this section, the following definitions apply:

(a) "Sexual conduct" means actual or simulated:

(i) sexual intercourse, whether between persons of the same or opposite sex;

(ii) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(iii) bestiality;

(iv) masturbation;

(v) sadomasochistic abuse;

(vi) lewd exhibition of the genitals, breasts, pubic or rectal area of any person; or

(vii) defecation or urination for the purpose of the sexual stimulation of the viewer.

(b) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(c) "Visual medium" means;

(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

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

(2) A person commits the offense of sexual abuse of children if he or she knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) photographs, films, videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated;

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises material consisting of or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual conduct, actual or simulated; or

(e) finances any of the activities described in subsections (1)(a) through (1)(d) knowing that the activity is of the nature described in those subsections.

(3) Sexual abuse of children is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

(4) For purposes of this section, "child" means any person less than 16 years old.

2-1-605. Incest. (1) A person commits the offense of incest if he or she has sexual contact as described in section 2-1-113(39) or sexual intercourse with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) Incest is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-606. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he or she reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

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

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

Part 7

Offenses Against the Family

2-1-701. Domestic abuse. (1) A person commits the offense of domestic abuse by if the person:

- (a) knowingly or purposely causes bodily injury to a family member, or partner;
 - (b) knowingly or purposely causes reasonable apprehension of bodily injury to a family member, or partner;
 - (c) negligently causes bodily injury with a weapon to a family member, or partner; or
 - (d) knowingly violates a protective order issued by the Tribal Court regarding a family member, or partner.
- (2) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.
- (3) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship.
- (4) For a first conviction for domestic abuse, the offense is classified as a Class D offense over which the Tribes have exclusive jurisdiction.
- (5) For a second conviction for domestic abuse, the offense is classified as a Class D offense over which the Tribes have exclusive jurisdiction.
- (6) For a third or subsequent conviction for domestic abuse, the offense is classified as a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana. *(Rev. 1-27-00) (Rev. 4-15-03)*

2-1-702. Prostitution. (1) A person commits the offense of prostitution if such person knowingly engages in or agrees or offers to engage in sexual intercourse with another person, not his or her spouse, for compensation, whether such compensation is paid or to be paid.

(2) Prostitution is a Class B offense over which the Tribes have exclusive jurisdiction.

2-1-703. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if he or she purposely or knowingly commits any of the following acts:

- (a) compels another to engage in or promote prostitution;
- (b) promotes prostitution of a child under the age of 18 years, whether or not he or she is aware of the child's age;
- (c) promotes the prostitution of one's child, ward, or any person for whose care, protection, or support he or she is responsible.

(2) Aggravated promotion of prostitution is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-704. Bigamy. (1) A person commits the offense of bigamy if, while married, the person knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:

- (a) the person believes on reasonable grounds that the prior spouse is dead;

(b) the person and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the person to be alive;

(c) a court has entered a judgment purporting to terminate or annul a prior marriage and the person does not know the judgment to be invalid; or

(d) the person reasonably believes she or he is legally eligible to marry.

(2) Bigamy is a Class B offense over which the Tribes have exclusive jurisdiction.

2-1-705. Failure to support or care for dependent person. (1) A person commits the offense of failure to support or care for a dependent person by knowingly:

(a) refusing or neglecting to furnish food, shelter, or proper care, which the person is physically and financially able to provide to any person recognized as legally dependent upon the person;

(b) endangering the health, welfare or emotional well being of any child under the person's care; or

(c) failing to provide financial support, which the person is legally obligated to provide and the person is financially able to provide.

(2) Failure to support or care for a dependent person is a Class D offense over which the Tribes have exclusive jurisdiction.

(3) It is not a defense to a charge of failure to support that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(4) A person commits the offense of aggravated failure to support if:

(a) the person has left the Reservation to avoid the duty of support; or

(b) the person has been previously convicted of the offense of failure to support.

(5) Aggravated failure to support is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-706. Contributing to the delinquency of an underage person. (1) The term underage person as used here denotes a person who is below the age designated by the particular section of the statute. A person commits the offense of contributing to the delinquency of an underage person by knowingly:

(a) selling, giving, supplying or encouraging the use of any intoxicating substances by a person under the age of 21;

(b) selling or giving explosives to a person under the age of 18;

(c) assisting, promoting, or encouraging a person under the age of 16 to

(i) abandon her or his place of residence without the consent of the minor's parents or legal guardian,

(ii) enter a place of prostitution,

(iii) engage in sexual conduct,

(iv) commit, participate, or engage in a criminal offense.

(2) For a first conviction for contributing to the delinquency of an underage person, the offense is classified as a Class C offense over which the Tribes have exclusive jurisdiction.

(3) For a second conviction for contributing to the delinquency of an underage person, the offense is classified as a Class D offense over which the Tribes have exclusive jurisdiction.

(4) For a third or subsequent conviction for contributing to the delinquency of an underage person, the offense is classified as a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-707. Failure to send children to school. (1) A person commits the offense of failure to send children to school by repeatedly neglecting or refusing, without good cause to send any child of school age under the person's care to school.

(2) For a first conviction of failure to send children to school, the offense is classified as a Class B offense over which the Tribes have exclusive jurisdiction.

(3) For a second or subsequent conviction of failure to send children to school, the offense is classified as a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-708. Custodial interference. (1) A person commits the offense of custodial interference when, with the intent to deprive another person or public agency of any custodial rights, the person maliciously takes, detains, entices, or conceals, either within or outside the exterior boundaries of the Reservation, any person under the age of 16, any incompetent person or any person entrusted by authority of law to the custody of another person or institution.

