Title 21 Amendments

§ 1. Title of code

This title shall be known and may be cited as the Criminal Code of Cherokee Nation.

§ 2. Criminal acts are only those prescribed—"This code" defined

No act or omission shall be deemed criminal or punishable except as prescribed or authorized by this code. The words **"this code"** as used in the "penal code" shall be construed to mean "Cherokee Nation Code Annotated."

§ 3. Crime and public offense defined

A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, any of the following punishments:

1. Imprisonment;

2. Fine;

3. Removal from office;

4. Disqualification to hold and enjoy any office of honor, trust, or profit, under this Nation;

5. Restitution;

6. Community service; or

7. Victim compensation assessment.

§ 4. Crimes classified

All crimes or offenses are divided into:

1. Felonies;
2. Misdemeanors.

§ 5. Felony defined

A felony is a crime which is, or may be, punishable by imprisonment for more than one year.

§ 6. Misdemeanor defined

Every other crime that is not a felony is a misdemeanor.

§ 7. Objects of criminal code

This title specifies the classes of persons who are deemed capable of committing crimes, and who are liable to punishment therefor; and defines the nature of the various crimes and prescribes the kind and measure of punishment to be inflicted for each. The manner of prosecuting and convicting criminals is regulated by the Code of Criminal Procedure, Title 22 of the Cherokee Nation Code Annotated.

§ 8. Conviction must precede punishment

The punishments prescribed by this title can be inflicted only upon a legal conviction in a court having jurisdiction.

§ 9. Indian defined

For the purposes of criminal prosecution and juvenile delinquency under the laws of the Cherokee Nation, the term "Indian" includes:

A. Any person who is a citizen of the Cherokee Nation;
B. Any person who is a citizen or member of any other federally recognized Indian tribe, including Alaska Native entities;
C. Any person who is eligible to become a member of any federally recognized Indian tribe; and
D. Any person who would be considered an "Indian" for the purposes of federal criminal prosecution under 18 U.S.C. § 1152 and/or 18 U.S.C. § 1153.

§ 10. Punishment of crimes

Except in cases where a different punishment is prescribed by this title or by some existing provisions of law, every offense declared to be a crime is punishable by the maximum punishment provided for by the Indian Civil Rights Act, 25 U.S.C. § 1302(a)(7). Provided that, for any conviction of an offense classified as a misdemeanor, the Court may not impose any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of Five Thousand Dollars ($5,000.00) or both; for felonies and other crimes the Court may subject a defendant to a term of imprisonment greater than one (1) year but not to exceed three (3) years for any one (1) offense, or a fine greater than Five Thousand Dollars ($5,000.00) but not to exceed Fifteen Thousand Dollars ($15,000.00), or both, if the defendant is a person accused of a criminal offense who (a) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or (b) is being prosecuted for an offense comparable to an offense that would be punishable by more than one (1) year of imprisonment if prosecuted by the United States or any of the states.

§ 10a. Punishment of crimes concerning public officials, appointed officials or department heads

Any elected official, appointed official or department head who is convicted of a crime concerning bribery, embezzlement, fraud, perjury, or forgery or larceny may in addition to the punishments provided under this title, be subject to the punishment of disqualification from employment with Cherokee Nation.

§ 11. Specific statutes in other titles as governing—Acts punishable in different ways—Acts not otherwise punishable by imprisonment

A. If there be in any other titles of the laws of this Nation a provision making any specific act or omission criminal and providing the punishment therefor, and there be in this penal code any provision or section making the same act or omission a criminal offense or prescribing the punishment therefor, that offense and the punishment thereof, shall be governed by the special provisions made in relation thereto, and not by the provisions of this penal code. But an act or omission which is made punishable in different ways by different provisions of this code may be punished under any of such provisions, the punishments therein prescribed are substituted for those prescribed for a first offense, but in no case can it be punished under more than one section of law; and an acquittal or conviction and sentence under any one section of law, bars the prosecution for the same act or omission under any other section of law.

B. Provided, however, notwithstanding any provision of law to the contrary, any offense, including traffic offenses, in violation of the laws of this Nation which is not otherwise punishable by a term of imprisonment or confinement shall be punishable by a term of imprisonment not to exceed one day in the discretion of the Court, in addition to any fine prescribed by law.

§ 12. Reserved

§ 13. Uniform Reporting System

For purposes of any crime specified by the criminal code of this title or any provision of the law in the Cherokee Nation, all criminal and juvenile justice information systems shall adopt and use the uniform reporting standard created and published by the Oklahoma State Bureau of Investigation as provided by Section 1517 of Title 22 of the Oklahoma Statutes. The uniform reporting standard shall ensure the accurate reporting of all criminal and juvenile delinquency information relating to arrests, charges, custody records, dispositions, and any other information record purporting to identify a criminal or juvenile delinquency history record or information to be maintained by any criminal or juvenile justice information system within the Cherokee Nation. The courts, any criminal justice department, and juvenile delinquency department of the Cherokee Nation is hereby directed to comply with and use the uniform reporting standard for reporting and maintaining all criminal justice information systems as set forth in this section.

§ 14. Sentencing Authority

A. The Cherokee Nation has authority pursuant to the “Tribal Law and Order Act of 2010”,

Pub.L. 111–211, Title II, July 29, 2010, 124 Stat. 2261 and 25 U.S.C. § 1302 to subject a person convicted of a crime punishable by the laws of the Cherokee Nation to a term of imprisonment not to exceed three (3) years for any single offense and a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or both.

B. The Cherokee Nation may impose upon a convicted person a total penalty or punishment of imprisonment for not more than nine (9) years in a criminal proceeding.
C. For the purposes of this section, the term "offense" means a violation of a criminal law.
D. For the purposes of this section, the term "criminal proceeding" means a prosecution for a single offense or a series of offenses that are part of a continuing transaction that may constitute separate offenses, but that are closely related in time.
E. If a defendant is convicted in a criminal proceeding for more than one offense where the total punishment upon conviction would be more than nine (9) years, the sentencing judge shall at the time of sentencing order that some or all of the sentences be served concurrently so that a term of imprisonment is not entered where the defendant would be subjected to imprisonment for a term of more than nine (9) years.

§§ 15-20. Reserved

CHAPTER 2

GENERAL PROVISIONS

§ 21. Prohibited act a misdemeanor, unless stated otherwise

Where the performance of an act is prohibited by any statute, and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a misdemeanor, unless the defendant is a person accused of a criminal offense who (a) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or (b) is being prosecuted for an offense comparable to an offense that would be punishable by more than one (1) year of imprisonment if prosecuted by the United States or any of the states.

§ 22. Gross injuries—Grossly disturbing peace—Openly outraging public decency—Injurious acts not expressly forbidden

Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency, and is injurious to public morals, although no punishment is expressly prescribed therefor by this code, is guilty of a crime.

§ 23. Acts punishable under foreign laws

An act or omission declared punishable by this title is not less so because it is also punishable under the laws of another Indian tribe, a state, the United States, or another government or country,

unless the contrary is expressly declared in this title.

§ 24. Reserved

§ 25. Foreign conviction or acquittal

Whenever it appears upon the trial that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of a state, another government or country, founded upon the act or omission in respect to which he is upon trial, this is a sufficient defense.

§ 26. Contempts, criminal acts which are also punishable as

A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

§ 27. Mitigation of punishment

Where it is made to appear at the time of passing sentence upon a person convicted, that such person has already paid a fine or suffered an imprisonment for the act which he stands convicted, under an order adjudging it a contempt, the Court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

§ 28. Aiding in a crime

Whenever an act is declared a crime, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act, is guilty of a crime, and punishable in the same manner as the principal offender.

§ 29. Sending letter—When complete—Place of prosecution

In the various cases in which the sending of a letter is made criminal by this title, the offense is deemed complete from the time when such letter is deposited in any post office or any other place, or delivered to any person with intent that it shall be forwarded. And the party may be charged and tried in the courts of the Cherokee Nation.

§ 30. Failure to perform duty

No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

§§ 31-40. Reserved

ATTEMPTS

§ 41. Conviction for attempt not permitted where crime is perpetrated

No person can be convicted of an attempt to commit a crime when it appears that the crime intended or attempted was perpetrated by such person in pursuance of such attempt.

§ 42. Attempts to commit crimes—Punishment

Every person who attempts to commit any crime, and in such attempt does any act toward the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempt, as follows:

1. Except in cases where a different punishment is prescribed by law, the punishment for attempt shall be a misdemeanor unless the attempt is to commit a felony.

2. Attempt to commit a felony shall be a felony and is punishable by payment of a fine not more than Fifteen Thousand Dollars ($15,000.00), or by imprisonment for a period not exceeding three (3) years, or by both such fine and imprisonment.

§ 43. Unsuccessful attempt—Another crime committed

The last two sections do not protect a person who in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

§ 44. Attempt defined

A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

1. purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or

2. when causing a particular result in an element of the crime, does anything with the purpose of causing or with the belief that it will cause such result, without further conduct on his part.

§§ 45-50. Reserved

§ 51. Offense of Habitual Criminal and Punishment

A. It shall be unlawful for any person to commit a felony in the Cherokee Nation after said person has been convicted within the preceding ten (10) years in the Cherokee Nation, in another

federally recognized Indian tribe, or in any state of the United States, or by the federal government of any prior felony offense.

B. Any person found guilty of violating subsection A of this section shall upon conviction be guilty of a felony and punished by imprisonment for not more than three (3) years, or by a fine of not exceeding Ten Thousand Dollars ($10,000.00), or by both fine and imprisonment

C. The purpose of this section is to enhance the punishment for convicted felons who continue to commit felony offenses and shall be liberally construed in support of that purpose. A person may be convicted of the provisions of this section and for committing the underlying crime without the offenses merging.

§ 52. Reserved

§ 53. Attempt to conceal death of child—Punishment on subsequent conviction

Every person who, having endeavored to conceal the live birth of an child, or the death of any such child under the age of two (2) years, is guilty of a crime.

§ 54-60. Reserved

SENTENCE AND IMPRISONMENT

§ 61. Sentences to be served in order received by penal institution—Concurrent sentences

When any person is convicted of two or more crimes in the same proceeding or court or in different proceedings or courts, and the judgment and sentence for each conviction arrives at a penal institution on different dates, the sentence which is first received at the institution shall commence and be followed by those sentences which are subsequently received at the institution, in the order in which they are received by the institution, regardless of the order in which the judgments and sentences were rendered by the respective courts, unless a judgment and sentence provides that it is to run concurrently with another judgment and sentence.

§ 62. Sentences to run concurrent with federal or state court sentence

When a defendant is sentenced in a Cherokee Nation Court and is also under sentence from a federal court or a state court, the Court may direct that custody of the defendant be relinquished to the federal or state authorities and that such Nation Court sentence as is imposed may run concurrently with the federal or state sentence imposed.

§ 63. Suspended sentence—Revocation—Relinquishment of custody

When a defendant has receied a suspended sentence from a Cherokee Nation Court and is also

under sentence from a federal court or a state court, the Court may revoke the suspended sentence and direct that custody of the defendant be relinquished to the federal or the state's authorities and that the sentence may run concurrently with the federal or the state's sentence which has been imposed.

§ 64. Imposition of fine in addition to imprisonment

A. Upon a conviction for any misdemeanor punishable by imprisonment, in relation to which no fine is prescribed by law, the court or a jury may impose a fine on the offender not exceeding One Thousand Dollars ($1,000.00) in addition to the imprisonment prescribed.

B. Upon a conviction for any felony punishable by imprisonment, in relation to which no fine is prescribed by law, the court or a jury may impose a fine on the offender not exceeding Fifteen Thousand Dollars ($15,000.00) in addition to the imprisonment prescribed.

§ 65. Civil rights suspended

A sentence of imprisonment suspends all the civil rights of the person so sentenced, except the right to make employment contracts, during confinement under said sentence, subject to the approval of the Nation's Court, when this benefits the vocational training or release preparation of the prisoner, and forfeits all public offices.

§ 66. Person of convict protected

The person of a convict sentenced to imprisonment in the Cherokee Nation penal institution is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

§ 67. Conviction does not work forfeiture

No conviction of any person for crime works any forfeiture of any property, except in the cases of any outlawry for treason, and other cases in which a forfeiture is expressly imposed by law.

§ 68. Sentence—Transfer to Bureau of Prisons

The District Court, upon the request of the Marshal or the Attorney General, may refer any person sentenced to a term of imprisonment in the Nation to the Bureau of Prisons for transfer of he inmate to the nearest appropriate and available Bureau of Prisons facility.

§69. Return to Cherokee Nation to complete sentence

Provided, that, after a defendant has been transferred to another jurisdiction pursuant to the

provisions of this title, if any sentence remains to be served in the Cherokee Nation, such defendant shall be returned by the sentencing court to the Cherokee Nation to complete his sentence.

§§ 70-80. Reserved

PERJURY ON EXAMINATION OF PRIVILEGED WITNESS

§ 81. Testimony—Privilege of witnesses and perjury

The various sections of this title which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

DEFINITIONS

§ 91. Terms to have meanings specified unless different meaning appears

Wherever the terms mentioned in the following sections are employed in this title, they are deemed to be employed in the senses hereafter affixed to them, except where a different sense plainly appears.

§ 92. Willfully defined

The term **"willfully"** when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

§ 93. Negligent—Negligence

The terms **"neglect," "negligence," "negligent"** and **"negligently,"** when so employed, import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

§ 94. Corruptly

The term **"corruptly"** when so employed, imports a wrongful design to acquire some pecuniary or other advantage to the person guilty of the act or omission referred to.

§ 95. Malice—Maliciously

The terms **"malice"** and **"maliciously,"** when so employed, import a wish to vex, annoy or injure another person, established either by proof or presumption of law.

§ 96. Knowingly

The term **"knowingly,"** when so applied, imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.

§ 97. Bribe

The term **"bribe"** signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking, asked, given or accepted, with a

corrupt intent to influence unlawfully the person to whom it is given, in his action, vote or opinion, in any public or official capacity.

§ 98. Vessel

The word **"vessel,"** when used with reference to shipping, includes ships of all kinds, steamboats, and steamships, canal boats, and every structure adapted to be navigated from place to place.

§ 99. Peace officer

The term **"peace officer"** means any tribal law enforcement officer, sheriff, police officer, federal or state law enforcement officer, or any other law enforcement officer whose duty it is to enforce and preserve the public peace.

Every United States Marshal, United States Deputy Marshal, Special Agent of the Federal Bureau of Investigation or any other federal law enforcement officer who is employed full-time as a law enforcement officer by the federal government, who is authorized by federal law to conduct any investigation of, and make any arrest for, any offense in violation of federal law shall have the same authority, and be empowered to act, as peace officers within the Cherokee Nation in rendering assistance to any law enforcement officer in an emergency, or at the request of any officer, and to arrest any person committing any offense in violation of the laws of the Cherokee Nation.

§ 100. Signature

The term **"signature"** includes any name, mark or sign, written with the intent to authenticate any instrument or writing.

§ 101. Writing includes printing

The term **"writing"** includes printing.

§ 102. Real property

The term **"real property"** includes every estate, interest and right in lands, tenements and hereditaments.

§ 103. Personal property

The term **"personal property"** includes every description of money, goods, chattels, effects, evidences of right in action, and written instruments by which any pecuniary obligation, right or title to property, real or personal, is created or acknowledged, transferred, increased, defeated, discharged or diminished.

§ 104. Property defined

The term **"property"** includes both real and personal property.

§ 105. Person defined

The word **"person"** includes corporations, as well as natural persons who are subject to the jurisdiction of Cherokee Nation pursuant to federal law.

§ 106. Person as designating party whose property may be subject of offense

Where the term **"person"** is used in this Title to designate the party whose property may be the subject of any offense, it includes this Nation, any state, other government or country which may lawfully own any property within this Nation, and all public and private corporations or joint associations, as well as individuals.

§ 107. Singular includes plural

The singular number includes the plural, and the plural the singular.

§ 108. Gender

Words used in the masculine gender comprehend as well the feminine and neuter.

§ 109. Present tense

Words used in the present tense include the future, but exclude the past.

§ 110. Intent to defraud

Whenever, by any of the provisions of this title, an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association or body politic or corporate whatever.

OTHER REMEDIES AND PUNISHMENTS

§ 131. Civil remedies not affected

The omission to specify or affirm in this title, any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

§ 132. Proceeding to impeach or remove

The omission to specify or affirm in this title, any ground of forfeiture of a public office or other trust or special authority conferred by law, to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension.

FINES AND PENALTIES

§ 141. Payment into Cherokee Nation

All fines, forfeitures and pecuniary penalties prescribed as a punishment by any of the provisions of this title, when collected, shall be paid to Cherokee Nation.

CRIME VICTIMS COMPENSATION ACT

§ 142.1. Intent of Cherokee Nation Tribal Council

It is the intent of the Cherokee Nation Council to provide a method of compensating and assisting those persons within the Nation who are victims of criminal acts and who suffer physical or psychological injury or death. To this end, it is the further intent of the Council to provide compensation in the amount of expenses actually incurred as a direct result of the criminal acts of other persons.

§§ 142.2-142.11. Reserved

§ 142.12. Authority to authorize payments

The Principal Chief shall have the authority to create any process deemed necessary through which victim compensation payments may be expended.

§ 142.13 Revolving Fund Established

There is hereby established a revolving fund to be designated the "Crime Victims Compensation Revolving Fund" ("Fund") which shall be held and administered by the Treasurer in accordance with the purposes of this Act. The Fund shall be authorized by the Tribal Council as a continuing fund, which shall initially receive a direct appropriation to begin the Fund and thereafter, shall receive a direct continuing appropriation from all monies accruing to the credit of said Fund. Such monies are hereby appropriated and may be budgeted and expended by the Treasurer for the purpose of implementing the provisions of the Wilma P. Mankiller Victim's Act, including the provisions set forth in Section 142.1 et seq. of this title.

Expenditures from said fund shall be made by the Treasurer against claims filed as prescribed by policies created pursuant to § 142.12. The fund shall be maintained as authorized by law for investments by the Treasurer. The interest earned by any investment of monies from the fund shall be credited to the fund for expenditure as provided by herein.

§§ 142.14-142.17. Reserved

§ 142.18. Victim compensation assessments

A. In addition to the imposition of any costs, penalties, or fines imposed pursuant to law, any person convicted of, pleading guilty to, or agreeing to a deferred judgment procedure for a crime involving criminally injurious conduct, be it a felony or misdemeanor offense, shall be ordered to pay a victim compensation assessment of at least Five Dollars ($5.00), but not to exceed Fifteen Thousand Dollars ($15,000.00), for each crime for which the person was convicted, pled guilty to, or agreed to a deferred judgement procedure for. In imposing this penalty, the Court shall consider factors such as the severity of the crime, the prior criminal record, the expenses of the victim of the crime, and the ability of the defendant to pay, as well as the economic impact of the victim compensation assessment on the dependents of the defendant.

B. All monies collected pursuant to this section shall be deposited in the Victims Compensation Revolving Fund.

§ 143.1 Intent of Cherokee Nation Tribal Council

It is the intent of the Cherokee Nation Tribal Council to secure justice and due process for victims throughout the criminal and juvenile justice systems. To this end, the Council provides that victims of crime shall have rights, which shall be protected by law in a manner no less vigorous than the rights afforded to the accused.

§ 143.2. Short Title

This act shall be known and may be cited as the "Wilma P. Mankiller Victim's Rights Act."

§ 143.3 Victim's Rights—Generally

A. Victims of crime shall have the following rights:

1. To be treated with fairness and respect for the victim's safety, dignity, and privacy;

2. Upon request and whenever possible, to reasonable and timely notice of and to be present at all proceedings involving the criminal or delinquent conduct;

3. To be heard in any proceeding involving release, plea, sentencing, or disposition;

4. To refuse an interview or other request made by the accused or any person acting on behalf of the accused, other than a refusal to appear if subpoenaed by defense counsel;

5. Upon request and whenever possible, to full and timely restitution;

6. To proceedings free from unreasonable delay, and a prompt conclusion of the case;

7. Upon request, to confer with the attorney for the Nation; and

8. To be informed of all rights enumerated in this section.

B. The victim, or the attorney for the Cherokee Nation Attorney General's Office, may assert in any jurisdiction the rights enumerated in this act and any other right afforded to the victim by law. The court shall act promptly on such a request.

C. This act shall not be construed as a waiver of sovereign immunity and shall not create any cause of action for compensation or damages against the Cherokee Nation, any officer, employee, or agent of the nation, or any officer or employee of the court.

D. As used in this section, the term "victim" includes any person against whom a criminal offense or delinquent act is committed, or any person who is directly and proximately harmed by the commission of such offense or act. The term "victim" shall not include the accused or any person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

§ 143.4. Duty of the Office of Attorney General to Victims

A. The Office of the Attorney General is directed to inform the victims and witnesses of crimes of their rights under this Act. The following rights shall be included:

1. Upon request, to be notified and to be present at all proceedings involving the criminal or delinquent conduct; to be heard in any proceeding involving release, plea, sentencing, disposition, and parole; to be notified that a court proceeding to which a victim or witness has been subpoenaed will or will not go on as scheduled in order to save the person an unnecessary trip to court;

2. To be treated with fairness and respect for the safety, dignity and privacy of the victim;

3. To be informed of financial assistance and other social services available to witnesses and/or victims, including information on how to apply for any applicable assistance and services;

4. To be informed of the procedure for applying to receive any restitution to which the victim is entitled;

5. To be provided, whenever possible, a secure waiting area during court proceedings that does not require close proximity to defendants and families and friends of defendants;

6. To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property—except weapons, currency, contraband, property subject to evidentiary analysis, and property the ownership of which is disputed—shall be returned to the person;

7. To have the family members of any homicide victims afforded any applicable services under this section, whether or not the person is to be a witness in any criminal proceeding;

8. To be informed of any plea bargain negotiations and, upon request, to confer with the attorney for the nation;

9. To have victim impact statements filed with the court;

10. To a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor. In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same

standards that govern the right to a speedy trial for a defendant or a minor. In ruling on any motion presented on behalf of a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy resolution of the case. If a continuance is granted, the court shall enter into the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

B. The Attorney General's office shall provide all victims with an official request for restitution form. The form is to be completed and signed by the victim, and shall include all invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss. The victim shall provide all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this Nation, any other nation or tribal government, any state, or the federal government received as a direct result of the crime for injury, loss of earnings, or out-of-pocket loss. The unexcused failure or refusal of the victim to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed available information.

§143.5. Duty of Law Enforcement to Victims

Upon the preliminary investigation of a crime, it shall be the duty of the officer who interviews the victim of such crime to inform the victim, or a responsible adult if the victim is a minor child or an incompetent person, or the family member who receives death notification in the case of a homicide, in writing, of their rights as a crime victim. Written notification shall consist of handing the victim a preprinted card or brochure that, at a minimum, includes the following information:

1. A statement that reads, "As a victim of crime, you have certain rights";

2. Telephone and address information for the Office of the Attorney General; and

3. The website address where victims can access a full list of their rights, additional information, and how to apply for victim compensation assistance.

§143.6. Victim Impact Statements

A. Each victim, or members of the immediate family of each victim, or person designated by the victim or by family members of the victim, may present a victim impact statement either in writing or orally at the sentencing proceeding. Any victim or representative who appears personally at the formal sentence proceeding shall not be cross-examined by opposing counsel; provided, however, such cross-examination shall not be prohibited in a proceeding before a jury or a judge acting as a finder of fact. A written victim impact statement

introduced at a formal sentence proceeding shall not be amended by any person other than the author, nor shall the statement be excluded in whole or in part from the court record. The court shall allow the victim impact statement to be read into the record.

B. If a presentence investigation report is prepared, the person preparing the report shall consult with each victim or members of the immediate family or a designee of members of the immediate family if the victim is deceased, incapacitated or incompetent, and include any victim impact statements in the presentence investigation report. If the individual to be consulted cannot be located or declines to cooperate, a notation to that effect shall be included.

C. The judge shall make available to the parties copies of any victim impact statements.

D. In any case which is plea bargained, victim impact statements shall be presented at the time of sentencing. In determining the appropriate sentence, the court shall consider among other factors any victim impact statements if submitted to the jury, or the judge in the event a jury was waived.

E. Any victim impact statements submitted to the court, judge, or jury shall be considered when deciding whether to release an individual on parole.

CHAPTER 3

PERSONS LIABLE TO PUNISHMENT

§ 151. Persons liable to punishment in Cherokee Nation

The following persons are liable to punishment under the laws of this Nation:

1. All persons who commit, in whole or in part, any crime within the Cherokee Nation.
2. All persons who commit theft out of this Nation, and bring, or are found with the property stolen, in the Cherokee Nation.
3. All persons who, being out of the Cherokee Nation, abduct or kidnap, by force or fraud, any person contrary to the laws of the place where such act is committed, and bring, send, or convey such person within the limits of the Cherokee Nation, and are afterward found therein.
4. And all persons who, being out of the Cherokee Nation, cause or aid, advise or encourage, another person, causing an injury to any person or property within the Cherokee Nation by means of any act or neglect which is declared criminal by this code, and who are afterward found within the Cherokee Nation.
5. Any person who violates the criminal laws of the Cherokee Nation shall be subject to the civil

remedies and penalties of the Cherokee Nation.

§ 152. Persons capable of committing crimes—Exceptions—Children—Idiots—Lunatics—Ignorance—Commission without consciousness—Involuntary subjection

All persons are capable of committing crimes, except those belonging to the following classes:

1. Children under the age of seven (7) years.

2. Children over the age of seven (7) years, but under the age of fourteen (14) years, in the absence of proof that at the time of committing the act or neglect charged against them, they knew its wrongfulness.

3. Mentally ill persons and persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.

4. Persons who committed the act, or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation.

5. Persons who committed the act charged without being conscious thereof.

6. Persons who committed the act, or make the omission charged, while under involuntary subjection to the power of superiors.

§ 153. Intoxication no defense

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition.

§ 154. Morbid propensity no defense

A morbid propensity to commit prohibited acts existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

§ 155. Subjection to superior exonerates

The involuntary subjection to the power of a superior which exonerates a person charged with a criminal act or omission from punishment therefor, arises from duress.

§ 156. Duress must be actual

The duress which excuses a person from punishment who has committed a prohibited act or omission must be an actual compulsion by use of force or fear.

§§ 157-170. Reserved

CHAPTER 4

PARTIES TO

CRIME

§ 171. Classification of parties

The parties to crimes are classified as:

1. Principals, and,

2. Accessories.

§ 172. Principals defined

All persons concerned in the commission of crime, whether it be a felony or a misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, are principals.

§ 173. Accessories defined

All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories.

§ 174. No accessories to misdemeanor

If the underlying crime is a misdemeanor, there are no accessories.

§ 175. Punishment of accessories

Except in cases where a different punishment is prescribed by law, an accessory to a crime is punishable as a principal.

§§ 176- 262. Reserved

CHAPTER 6

CRIMES AGAINST THE EXECUTIVE POWER

§ 263. Falsely assuming to be officer

Every person who shall falsely assume or pretend to be any tribal officer, or who shall knowingly take upon himself to act as such or to require any person to act as such, or assist him in any matter pertaining to such office, shall be punished by imprisonment for not more than one (1) year nor less than three (3) months, and by fine not exceeding Five Hundred ($500.00) nor less than Fifty Dollars ($50.00).

§ 264. Falsely assuming to be peace officers—Private persons may make arrests

A. Any person who shall without due authority exercise or attempt to exercise the functions of or hold himself out to any one as a deputy sheriff, marshal, policeman, constable or peace officer, shall be deemed guilty of a crime: Provided, however, that this section shall not be so construed as to prevent private persons from making arrests for crimes committed in their presence.

B. It shall be unlawful for any person to affix on his or her motor vehicle, either temporarily or permanently, any insignia typically used by a law enforcement agency for the purpose of causing any other motor vehicle operator to yield the right-of-way and stop, or which actually causes any other motor vehicle operator to yield the right-of-way and stop, whether intended or not. Any person who violates the provisions of this subsection shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or by a fine not exceeding One Thousand Dollars ($1,000.00), or by both such fine and imprisonment. The provisions of this subsection shall not apply to vehicles of any fire department, fire patrol, law enforcement vehicles, ambulances, or other authorized emergency vehicles.

§ 265. Bribing or offering bribe to executive officer

Every person who gives or offers any bribe to any executive officer, with intent to influence him in respect to any act, decision, vote, opinion, or other proceedings of such officer, is guilty of a crime.

§ 266. Asking or receiving bribes

Every executive officer or person elected or appointed to executive office who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity, shall be influenced thereby, is guilty of a crime and in addition thereto, forfeits his office and is forever disqualified from holding any public office under the laws of the Nation.

§ 267. Preventing officer's performance of duty

Every person who attempts, by means of any threat or violence, to deter or prevent any executive officer from performing any duty imposed upon such officer by law, is guilty of a crime.

§ 268. Resisting executive officer

Every person who knowingly resists, by the use of force or violence, any executive officer in the performance of his duty, is guilty of a crime.

§ 269. Asking or receiving unauthorized reward for official act

A. Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

B. It shall be unlawful for any tribal employee, with responsibility or oversight for processing a benefit or allowance, to solicit any portion of the benefit or allowance as a gratuity, kickback, or loan from a recipient who is otherwise entitled to the benefit or allowance.

C. Any tribal employee convicted of violating the provisions of subsection B of this section shall be guilty of a misdemeanor punishable by a fine of not less than Five Hundred Dollars ($500.00), or by imprisonment for a term not to exceed one (1) year, or by both such fine and imprisonment.

§ 270. Reward for omission to act, asking or receiving

Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

§271-277. Reserved

§ 278. Refusal to surrender books to successor

Every person who having been an executive officer of this Nation, wrongfully refuses to surrender the official seal or any of the books and papers appertaining to his office, to his successor, who has been duly elected or appointed, and has duly qualified, and has demanded the surrender of the books and papers of such office is guilty of a crime.

§ 279. Administrative officers included

The various provisions of this article which relate to executive officers apply in relation to

administrative officers in the same manner as if administrative and executive officer were both mentioned together.

§§ 280-300. Reserved

CHAPTER 7

CRIMES AGAINST THE LEGISLATIVE POWER

§ 301. Preventing meetings of Council

Every person who willfully and by force or fraud prevents the Council, or any of the Members thereof, from meeting or organizing, is guilty of a felony punishable by imprisonment not exceeding three (3) years, or by fine not exceeding Five Thousand Dollars ($5,000), or both.

§§ 302-303. Reserved.

§ 304. Preventing Council Member or personnel from performing official duties—Penalty

Any person who alone or in concert with others willfully either by force, physical interference, fraud, intimidation, or by means of any independently unlawful act, prevents or attempts to prevent any member, officer or employee of the council from performing any official act, function, power or duty shall be guilty of a crime.

§ 308. Bribery of or influencing Council Members

Every person who gives or offers to give a bribe to any Member of the Council, or attempts directly or indirectly, by menace, deceit, suppression of truth or any other corrupt means, to influence a Member in giving or withholding his vote, or in not attending the Council meeting, or any committee thereof is guilty of a felony punishable by imprisonment not exceeding three (3) years, or by fine not exceeding Five Thousand Dollars ($5,000), or both..

§ 309. Soliciting bribes—Trading votes

Every Member of the Council who asks, receives or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity or who gives, or offers or promises to give any official vote in consideration that another Member of the Council shall give any such vote, either upon the same or another question, is guilty of a felony punishable by imprisonment not exceeding three (3) years, or by fine not exceeding Five Thousand Dollars ($5,000), or both.

§§ 313-317. Reserved,

§ 312. Forfeiture of office—Disqualification to hold office

The conviction of a Member of the Council of bribery involves as a consequence, in addition to the punishment prescribed by this code, a forfeiture of his office, and disqualifies him from ever afterwards holding any office under this Nation.

§ 318. Bribery

No person, firm, or member of a firm, corporation, or association shall give or offer any money, position or thing of value to any Member of the Council to influence him to work or to vote for any

proposition, nor shall any Member of the Council accept any money, position, promise, or reward or thing of value for his work or vote upon any bill, resolution or measure before the Council.

§ 319. Penalty for Bribery

Any person or member of any firm, corporation or association violating the provisions of Section 318 of this title shall be guilty of a felony punishable by imprisonment for not less than one (1) year nor more than three (3) years, and by a fine in the sum of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00).

§ 320. Member of Council—Soliciting or securing employment with Cherokee Nation

It shall be unlawful for any Member of the Council to solicit, receive or accept any money or thing of value either directly or through another person for soliciting or securing employment of or for another person from any department or institution of the Nation, where the said department or institution is supported in whole or in part from revenues levied pursuant to shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives, or offers or promises to give any official vote in consideration that another Member of the Council shall give any such vote, either upon the same or another question, is guilty of a crime.

§ 321. Penalty for violating Section 320

Any member of the Tribal Council who shall violate the provisions of Section 321 of this title shall be guilty of a felony, and upon conviction shall be fined not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), and be imprisoned for not less than one (1) year nor more than three (3) years and, in addition thereto, the member shall forfeit office.

§§ 322-340. Reserved

CHAPTER 8

CRIMES AGAINST THE REVENUE AND PROPERTY OF THE NATION

§ 341. Embezzlement and false accounts by officers

Every public officer of the Nation and every deputy or clerk of any such officer and every other person receiving any money or other thing of value on behalf of or for account of this Nation or any department of the government of this Nation or any bureau or fund created by law and in which this Nation or the people thereof, are directly or indirectly interested, who either:

First: Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money or anything of value received by him as such officer, clerk, or deputy, or otherwise, on behalf of this Nation, or any subdivision of this Nation, or the people thereof, or in which they are interested; or

Second: Receives, directly or indirectly, any interest, profit or perquisites, arising from the use or loan of public funds in his hands or money to be raised through his agency for the Nation; or

Third: Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to any monies so received by him, on behalf of the Nation, or the people thereof, or in which they are interested; or

Fourth: Fraudulently alters, falsifies, cancels, destroys or obliterates any such account; or

Fifth: Willfully omits or refuses to pay over to the Nation, or its officers or agents authorized by law to receive the same, any money or interest, profit or perquisites arising therefrom, received by him under any duty imposed by law so to pay over the same, shall upon conviction thereof, be deemed guilty of a crime, and in addition thereto shall be disqualified to hold office in this Nation, and the court shall issue an order of such forfeiture, and should appeal be taken from the judgment of the Court, the defendant may, in the discretion of the Court, stand suspended from such office until such cause is finally determined.

§ 344. Fraud by officer authorized to sell, lease or make contract

Every public officer, being authorized to sell or lease any property, or make any contract in his official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a misdemeanor.

§ 346. Obstructing the collection of taxes

Every person who willfully obstructs or hinders any public officer of the Cherokee Nation from collecting any revenue, taxes, or other sums of money in which, or any part of which the people of this Nation are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

§ 347-348. Reserved

§ 349. Injuring or burning public buildings

Every person who willfully burns, destroys, or injures any public buildings or improvements in this Nation, is guilty of a crime.

§ 350. Reserved

§ 351. False statement regarding taxes

Every person who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states any material matter which he knows to be false, is guilty, upon conviction, of a crime.