(2) Expenses incurred in locating and regaining physical custody of the person taken, enticed or kept in violation of this section are "pecuniary damages" for purposes of restitution.

(3) Custodial interference is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-709. Visitation interference. (1) A person who has legal custody of a minor child commits the offense of visitation interference if he or she knowingly or purposely frustrates the visitation rights of a person entitled to visitation under an existing court order.

(2) Visitation interference is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-710. Curfew violation. (1) Every person under the age of 18 years is subject to curfew times as follows:

(a) 11 p.m. Sunday through Thursday, and

(b) 12:00 midnight on Friday and Saturday.

(2) Parents or guardians of children under the age of 18 are responsible for curfew compliance. Exceptions are permitted if the child is under the immediate supervision of a parent, guardian, or other adult approved by the parent or guardian. A child may attend authorized school functions without such supervision.

(3) Any parent, guardian or custodian whose children fail to obey curfew regulations commits the offense of curfew violation.

(4) Curfew violation is a Class A offense over which the Tribes have exclusive jurisdiction and which will be handled in Tribal Traffic Court.

Part 8

Offenses Against Property

2-1-801. Arson. (1) A person commits the offense of arson by knowingly or purposely using fire or explosives

(a) to damage or destroy a building or occupied structure of another without consent; or

(b) in a manner which places another person in danger of death or bodily harm, including a firefighter responding to or at the scene of the fire or explosion.

(2) Arson is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-802. Negligent arson. (1) A person commits the offense of negligent arson if he or she purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently

(a) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene, or

(b) places property of another in danger of damage or destruction.

(2) Negligent arson as defined above in (1)(b) is a Class C offense over which the Tribes have exclusive jurisdiction. Negligent arson as defined above in (1)(a) is a Class E offense over which the Tribes and the State of Montana have concurrent jurisdiction.

2-1-803. Criminal mischief. (1) A person commits the offense of criminal mischief by knowingly or purposely:

(a) injuring, damaging, or destroying any property of another without his or her consent;

(b) tampering with the property of another or Tribal property without consent, so as to endanger or interfere with the use of the property; or

(c) damaging or destroying property in an attempt to defraud an insurer;

(2) If the verified damage amount does not exceed \$1,000, criminal mischief is a Class C offense over which the Tribes have exclusive jurisdiction.

(3) If the verified damage amount is greater than \$1,000, criminal mischief is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-804. Trespass. (1) A person commits the offense of trespass by knowingly or purposely and without express or implied privilege

(a) entering or remaining in an unoccupied structure;

(b) entering or remaining in or upon the premises of another;

(c) entering any vehicle or any part thereof; or

(d) allowing livestock to occupy or graze on the cultivated or enclosed land of another.

(2) A privilege to enter may be extended

(a) by explicit invitation, license, or permission from the landowner or any other authorized person,

(b) by a landowner's failure to give notice that the lands are restricted, or

(c) by law.

(3) Access to Tribal lands, waters, and natural resources by persons who are not Tribal members is restricted as provided by Tribal and federal law. Tribal members crossing Reservation lands in order to exercise hunting and fishing rights retained by treaty do so with privilege.

(4) Notice restricting entry onto non-Tribal lands must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal posts are used the top one-third of the post must be painted. Notice must be placed at all normal points of access to the property. A privilege to enter may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(5) Trespass is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-805. Burglary. (1) A person commits the offense of burglary by knowingly entering or remaining in an occupied structure, without privilege to be there, with the purpose of committing an offense therein.

(2) Burglary is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-806. Theft. (1) A person commits the offense of theft by knowingly and purposely obtaining or exerting unauthorized control, including by threat or deception, over the property of the owner or by obtaining control over stolen property knowing the property to have been stolen by another, and the person

(a) has the purpose of depriving the owner of the property,

(b) uses, conceals, or abandons the property in such a manner as to deprive the owner of the property, or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered or otherwise disposed of after a Tribal police officer has requested him to hold the property for 30 days commits the offense of theft.

(3) If the verified value of the property does not exceed \$1,000, theft is a Class C offense over which the Tribes have exclusive jurisdiction.

(4) If the verified value of the property is greater than \$1,000, theft is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-807. Theft of lost or mislaid property. (1) A person commits the offense of theft by obtaining control over lost or mislaid property when the person

(a) knows or learns the identity of the owner or knows, is aware, or learns of a reasonable method of identifying the owner; or

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) Theft of lost or mislaid property is a Class B offense.

2-1-808. Theft of labor or services or use of property (1) A person commits the offense of theft when he or she obtains use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor, or services.

(2) If the verified value of the labor or services or use of property does not exceed \$1,000, its theft under this Section is a Class C offense over which the Tribes have exclusive jurisdiction.

(3) If the verified value of the labor or services or use of property is greater than \$1,000, its theft is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-809. Failure to return rented or leased property. (1) A person commits the offense of failure to return rented or leased property if, without notice to and permission of the lessor, the person knowingly and purposely fails to return such property after the time provided for such return in the rental agreement, provided that the date and time when return of the property is required and the penalty prescribed in this section is clearly stated, in bold print, in the written agreement.

(2) Obtaining rental or leased property through the use of false identification constitutes prima facie evidence of the commission of this offense.

(3) Failure to return the rental property within 72 hours after written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time the rental agreement was entered into or personally served on the renter or lessee, constitutes prima facie evidence of the commission of this offense.

(4) If the verified value of the rented or leased property does not exceed \$1,000, failure to return rental property is a Class C offense over which the Tribes have exclusive jurisdiction.

(5) If the verified value of the rented or leased property is greater than \$1,000, failure to return rental property is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-810. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he or she knowingly publishes the number or code of an existing, canceled, revoked expired, or nonexistent telephone credit card with the purpose of avoiding payment of lawful telecommunications charges.

(2) Aiding the avoidance of telecommunications charges is a Class B offense over which the Tribes have exclusive jurisdiction.

(3) For purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally in person, by telephone, radio, or television, or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

2-1-811. Unauthorized acquisition or transfer of food stamps.

(1) A person commits the offense of unauthorized acquisition or transfer of food stamps if he or she knowingly

(a) acquires, purchases, possesses, or uses any food stamp or coupon that he or she is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

(2) The unauthorized acquisition or transfer of food stamps with a value of less than \$1,000 is Class C offense over which the Tribes have exclusive jurisdiction.

(3) The unauthorized acquisition or transfer of food stamps with a value of greater than \$1,000 is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-812. Waste, sale or trade of food distribution program foods.

(1) A person commits the offense of waste, sale or trade of food distribution program foods (commodities) if he or she knowingly

- (a) wastes the foods by discarding them,
- (b) sells the foods to another for money, or
- (c) trades the foods for other items or services.

(2) Waste, sale or trade of food distribution program foods is a Class B offense over which the Tribes have exclusive jurisdiction.

2-1-813. Unauthorized use of motor vehicle.

(1) A person commits the offense of unauthorized use of a motor vehicle by knowingly operating the vehicle of another without the his or her consent.

(2) It is a defense that the offender reasonably believed that the owner would have consented to the offender's operation of the motor vehicle if asked.

(3) Unauthorized use of a motor vehicle is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-814. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer by knowingly or purposely

- (a) obtaining the use of a computer, computer system, or computer network without consent of the owner;
- (b) altering or destroying or causing another to alter or destroy a computer program or computer software without consent of the owner; or
- (c) obtaining the use of, or altering or destroying a computer, computer system, computer network, or any part thereof, for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or from any other person.

(2) If the verified value of the property used, altered, destroyed, or obtained does not exceed \$1,000, unlawful use of a computer is a Class C offense over which the Tribes have exclusive jurisdiction.

(3) If the verified value of the property used, altered, destroyed, or obtained is greater than \$1,000, unlawful use of a computer is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-815. Issuing a bad check. (1) A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing it will not be honored by the depository.

(2) If the person issuing the check or other order has an account with the depository, failure to make good the check or other order within 15 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the person knew it would not be paid by the depository.

(3) Issuing a bad check for services, labor, or property obtained not exceeding \$1,000 is a Class C offense over which the Tribes have exclusive jurisdiction.

(4) Issuing a bad check for services, labor, or property obtained or attempted to be obtained exceeding \$1,000 is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-816. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if he or she knowingly destroys, conceals, encumbers, transfers, removes from the Reservation, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(3) Defrauding creditors is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-817. Deceptive practices. (1) A person commits the offense of deceptive practices by knowingly or purposely

(a) causing another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred,

(b) making, directing another to make, or accepting a false or deceptive statement regarding the person's financial condition for the purpose of procuring a loan or credit;

(c) making or directing another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property, or

(d) obtaining or attempting to obtain property, labor, or services through the use of an invalid credit card.

(2) Deceptive practices is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-818. Deceptive business practices. (1) A person commits the offense of deceptive business practices if, while in the course of engaging in a business, occupation, or profession, the person knowingly or purposely

(a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quantity or quality,

(b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service,

(c) takes or attempts to take more than the represented quantity of any commodity or service when furnishing the weight or measure,

(d) sells, offers, or exposes for sale adulterated commodities,

(e) sells, offers, or exposes for sale mislabeled commodities, or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) Deceptive business practices is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-819. Forgery. (1) A person commits the offense of forgery when, with purpose to defraud, the person knowingly falsely signs, makes, executes, or alters any written instrument.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) Except as provided in subsection (4), forgery is a Class C offense over which the Tribes have exclusive jurisdiction.

(4) If the forgery is part of a common scheme, or if the value of the property, labor, or services obtained or attempted to be obtained exceeds \$1,000, the offense is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-820. Obscuring the identity of a machine. (1) A person commits the offense of obscuring the identity of a machine if he or she

(a) removes, defaces, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm, or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) Obscuring the identity of a machine is a Class C offense over which the Tribes have exclusive jurisdiction.

(3) The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

2-1-821. Illegal branding or altering or obscuring a brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if he or she marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal

(2) Illegal branding or altering or obscuring a brand is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

Part 9

Offenses Against Public Administration

2-1-901. Definitions. For purposes of this Part, the following definitions apply:

- (1) "Administrative proceeding" means any Tribal proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.
- (2) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.
- (3) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.
- (4) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.
- (5) "Tribal public servant" means any officer or employee of the Tribal government including but not limited to a member of the Tribal Council, a judge, anyone who has been elected or designated to become a Tribal public servant, or any person serving as a juror, administrator, executor, personal representative, guardian, or court-appointed fiduciary.

2-1-902. Bribery. (1) A person commits the offense of bribery by knowingly or purposely offering, conferring, agreeing to confer upon another, soliciting, accepting, or agreeing to accept from another, any benefit, including pecuniary benefit, as consideration for:

(a) the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a Tribal public servant or voter,

(b) the recipient's decision, vote, recommendation, or other exercise of official discretion in a Tribal judicial or administrative proceeding, or

(c) a violation of a known duty as a Tribal public servant.