§ 352. Reserved

§ 353. Officer dealing in warrants—Crime

It shall be unlawful for any public officer or deputy or employee of such officer to either directly or indirectly, buy, barter for, or otherwise engage in any manner in the purchase of any bonds, warrants or any other evidence of indebtedness against this Nation, any subdivision thereof, of which he is an officer.

§ 354. Penalty

Any person who shall violate any of the provisions of the two preceding sections shall be deemed guilty of the unlawful issuing of warrants or the unlawful purchase of warrants as the case may be, and shall be punished by a fine of not exceeding One Thousand Dollars ($1,000.00).

§§ 356-357. Reserved

§ 355. Member of governing body not to furnish public supplies for consideration

It shall be unlawful for any Member of the Council of the nation to furnish, for a consideration any material or supplies for the use of said Nation or subdivision.

§ 358. False, fictitious or fraudulent claims against Cherokee Nation

It shall be unlawful for any person, firm, corporation, association or agency to make, present, or cause to be presented to any employee or officer of Cherokee Nation, or to any department or agency thereof, any false, fictitious or fraudulent claim for payment of public funds upon or against

Cherokee Nation, or any department or agency thereof, knowing such claim to be false, fictitious or fraudulent.

§ 359. Penalties

Any person, firm, corporation, association or agency found guilty of violating the foregoing section shall be guilty of a crime.

§§ 360-379. Reserved

PART II

CRIMES AGAINST PUBLIC JUSTICE

CHAPTER 10

BRIBERY AND CORRUPTION

§ 380. Bribery of fiduciary

A. Any fiduciary who, with a corrupt intent and without the consent of his beneficiary, intentionally or knowingly solicits, accepts, or agrees to accept any bribe from another person with the agreement or understanding that the bribe as defined by law will influence the conduct of the fiduciary in relation to the affairs of his beneficiary, upon conviction, is guilty of a felony punishable by imprisonment for a term not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both said imprisonment and fine.

B. Any person who offers, confers, or agrees to confer any bribe the acceptance of which is an offense pursuant to the provisions of subsection (A) of this section, upon conviction, is guilty of a felony punishable by imprisonment for a term not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both said imprisonment and fine.
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C. As used in subsection (A) of this section:

1. **"Beneficiary"** means any person for whom a fiduciary is acting.

2. **"Fiduciary"** means:

a. an agent or employee; or

b. a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary; or

c. a lawyer, physician, accountant, appraiser, or other professional advisor; or

d. an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.

§ 381. Bribing officers

Whoever corruptly gives, offers, or promises to any executive, legislative, judicial, or other public officer, or any employee of Cherokee Nation or any political subdivision thereof, including peace officers and any other law enforcement officer, or any person assuming to act as such officer, after his election or appointment, either before or after he has qualified or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or judgment on any matter, question, cause, or proceeding which then may be pending, or may by law come or be brought before him in his official capacity, or as a consideration for any speech, work, or service in connection therewith, shall be guilty of a felony punishable by imprisonment not exceeding three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00).

§ 382. Officers receiving bribes

Every executive, legislative, judicial, or other public officer, or any employee of Cherokee Nation or any political subdivision thereof, including peace officers and any other law enforcement officer, or any person assuming to act as such officer, who corruptly accepts or requests a gift or gratuity, or a promise to make a gift, or a promise to do an act beneficial to such officer, or that judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust, or appointment under the laws of this Nation, is guilty of a felony punishable by imprisonment not exceeding three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or both.

§ 383. Bribing jurors, referees, etc.

Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, umpire or assessor, or to any person who may be authorized by law or agreement of parties interested to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, is guilty of a felony punishable by imprisonment not exceeding three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or both.

§ 384. Receiving bribes by jurors, referees, etc.

Every juror, referee, arbitrator, umpire or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe upon

any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, shall be thereby influenced, is guilty of a felony punishable by imprisonment not exceeding three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or both.

§ 385. Misconduct of jurors

Every juror or person drawn or summoned as a juror, or chosen arbitrator, or umpire, or appointed referee, who either:

1. Makes any promise or agreement to give a verdict for or against any party; or

2. Willfully permits any communication to be made to him, or receives any book, paper, instrument, or information relative to any cause pending before him, except according to the regular course of proceeding upon the trial of such cause,

is guilty of a misdemeanor.

§ 386. Accepting gifts

Every judicial officer, juror, referee, arbitrator or umpire, who accepts any gift from any person, knowing him to be a party in interest or the attorney or counsel of any party in interest to any action or proceeding then pending or about to be brought before him, is guilty of a misdemeanor.

§ 387. Gifts defined

The word **"gift"** in the foregoing section shall not be taken to include property received by inheritance, by will or by gift in view of death.

§ 388. Attempts to influence jurors

Every person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as arbitrator or appointed a referee, in respect to his verdict, or decision of any cause or matter pending, or about to be brought before him, either:

1st, By means of any communication oral or written had with him, except in the regular course of proceedings upon the trial of the cause;

2nd, By means of any book, paper, or instrument, exhibited otherwise than in the regular course of proceedings, upon the trial of the cause;

3rd, By means of any threat or intimidation;

4th, By means of any assurance or promise of any pecuniary or other advantage; or,

5th, By publishing any statement, argument or observation relating to the cause, is guilty of a misdemeanor.

§ 389. Drawing jurors fraudulently

Every person authorized by law to assist at the drawing of any jurors to attend any court, who willfully puts or consents to the putting upon any list of jurors as having been drawn any name which shall not have been drawn for that purpose in the manner prescribed by law; or, who omits to place on such list any name that shall have been drawn in the manner prescribed by law, or who signs or certifies any list of jurors as having been drawn which was not drawn according to law; or, who is guilty of any other unfair, partial or improper conduct in the drawing of any such list of jurors, is guilty of a misdemeanor.

§ 390. Misconduct by officer in charge of jury

Every officer to whose charge any juror or jury is committed by any court or magistrate who negligently or willfully permits them, or any one of them, either:

1. To receive any communication from any person;

2. To make any communication to any person;

3. To obtain or receive any book or paper or refreshment; or

4. To leave the jury room, the jury box, or his immediate custody or control, without the leave of such court or magistrate first obtained, is guilty of a misdemeanor.

Every bailiff, or other officer or person, into whose custody and care any court of record contemplates committing any juror or jury, before entering upon his duties as such for the Court term or such lesser period of such service as the Court may determine, shall first be admonished and shall make in writing and file with the Clerk of such Court a solemn oath, sworn to before the Clerk or Judge of such Court, to the effect that he will regard the foregoing provisions of this section and that he will faithfully prevent the same and obstruct any attempt to accomplish or to attempt to do any of them, but at the same time to have regard to the comfort and well-being of the jurors and all of them, entrusted into his care in each and every jury trial in any cause during such Court term or lesser period of appointment by such Court.

In every Court the same admonition shall be given and the same oath required as above, in each jury trial; but the Court shall have the option whether the same be oral, or in writing and filed in such case, but thereafter during the trial of the same cause and until such jury is dismissed from further consideration of the same it shall not be necessary, for all intent and purposes of this act, to administer again such admonition or to require such oath.

§§ 391-420. Reserved

CHAPTER 11

CONSPIRACY

§ 421. Conspiracy—Definition—Punishment

3. If two or more persons conspire, either:

1. To commit any crime; or

2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or

3. Falsely to move or maintain any suit, action or proceeding; or

4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat or to obtaining money or property by false pretenses; or

5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws, they are guilty of a conspiracy.

4. Except in cases where a different punishment is prescribed by law the punishment for conspiracy shall be a misdemeanor unless the conspiracy is to commit a felony.

5. Conspiracy to commit a felony shall be a felony and is punishable by payment of a fine not more than Fifteen Thousand Dollars ($15,000.00), or by imprisonment for a period not exceeding three (3) years, or by both such fine and imprisonment.

§ 422. Conspiracy outside Cherokee Nation against the peace of the Nation

If two or more persons, being out of this Nation, conspire to commit any act against the peace of this Nation, the commission or attempted commission of which, within this nation, would be treason against the Nation, they are guilty of a felony punishable by a fine of not more than Fifteen Thousand Dollars ($15,000.00), or by imprisonment for a period not exceeding three (3) years, or by both such fine and imprisonment.

§ 423. Overt act necessary

No agreement to commit a crime amounts to a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

§ 424. Punishment for conspiracy against Cherokee Nation

If two or more persons conspire either to commit any offense against Cherokee Nation, any subdivision thereof, or to defraud Cherokee Nation, any subdivision thereof, in any manner or for any purpose, and if one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be guilty of a felony punishable by a fine of not more than Five Thousand Dollars ($5,000.00) or imprisonment for not more than three (3) years or by both such fine and imprisonment.

CHAPTER 11A

ELECTION

FRAUD

§ 425. Voting fraud

Every person, not having the qualification of a voter, who shall fraudulently vote, or attempt to vote, at any election, or who shall vote or attempt to vote, more than once for the same candidate, at any election, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not less than One Hundred Dollars ($100.00), and be imprisoned for any time less than one (1) year and exceeding six (6) months, and be forever disqualified from voting.

§ 426. Unlawful influence of voters

Every person who shall by bribery, treats or offers of employment, attempt to influence any voter in giving his vote, or shall use threats to procure any voter to vote contrary to the inclination of such voter, or to deter him from giving his vote, shall be deemed guilty of a crime, and, upon conviction, be fined in a sum of not less than One Hundred Dollars ($100.00), and not more than Five Hundred Dollars ($500.00), or be imprisoned for any time less than one (1) year, and exceeding three (3) months, or both by fine and imprisonment, at the discretion of the Court.

§ 427. Receiving the votes of unqualified voters

Any Election Board member who shall willfully and knowingly receive or sanction the reception of the vote of any person not having the qualification of a voter, or who shall be guilty of a wilful neglect of duty, or of any corrupt action in the execution of the same, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined in a sum of not less than One Hundred Dollars ($100.00), nor more than One Thousand Dollars ($1,000.00), and be imprisoned for any term less than one (1) year and exceeding three (3) months.

§ 428. Tampering with election returns

Any person, who shall fraudulently alter, mutilate, destroy, or unlawfully open, after being sealed up, any returns of election, shall be deemed guilty of a misdemeanor, and, upon conviction, be imprisoned for any term less than one (1) year and exceeding three (3) months.

§§ 429-430. Reserved

CHAPTER 12

ESCAPES AND AIDING THEREIN

§ 431. Rearrest of escaped prisoners

Every prisoner confined upon conviction for a criminal offense, who escapes from a penal institution, may be pursued, retaken and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he is retaken, and he shall remain so imprisoned until tried for such escape, or discharged, on a failure to prosecute therefor.

§ 432-433. Reserved

§ 434. Escape from penitentiary or jail

Every prisoner confined in any penitentiary or jail, who escapes by force or fraud from such penal institution, is guilty of a felony punishable by imprisonment not exceeding three (3) years, or by a fine of not more than Fifteen-thousand dollars ($15,000), or by both such fine and imprisonment.

§ 435. Reserved

§ 436. Attempt to escape from penitentiary or jail

Every prisoner confined in any penal institution who attempts by force or fraud, although unsuccessfully, to escape therefrom, is guilty of a crime.

§ 437. Assisting prisoner to escape

Every person who willfully by any means whatever, assists any prisoner confined in any penal institution to escape therefrom, is guilty of a crime.

§ 438. Carrying into penitentiary or jail things to aid escape

Every person who carries or sends into any penal institution anything useful to aid any prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as guilty as follows:

1. If such prisoner was confined upon a charge or conviction of a felony, by imprisonment not exceeding three (3) years, or by a fine of not more than Fifteen Thousand Dollars ($15,000), or

by both such fine and imprisonment.

2. If such prisoner was confined otherwise than upon a charge or conviction of a misdemeanor, by imprisonment not exceeding one (1) year, or by a fine of not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 439. Concealing escaped prisoner

Every person who willfully and knowingly conceals any prisoner, who having been confined in penal institution upon a charge or conviction of crime, has escaped therefrom, is guilty of a misdemeanor.

§ 440. Harboring criminals and fugitives—Penalty

A. Any person who shall knowingly feed, lodge, clothe, arm, equip in whole or in part, harbor, aid, assist or conceal in any manner any person guilty of any crime, or outlaw, or fugitive from justice, or any person seeking to escape arrest for any crime committed within this Nation or state, jurisdiction or territory, shall be guilty of a felony punishable by imprisonment for a period not exceeding three (3) years, or by a fine of not more than Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

B. It shall be unlawful for any person who has reason to believe that a sex offender is in violation of the registration requirements of the Sex Offenders Registration Act and who has the intent to assist the sex offender in eluding arrest, to do any of the following:
   a. Withhold information from, or fail to notify, a law enforcement agency about the noncompliance of the sex offender with the registration requirements of the Sex Offenders Registration Act, and, if known, the whereabouts of the offender;
   b. Harbor, attempt to harbor, or assist another person in harboring or attempting to harbor, the sex offender;
   c. Conceal, or attempt to conceal, or assist another person in concealing or attempting to conceal, the sex offender; or
   d. Provide information to a law enforcement agency regarding the sex offender that the person knows to be false information.

C. Any person convicted of violating the provisions of subsection B of this section shall be guilty of a misdemeanor punishable by a fine of not more than Five Thousand Dollars ($5,000.00), or by imprisonment for a term not to exceed one (1) year, or by both such fine and imprisonment.

§ 441. Assisting escape from officer

Every person who willfully assists any prisoner in escaping or attempting to escape from the custody of any officer or person having the lawful charge of such prisoner under any process of law or under any lawful arrest, is guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for a term not to exceed one (1) year, or by both such fine and imprisonment.

§ 442. Prisoner defined

The term **"prisoner"** in this chapter includes every person held in custody under process of law issued from a court of competent jurisdiction, whether civil or criminal, or under any lawful arrest.

§ 443.

Additional punishment under rules and regulations of jail or prison after escape

In addition, all prisoners who escape from the aforesaid jails or prisons either while confined therein, or while at large as a trustee, when apprehended and returned to the jail or prison, shall be punishable by the penal institution authorities in such manner as may be prescribed by the rules and regulations of the penal institution, provided that such punishment shall not be cruel or unusual.

§ 444. Escape or attempt to escape from arrest or detention

A. It is unlawful for any person, after being lawfully arrested or detained by a peace officer, to escape or attempt to escape from such peace officer.

B. Such person who escapes or attempts to escape after being lawfully arrested or detained for custody for a crime offense shall be guilty of a misdemeanor.

C. Any person who escapes or attempts to escape after being lawfully arrested or detained for custody for a felony offense shall be guilty of a felony.It is unlawful for any person admitted to bail or released on recognizance, bond, or undertaking for appearance before any court of the Cherokee Nation, and required as a condition of such release from detention to wear any electronic monitoring device on the body of the person to remove such device without authorization from the court. For purposes of this subsection, any person charged with a misdemeanor offense who removes such device without authorization from the court shall be guilty of a misdemeanor and any person charged with a felony offense who removes such device without authorization from the court shall be guilty of a felony.

§ 445. Unauthorized entry into prison, jail, etc.—Penalties

Any person who willfully gains unauthorized entry into any Cherokee Nation penal institution, any place where prisoners are located, or the penal institution grounds, upon conviction, shall be guilty of a felony punishable by imprisonment for not more than three (3) years, or by the imposition of a fine of not more than Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 446. Escape from jail, or other lawful custody—Penalty—Juvenile offender

A. Any person having been imprisoned in a jail awaiting charges on a felony offense, or a prisoner awaiting trial, or a prisoner having been sentenced on a felony charge, or any other prisoner having been lawfully detained who escapes from a jail or prison, either while actually confined therein, while permitted to be at large as a trustee, or while awaiting transportation to a jail, correctional or other facility for execution of sentence, shall be guilty of a felony punishable by imprisonment of not more than three (3) years.

B. For the purposes of this section, a prisoner assigned to an alternative to incarceration authorized by law shall be considered to have escaped if the inmate cannot be located within a twenty-four hour period or if he or she fails to report to a correctional facility or institution, as directed. This includes any person escaping by absconding from an electronic monitoring device or absconding after removing an electronic monitoring device from his or her body.

C. Any juvenile offender lawfully placed in a juvenile detention facility or secure juvenile facility, other than a community intervention center, who escapes from the facility while actually confined therein, who escapes while escorted by a transportation officer, or who escapes while permitted to be on an authorized pass or work program outside the facility shall be guilty of a felony punishable by imprisonment for not more than three (3) years. For purposes of this subsection:

1. A juvenile offender permitted to be on an authorized pass or work program shall be considered to have escaped if the juvenile offender cannot be located within a twenty-four-hour period or if the juvenile offender fails to report to the facility at the specified time, and shall include any juvenile offender escaping by absconding from an electronic monitoring device or absconding after removing an electronic monitoring device from the body of the juvenile offender; and

2. “Escape” means a juvenile offender in lawful custody who has absented himself or herself without official permission from a facility or secure placement, during transport to or from such facility, or failure to return from a pass issued by a facility.

CHAPTER 13

FALSIFYING EVIDENCE

§ 450. Misprision of crime and false statements to law enforcement

A. Misprision of crime. It shall be unlawful for any person having knowledge of the actual commission of a crime cognizable by a Court of the Cherokee Nation, which crime would be a felony under the laws of the Cherokee Nation, the State of Oklahoma or the United States of America, to affirmatively conceal and not make known that crime to a Cherokee Nation Judge or some other person in civil authority within Cherokee Nation. Such act shall constitute a crime against Cherokee Nation, and shall be punished as provided in 21 CNCA § 10.

B. False statement to law enforcement. In connection with a law enforcement investigation, whoever, in any manner within the jurisdiction of Cherokee Nation knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be guilty of a misdemeanor, subject to punishment as provided in 21 CNCA § 10.