(2) It is not a defense that a person whom the offender sought to bribe was not qualified to act in the desired way.

(3) Bribery is a Class D offense over which the Tribes have exclusive jurisdiction.

(4) A person convicted of the offense of bribery shall forever be disqualified from holding any position as a Tribal public servant.

2-1-903. Improper influence in official matters. (1) A person commits the offense of improper influence by purposely or knowingly:

(a) threatening harm to any person, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal public servant or voter;

(b) threatening harm to any Tribal public servant, to the Tribal public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the Tribal public servant's decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding;

(c) threatening harm to any Tribal public servant, the public servant's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person to violate her or his duty, or

(d) privately talking about the circumstances of a pending or potential controversy with any Tribal public servant who has or will have official discretion in a judicial or administrative proceeding or any other communication with such Tribal public servant designed to influence or with the potential to influence the outcome of such proceedings on the basis of considerations other than those authorized by Tribal law.

(2) It is not a defense that a person whom the offender sought to influence was not qualified to act in the desired way.

(3) Improper influence in official matters is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-904. Compensation for past official behavior. (1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a Tribal public servant, given a decision, opinion, recommendation, or vote favorable to another, for having exercised a discretion in another's favor, or for having violated his or her duty. A person commits an offense under this section if he or she knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.

(2) Compensation for past official behavior is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-905. Gifts to Tribal public servants by persons subject to their jurisdiction. (1) No Tribal public servant in any department or agency exercising a regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of Tribal government, or having custody of prisoners shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

(2) No Tribal public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

(3) No Tribal public servant having judicial or administrative authority and no Tribal public servant employed by a Tribal court having such authority or participating in the enforcement of its decision shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such Tribal public servant or tribunal with which he or she is associated.

(4) This section shall not apply to:

(a) fees or payments prescribed by law to be received by a Tribal public servant or any other benefit for which the recipient gives legitimate consideration or to which he or she is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(5) No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (3).

(6) An offense committed under this section is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-906. Perjury. (1) A person commits the offense of perjury by knowingly making in any Tribal judicial or administrative proceeding a false statement under oath or equivalent affirmation, or by swearing or affirming the truth of a false statement previously made when the statement is material to the proceedings.

(2) Perjury is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-907. False swearing. (1) A person commits the offense of false swearing by knowingly making a false statement under oath or equivalent affirmation, or swearing or affirming the truth of such a statement previously made when the person does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a Tribal public servant in performing his or her official function; or

(c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) False swearing is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-908. Unsworn falsification to authorities. (1) A person commits an offense under this section if, with purpose to mislead a Tribal public servant in performing his or her official function, he or she

(a) makes any written false statement which he or she does not believe to be true,

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading,

(c) submits or invites reliance on any writing which he or she knows to be forged, altered, or otherwise lacking in authenticity, or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.

(2) Unsworn falsification is a Class B offense over which the Tribes have exclusive jurisdiction.

2-1-909. False alarms to agencies of public safety. (1) A person commits an offense under this section if he or she knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, Tribal or otherwise, official or volunteer, which deals with emergencies involving danger to life or property.

(2) False alarms to public agencies is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-910. False reports to law enforcement officers.

(1) A person commits the offense of giving false reports to law enforcement officers by knowingly

(a) giving false information to any law enforcement officer with the purpose to implicate another,

(b) reporting to a law enforcement officer an offense or other incident within their concern, knowing that the alleged offense or incident did not occur, or

(c) pretending to furnish such officers with information relating to an offense or incident when the person does not have information relating to such offense or incident.

(2) Giving false reports to law enforcement officers is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-911. Tampering with witnesses, informants, or physical evidence. (1) A person commits the offense of tampering if, believing that an official proceeding or investigation is pending or about to be instituted, the person knowingly or purposely attempts to or does

(a) induce or otherwise cause a witness or informant to testify or inform falsely,

(b) withhold any testimony, information, document or other material evidence,

(c) cause a witness to elude legal process summoning the witness to testify or supply evidence, or

(d) alter, destroy, conceal, or remove any record, document, or other physical object in order to impair its availability or reliability in such proceeding or investigation.

(2) Tampering is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-912. Impersonating a Tribal public servant. (1) A person commits the offense of impersonating a Tribal public servant by knowingly and purposely pretending to hold a position as a public servant of the Tribes as a means of inducing another to submit to the person's authority or otherwise act in reliance upon such representation.

(2) Impersonating a Tribal public servant is a Class B offense over which the Tribes have exclusive jurisdiction.

2-1-913. False claims to Tribal agencies. (1) A person commits an offense under this section if he or she purposely and knowingly presents for allowance or for payment a claim already paid by another or a false or fraudulent claim, bill, account, voucher, or writing to a Tribal agency, Tribal public servant, or to a contractor authorized to allow of pay claims presented to a Tribal agency, if genuine.

(2) A false claim is a Class D offense over which the Tribes have exclusive jurisdiction, except as may be provided otherwise by federal law.

2-1-914. Resisting arrest. (1) A person commits the offense of resisting arrest by knowingly preventing or attempting to prevent a law enforcement officer from making an arrest by:

(a) using or threatening to use physical force or violence against the law enforcement officer or another; or

(b) using any other means which creates a risk of causing physical injury to a law enforcement or another.

(2) It is no defense to a charge of resisting arrest that the arrest was unlawful, provided the law enforcement officer was acting under the color of his or her official authority.

(3) Resisting arrest is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-915. Obstructing a law enforcement officer or other Tribal public servant. (1) A person commits the offense of obstructing a law enforcement officer or other Tribal public servant if he or she knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a Tribal governmental function.

(2) It is no defense to a charge under this section that the law enforcement officer or other Tribal public servant was acting in an illegal manner, provided he was acting under the color of his or her official authority.

(3) Obstructing a law enforcement officer or other Tribal public servant is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-916. Obstructing justice. (1) For the purpose of this section, "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a Tribal offense.

(2) A person commits the offense of obstructing justice if, knowing another person is an offender, he or she purposely:

(a) harbors or conceals an offender;

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

(c) provides an offender with money, transportation, a weapon, disguise, or other means of avoiding discovery or apprehension;

(d) prevents or obstructs, by means of force, deception, or intimidation, anyone from performing an act that might aid in the discovery or apprehension of an offender;

(e) supports, by act of concealment, alteration, or destruction, any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to detention to escape from such detention.

(3) Obstructing justice is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-917. Violation of a protective order. (1) A person to whom a protective order is directed commits the offense of violating a protective order by, with knowledge of the order, knowingly or purposely engaging in any conduct proscribed by the protective order or by failing to meet any requirement of the order.

(2) The person requesting the protective order or for whose protection it was issued may not be charged with violation of this section.

(3) The person against whom the protective order is directed may not be convicted of a violation of the order if the person who requested the protective order initiates the contact.

(4) Violation of a protective order is a Class D offense over which the Tribes have exclusive jurisdiction, except as provided by 2-1-701 (11) concerning multiple violations of a protective order involving a family or household member. *(Rev. 1-27-00)*

2-1-918. Escape. (1) A person commits the offense of escape by:

(a) unlawfully removing herself or himself from official detention or failing to return to detention following temporary leave granted for a specific purpose or limited time period;

(b) aiding another person to escape from official detention; or

(c) knowingly procuring, making, possessing or providing a person in official detention with anything which may facilitate escape.

(2) Escape is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-919. Providing contraband. (1) A person commits the offense of providing contraband by knowingly providing a person in official Tribal detention with alcoholic beverages, implements of escape or any other items or substances which the person knows are unlawful or improper for the detainee to possess.

(2) Providing contraband is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-920. Bail-jumping. (1) A person commits the offense of bail-jumping if, having been released on bail, or on the person's own recognizance, by Tribal Court order or other lawful Tribal authority upon condition that the person subsequently appear on a charge of an offense, the person fails, without just cause, to appear in person or by counsel at the time and place lawfully designated for the person's appearance.

(2) Bail-jumping constitutes a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-921. Criminal contempt. (1) A person commits the offense of criminal contempt by knowingly engaging in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of the Tribal Court or the Court of Appeals, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due its authority;

(b) breaching the peace by causing a disturbance directly tending to interrupt the proceedings of the Tribal Court or the Court of Appeals;

(c) purposely disobeying or refusing any lawful process or other mandate of Tribal Court or the Court of Appeals;

(d) unlawfully refusing to be sworn as a witness in any Tribal Court proceeding or, after being sworn, refusing to answer any legal and proper questions;

(e) purposely publishing a false or grossly inaccurate report of a Tribal Court proceeding; or

(f) purposely failing to obey any mandate, process, or notice relative to serving as a juror.

(2) Criminal contempt is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-922. Official misconduct. (1) A Tribal public servant commits the offense of official misconduct when in his or her official capacity he or she commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in his or her official capacity which he or she knows is forbidden by law;

(c) with the purpose to obtain advantage for himself or herself or another, performs an act in excess of his or her lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he or she knows is not authorized by law.

(2) Official misconduct is a Class D offense over which the Tribes have exclusive jurisdiction.

(3) A public servant who has been charged as provided in this section may be suspended from his or her office without pay pending final judgment.

Part 10

Offenses Against Public Order

2-1-1001. Disorderly conduct. (1) A person commits the offense of disorderly conduct by knowingly disturbing the peace of another by:

- (a) knowingly uttering fighting words with a direct tendency to violence, challenging to fight, or fighting;
- (b) making loud or unusual noises;
- (c) using physically threatening, profane, or abusive language;
- (d) discharging firearms, except at a shooting range during established hours of operation;
- (e) obstructing vehicular or pedestrian traffic on a public way without good cause;
- (f) rendering the free entrance or exit to public or private places impassable without good cause; or
- (g) disturbing or disrupting any lawful assembly or public meeting after having been asked to cease such disturbance or disruption or leave the premises by one in authority at the assembly or meeting.

(2) Disorderly conduct is a Class B offense over which the Tribes have exclusive jurisdiction.

2-1-1002. Riot. (1) A person commits the offense of riot if he or she purposely disturbs the peace by engaging in an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) Riot is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-1003. Public nuisance. (1) A person commits the offense of public nuisance by knowingly creating, conducting, or maintaining a public nuisance.

(2) "Public nuisance" includes, but is not limited to:

- (a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property;
- (b) persons gathering on any premise for the purpose of engaging in unlawful conduct;
- (c) a condition making passage of any public right-of-way, or waters used by the public, dangerous; or
- (d) a person appearing in a public place in an intoxicated condition such that the person is unable to care for himself or herself.

(3) Uses of Reservation lands and waters by Tribal members or the Tribes, whether agricultural operations or otherwise, existing prior to nearby residential or commercial development or population increase, will not be considered a public nuisance.