§ 451. Offering false evidence

Every person who, upon any trial, proceedings, inquiry or investigation whatever, authorized by law, offers in evidence, as genuine, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged, or fraudulently altered, is guilty of a felony and shall be punished in the same manner as the forging or false alteration of such instrument is made punishable by the provisions of this title.

§ 452. Deceiving witness

Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, proceeding by authority of law, with intent to affect the testimony of such witness, is guilty of a felony.

§ 453. Preparing false evidence

Every person guilty of falsely preparing any book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced as genuine upon any trial, proceeding or inquiry whatever, authorized by law, is guilty of a misdemeanor.

§ 454. Destroying evidence

Every person who knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, proceeding, inquiry or investigation whatever, authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor.

§ 455. Preventing witness from giving testimony

A. Every person who willfully prevents any person from giving testimony who has been duly summoned or subpoenaed or endorsed on the criminal information as a witness or threatens physical or mental harm through force or fear with the intent to prevent the witness from appearing in Court to give his testimony, or to alter his testimony, is guilty of a felony punishable by a fine of not more than Fifteen Thousand Dollars ($15,000), or by not more than three (3) years imprisonment, or by both such fine and imprisonment.

B. Every person who threatens physical harm through force or fear or causes or procures physical harm to be done to any person or harasses any person or causes a person to be harassed because of testimony given by such person in any civil or criminal trial or proceeding, or who makes a report of abuse or neglect is, upon conviction, guilty of a felony punishable by a fine of not more than Fifteen Thousand Dollars ($15,000), or by not more than three (3) years imprisonment, or by both such fine and imprisonment.

§ 456. Bribing witness—Subornation of perjury

Every person who gives or offers or promises to give to any witness or person about to be called as a witness in any matter whatever, any bribe upon any understanding or agreement that the testimony of such witness shall be influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony is guilty of a crime, but if the offer, promise, or bribe is in any way to induce the witness to swear falsely, then it shall be held to be subornation of perjury.

§§ 457-461. Reserved

CHAPTER 14

FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS

§ 461. Larceny or destruction of records by clerk or officer

Every clerk, register or other officer having the custody of any record, maps or book, or of any paper or proceeding of any Court, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying or unlawfully removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, is guilty of a felony punishable by a fine of not more than Fifteen Thousand Dollars ($15,000), or by not more than three (3) years imprisonment, or by both such fine and imprisonment, and in addition thereto, such person shall forfeit his or her office or employment.

§ 462. Larceny or destruction of records by other persons

Every person not an officer such as is mentioned in the last section, who is guilty of any of the acts specified in that section, is guilty of a felony punishable by a fine of not more than Fifteen Thousand Dollars ($15,000), or by not more than three (3) years imprisonment, or by both such fine and imprisonment, and in addition thereto, such person shall forfeit his or her office or employment.

§ 463. Offering forged or false instruments for record

Every person who knowingly procures or offers any false or forged instrument to be filed,

registered, or recorded in any public office within this Nation, which instrument, if genuine, might be filed or registered or recorded under any law of this Nation or of the United States, is guilty of a felony punishable by a fine of not more than Fifteen Thousand Dollars ($15,000), or by not more than three (3) years imprisonment, or by both such fine and imprisonment.

§ 464. Forging name to petition—Penalties

Any person who shall knowingly sign, subscribe or forge the name of any other person, without the consent of such other person, to any petition, application, remonstrance, or other instrument of writing, authorized by law to be filed in or with any Court, board or officer, with intent to deceive or mislead such Court, board or officer, shall be guilty of a misdemeanor punishable by a fine not to exceed Five Thousand Dollars ($5,000.00), or imprisonment not exceeding one (1) year, or by both such fine and imprisonment.

CHAPTER 15

ILLEGAL USE OF GOVERNMENT DOCUMENTS

§ 471. Criminal activity with respect to Cherokee Nation citizenship

A. A person who knowingly buys or barters the Cherokee Nation Citizenship Card from another tribal citizen for whatever purposes may be subject to criminal prosecution. The penalty upon conviction of the offense specified in this subsection shall be no longer than one (1) year imprisonment, or a fine of no more than Five Thousand Dollars ($5,000.00), or both.

B. A person who knowingly sells or barters his or her Cherokee Nation Citizenship Card to another tribal citizen or person for whatever purposes maybe subject to criminal prosecution. The penalty upon conviction of the offense specified in this subsection shall be no longer than one (1) year imprisonment, or a fine of no more than Five Thousand Dollars ($5,000.00), or both.

C. In addition to the foregoing sanctions, any person who knowingly buys, sells, or barters the Cherokee Nation Citizenship Card to or from another person for whatever purposes may be subject to a civil penalty as hereinafter provided. The penalty for violating this subsection shall be a fine of not more than Five Thousand Dollars ($5,000.00).

D. Any person who knowingly uses, or allows another person to use, any Cherokee Nation Citizenship Card, Cherokee Nation Registry Number, or Cherokee Roll Number, for the purpose of defrauding Cherokee Nation or the United States, or for any other fraudulent purpose, may be subject to criminal prosecution. The penalty upon conviction of the offense specified in this subsection shall be no longer than one (1) year imprisonment, no greater than a Five Thousand Dollars ($5,000.00) fine, or both.

CHAPTER 16

NEPOTISM

§ 481. Repealed by LA 34–07, eff. September 13, 2007

§ 482. Unlawful to pay salary to ineligible persons

It shall be unlawful for any such executive, legislative, ministerial or judicial officer mentioned in the preceding section, to draw or authorize the drawing of any warrant or authority for the payment out of any public fund, of the salary, wages, pay or compensation of any such ineligible person, and it shall be unlawful for any executive, legislative, ministerial or judicial officer to pay out of any public funds in his custody or under his control the salary, wages, pay or compensation of any such ineligible person.

§ 483. Appointment of one related to another officer

It shall be unlawful for any executive, legislative, ministerial, or judicial officer to appoint and furnish employment for any person whose services are to be rendered under his direction and control and paid for out of the public funds, and who is related by either blood or marriage within the third degree to any other executive, legislative, ministerial or judicial officer when such appointment is made in part consideration that such other officer shall appoint and furnish employment to any one so related to the officer making such appointment.

§ 485. Penalty

Any executive, legislative, ministerial or judicial officer who shall violate any provision of this article, shall be deemed guilty of a crime involving official misconduct.

§ 486. Removal from office for violation of chapter

Every person guilty of violating the provisions of this chapter, shall, independently of, or in addition to any criminal prosecution that may be instituted, be removed from office according to the mode of trial and removal prescribed in the Constitution and laws of this Nation.

§ 487. Officers affected

Under the designation executive, legislative, ministerial or judicial officer as mentioned herein are included the Principal Chief, Deputy Principal Chief, Council Members, Commissioners, all the heads of the Departments of the Nation Government, Judges of all the Courts of this Nation, Trustees, Officers and Commissioners of subdivisions of the Nation.

CHAPTER 17

PERJURY AND SUBORNATION OF PERJURY

§ 491. Perjury defined—Defense

Whoever, in a trial, hearing, investigation, deposition, certification or declaration, in which the making or subscribing of a statement is required or authorized by law, makes or subscribes a statement under oath, affirmation or other legally binding assertion that the statement is true, when in fact the witness or declarant does not believe that the statement is true or knows that it is not true or intends thereby to avoid or obstruct the ascertainment of the truth, is guilty of perjury. It shall be a defense to the charge of perjury as defined in this section that the statement is true.

§ 492. Oath defined

The term **"oath,"** as used in the last section, includes an affirmation, and every other mode of attesting the truth of that which is stated, which is authorized by law.

§ 493. Oath of office

So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the previous sections.

§ 494. Irregularities no defense

It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

§ 495. Incompetency no defense

It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was required to give such testimony or made such deposition or certificate.

§ 496. Contradictory statements as perjury

Whoever, in one or more trials, hearings, investigations, depositions, certifications or declarations, in which the making or subscribing of statements is required or authorized by law, makes or subscribes two or more statements under oath, affirmation or other legally binding assertion that the statements are true, when in fact two or more of the statements contradict each other, is guilty of perjury.

§ 497. Making deposition or certificate

The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person with the intent that it be uttered or published as true.

§ 498. Degree of proof required

A. Proof of guilt beyond a reasonable doubt is sufficient for conviction under this chapter, and it shall not be necessary also that proof be by a particular number of witnesses or by documentary or other type of evidence.

B. Lack of materiality of the statement is not a defense but the degree to which a perjured statement might have affected some phase or detail of the trial, hearing, investigation, deposition, certification or declaration shall be considered, together with the other evidence or circumstances, in imposing sentence.

C. In a prosecution for perjury by contradictory statements, as defined in Section 496 of Title 21, it is unnecessary to prove which, if any, of the statements is not true.

§ 499. Defenses to charges of perjury

A. Upon accusation of a charge of perjury by single statement, as defined in Section 491 of Title 21, it is a defense that the statement is true.

B. Upon accusation of a charge of perjury by contradictory statements, as defined in Section 496 of Title 21, it is a defense that the accused at the time he made each statement believed the statement was true.

§ 500. Punishment for perjury

Perjury is a felony punishable by a fine of not more than Fifteen Thousand Dollars ($15,000), or by not more than three (3) years imprisonment, or by both such fine and imprisonment.

§ 501. Summary committal of witness

Whenever it appears probable in any court of record, that any person who has testified in any action or proceeding in such Court has committed perjury, such Court must immediately commit such person by an order or process for that purpose to a penal institution or take a recognizance with sureties for his appearance and answering to an information for perjury.

§ 502. Witness bound over to appear

Such court shall thereupon bind over the witnesses to establish such perjury to appear at the proper court to testify upon the trial for such perjury, and shall also cause immediate notice of such commitment or recognizance, with the names of the witnesses so bound over, to be given to the prosecuting official.

§ 503. Documents may be retained

If, upon the hearing of such action or proceeding in which such perjury has probably been committed, any papers or documents produced by either party shall be deemed necessary to be used on the prosecution for such perjury, the Court may by order detain such papers or documents from the party producing them, and direct them to be delivered to the Prosecuting Attorney.

§ 504. Perjury by subornation—Attempted perjury by subornation

Whoever procures another to commit perjury is guilty of perjury by subornation. Whoever does any act with the specific intent to commit perjury by subornation but fails to complete that offense is guilty of attempted perjury by subornation.

§ 505. Punishment of subornation of perjury

Any person guilty of subornation of perjury is punishable in the same manner as he would be if personally guilty of the perjury so procured.

§§ 506-520. Reserved

CHAPTER 18

RESCUES

§ 521. Rescuing prisoners

Every person who by force or fraud rescues or attempts to rescue, or aids another person in rescuing or in attempting to rescue any prisoner from any officer or other person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a charge or conviction of felony, such person shall be guilty of a felony by imprisonment for not more than three (3) years; or

2. If such prisoner was in custody otherwise than upon a charge or conviction of a felony, by imprisonment not exceeding one (1) year.

§ 522. Taking goods from legal custody

Every person who willfully injures or destroys, takes or attempts to take, or assists any other person in taking or attempting to take from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

§§ 523-530. Reserved.

CHAPTER 19

OTHER CRIMES AGAINST PUBLIC JUSTICE

§ 531. Injury to records—Embezzlement by officer

Every sheriff, marshal, police officer, clerk, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of an ministerial officer who either:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or

2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property entrusted to him in virtue of his office;

is guilty of a felony.

§ 532. Permitting escapes

Every sheriff, marshal, policeman, coroner, clerk of a court, constable or other ministerial officer and any deputy or subordinate of any ministerial officer, who either:

1. Willfully or carelessly allows any person lawfully held by him in custody to escape or go at large, except as may be permitted by law; or

2. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or

3. Commits any unlawful act tending to hinderjustice; is

guilty of a felony.

§ 533. Refusing to receive or fingerprint prisoners—Medical exceptions

A. Every officer who, in violation of a duty imposed upon him by law as such officer to receive into his custody any person as a prisoner, willfully neglects or refuses so to receive such person into his custody, is guilty of a misdemeanor.

B. Except as provided in this section, or for emergency medical treatment for an injury or condition that threatens life or threatens the loss or use of a limb, any peace officer or jail or prison contractor who, in violation of a duty imposed upon the officer or contractor by law or by contract to fingerprint any person received into custody as a prisoner, willfully

neglects or refuses so to fingerprint such person is guilty of a misdemeanor.

C. Any person coming into contact with a peace officer prior to being actually received into custody at a jail facility or holding facility, including, but not limited to, during the time of any arrest, detention, transportation, investigation of any incident, accident or crime, who needs emergency medical treatment for an injury or condition that threatens life or threatens the loss or use of a limb, shall be taken directly to a medical facility or hospital for such emergency medical care notwithstanding any duty imposed pursuant to this section or any other provision of law to first take such person into custody or to fingerprint such person. The responsibility for payment of such emergency medical costs shall be the sole responsibility of the person coming into the officer's contact and shall not be the responsibility of any jail, law enforcement agency, jail or prison contractor, except when the condition is a direct result of injury caused by such officer acting outside the scope of lawful authority.

§ 534. Reserved

§ 535. Arrest without authority

Every public officer or person pretending to be a public officer, who under the pretense or color of any process or other legal authority arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses anyone of any lands or tenements without due and legal process, is guilty of a misdemeanor.

§ 537. Refusing to aid officer

Every person who, after having been lawfully commanded to aid any officer in arresting any person or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, is guilty of a misdemeanor.

§ 538. Refusing to make arrest

Every person who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a misdemeanor.

§ 539. Reserved

§ 540. Obstructing officer

Every person who willfully delays or obstructs any peace officer in the discharge or attempt to discharge any duty of his office, is guilty of a misdemeanor. Public officer means an elected or appointed official or any employee of the Cherokee Nation.

§ 541. Eluding police officer

A. Any operator of a motor vehicle who has received a visual and audible signal, a red light and a siren from a peace officer driving a motor vehicle showing the same to be an official police, marshal, sheriff, highway patrol or state game ranger vehicle directing the said operator to bring his vehicle to a stop and who willfully increases his speed or extinguishes his lights in an attempt to elude such peace officer, or wilfully attempts in any other manner to elude the peace officer, or who does elude such peace officer, is guilty of a misdemeanor. The peace officer, while attempting to stop a violator of this section, may communicate a request for the assistance of other peace officers from any office, department or agency. Any peace officer within the Cherokee Nation having knowledge of such request is authorized to render such assistance in stopping the violator and may effect an arrest under this section upon probable cause. Violation of this subsection shall constitute a misdemeanor and shall be punishable by not more than one (1) year imprisonment or by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00) or by both such fine and imprisonment.

B. Any person who violates the provisions of subsection A of this section in such manner as to endanger any other person shall be deemed guilty of a felony punishable by imprisonment for a term of not more than three (3) years, or by a fine of not more than Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

C. 1. Any person who causes an accident, while eluding or attempting to elude an officer, resulting in great bodily injury to any other person while driving or operating a motor vehicle within the Cherokee Nation and who is in violation of the provisions of subsection A of this section may be charged with a violation of the provisions of this subsection. Any person who is convicted of a violation of the provisions of this subsection shall be deemed guilty of a felony punishable by imprisonment for not more than three (3) years, or a fine of not more than Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

2. As used in this subsection, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

§ 542. Roadblocks

A peace officer may set up one or more roadblocks to apprehend any person riding upon or within a motor vehicle traveling upon a highway, street, turnpike, or area accessible to motoring public, when the officer has probable cause to believe such person is committing or has committed:

1. a violation of 21 CNCA § 541;

2. escape from the lawful custody of any peace officer;

3. a crime under the laws of this Nation or the laws of any other jurisdiction.

A roadblock is defined as a barricade, sign, standing motor vehicle, or similar obstacle temporarily placed upon or adjacent to a public street, highway, turnpike or area accessible to the motoring public, with one or more peace officers in attendance thereof directing each operator of approaching motor vehicles to stop or proceed.

Every operator of a motor vehicle approaching such roadblock has a duty to stop at the roadblock unless directed otherwise by a peace officer in attendance thereof and the willful violation hereof shall constitute a separate offense from any other offense committed. Any person who willfully attempts to avoid such roadblock or in any manner willfully fails to stop at such roadblock or who willfully passes by or through such roadblock without receiving permission from a peace officer in attendance thereto, is guilty of a felony and shall be punished by imprisonment for not more than three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00) or by both such fine and imprisonment.

§ 543. Compounding crimes

Every person who, having knowledge of the actual commission of a crime or violation of statute, takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal such crime, or violation of statute, or to abstain from any prosecution therefor, or to withhold any evidence thereof, is guilty of a is punishable as follows:

1. By a fine of not more than Fifteen Thousand Dollars ($15,000), or by imprisonment not exceeding three (3) years if the crime or violation of statute compounded is a felony, or by both such fine and imprisonment; or

2. By a fine of not more than Five Thousand Dollars ($5,000), or by imprisonment not exceeding one (1) year, or by both such fine and imprisonment, if the crime or violation of statute compounded is a misdemeanor, or violation of statute for which a pecuniary or other penalty or forfeiture is prescribed.

§ 544. Compounding prosecution

Every person who takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, discontinue or delay any prosecution then pending for any crime or violation of statute, or to withhold any evidence in aid thereof, is guilty of a misdemeanor.

§ 545. Attempt to intimidate officer

Every person who, directly or indirectly, utters or addresses any threat or intimidation to any

judicial or ministerial officer, to any juror, referee, arbitrator, umpire or assessor or other person authorized by law to hear or determine any controversy, with intent to induce him either to any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, is guilty of a misdemeanor.

§ 546. Suppressing evidence

Every person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper, or other matter or thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other matter or thing which might be evidence in such suit or proceeding, or prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor.