(4) Public nuisance is a Class A offense over which the Tribes have exclusive jurisdiction which will be handled in Tribal Traffic Court.

2-1-1004. Creating a hazard. (1) A person commits the offense of creating a hazard by knowingly:

(a) discarding in any place where it might attract children a container having a compartment with a capacity of more than 1.5 cubic feet and an attached door or lid that automatically locks or otherwise securely fastens when closed and cannot be easily opened from the inside;

(b) maintaining any property under her or his control in a manner which could attract children and which constitutes a potential health or safety hazard to the children, without taking proper steps to restrict access to the area;

(c) failing to cover or fence with suitable protective materials a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 or more feet and a width of 12 or more inches located upon property in the person's possession; or

(d) being the owner or otherwise having possession of any property owning or possessing any property upon which industrial, construction, or farming equipment is located and allowing the equipment to be maintained or operated in an unsafe manner or condition.

(2) Creating a hazard is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-1005. Illegal possession or use of liquor.

(1) A person commits the offense of illegal possession or use of liquor by knowingly and purposely:

(a) manufacturing, purchasing, transporting, or possessing any intoxicating beverage for the purpose of sale or resale, trade or barter, without appropriate licenses or permits, or in violation of any Tribal law regulating the possession and use of intoxicants;

(b) possessing, using, or being under the influence of any intoxicating beverage while under 21 years of age; or

(c) consuming, possessing, or transporting any intoxicating beverage within or into designated pow-wow grounds during any pow-wow duly authorized by the Tribal Council.

(2) A first or second offense of illegal possession or use of liquor under (1)(b) above is a Class A offense over which the Tribes have exclusive jurisdiction which shall be referred to Tribal Traffic Court.

(3) A third or subsequent offense of illegal possession or use of liquor under (1)(b) above is a Class C offense over which the Tribes have exclusive jurisdiction which shall be referred to Tribal Criminal Court and shall require a chemical dependency assessment and completion of the assessment recommendations.

(4) An offense of illegal possession or use of liquor under (1)(a) or (1)(c) above is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-1006. Harming a police dog. (1) A person commits the offense of harming a police dog if he or she purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a Tribal law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

(2) Harming a police dog is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-1007. Causing animals to fight. (1) A person commits the offense of causing animals to fight by:

(a) owning, possessing, keeping, or training any animal with the intent that such animal fight or engage in an exhibition of fighting with another animal;

(b) allowing or causing any animal to fight with another animal or causing any animal to menace or injure another animal for the purpose of sport, amusement, or gain;

(c) knowingly permitting any act in violation of subsection (1)(a) or (1) (b) to take place on any premises under the person's charge or control, or aids or abets any such act; or

(d) participating in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.

2) Causing animals to fight is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-1008. Cruelty to animals. (1) A person commits the offense of cruelty to animals if, without justification, the person knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying any animal in a cruel manner;

(c) failing to provide an animal in the person's custody with proper food, drink, or shelter; or

(d) abandoning any helpless animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure, or become a public charge.

(2) A first offense of cruelty to animals is a Class B offense over which the Tribes have exclusive jurisdiction which will be referred to Tribal Traffic Court.

(3) A second or subsequent offense of cruelty to animals is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

(4) Sentencing may also include:

(a) Forfeiture of the animals;

(b) Payment of any vet costs;

(c) Prohibition or limitation on future ownership of animals; and

(d) Treating, boarding or disposing of the animals.

(5) Nothing in this section prohibits:

(a) a person from humanely destroying an animal for just cause; or

(b) the use of commonly accepted agricultural and livestock practices on livestock.

2-1-1009. Maintaining a Vicious Dog. (1) It is a criminal offense to maintain a vicious dog.

(2) A vicious dog is defined as one which bites, attempts to bite, harasses, or chases any human being without provocation or which harasses, chases, bites, or attempts to bite livestock or any domestic pet.

(3) A Law Enforcement Officer may restrain, quarantine, or otherwise control any vicious dog upon a reasonable suspicion that there was a violation of this section.

(4) Strict Liability is imposed under this section.

(5) Maintaining a Vicious Dog is a Class A offense over which the Tribes have exclusive jurisdiction which shall be referred to Tribal Traffic Court. In addition to the penalties allowed under this code, the Court shall order a person convicted of Maintaining a Vicious Dog to make restitution for any expense incurred by the Tribes for controlling the vicious dog under subsection (3) and may order the vicious dog destroyed.

Part 11

Communications Offenses

2-1-1101. Promoting obscene acts or materials. (1) A person commits the offense of promoting obscene acts or materials when, with knowledge of the obscene nature thereof, he or she purposely or knowingly:

- (a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;
- (b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;
- (c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;
- (d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;
- (e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18;
- (f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

- (a)(i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;
- (ii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and
- (b) taken as a whole, the material
 - (i) applying contemporary community standards, appeals to the prurient interest in sex;
 - (ii) portrays conduct described in subsection (2)(a) in a patently offensive way; and
 - (iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

- (a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;
- (b) the artistic, literary, scientific, educational, or other merits of the material;
- (c) the degree of public acceptance of the material in the community;
- (d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or
- (e) the purpose of the author, creator, publisher, or disseminator.