§ 547. Buying lands in suit

Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any Court, knowing the pendency of such suit, and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor.

§ 548. Fortification of access point to place where felony under Controlled Dangerous Substances Act being committed or attempted

A. It shall be unlawful for any person to willfully fortify an access point into any dwelling, structure, building or other place where a felony offense prohibited by the Uniform Controlled Dangerous Substances Act is being committed, or attempted, and the fortification is for the purpose of preventing or delaying entry or access by a law enforcement officer, or to harm or injure a law enforcement officer in the performance of official duties.

B. For purposes of this section, “fortify an access point” means to willfully construct, install, position, use or hold any material or device designed to injure a person upon entry or to strengthen, defend, restrict or obstruct any door, window or other opening into a dwelling, structure, building or other place to any extent beyond the security provided by a commercial alarm system, lock or deadbolt, or a combination of alarm, lock or deadbolt.

C. Any person violating the provisions of this section shall, upon conviction, be guilty of a felony punishable by imprisonment for a term of not more than three (3) years, or by a fine in an amount not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 549-553. Reserved

§ 554. Attorneys—Buying demands for suit—Misleading inferior courts

Every attorney who either directly or indirectly buys or is interested in buying any evidence of debt or thing in action with intent to bring suit thereon is guilty of a crime. Any attorney who in any proceeding before any Court in which he appears as attorney, willfully misstates any proposition or seeks to mislead the Court in any matter of law is guilty of a crime and on any trial therefor the nation shall only be held to prove to the Court that the cause was pending, that the defendant appeared as an attorney in the action, and showing what the legal statement was, wherein it is not the law. If the defense be that the act was not willful the burden shall be on the defendant to prove that he did not know that there was error in his statement of the law.

§ 555. Prosecutors and their partners

Every attorney who directly or indirectly advises in relation to, or aids or promotes the defense of any action or proceeding in any Court, the prosecution of which is carried on, aided or promoted by any person as prosecutor or other public attorney; with whom such person is directly or indirectly connected as a partner, or who takes or receives, directly or indirectly, from or on behalf of any defendant therein, any valuable consideration, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor.

§ 556. Prosecutor advising the defense

Every attorney who, having prosecuted or in any manner aided or promoted any action or proceeding in any court, as prosecutor or other public attorney, afterward, directly or indirectly, advises in relation to, or takes any part in the defense thereof, as attorney or otherwise, or takes or receives any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor he shall forfeit his license to practice.

§ 557. Attorneys may defend themselves

The two last sections do not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

§ 558. Reserved

§ 559. Claims for collection, loans or advances on

Every attorney or judge, who, directly or indirectly, lends or advances any money or property, or agrees for or procures any loan or advance, to any person, as a consideration for or inducement toward committing any evidence of debt or thing in an action to such attorney or judge or any other person, for collection, is guilty of a misdemeanor.

§ 560. Receiving claims in payment of debts

Nothing in the preceding sections shall be construed to prohibit the receiving in payment of any evidence of debt or thing in action for any estate, real or personal, or for any services of any attorney actually rendered, or for a debt antecedently contracted, or the buying or receiving any evidence of debt or the thing in action for the purpose of remittance, and without any intent to violate the preceding section.

§ 561. Application of preceding sections

The provisions of the foregoing sections relating to the buying of claims by an attorney with intent to prosecute them, or to the lending or advancing money by an attorney in consideration of a claim being delivered for collection, shall apply to every case of such buying a claim, or lending or advancing money by any person prosecuting a suit or demanding in person.

§ 562. Privilege of witnesses in respect to claims or debts sold

No person shall be excused from testifying in any civil action, to any facts showing that an evidence of debt or thing in action has been bought, sold or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon any criminal prosecution.

§§ 563-564. Reserved

§ 565. Definition of direct contempt and indirect contempt

Contempts of court shall be divided into direct and indirect contempts. Direct and indirect contempts can be civil or criminal in nature.

A. Direct and indirect contempts

1. Direct contempts shall consist of disorderly or insolent behavior committed during the session of the Court and in its immediate view, and presence, and of the unlawful and willful refusal of any person to be sworn as a witness, and the refusal to answer any legal or proper question; and any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings, shall be deemed direct contempt of court, and may be summarily punished as hereinafter provided for.

2. Indirect contempts of court shall consist of willful disobedience of any process or order lawfully issued or made by court; resistance willfully offered by any person to the execution of a lawful order or process of a Court.

B. Civil and criminal contempts

1. Civil contempts: failure to obey a court order that was issued for another party's benefit. A civil

contempt procedure is coercive or remedial in nature.

2. Criminal contempts: acts that obstruct justice or attack the integrity of the court. A criminal contempt proceeding is punitive in nature.

§ 565.1. Trial court—Power to punish contempt—Censure—Contempt proceedings

A. The Trial Judge has the power to cite for contempt anyone who, in his presence in open court, willfully obstructs judicial proceedings. If necessary, the Trial Judge may punish a person cited for contempt after an opportunity to be heard has been given.

B. Censure shall be imposed by the Trial Judge only if:

1. it is clear from the identity of the offender and the character of his acts that disruptive conduct is willfully contemptuous; or

2. the conduct warranting the sanction is preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

C. The Trial Judge, as soon as practicable after he is satisfied that courtroom misconduct requires contempt proceedings, should inform the alleged offender of his intention to institute said proceedings.

D. Before imposing any punishment for contempt, the Judge shall give the offender notice of the charges and an opportunity to adduce evidence or argument relevant to guilt or punishment.

E. The Judge before whom courtroom misconduct occurs may impose appropriate sanctions including punishment for contempt. If the Judge's conduct was so integrated with the contempt that he contributed to it or was otherwise involved or his objectivity can reasonably be questioned, the matter shall be referred to another Judge.

§ 566. Punishment for direct or indirect contempt—Guidelines for determination of sentence and purge fee for failure to comply with certain orders regarding children

A. Unless otherwise provided for by law, punishment for direct or indirect contempt shall be by the imposition of a fine in a sum not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail not exceeding six (6) months, or by both, at the discretion of the Court.

B. 1. In the case of indirect contempt for the failure to comply with an order for child support, other support, visitation, or other court orders regarding minor children the Supreme Court shall promulgate guidelines for determination of the sentence and purge fee. If the Court fails to follow said guidelines, the Court shall make a specific finding stating the reasons why the imposition of the guidelines would result in inequity. The factors that shall be used in determining the sentence and purge fee are:

a. the proportion of the child support or other support that was unpaid in relation to the amount of support that was ordered paid;

b. the proportion of the child support or other support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid;

c. the present capacity of the party found in contempt to pay any arrearages;

d. any willful actions taken by the party found in contempt to reduce factor c;

e. the past history of compliance or noncompliance with the support or visitation order; and

f. willful acts to avoid the jurisdiction of the Court.

2. When a court of competent jurisdiction makes an order compelling a parent to furnish monetary support, necessary food, clothing, shelter, medical attention, medical insurance or other remedial care for the minor child of the parent:

a. proof that:

i. the order was made, filed, and served on the parent, or

ii. the parent had actual knowledge of the existence of the order, or

iii. the order was granted by default after prior due process notice to the parent, or

iv. the parent was present in Court at the time the order was pronounced; and

b. proof of noncompliance with the order,

shall be prima facie evidence of an indirect civil contempt of court.

§ 567. Indirect contempts—Notice—Trial by jury—Appearance bond

A. In all cases of indirect contempt the party charged with contempt shall be notified in writing of the accusation and have a reasonable time for defense; and the party so charged shall, upon demand, have a trial by jury.

B. In the event the party so charged shall demand a trial by jury, the Court shall thereupon set the case for trial at the next jury term of said Court, and shall fix the amount of an appearance bond to be posted by said party charged, which bond shall be signed by said party and two sureties, which sureties together shall qualify by showing ownership of real property, the equal of which property shall be in double the amount of the bond, or, in the alternative, the party charged may

deposit with the Court Clerk cash equal to the amount of the appearance bond.

C. In a case of indirect contempt, it shall not be necessary for the party alleging indirect contempt, or an attorney for that party, to attend an initial appearance or arraignment hearing for the party charged with contempt, unless the party alleging the indirect contempt is seeking a cash bond. If a cash bond is not being requested, the Clerk of the Court shall, upon request, notify the party alleging the indirect contempt of the date of the trial.

D. Notwithstanding any other provision of law, a party charged with indirect civil contempt of court for failure to pay child support, day care expenses or unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses as required by the terms of a valid child support order shall not be entitled to trial by jury.

§ 567.1. Indirect contempt for failure to pay child support—Purge fee

When a person is found guilty of indirect contempt of court for failure to pay child support, day care expenses or unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses, that person may purge the contempt by:

1. Making all future payments for child support, day care expenses and unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses as required by the current order for child support; and

2. a. paying the full amount of the arrearage, or some portion thereof, as a lump sum if the Court determines the contemnor has the financial ability to do so; and

b. if the full amount of the arrearage is not paid in a lump sum, then by making additional monthly payments in an amount equal to one-half of the current monthly child support obligation, exclusive of day care expenses.

All payments made pursuant to this subdivision (2)(b) shall be applied to reduce the amount of child support arrearage which was the subject of the contempt action. Payments made in accordance with the provisions of this subdivision (2)(b) shall bear interest as set forth in 43 CNCA § 511(C) and 43 CNCA § 513.

3. The total amount of the payments required to be made pursuant to subdivisions (1) and (2)(b) above shall not exceed forty percent (40%) of the contemnor's current gross monthly income. For purposes of this subdivision, the contemnor's gross income shall be determined in accordance with the provisions of 43 O.S. § 118(2) and (3) as incorporated by reference in the Cherokee Nation Code Annotated at 43 CNCA § 514. If the total amount of the payments required to be made pursuant to subdivisions (1) and (2)(b) above exceeds forty percent (40%) of the contemnor's gross monthly income, then the amount required to be paid under subdivision (2)(b) above shall be reduced such that the total payments required under subdivision (1) and (2)(b) shall equal forty percent (40%) of the contemnor's gross monthly income. If application of this subdivision (3)

creates a payout schedule which exceeds three (3) years then the terms and provisions of 43 CNCA § 511(B) shall apply.

4. The payments required to be made pursuant to this section shall continue until the child support arrearage, which was the subject of the contempt action has been paid in full, at which time the contempt shall be deemed purged.

5. If a contemnor is committed to the custody of the sheriff to serve the sentence imposed by the Court, the contemnor may thereafter only be discharged from the custody of the sheriff:

a. upon payment in full of the adjudicated arrearage; or

b. upon serving the full sentence: or

c. upon the making of a subsequent agreement by the parties as to payment of the arrearages, which agreement has been approved by the Court and entry of a court order that the contemnor be released from the custody of the sheriff with the balance of the sentence to be conditionally suspended, subject to performance of the terms of the agreement and the provisions of the court order for release. Persons incarcerated pursuant to the provisions of this section shall not be entitled to credit for good time, blood time, trustee time, or any other credit for time served. Persons incarcerated pursuant to the provisions of this section shall serve flat time in all cases.

§ 567.2. Failure to Appear for Jury Service

An individual who fails to appear in person on the date scheduled for jury service and who has failed to obtain a postponement in compliance with the provisions for requesting a postponement, or who fails to appear on the date set for said jury service, shall be in indirect contempt of court and shall be punished by the imposition of a fine not to exceed Five Hundred Dollars ($500.00). The prospective juror may be excused from paying sanctions for good cause shown or in the interests of justice. In addition to or in lieu of the fine, the court may order that the prospective juror complete a period of community service for a period no less than if the prospective juror would have completed jury service, and provide proof of completion of this community service to the court.

§ 568. Contempt—Substance of offense made of record

Whenever a person shall be imprisoned for contempt the substance of the offense shall be set forth in the order for his confinement, and made a matter of record in the Court.

§ 569. Attorneys—Second application to another judge to stay trial

Every attorney or counselor at law who, knowing that an application has been made for an order staying the trial of an indictment, to a Judge authorized to grant the same, and has been denied, without leave reserved to renew it, makes an application to another Judge to stay the same trial, is guilty of a misdemeanor.

§§ 570-572. Reserved

§ 573. Fraudulent concealment of property

Every person who, having been called upon, by the lawful order of any Court, to make a true exhibit of his real and personal effects, either:

1. willfully conceals any of his estate or effects, or any books or writing relative thereto; or,

2. willfully omits to disclose to the Court any debts or demands which he has collected, or any transfer of his property which he had made after being ordered to make an exhibit thereof, is guilty of a misdemeanor.

§ 574. Reserved

§ 575. Attorneys, misconduct by—Deceit—Delaying suit—Receiving allowance for money not laid out

Every attorney who, whether as attorney or as counselor, who:

1st, is guilty of any deceit or collusion, or consents to any deceit or collusion with intent to deceive the Court or any party; or

2nd, willfully delays his client's suit, with a view to his own gain; or

3rd, willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for, is guilty of a crime; and, in addition to the punishment prescribed therefor by this code, he forfeits to the party injured treble damages, to be recovered in a civil action.

§ 576. Attorney permitting other person to use his name

If any attorney knowingly permits any person not being his general law partner or a clerk in his office to sue out any process or to prosecute or defend any action in his name, except as authorized by the next section, such attorney, and every person who shall so use his name is guilty of a misdemeanor.

§ 577. Attorneys, use of name lawful, when

Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers or municipal corporation, on behalf of another party, the prosecutor, or attorney of such public officer or board or corporation may permit any proceeding therein to be taken in his name by an attorney to be chosen by the party in interest.

§ 578. Inheritance, intercepting by fraudulent production of infant

Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate, from any person lawfully entitled thereto, is guilty of a misdemeanor.

§ 579. Substituting child

Every person to whom an infant has been confided for nursing, education, or any other person, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is guilty of a misdemeanor.

§§ 580-583. Reserved

§ 584. Prosecuting suit or bringing action or procuring arrest in false name

Every person who maliciously institutes or prosecutes any action or legal proceeding; or makes or procures any arrest, in the name of a person who does not exist, or has not consented that it be instituted or made, is guilty of a misdemeanor.

§§ 585-586. Reserved

§ 587. False certificate by public officer

Every public officer who, being authorized by law to make or give any certificate or other writing, knowingly makes and delivers as true any such certificate or writing containing any statement which he knows to be false, is guilty of a misdemeanor.

§ 588. Recording of petit jury proceedings—Listening or observing—Penalty

Any person, firm or corporation who knowingly and willfully, by means of any device whatsoever, records or attempts to record the proceedings of any jury in any Court of Cherokee Nation while such jury is deliberating or voting or listens to or observes, or attempts to listen to or observe, the proceedings of any jury of which he is not a member in any Court of Cherokee Nation while such jury is deliberating or voting shall be guilty of a felony punishable by a fine of not more than Fifteen Thousand Dollars ($15,000.00) or imprisonment for not more than three (3) years, or both such fine and imprisonment. Provided, however, that nothing in this section shall be construed to prohibit the taking of notes by a juror in any court of the Cherokee Nation in connection with and solely for the purpose of assisting him in the performance of his duties as such juror.

§ 589. False reporting of crime

It shall be unlawful to willfully, knowingly and without probable cause make a

false report to any person of any crime or circumstances indicating the possibility of crime having been committed, including the unlawful taking of personal property, which report causes or encourages the exercise of police action or investigation, and any person violating the provisions hereof shall be guilty of a felony punishable by a fine of not more than Fifteen Thousand Dollars ($15,000), or by imprisonment for not more than three (3) years, or by both such fine and imprisonment.§§ 590-640. Reserved

PART III

CRIMES AGAINST THE PERSON

CHAPTER 20

ASSAULT AND BATTERY

§ 641. Assault defined

An assault is any willful and unlawful attempt or offer with force or violence to do a corporal hurt to another.

§ 642. Battery defined

A battery is any willful and unlawful use of force or violence upon the person of another.

§ 643. Force against another not unlawful, when—Self-defense—Defense of property

To use or to attempt to offer to use force or violence upon or toward the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting him or acting by his direction.

2. When necessarily committed by any person in arresting one who has committed any crime, and delivering him to a public officer competent to receive him in custody.

3. When committed either by the party about to be injured, or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass or other unlawful interference with real or personal property in his lawful possession; provided the force or violence used is not more than sufficient to prevent such offense.

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, provided restraint or correction has been rendered necessary by the misconduct of such

child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent or authorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree.

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them at their request, in expelling from any carriage, railroad car, vessel or other vehicle any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety.

6. When committed by any person in preventing a person who is impaired by reason of mental retardation or developmental disability, a mentally ill person,, insane person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

§ 644. Assault or assault and battery—Punishment

A. Assault shall be punishable by imprisonment not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars ($500.00), or both, at the discretion of the Court.

B. Assault and battery shall be punishable by imprisonment not exceeding six (6) months, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such imprisonment and fine.

C. Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of domestic abuse. Upon conviction, the defendant shall be guilty of a misdemeanor and punished by imprisonment for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, the person shall be guilty of a felony and punished by imprisonment for not more than three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent offense.

D. Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy shall be guilty of a misdemeanor, punishable by imprisonment for not more than one (1) year.

E. Any person convicted of a second or subsequent offense of domestic abuse against a pregnant woman with knowledge of the pregnancy shall be guilty of a felony, punishable by imprisonment for not more than three (3) years.

F. Any person convicted of domestic abuse committed against a pregnant woman with knowledge of

the pregnancy and a miscarriage occurs or injury to the unborn child occurs shall be guilty of a felony, punishable by imprisonment for not more than three (3) years.

G. Any person convicted of domestic abuse as defined in subsection C of this section that results in great bodily injury to the victim shall be guilty of a felony and punished by imprisonment for not more than three (3) years. The provisions of Section 51 of this title shall apply to any second or subsequent conviction of a violation of this subsection.

H. Any person convicted of domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be guilty of a misdemeanor and punished by imprisonment for not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. Any person convicted of a second or subsequent domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be guilty of a felony and punished by imprisonment for not less than one (1) year nor more than three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent offense.

I. For every conviction of any provision of this section, the court shall:

1. Specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

2. a. The court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered domestic abuse counseling or treatment program shall be prima facie evidence of the violation of the conditions of probation.

b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or

inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

J. As used in subsection F of this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of subsections C and F of this section, "child" may be any child whether or not related to the victim or the defendant.

K. For the purposes of subsections C and F of this section, any conviction for assault and battery against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for a felony charge if that conviction is rendered in any court of record.

L. Any plea of guilty or nolo contendere or a finding of guilt for a violation of any subsection of this section shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any court imposed probationary term; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony.

M. For purposes of subsection F of this section, "great bodily injury" means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

§ 645. Assault, battery, or assault and battery with a dangerous weapon punishment

Every person who with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon the person of another with any sharp or dangerous weapon, or who, without such cause, shoots at another with any kind of firearm or air gun or other means whatever, with intent to injure any person, although without the intent to kill such person or to commit any felony, upon conviction shall be guilty of a felony punishable by imprisonment not exceeding three (3) years.

§ 646. Aggravated assault and battery defined

A. An assault and battery becomes aggravated when committed under any of the following circumstances:

1. When great bodily injury is inflicted upon the person assaulted; or

2. When committed by a person of robust health or strength upon one who is aged, decrepit, or incapacitated, as defined in 21 CNCA § 641.

B. For purposes of this section **"great bodily injury"** means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or

substantial risk of death.

§ 647. Punishment for aggravated assault and battery

Aggravated assault and battery shall be a felony punishable by imprisonment for a period not to exceed three (3) years, or by a fine of not more than Fifteen Thousand Dollars ($15,000.00), or both such fine and imprisonment.

§ 648. Definitions

A. **"Dog handler"** means any police officer or peace officer who has successfully completed training in the handling of a police dog as established by the policy or standard of the law enforcement agency employing said officer.

B. **"Police dog"** means any dog used by a law enforcement agency of this Nation or political subdivision of this Nation which is especially trained for law enforcement work and is subject to the control of a dog handler.

C. **"Police horse"** means any horse which is used by a law enforcement agency of this Nation or political subdivision of this Nation for law enforcement work.

D. **"Police officer," "police"** or **"peace officer"** means any duly appointed person who is charged with the responsibility of maintaining public order, safety, and health by the enforcement of all laws, ordinances or orders of this Nation or any of its political subdivisions and who is authorized to bear arms in execution of his responsibilities.

§ 649. Assault, battery or assault and battery upon police officer or other peace officer— Penalties

A. Every person who, without justifiable or excusable cause, knowingly commits any assault upon the person of an officer of the Cherokee Nation Marshal Service, police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other Nation peace officer commissioned by any Nation, state or federal governmental agency to enforce Nation laws while said officer is in the performance of his or her duties is upon conviction, guilty of a crime, punishable by imprisonment not exceeding six (6) months, or by a fine not exceeding One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

B. Every person who, without justifiable or excusable cause knowingly commits battery or assault and battery upon the person of a police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other Nation peace officer employed by any Nation governmental agency to enforce Nation laws while said officer is in the performance of his duties, upon conviction, is guilty of a felony punishable by imprisonment of not more than three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

C. As used in this section and in 21 CNCA § 650, **"corrections personnel "**means any person, employed by the Nation or by a political subdivision, who has direct contact with inmates of a jail or Nation correctional facility, and includes but is not limited to, penal institution employees in job classifications requiring direct contact with inmates, persons providing vocational-technical training to inmates, education personnel who have direct contact with inmates because of education programs for inmates, and persons employed by county or municipal jails to supervise inmates or to provide medical treatment

or meals to inmates of jails.

§ 649.1. Certain acts against police dog or police horse prohibited—Penalties

A. No person shall willfully torture, torment, beat, mutilate, injure, disable, or otherwise mistreat a police dog or police horse owned, or the service of which is employed, by a law enforcement agency of the Nation or political subdivision of the Nation.

B. No person shall willfully interfere with the lawful performance of any police dog or police horse.

C. Except as provided in subsection (D) of this section, any person convicted of violating any of the provisions of this section shall be guilty of a misdemeanor, punishable by the imposition of a fine not exceeding Five Hundred Dollars ($500.00), or by imprisonment not exceeding one (1) year, or by both such fine and imprisonment.

D. Any person who knowingly and willfully and without lawful cause or justification violates the provisions of this section, during the commission of a crime shall be guilty of a felony, punishable by the imposition of a fine not exceeding One Thousand Dollars ($1,000.00), or by imprisonment not exceeding two (2) years, or by both such fine and imprisonment.

§ 649.2. Killing police dog or police horse—Penalties

A. No person shall willfully kill any police dog or police horse owned, or the service of which is employed, by a law enforcement agency of the State of Oklahoma, federal government, Nation or a political subdivision of the State of Oklahoma, federal government or Nation.

B. Except as provided in subsection (C) of this section, any person convicted of violating the provisions of this section is guilty of a crime.

C. Any person who knowingly and willfully and without lawful cause or justification violates the provisions of this section during the commission of a crime shall be guilty of a crime, punishable by imprisonment not exceeding six (6) months, or by a fine not exceeding Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

§ 650. Aggravated assault and battery upon peace officer

A. Every person who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of a marshal, police officer, sheriff, deputy sheriff or highway patrolman, corrections personnel as defined in 21 CNCA § 649, or any state, federal or Nation peace officer employed by any Nation governmental agency to enforce Nation laws, while said officer is in the performance of his duties, shall upon conviction thereof be guilty of a felony, which shall be punishable by imprisonment for not more than three (3) years or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

B. This section shall not supersede any other act or acts, but shall be cumulative thereto.

§ 650.1. Athletic contests—Assault and battery upon referee, umpire, etc.

Every person who, without justifiable or excusable cause and with intent to do bodily harm, commits any assault, battery, or assault and battery upon the person of a referee, umpire, timekeeper, coach, official, or any person having authority in connection with any amateur or professional athletic contest is guilty of a misdemeanor and is punishable by imprisonment not exceeding one (1) year or by a fine not exceeding One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

§ 650.2. Aggravated assault and battery upon Corrections, Children and Family Services or Juvenile Services employee or contractor

A. Every person incarcerated in an institution, prison, jail or detention facility owned, operated, or contracted by the Cherokee Nation, who, without justifiable or excusable cause, knowingly commits any assault, battery or assault and battery upon the person of an employee of the institution, prison, jail, detention facility or any contractor while said employee is in the performance of his or her duties shall, upon conviction thereof, be guilty of a felony.
B. Every person in the custody of the Cherokee Nation who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of a Department of Human Services employee or any contractor, or a person contracting with the Department to provide services, while the employee or contractor is in the performance of his or her duties shall, upon conviction thereof, be guilty of a felony.
C. Every person in the custody of the Cherokee Nation who, without justifiable or excusable cause, knowingly commits any assault, battery or assault and battery upon the person of a juvenile services employee while said employee is in the performance of his or her duties shall, upon conviction thereof, be guilty of a felony.

D. Every person in the custody of the Cherokee Nation who, without justifiable or excusable cause, knowingly commits any battery or assault and battery resulting in bodily injury to any juvenile services employee or employee of any residential facility while said employee is in the performance of duties of employment shall, upon conviction thereof, be guilty of a felony. The fine for a violation of this subsection shall not be less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), which may be imposed whether or not a period of incarceration is imposed.

§ 650.3. Delaying, obstructing or interfering with emergency medical technician or other emergency medical care provider—Punishment

Every person who willfully delays, obstructs or in any way interferes with an emergency medical technician or other emergency medical care provider in the performance of or attempt to perform emergency medical care and treatment or in going to or returning from the scene of a medical emergency, upon conviction, is guilty of a crime punishable by imprisonment not exceeding six (6) months, or by a fine not to exceed Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

§ 650.4. Assault, battery or assault and battery upon emergency medical technician or other emergency medical care provider—Punishment

A. Every person who, without justifiable or excusable cause, knowingly commits any assault upon the person of an emergency medical technician or other emergency medical care provider, upon conviction, is punishable by imprisonment not exceeding six (6) months, or by a fine not exceeding One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

B. Every person who, without justifiable or excusable cause and with intent to do bodily harm, commits any battery or assault and battery upon the person of an emergency medical technician or other emergency

medical care provider, upon conviction, is guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

C. As used in this section, "emergency medical care provider" means doctors, residents, interns, nurses, nurses' aides, emergency medical technicians, laboratory and other medical technicians, and members of a hospital or other medical clinic security force.

§ 650.5. Aggravated assault and battery or assault with firearm or other dangerous weapon upon emergency medical technician or other emergency medical care provider—Punishment

Every person who, without justifiable or excusable cause and with intent to do bodily harm, commits any aggravated assault and battery or any assault with a firearm or other deadly weapon upon the person of an emergency medical technician or other emergency medical care provider, upon conviction, is guilty of a felony punishable by imprisonment for not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 650.6. Assault or battery or assault and battery upon officer of district or appellate court, witness or juror—Punishment

A. Every person who commits any assault upon any officer of a district or appellate court, including but not limited to judges, bailiffs, court reporters, court clerks or deputy court clerks, or upon any witnesses or juror, because of said person's service in such capacity or within six (6) months of said person's service in such capacity, shall be guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such imprisonment and fine.

B. Every person who commits any battery or assault and battery upon any officer of a district or appellate court, including but not limited to judges, bailiffs, court reporters, court clerks or deputy court clerks, or upon any witnesses or juror, because of said person's service in such capacity or within six (6) months of said person's service in such capacity, shall be guilty of a felony punishable by imprisonment for not more than three (3) years, by a fine of not more than Fifteen Thousand Dollars ($15,000.00), or by both such imprisonment and fine.

§§ 650.7-650.8. Reserved

§ 650.9. Persons in custody—Placing body wastes or fluids upon tribal employee or contractor

Every person in the custody of the Cherokee Nation, or a contractor of the Cherokee Nation, who throws, transfers or in any manner places feces, urine, semen, saliva or blood upon the person of an employee of the tribe, or an employee of a contractor of the tribe shall, upon conviction thereof, be guilty of a felony.

§ 650.10. Touching assistive device with intent to harass—Punishment

Every person who, without justifiable or excusable cause and with intent to harass, touches any assistive device of another person, shall upon conviction, be guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

As used in this section, "assistive device" means any device that enables a person with a disability to communicate, see, hear, or maneuver.

CHAPTER 21 ATTEMPTS

TO KILL

§ 651. Poison, attempt to kill by administering

Every person who, with intent to kill, administers or causes or procures to be administered to another any poison which is actually taken by such other person but by which death is not caused, is guilty of a felony, punishable by imprisonment for not more than three (3) years.

§ 652. Shooting or discharging firearm with intent to kill—Use of vehicle to facilitate discharge of weapon in conscious disregard of safety of others—Assault and battery with deadly weapon, etc.

A. Every person who intentionally and wrongfully shoots another with or discharges any kind of firearm, with intent to kill any person, is guilty of a crime. Any person who commits any assault and battery upon another by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, or in resisting the execution of any legal process, is guilty of a crime.

B. Every person who uses any vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of any other person or persons including an unborn child shall upon conviction be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years.

C. Any person who commits any assault and battery upon another, including an unborn child by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, including an unborn child, or in resisting the execution of any legal process, shall upon conviction be guilty of a felony punishable by imprisonment not exceeding three (3) years.

D. The provisions of this section shall not apply to:

1. Acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented; or

2. Acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

E. Under no circumstances shall the mother of the unborn child be prosecuted for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child.

F. "Unborn child" means the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus.

CHAPTER 22 DUELS AND

CHALLENGES

§ 661. Duel defined

A duel is any combat with deadly weapons fought between two persons by agreement.

§ 662. Punishment for dueling

Every person fighting any duel, although no death or wound ensues, is guilty of a crime.

CHAPTER 23 CRIMINAL

ASSAULTS

§ 681. Assaults with intent to commit crime; Punishment

A. Every person who commits an assault with intent to commit any crime, except an assault with intent to kill, the punishment for which assault is not otherwise prescribed in this code, is guilty of a crime, punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment if the offense involved sexual assault.

B. Any person convicted for a violation of subsection (A) of this section where the offense involved sexual assault, shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

CHAPTER 24 HOMICIDE

GENERAL PROVISIONS

MURDER MANSLAUGHTER

EXCUSABLE AND JUSTIFIABLE HOMICIDE

GENERAL PROVISIONS

§ 691. Homicide defined

Homicide is the killing of one human being by another.

§ 692. Homicide classified

Homicide is either:

1. Murder;

2. Manslaughter;

3. Excusable homicide; or

4. Justifiable homicide.

§ 693. Proof necessary to conviction of murder or manslaughter

No person can be convicted of murder or manslaughter, or of aiding suicide, unless the death of the person alleged to have been killed and the fact of the killing by the accused are each established as independent facts beyond a reasonable doubt.

§ 694. Petit treason by killing master or husband abolished—Such offenses homicides

The rules of the common law, distinguishing the killing of a master by his servant and of a husband by his wife, as petit treason are abolished and these offenses are deemed homicides, punishable in the manner prescribed by this chapter.

§ 695. Confidential or domestic relation may be considered

Whenever the grade or punishment of homicide is made to depend upon its having been committed under circumstances evincing a depraved mind or unusual cruelty, or in a cruel manner, the jury may take into consideration the fact that any domestic or confidential relation existed between the accused and the person killed, in determining the moral quality of the acts proved.

MURDER

§ 701.7. Murder in the first degree

A. A person commits murder in the first degree when he unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person also commits the crime of murder in the first degree when he takes the life of a human being, regardless of malice, in the commission of forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, first degree burglary, first degree arson, unlawful distributing or dispensing of controlled dangerous substances, or trafficking in illegal drugs.

A person commits murder in the first degree when the death of a child results from the willful or malicious injuring, torturing, maiming or using of unreasonable force by said person or who shall willfully cause, procure or permit any of said acts to be done upon the child pursuant to 21 CNCA§ 843.

A person commits murder in the first degree when he unlawfully and with malice aforethought solicits another person or persons to cause the death of a human being in furtherance of unlawfully manufacturing, distributing or dispensing controlled dangerous substances, as defined in the Uniform Controlled Substances Act, 21 CNCA § 2101 et seq., unlawfully possessing with intent to distribute or dispense controlled dangerous substances, or trafficking in illegal drugs.

§ 701.8. Murder in the second degree

Homicide is murder in the second degree in the following cases:

1. When perpetrated by an act imminently dangerous to another person and evincing a depraved mind,

regardless of human life, although without any premeditated design to effect the death of any particular individual; or

2. When perpetrated by a person engaged in the commission of any crime other than the unlawful acts set out in 21 CNCA § 701.7(B).

§ 701.9. Punishment for murder

A. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

B. A person who is convicted of or pleads guilty or nolo contendere to murder in the second degree shall be guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 701.16. Solicitation for murder in the first degree

It shall be unlawful for any person or agent of that person to solicit another person or persons to cause the death of a human being by the act of murder in the first degree as is defined by 21 CNCA§ 701.7. A person who is convicted, pleads guilty or pleads nolo contendere to the act of solicitation for murder in the first degree, except as provided in 21 CNCA § 701.7, shall be guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 702. Design to effect death inferred

A design to effect death is inferred from the fact of killing, unless the circumstances raise a reasonable doubt whether such design existed.

§ 703. Premeditation

A design to effect death sufficient to constitute murder may be formed instantly before committing the act by which it is carried into execution.

§ 704. Anger or intoxication no defense

Homicide committed with a design to effect death is not the less murder because the perpetrator was in a state of anger or voluntary intoxication at the time.

§ 705. Act imminently dangerous and evincing depraved mind

Homicide perpetrated by an act imminently dangerous to others and evincing a depraved mind, regardless of human life, is not the less murder because there was no actual intent to injure others.

§§ 706-710. Reserved

MANSLAUGHTER

§ 711. Manslaughter in the first degree defined

Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated without a design to effect death by a person while engaged in the commission of a crime.

2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon; unless it is committed under such circumstances as constitute excusable or justifiable homicide.

3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.

§ 712. Liability of physicians

Every physician who being in a state of intoxication without a design to effect death, administers any poison, drug or medicine, or does any other act as such physician to another person, which produces the death of such other person, is guilty of manslaughter in the first degree.

§ 713. Killing an unborn quick child

The willful killing of an unborn quick child by any injury committed upon the person of the mother of such child is manslaughter in the first degree.

§ 715. Punishment for manslaughter in the first degree

Every person committing manslaughter in the first degree is guilty of a crime.

§ 716. Manslaughter in the second degree

Every killing of one human being by the act, procurement or culpable negligence of another, which, under the provisions of this chapter, is not murder, nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree.

§ 717. Owner of mischievous animal which kills person

If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances permitted, to avoid such animal, the owner is deemed guilty of manslaughter in the second degree.

§§ 718-721. Reserved

§ 722. Punishment for manslaughter in the second degree

Every person committing of manslaughter in the second degree is guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

EXCUSABLE AND JUSTIFIABLE HOMICIDE

§ 731. Excusable homicide, what is

Homicide is excusable in the following cases:

1. When committed by accident and misfortune in doing any lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent.

2. When committed by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat provided that no undue advantage is taken, nor any dangerous weapon used, and that the killing is not done in a cruel or unusual manner.