(4) Promoting obscene acts or materials is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-1102. Public display or dissemination of obscene material to minors. (1) A person having custody, control or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) he or she had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a public school, college, or university or a retail outlet affiliated with the serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

(3) Public display or dissemination of obscene material to minors is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-1103. Violation of privacy in communications. (1) A person commits the offense of violating privacy in communication who knowingly or purposely:

(a) communicates with any person by telephone and uses any obscene, lewd or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person, intending that the communication terrify, intimidate, threaten, harass, annoy, or offend the person;

(b) uses a telephone to extort anything of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of hidden electronic or mechanical devices which reproduce conversation without the knowledge of all parties to the conversation, unless

(i) the transcribing or recording is carried out pursuant to Sections 2-2-211 through 2-2-214 of this Code.

(ii) the recording is of a person speaking at a public meeting, or

- (iii) the person making the recording has given warning that the conversation is being recorded, or
 - (d) reading or disclosing any communications addressed to another person without the permission of such person, unless directed by a court order to read or disclose such communications.
- (2) Violating privacy in communications is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-1104. Bribery in contests. (1) A person commits the offense of bribery in contests if he or she purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

- (a) any pecuniary benefit as a consideration for the recipient's failure to use his or her best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or
- (b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.

(2) Bribery in contests is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

Part 12

Weapons Offenses

2-1-1201. Carrying concealed weapon. (1) A person commits the offense of carrying a concealed weapon by knowingly carrying or bearing a dirk, dagger, pistol, revolver, slingshot, sword cane, billy club, knuckles made of any metal or other hard substance, knife having a blade at least 4 inches long, non-safety type razor, or any other deadly weapon which is wholly or partially covered by the clothing or wearing apparel of the person carrying the weapon.

(2) Subsection (1) does not apply to:

- (a) any law enforcement officer of the Tribes;
- (b) a person authorized by a judge of the Tribal Court to carry a concealed weapon;
- (c) a person permitted under state law to carry a concealed weapon; or
- (d) the carrying of arms on one's own premises or at one's home or place of business.

(3) Carrying a concealed weapon is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-1202. Possession of deadly weapon by prisoner. Every prisoner committed to the Tribal jail, who while at the jail, while being conveyed to or from the jail, or while under the custody of prison or jail officers, or employees, purposely or knowingly possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-1203. Carrying a concealed weapon while under the influence. 1) A person commits the offense of carrying a concealed weapon while under the influence if he or she purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. For the purpose of this statute "under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a weapon It is not a defense that the person had is a person permitted to carry a concealed weapon under Section 2-1-1201(2).

(2) Carrying a concealed weapon while under the influence is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-1204. Carrying concealed weapon in a prohibited place. (1) A person commits the offense of carrying a concealed weapon in a prohibited place if he or she purposely or knowingly carries a concealed weapon in:

- (a) a building owned or leased by the federal, state, local government, or Tribes or any governmental entity;
- (b) a bank, credit union, savings and loan institution, or similar institution; or
- (c) a commercial establishment in which alcoholic beverages are sold, dispensed, and consumed.

(2) It is not a defense that the person had the permission of the Tribal Court or a state permit to carry a concealed weapon.

(3) Carrying a concealed weapon in a prohibited place is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-1205. Carrying or bearing a switchblade knife. (1) Every person who knowingly carries or bears upon his or her person, who carries or bears within or on a motor vehicle or other means of conveyance operated by him or her or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be guilty of a Class C offense.

(2) A bona fide collector whose collection is registered with the Tribal Police is exempted from the provisions of this section.

(3) For the purpose of this section, a switchblade knife is defined as any knife which has a blade 1 and ½ inches long or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

(4) Carrying or bearing a switchblade knife is a Class C offense over which the Tribes have exclusive jurisdiction and which will be heard in Tribal Traffic Court. (Rev. 1-27-00)

2-1-1206. Reckless or malicious use of explosives. (1) Every person who shall recklessly or maliciously use, handle, or have in his or her possession any explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a Class C offense.

(2) "Explosive" means any chemical compound that is commonly used or intended for the purpose of producing a destructive effect and which contains compounds or ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion, or a detonator of any part of the compound or mixture may cause a destructive effect on surrounding objects or persons.

(3) Reckless or malicious use of explosives is a Class C offense over which the Tribes have exclusive jurisdiction.

2-1-1207. Possession of a destructive device. (1) A person who, with the purpose to commit a Class E offense, has in his or her possession any destructive device on a public street or highway, in or near a theater, hall, school, college, church, hotel, Tribally-owned building, or any other public building, or private habitation, in, on or near any aircraft, railway passenger train, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) "Destructive device" as used in this section includes, but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than .60 inch or a launching device therefor and a rocket, rocket-propelled projectile or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes; or

(e) a breakable container which contains a flammable liquid with a flash point of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(3) Possession of a destructive device is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-1208. Possession of explosives. (1) A person commits the offense of possession of explosives if he or she possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and

(a) has the purpose to use such explosive material or device to commit an offense, or

(b) knows that another has the purpose to use such explosive material or device to commit an offense.

(2) Possession of explosives is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-1209. Possession of a silencer. (1) A person commits the offense of possession of a silencer if he or she possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) Possession of a silencer is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

2-1-1210. Possession of a sawed-off firearm. (1) A person commits the offense of possession of a sawed-off firearm if he or she knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

(a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or

(b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and

(c) the firearm has been modified in a manner so that the barrel length, overall length, or both are less than specified in subsection (1)(a) or (1)(b).

(2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.

(3) This section does not apply to firearms possessed:

(a) for educational or scientific purposes in which the firearms are incapable of being fired;

(b) by a person who has a valid federal tax stamp for the firearm, issued by the Bureau of Alcohol, Tobacco, and Firearms; or

(c) by a bona fide collector of firearms if the firearm is a muzzle loading, sawed-off firearm manufactured before 1900.