§ 732. Justifiable homicide by officer

A peace officer, correctional officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

1. In effecting an arrest or preventing an escape from custody following arrest and the officer reasonably believes both that:

   a. such force is necessary to prevent the arrest from being defeated by resistance or escape, and

   b. there is probable cause to believe that the person to be arrested has committed a crime involving the infliction or threatened infliction of serious bodily harm, or the person to be arrested is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay; or

2. The officer is in the performance of his legal duty or the execution of legal process and reasonably believes the use of the force is necessary to protect himself or others from the infliction of serious bodily harm; or

3. The force is necessary to prevent an escape from a penal institution from custody while in transit thereto or therefrom unless the officer has reason to know:

   a. the person escaping is not a person who has committed a crime involving violence, and

   b. the person escaping is not likely to endanger human life or to inflict serious bodily harm if not apprehended.

§ 733. Justifiable homicide by any person

Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any crime upon him, or upon or in any dwelling house in which such person is; or

2. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there is a reasonable ground to apprehend a design to commit a crime, or to do

some great personal injury, and imminent danger of such design being accomplished; or

3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any crime committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

§§ 734-740. Reserved

CHAPTER 25

KIDNAPPING

§ 741. Kidnapping defined

A. Every person who, without lawful authority, seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away another, with intent, either:

1. To cause such other person to be confined or imprisoned in this Nation against the will of the other person; or,

2. To cause such other person to be sent out of this Nation against the will of the other person; or,

3. To cause such person to be sold as a slave, or in any way held to service against the will of such other person, is guilty of a crime, punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment when the offense was by a non-parent and involved sexual abuse or sexual exploitation.

B. Upon any trial for a violation of this section, the consent thereto of the person kidnapped or confined, shall not be a defense, unless it appears satisfactorily to the jury, that such person was above the age of twelve (12) years, and that such consent was not extorted by threat, or by duress.

C. Any person, except for the parent of the child, convicted for a violation of subsection (A) of this section where the offense involved sexual abuse or sexual exploitation, shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§§ 742-744. Reserved

§ 745. Kidnapping for purpose of extortion—Assisting in disposing, receiving, possessing or exchanging money or property received

A. Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, for the purpose of extorting any money, property or thing of value or advantage from the person so seized, confined, inveigled or kidnapped, or from any other person, or in any manner threatens either by written instrument, word of mouth, message, telegraph, telephone, by placing an ad in a newspaper, or by messenger, demands money or other thing of value, shall be guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

B. Every person, not a principal in the kidnapping and not a relative or agent authorized by a relative of a kidnapped person, but who knowingly aids, assists, or participates in the disposing, receiving, possession or exchanging of any moneys, property or thing of value or advantage from the person so seized, confined, inveigled or kidnapped, shall be guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 746. Venue

Every offense prohibited in the last section may be tried in the jurisdiction in which the crime may have been committed or in any jurisdiction through which the person so seized, confined, inveigled or kidnapped shall have been taken, carried, or into which such person may be brought.

§ 747. Holder of hostage—Telephone communications

A. The supervising law enforcement official having jurisdiction in the geographical area where hostages are held who has probable cause to believe that the holder of one or more hostages is committing a crime shall have the authority to order a telephone company to arrange to cut, reroute or divert telephone lines in any emergency in which such hostages are being held, for the purpose of preventing telephone communication by the holder of such hostages with any person other than a peace officer or a person authorized by the peace officer.

B. The serving telephone company within the geographical area of a law enforcement unit shall designate appropriate telephone company management employees to provide, or cause to be provided, all required assistance to law enforcement officials to carry out the purposes of this section.

C. Good faith reliance on an order by a supervising law enforcement official pursuant to this section, shall constitute a complete defense to any civil or criminal action brought against a telephone company, its agents or employees, as a result of compliance with said order.

§§ 748-750. Reserved

CHAPTER 26 MAIMING

§ 751. Maiming defined

Every person who, with premeditated design to injure another, inflicts upon his person any injury which disfigures his personal appearance or disables any member or organ of his body or seriously diminishes his physical vigor, is guilty of maiming.

§ 752. Maiming one's self

Every person who with design to disable himself from performance of any legal duty, existing or anticipated, inflicts upon himself any injury whereby he is so disabled, is guilty of maiming.

§ 754. Means and manner of maiming immaterial

To constitute maiming it is immaterial by what means or instrument, or in what manner the injury was inflicted.

§ 755. Maiming by disfigurement

To constitute maiming by disfigurement, the injury must be such as is calculated, after healing, to attract observation. A disfigurement which can only be discovered by close inspection does not constitute maiming.

§ 756. Design to maim inferred

A design to injure, disfigure, or disable, is inferred from the fact of inflicting an injury which is calculated to disfigure or disable, unless the circumstances raise a reasonable doubt whether such design existed.

§ 757. Premeditated design

A premeditated design to injure, disfigure or disable, sufficient to constitute maiming, may be formed instantly before inflicting the wound.

§ 758. Recovery before trial at bar—Conviction of assault and battery

Where it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming shall be had; but the accused may be convicted of assault and battery, with or without a special intent, according to proof.

§ 759. Punishment for maiming

Every person convicted of maiming is guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§§ 758-790. Reserved

CHAPTER 28 ROBBERY

§ 791. Robbery defined

Robbery is a wrongful taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

§ 792. Force or fear—How employed

To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking.

§ 793. Degree of force immaterial

When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

§ 794. What fear is an element

The fear which constitutes robbery may be either:

1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed or of any relative of his, or member of his family; or

2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed, at the time of the robbery.

§ 795. Value of property not material

When property is taken under the circumstances, required to constitute robbery, the fact that the property was of trifling value does not qualify the offense.

§ 796. Taking secretly not robbery

The taking of property from the person of another is not robbery, when it clearly appears that the taking was fully completed without his knowledge.

§ 797. Degrees of robbery

Robbery, when accomplished by the use of force, or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree. When accomplished in any other manner, it is robbery in the second degree.

§ 798. Punishment for first degree

Every person convicted of robbery in the first degree is guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 799. Punishment for second degree

Every person convicted of robbery in the second degree is guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 800. Robbery by two or more persons—Punishment

Whenever two or more persons conjointly commit a robbery or where the whole number of persons conjointly commits a robbery and persons present and aiding such robbery amount to two or more, each and either of such persons is guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine

and imprisonment.

§ 801. Robbery or attempted robbery with dangerous weapon or imitation firearm— Punishment

Any person or persons who, with the use of any firearms or any other dangerous weapons, whether the firearm is loaded or not, or who uses a blank or imitation firearm capable of raising in the mind of the one threatened with such device a fear that it is a real firearm, attempts to rob or robs any person or persons, or who robs or attempts to rob any place of business, residence or banking institution or any other place inhabited or attended by any person or persons at any time, either day or night, shall be guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§§ 802-810. Reserved

CHAPTER 29 SUICIDE

§ 811. Suicide defined

Suicide is the intentional taking of one's own life.

§ 813. Aiding suicide

Every person who willfully, in any manner, advises, encourages, abets, or assists another person in taking his own life, is guilty of aiding suicide.

§ 814. Furnishing weapon or drug

Every person who willfully furnishes another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life, is guilty of aiding suicide, if such person thereafter employs such instrument or drug in taking his own life.

§ 815. Aid in attempt to commit suicide

Every person who willfully aids another in attempting to take his own life, in any manner which by the preceding sections would have amounted to aiding suicide if the person assisted had actually taken his own life, is guilty of aiding an attempt at suicide.

§ 816. Incapacity of person committing or attempting suicide no defense

It is no defense to a prosecution for aiding suicide or aiding an attempt at suicide, that the person who committed or attempted to commit the suicide was not a person deemed capable of committing crime.

§ 817. Punishment for aiding suicide

Every person convicted of aiding suicide is guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 818. Punishment for aiding an attempt at suicide

Every person convicted of aiding an attempt at suicide is guilty of a felony by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§§ 819-830. Reserved

CHAPTER 30

MISCELLANEOUS OFFENSES AGAINST THE PERSON

§ 831. Intoxicated physician

Every physician who being in the state of intoxication administers any poison, drug or medicine, or does any other act as such physician to another person, is guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 832. Willfully poisoning food, drink, medicine, or patent or proprietary medicine

A. 1. No person shall willfully mingle any poison, Schedule I through V drug pursuant to the provisions of 21 CNCA § 2203 et seq., or sharp object, or any other object or substance which if used in a manner which is not customary or usual is harmful to human life, with any food, drink, medicine, or patent or proprietary medicine with intent that the same shall be taken, consumed, applied, or used in any manner by any human being to his injury; and

2. Unless authorized by law, no person shall willfully poison or place any Schedule I through V drug pursuant to the provisions of 21 CNCA § 2203 et seq., or any other object or substance which if used in a manner which is not customary or usual is harmful to human life in any spring, well, or reservoir of water.

B. Any person convicted of violating any of the provisions of this section shall be guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 833. Unlawful confinement of persons with mental impairment

Every person who confines any person with a mental impairment or insane person, in any other manner or in any other place than is authorized by law, is guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 834. Reconfining persons discharged upon writ of deliverance

Every person who, either solely or as a member of a court, in the execution of a judgment, order or process, knowingly recommits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged from a penal institution upon a writ of deliverance, is guilty of a crime; and, in addition to the

punishment prescribed therefor, he forfeits to the party aggrieved One Thousand Dollars ($1,000.00), to be recovered in a civil action.

§ 835. Concealing persons to avoid habeas corpus

Every person having in his custody or power, or under his restraint, a party who by the provisions of law relating to habeas corpus, would be entitled to a writ of habeas corpus, or for whose relief such writ has been issued, who, with intent to elude the service of such writ, to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who, without lawful excuse, refuses to produce him, is guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 836. Assisting in concealing person to avoid habeas corpus

Every person who knowingly assists in the violation of the preceding section is guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 837. Intimidating laborers

Every person who, by use of force, threats or intimidation, prevents or endeavors to prevent any hired foreman, journeyman, apprentice, workman, laborer, servant or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or induces such hired person to relinquish his work or employment, or to return any work he has in

hand, before it is finished, is guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

Every person who, by use of force, threats, or intimidation, prevents or endeavors to prevent any farmer or rancher from harvesting, handling, transporting or marketing any agricultural products, is guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 838. Intimidating employers

Every person who, by use of force, threats or intimidation, prevents or endeavors to prevent another from employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants or other persons employed by him, or their rate of wages or time of service, is guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 839. Reserved

RIGHT OF PRIVACY

§ 839.1. Right of privacy—Use of name or picture for advertising without consent—Misdemeanor

Any person, firm or corporation that uses for the purpose of advertising for the sale of any goods, wares or merchandise, or for the solicitation of patronage by any business enterprise, the name, portrait or picture of any person, without having obtained, prior or subsequent to such use, the consent of such person, or, if such person is a minor, the consent of a parent or guardian, and, if such person is deceased, without the consent of the surviving spouse, personal representatives, or that of a majority of the deceased's adult heirs, is guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 839.2. Right of action—Damages

Any person whose right of privacy, as created in 21 CNCA § 839.1, is violated or the surviving spouse, personal representatives or a majority of the adult heirs of a deceased person whose name, portrait, or picture is used in violation of 21 CNCA § 839.1, may maintain an action. Provided that this act shall not prevent the continued use of names of such persons by business establishments using such names and displaying such names at the effective date of this act.

§ 839.3. Right of photographer to exhibit specimens of work—Other uses excepted

Nothing contained in this act shall be so construed as to prevent any person, firm or corporation, practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such establishment, unless the same is continued by such person, firm or corporation after written notice objecting thereto has been given by the person portrayed; and nothing contained in this act shall be so construed as to prevent any person, firm or corporation from using the name, portrait or picture of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by him which he has sold or disposed of with such name, portrait or picture used in connection therewith; or from using the name, portrait or picture of any author, composer or artist in connection with his literary, musical or artistic productions which he has sold or disposed of with such name, portrait or picture used in connection therewith. Provided that this act shall not prevent the continued use of names of such persons by business establishments using such names and displaying such names at the effective date of this act.

§§ 840. Reserved

TATTOOING

§ 841. Reserved

§ 842. Reserved

CHILD ABUSE

§ 843. Abuse of children—Penalties

A. For the purposes of this section:

1. **"Abuse"** means harm or threatened harm to a child's health, safety or welfare by a person responsible for the child's health, safety or welfare, including sexual abuse and sexual exploitation.

2. **"Child"** means any unmarried person under the age of eighteen (18) years.

3. **"Harm or threatened harm to a child's health or safety"** includes, but is not limited to:

a. nonaccidental physical or mental injury;

b. sexual abuse;

c. sexual exploitation;

d. neglect;

e. failure or omission to provide protection from harm or threatened harm; or

f. abandonment.

4. **"Neglect"** means abandonment, or failure or omission to provide any of the following:

a. adequate food, clothing, shelter, medical care, or supervision; or

b. special care made necessary by the physical or mental condition of the child.

5. **"Person responsible for a child's health, safety or welfare"** includes a parent, a legal guardian, a custodian, a foster parent, a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child, an agent or employee of a public or private residential home, institution, facility or day treatment program, or an owner, operator, or employee of a child care facility.

6. **"Sexual abuse"** includes, but is not limited to, rape, incest and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child's health, safety or welfare regardless of the age or consent of the child.

7. **"Sexual exploitation"** includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's health, safety or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the law, by a person responsible for the child's health, safety or welfare.

B. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a felony, punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.. As used in this subsection, **"child abuse"** means the willful or malicious abuse, as defined by paragraph 1 of subsection (A) of this section, of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.

C. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall, upon conviction, be punished pursuant to 21 CNCA § 10. As used in this subsection, **"enabling child abuse"**

means the causing, procuring or permitting of a willful or malicious act of child abuse, as defined by paragraph 1 of subsection (A) of this section, of a child under eighteen (18) years of age by another. As used in this subsection, **"permit"** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.

D. Any parent or other person who shall willfully or maliciously engage in child neglect shall, upon conviction, be punished pursuant to 21 CNCA § 10. As used in this subsection, **"child neglect"** means the willful or malicious neglect, as defined by paragraph 3 of subsection (A) of this section, of a child under eighteen (18) years of age by another.

E. Any parent or other person who shall willfully or maliciously engage in enabling child neglect shall, upon conviction, be punished pursuant to 21 CNCA § 10. As used in this subsection,

"enabling child neglect" means the causing, procuring or permitting of a willful or malicious act of child neglect, as defined by paragraph 3 of subsection (A) of this section, of a child under eighteen (18) years of age by another. As used in this subsection, **"permit"** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.

F. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this section, **"child sexual abuse"** means the willful or malicious sexual abuse, as defined by paragraph 6 of subsection (A) of this section, of a child under eighteen (18) years of age by another.

G. Any parent or other person who shall willfully or maliciously engage in sexual abuse to a child under twelve (12) years of age shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

H. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this subsection, **"enabling child sexual abuse"** means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by paragraph 6 of subsection (A) of this section, of a child under the age of eighteen (18) by another. As used in this subsection, **"permit"** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

I. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this subsection, **"child sexual exploitation"** means the willful or malicious sexual exploitation, as defined by paragraph 7 of subsection (A) of this section, of a child under eighteen (18) years of age by another.

J. Any parent or other person who shall willfully or maliciously engage in sexual exploitation of a child under twelve (12) years of age shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

K. Any parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this subsection, **"enabling child sexual exploitation"** means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation, as defined by paragraph 7 of subsection (A) of this section, of a child under eighteen (18) years of age by another. As used in this subsection, **"permit"** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

L. Notwithstanding any other provision of law, any parent or other person convicted of rape or lewd molestation of a child under fourteen (14) years of age subsequent to a previous conviction, in any court of competent jurisdiction, for any offense of forcible anal or oral sodomy, rape, or lewd molestation of a child under fourteen (14) years of age shall be punished, punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

M. Any person convicted of violating the provisions of subsections (F) through (L) of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

N. Consent shall not be a defense for any violation of this section.

§ 843.1. Caretaker—Abuse, neglect or financial exploitation of charge

A. No caretaker or other person as defined in 43A O.S. § 10-103 shall abuse, commit financial neglect of, commit neglect of, commit sexual abuse upon, or financially exploit any person entrusted to the care of such caretaker or other person in a nursing facility or other setting or knowingly cause, secure, or permit any of said acts to be done.

B. Any person convicted of violating the provisions of this section shall be guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment., provided that when such conviction involves sexual abuse or sexual exploitation, such sentence must include a term of imprisonment.

C. Consent shall not be a defense for any violation of this section.

D. Any person convicted of violating the provisions of this section by committing sexual abuse or sexual exploitation shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

E. For purposes of this section and 21 CNCA §§ 843.2 through 843.4:

1. **"Abuse"** means causing or permitting:

a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or

b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

2. **"Caretaker"** shall be defined as a person who has:

a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship;

b. assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or

c. been appointed a guardian, limited guardian, or conservator.

3. **"Exploitation"** or **"exploit"** means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;

4. **"Financial neglect"** means repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:

a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;

b. refusing to pay for necessities or utilities in a timely manner; or

c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

5. **"Incapacitated person"** means:

a. any person eighteen (18) years of age or older:

i. who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability or other cause; and

ii. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that such person lacks the capacity to manage his or her financial resources or to meet essential requirements for his or her mental or physical health or safety without assistance from others; or

b. a person for whom a guardian, limited guardian, or conservator has been appointed.

6. **"Indecent exposure"** means forcing or requiring a vulnerable adult to:

a. look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or

b. touch or feel the body or private parts of another.

7. **"Neglect"** means:

a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest; or

b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; or

c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services.