(4) Possession of a sawed-off firearm is a Class D offense over which the Tribes have exclusive jurisdiction.

2-1-1211. Firing firearms. (1) Except as provided in subsections (2) and (3), every person who purposely shoots or fires off a gun, pistol, or any other firearm within the limits of any town, city, Tribal housing or community area, or any private enclosure which contains a dwelling house is guilty of a Class A offense over which the Tribes have exclusive jurisdiction and which will be heard in Tribal Traffic Court.

(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town, city, Tribal housing or community area, or an enclosure that contains a private dwelling.

(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Part 3 of this Chapter.

2-1-1212. Use of firearms by children under 14 years. (1) Unless a child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor who has been authorized by the parent or guardian, it is unlawful for a parent, guardian, or other person having charge of custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms.

(2) "Public places" means any place to which the public, Tribal licensees or invitees, or any group of substantial size has access.

(3) Any parent, guardian, or other person having charge or custody of a minor child under the age of 14 years violating the provisions of this section is guilty of a Class A offense over which the Tribes have exclusive jurisdiction and which will be heard in Tribal Traffic Court.

Part 13

Traffic Violations

2-1-1301. Violation of Montana traffic laws. (1) A person commits a traffic violation by violating any law contained in the following sections of the Montana Code Annotated:

(a) Title 61:

Chapter 1	in entirety
Chapter 3	Part 3, Section 61-3-601
Chapter 5	in entirety
Chapter 6	Sections 61-6-103, 133, 151 and Part 3
Chapter 7	in entirety, except Sections 61-7-115,-116, and-117
Chapter 8	in entirety, except Parts 1 and 8
Chapter 9	in entirety
Chapter 13	in entirety

(b) Sections 23-2-601, 631, and 641.

(2) Subsection (1) of this section is subject to the following conditions:

(a) all amendments to the above-mentioned provisions of the Montana Code Annotated shall operate to amend this Code until Tribal law provides otherwise.

(b) nothing in this section shall diminish the authority of the Tribal Council to delete, amend, or supplement the above-mentioned provisions of the Montana Code Annotated;

(c) "county" or "city" jail as used in the Montana Code shall be construed to mean Tribal jail or other jail authorized by the Tribal Council to receive prisoners;

(d) references to State law enforcement officials used in the Montana Code shall be construed to mean Tribal law enforcement officers;

(e) references to State department of public health and human services used in the Montana Code shall be construed to refer to either the Montana department of public health and human services, or Tribal Health and Human Services Department;

(f) references to diagnosis and patient placement rules adopted by the department of public health and human services shall be construed to mean the rules of the relevant department referenced in the (e) above;

(g) references to justice court or state district court in the Montana Code shall be construed to mean Tribal Court.

(3) The penalties imposed by the Tribal Court for traffic violations shall be those set forth in the above referenced sections of the Montana Code, except that no Tribal Court penalty may exceed one year labor or jail time or a fine of \$5,000, or both.

2-1-1302. Tribal Traffic Court. Any violation of Title 61 of the Montana Code Annotated which does not carry the possibility of a jail sentence shall be heard in Tribal Traffic Court.

2-1-1303. Tribal Driver Improvement Program. Nothing in this Part shall prohibit the Tribes from developing and instituting their own driver improvement program to allow for reinstatement of driving privileges for Tribal members.

Part 14

Offenses Involving Dangerous Drugs

2-1-1401. Drug violations. (1) A person commits a drug violation by violating any provision in Chapter 9 of Title 45 of the Montana Code Annotated.

(2) The Tribes will have exclusive jurisdiction over any misdemeanor offense in Chapter 9 of Title 45 of the Montana Code Annotated.

(3) Any offense classified as a misdemeanor under subsection (2) above is a Class D offense over which the Tribes have exclusive jurisdiction.

(4) The Tribes and the State of Montana shall have concurrent jurisdiction over any felony offense in Chapter 9 of Title 45 of the Montana Code Annotated and which shall be classified as a Class E offense.

2-1-1402. Possession, manufacture, delivery, or advertisement of drug paraphernalia. (1) "Drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug.

(2) In determining whether an object is drug paraphernalia, the Tribal Court shall consider, in addition to all other logically relevant factors, the following:

(a) statements by an owner or by anyone in control of the object concerning its use;

(b) prior convictions, if any of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or any dangerous drug;

(c) the proximity of the object, in time and space, to a direct violation of this section, although lack of proximity does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;

(d) the existence of any residue of dangerous drugs on the object;

(e) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this section;

(f) instructions, oral or written, provided with the object concerning its use;

(g) descriptive materials accompanying the object which explain or depict its use;

(h) national and local advertising concerning its use;

(i) the manner in which the object is displayed for sale;

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

(k) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(l) the existence and scope of legitimate uses for the object in the community; and

(m) expert testimony concerning its use.

(3) A person commits the offense of criminal possession, manufacture, delivery, or advertisement of drug paraphernalia if he or she knowingly

(a) uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grown, harvest, manufacture, compound, convert, produce process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug;

(b) delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug;

(c) delivers drug paraphernalia to a person under 18 years of age, who is at least 3 years his or her junior; or

(d) places in any newspaper, magazine, handbill, or other publication any advertisement knowing or under circumstances where one reasonable should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(4) A violation of subsection (3)(a),(b),(c), or (d) is a Class C offense over which the Tribes have exclusive jurisdiction.

(5) Practitioners and agents acting in the course of a professional practice are exempt from this section.