8. **"Self-neglect"** means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity;

9. **"Sexual abuse"** means:

a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object; or

b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or

c. indecent exposure by a caretaker or other person providing services to the vulnerable adult.

10. **"Sexual exploitation"** includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by the Nation's laws.

11. **"Verbal abuse"** means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

12. **"Vulnerable adult"** means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

F. Nothing in this section shall be construed to mean a vulnerable adult is abused or neglected for the sole reason the vulnerable adult, in good faith, selects and depends upon spiritual means alone, in accordance with the practices of a recognized religious method of healing, for the treatment or cure of disease or remedial care, or a caretaker or other person responsible, in good faith, is furnishing such vulnerable adult spiritual means alone, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care in accordance with the practices of or express consent of the vulnerable adult.

§ 843.2. Verbal abuse by caretaker

No caretaker shall verbally abuse any person entrusted to the care of the caretaker, or knowingly cause, secure, or permit an act of verbal abuse to be done. Any person convicted of violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a period of not more than one (1) year, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment..

§ 843.3. Abuse or exploitation of vulnerable adult by non-caretaker

A. Any person who engages in abuse, sexual abuse, or exploitation of a vulnerable adult, as defined in 21 CNCA § 843, shall be guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment when the offense involved sexual abuse or exploitation. Any person convicted of violating the provisions of this subsection by committing sexual abuse or exploitation shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

Any person who has a responsibility to care for a vulnerable adult who purposely, knowingly or recklessly neglects the vulnerable adult shall be guilty of a felony punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 843.4. Exploitation of elderly persons or disabled adults

A. As used in this section, **"exploitation of an elderly person or disabled adult"** means:

1. Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

a. stands in a position of trust and confidence with the elderly person or disabled adult; or

b. has a business relationship with the elderly person or disabled adult.

2. Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

B. Any person convicted of violating this section commits a crime punishable pursuant to 21 CNCA § 10.

C. For purposes of this section, **"elderly person"** means any person sixty-two (62) years of age or older.

§ 844. Ordinary force as means of discipline not prohibited

Provided, however, that nothing contained in this act shall prohibit any parent, teacher or other person from using ordinary force as a means of discipline, including but not limited to spanking, switching or paddling.

§ 845. Repealed by LA 20–08, eff. January 12, 2009

§ 846. Mandatory reporting of physical abuse or birth of chemically-dependent child—Investigations—Spiritual treatment exemption—Appointment of attorney for child

A. Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, every teacher of any child under the age of eighteen (18) years, and every other person having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to Cherokee Nation and the county office of the Department of Human Services in the county wherein the suspected injury occurred. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance shall promptly report the matter to Cherokee Nation and the county office of the Department of Human Services in the county in which such birth occurred. Provided it shall be a crime for any person to knowingly and willfully fail to promptly report any incident as provided above. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as maybe after it is initially made by telephone or otherwise and shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, the nature and extent of the child's dependence on a controlled dangerous substance and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

Cherokee Nation and the county office receiving any report as herein provided shall investigate said report in accordance with priority guidelines established by Cherokee Nation and the Department of Human Services and if the county office finds evidence of abuse and neglect forward its findings to the prosecutor together with its recommendation as to disposition. In addition, a copy of the findings shall be sent to the Child Welfare Division of the Department of Human Services which shall be responsible for maintaining a permanent central registry, suitably cross-indexed, of all such reported findings. Any information contained in the central registry shall be available to any county office and to any prosecutor's office or public law enforcement agency investigating a report of suspected child abuse or neglect. The Department of Human Services may promulgate rules and regulations in furtherance of the provisions of this section.

All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the Nation, State of Oklahoma or United States in connection with the performance of their official duties. It shall be unlawful and a crime for the Commission, or any employee working under the direction of the Department of Human Services, any other public officer or employee, or any Court-Appointed Special Advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

No provision of this section shall be construed to mean that a child has been abused or neglected because said child's parent, guardian or custodian in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care of such child.

B. In every case filed under 21 CNCA § 843, the Judge of the District Court shall appoint an attorney-at-law to appear for and represent a child who is the alleged subject of child abuse in such case if the prosecutor has a conflict of interest. The attorney may be allowed a reasonable fee for such services to be paid from the Court Fund to be fixed by the District Court. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section. The attorney shall be charged with the representation of the child's best interests. To that end, he shall make such further investigation that he deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the Court and participate further in the proceedings to the degree appropriate for adequately representing the child. A Court-Appointed Special Advocate as defined by 10 CNCA § 1109 may be appointed to represent a child who is the alleged subject of child abuse or neglect. The Court-Appointed Special Advocate shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section.

§ 846.1. Report of criminally inflicted injuries

Any physician, surgeon, osteopathic physician, resident, intern, physician's assistant, or registered nurse, examining, attending, or treating the victim of what appears to be criminally injurious conduct shall report orally or by telephone the matter promptly to the nearest appropriate law enforcement agency wherein the criminally injurious conduct occurred.

§ 847. Immunity from civil or criminal liability

Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of 21 CNCA § 846 or 21 CNCA § 846.1, or any person who, in good faith and exercising due care, allows access to a child by persons authorized to investigate a report concerning the child shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

§ 848. Admissibility of evidence

In any proceeding resulting from a report made pursuant to the provisions of 21 CNCA § 846 or 21 CNCA § 846.1 or in any proceeding where such a report or any contents of the report are sought to be introduced into evidence, such report, contents, or other fact related thereto or to the condition of the child or victim who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

EXPLOSIVES

§ 849. Wiring or equipping of vehicles or structures with explosives—Penalty

Every person who shall attach to, or place in or upon any motor vehicle or any vehicle designed or

customarily used to transport a person or persons or any structure designed or customarily used for the occupancy of a person or persons, any explosive material, thing or device with the intent of causing bodily injury or death to any person shall be guilty of a crime.

INTIMIDATION OR HARASSMENT

§ 850. Malicious intimidation or harassment because of race, color, religion, ancestry, national origin or disability—Standardized reporting system

A. No person shall maliciously and with the specific intent to intimidate or harass another person because of that person's race, color, religion, ancestry, national origin or disability:

1. Assault or batter another person;

2. Damage, destroy, vandalize or deface any real or personal property of another person; or

3. Threaten, by word or act, to do any act prohibited by paragraph 1 or 2 of this subsection if there is reasonable cause to believe that such act will occur.

B. No person shall maliciously and with specific intent to incite or produce, and which is likely to incite or produce, imminent violence, which violence would be directed against another person

because of that person's race, color, religion, ancestry, national origin or disability, make or transmit, cause or allow to be transmitted, any telephone or electronic message.

C. No person shall maliciously and with specific intent to incite or produce, and which is likely to incite or produce, imminent violence, which violence would be directed against another person because of that person's race, color, religion, ancestry, national origin or disability, broadcast, publish, or distribute, cause or allow to be broadcast, published or distributed, any message or material.

D. Any person convicted of violating any provision of subsections (A), (B) or (C) of this section shall be guilty of a crime on a first offense.

E. Cherokee Nation shall cooperate with the Oklahoma State Bureau of Investigation to develop a standard system for Nation, state and local law enforcement agencies to report incidents of crime which are apparently directed against members of racial, ethnic or religious groups to the Bureau within seventy-two (72) hours of the time such incidents are reported to such agencies.

F. No person, partnership, company or corporation that installs telephone or electronic message equipment shall be required to monitor the use of such equipment for possible violations of this section, nor shall such person, partnership, company or corporation be held criminally or civilly liable for the use by another person of the equipment in violation of this section, unless the person, partnership, company or corporation that installed the equipment had prior actual knowledge that the equipment was to be used in violation of this section.

§ 851. Desertion of children under age of ten a felony

Any parent of any child or children under the age of ten (10) years, and every person to whom such child or children have been confided for nurture or education, who deserts such child or children within Cherokee

Nation, or takes such child or children out of Cherokee Nation, with the intent wholly to abandon it shall be deemed guilty of a felony punishable by a term of imprisonment not to exceed three (3) years and a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or both.

§ 852. Omission to provide for a child--Penalties

A. Unless otherwise provided for by law, any parent, guardian, or person having custody or control of a child as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes who willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, monetary child support, medical attendance, payment of court-ordered day care or payment of court-ordered medical insurance costs for such child which is imposed by law, upon conviction, is guilty of a misdemeanor. Any subsequent conviction pursuant to this section shall be a felony, punishable by imprisonment for not more than three (3) years or by the imposition of a fine of not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. As used in this section, the duty to furnish medical attendance shall mean that the parent or person having custody or control of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or person having custody or control of a child is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted.

B. Any person who leaves the Nation to avoid providing necessary food, clothing, shelter, court-ordered monetary child support, or medical attendance for such child, upon conviction, shall be guilty of a felony punishable by imprisonment for not more than three (3) years or by the imposition of a fine of not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

C. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated.

D. Nothing contained in this section shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the health or welfare of the child.

E. Psychiatric and psychological testing and counseling are exempt from the provisions of this section.
H. It is the duty of any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person, as such terms are defined by Section 3-403 of Title 43A of the Oklahoma Statutes, to provide for the treatment, as such term is defined by Section 3-403 of Title 43A of the Oklahoma Statutes, of such child. Any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person who without having made a reasonable effort fails or willfully omits to provide for the treatment of such child shall be guilty of a misdemeanor. For the purpose of this subsection, the duty to provide for such treatment shall mean that the parent having legal custody of a child must provide for the treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide.

§ 853. Desertion of wife or child under 15 a felony

Every person who shall without good cause abandon his wife in destitute or necessitous circumstances and neglect and refuse to maintain or provide for her, or who shall abandon his or her minor child or children under the age of fifteen (15) years and willfully neglect or refuse to maintain or provide for such child or children, shall be deemed guilty of a felony punishable by a term of imprisonment not to exceed three (3) years and a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or both.

§ 854. Proof of marriage--Wife as competent witness--Duty of prosecutor to prosecute

No other evidence shall be required to prove marriage of such husband and wife, or that such person is the lawful father or mother of such child or children than is or shall be required to prove such fact in a civil action, and such wife shall be a competent witness to testify in any case brought under this chapter, and to any and all matters relevant thereto, including the fact of such marriage and the parentage of such child or children. It shall be the mandatory duty of each prosecutor of this Nation to diligently prosecute all persons violating any of the provisions of this chapter and in all cases where the evidence is deemed sufficient to justify a prosecution for such violation, any prosecutor who shall willfully fail, neglect or refuse to institute criminal proceedings to enforce such provisions, shall be subject to removal from office.

CHAPTER 31A

CONTRIBUTING TO DELINQUENCY OF MINORS

§ 856. Causing, aiding, abetting or encouraging minor to be delinquent or runaway child, to commit felony or to become involved with criminal street gang

A. 1. Except as otherwise specifically provided by law, every person who shall knowingly or willfully cause, aid, abet or encourage a minor to be, to remain, or to become a delinquent child or a runaway child, upon conviction, shall, for the first offense, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

2. For purposes of prosecution under this subsection, a “runaway child” means an unemancipated minor who is voluntarily absent from the home without a compelling reason, without the consent of a custodial parent or other custodial adult and without the parent or other custodial adult’s knowledge as to the child’s whereabouts. “Compelling reason” means imminent danger from incest, a life-threatening situation, or equally traumatizing circumstance. A person aiding a child based upon a reasonable belief that the child is in physical, mental or emotional danger and with notice to the appropriate authority of the location of the child within twelve (12) hours of aiding the child shall not be subject to prosecution under this section.

B. Every person convicted of a second or any subsequent violation of this section shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

A. C. Every person eighteen (18) years of age or older who shall knowingly or willfully cause, aid, abet, or encourage a minor to commit or participate in committing an act that would be a felony if committed by an adult shall, upon conviction, be guilty of a felony punishable by the maximum penalty allowed for conviction of the offense or offenses which the person caused, aided, abetted, or encouraged the minor to commit or participate in committing.

D. Every person who shall knowingly or willfully cause, aid, abet, encourage, solicit, or recruit a minor to

participate, join, or associate with any criminal street gang, as defined by subsection F of this section, or any gang member for the purpose of committing any criminal act shall, upon conviction, be guilty of a felony punishable by imprisonment for a term of not more than three (3) years, or a fine not to exceed Five Thousand Dollars ($5,000.00), or both such fine and imprisonment.

E. Every person convicted of a second or subsequent violation of subsection D of this section shall be guilty of a felony punishable by imprisonment for a term not more than three (3) years nor more than ten (10) years, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

F. "Criminal street gang" means any ongoing organization, association, or group of five or more persons that specifically either promotes, sponsors, or assists in, or participates in, and requires as a condition of membership or continued membership, the commission of one or more of the following criminal acts:

1. Assault, battery, or assault and battery with a deadly weapon, as defined in Section 645 of this title;

2. Aggravated assault and battery as defined by Section 646 of this title;

3. Robbery by force or fear, as defined in Sections 791 through 797 of this title;

4. Robbery or attempted robbery with a dangerous weapon or imitation firearm, as defined by Section 801 of this title;

5. Unlawful homicide or manslaughter, as defined in Sections 691 through 722 of this title;

6. The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled dangerous substances, as defined in Section 2-101 et seq.;

7. Trafficking in illegal drugs, as provided for in the Trafficking in Illegal Drugs Act, Section 2-414 et seq.;

8. Arson, as defined in Sections 1401 through 1403 of this title;

9. The influence or intimidation of witnesses and jurors, as defined in Sections 388, 455 and 545 of this title;

10. Theft of any vehicle, as described in Section 1720 of this title;

11. Rape, as defined in Section 1111 of this title;

12. Extortion, as defined in Section 1481 of this title;

13. Transporting a loaded firearm in a motor vehicle, in violation of Section 1289.13 of this title;

14. Possession of a concealed weapon, as defined by Section 1289.8 of this title;

15. Shooting or discharging a firearm, as defined by Section 652 of this title;

16. Soliciting, inducing or enticing another to commit an act of prostitution, as defined by Section 1030 of this title;

17. Human trafficking, as defined by Section 748 of this title; or

18. Possession of a firearm after former conviction of a felony, as defined by Section 1283 of this title.

§ 856.1. Causing, aiding, abetting or encouraging minor to participate in certain drug-related crimes

Every person who shall knowingly, intentionally or willfully cause, aid, abet or encourage a minor child to:

1. Distribute, dispense, possess or manufacture a controlled dangerous substance, as provided in the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.;

2. Create, distribute, or possess a counterfeit controlled dangerous substance, as defined by 21 CNCA § 2101;

3. Distribute any imitation controlled substance as defined by 21 CNCA § 2101;

4. Conspire or participate in any scheme, plan or act for the purposes of avoiding, eluding or evading arrest or detection by law enforcement authorities for crimes involving controlled substances as defined by 21 CNCA § 2101; or

5. Violate any penal provisions of the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.;

shall be guilty of a shall be guilty of a felony punishable by imprisonment not to exceed three (3) years and a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or both.

§ 856.2. Harboring endangered runaway child

It shall be unlawful for any person to knowingly and willfully harbor an endangered runaway child. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine not exceeding One Thousand Dollars ($1,000.00), or by imprisonment for a term not exceeding one (1) year, or by both such fine and imprisonment. Every person convicted of a second or any subsequent violation shall, upon conviction, be guilty of a felony punishable by a fine not exceeding Five Thousand Dollars ($5,000.00), or by imprisonment not exceeding three (3) years, or by both such fine and imprisonment. For purposes of this section, an "endangered runaway child" means an unemancipated minor who is voluntarily absent from the home for seventy-two (72) hours or more without a compelling reason and without the consent of a custodial parent or other custodial adult or an unemancipated minor who is voluntarily absent from the home without a compelling reason and without the consent of a custodial parent or other custodial adult and the child needs medication or other special services. For purposes of this section, "compelling reason" shall be defined as provided in Section 856 of Title 21 of the Oklahoma Statutes.

§ 856.3. Gang related offenses--Condition of membership

Any person who attempts or commits a gang-related offense as a condition of membership in a criminal street gang or while in association with any criminal street gang or gang member shall be guilty of a felony offense. For purposes of this section, "criminal street gang" is defined subsection F of Section 856 of this chapter and "gang-related offense" means those offenses enumerated in paragraphs 1 through 16 of subsection F of Section 856 of this chapter.

§ 857. Definitions

1. **"Delinquent child,"** as used in 21 CNCA § 856, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, shall include a minor, as herein defined, who shall have been or is violating any penal statute of this Nation, or who shall have been or is committing any one or more of the following acts, to wit:

a. Associating with thieves, vicious or immoral persons;

b. Frequenting a house of ill repute;

c. Frequenting any policy shop, or place where any gambling device is operated;

d. Frequenting any saloon, dram shop, still, or any place where intoxicating liquors are manufactured, stored or sold;

e. Possession, carrying, owning or exposing any vile, obscene, indecent, immoral or lascivious photograph, drawing, picture, book, paper, pamphlet, image, device, instrument, figure or object;

f. Willfully, lewdly or lasciviously exposing his or her person, or private parts thereof, in any place, public or private, in such manner as to be offensive to decency, or calculated to excite vicious or lewd thoughts, or for the purpose of engaging in the preparation or manufacture of obscene, indecent or lascivious photographs, pictures, figures or objects;

g. Possessing, transporting, selling, or engaging or aiding or assisting in the sale, transportation or manufacture of intoxicating liquor, or the frequent use of same;

h. Being a runaway from his or her parent or legal guardian;

i. Violating any penal provision of the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.

2. **"Encourage,"** as used in 21 CNCA § 856, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, in addition to the usual meaning of the word, shall include a willful and intentional neglect to do that which will directly tend to prevent such act or acts of delinquency on the part of such minor, when the person accused shall have been able to do so.

3. **"Every person,"** as used in 21 CNCA § 856, 21 CNCA § 856.1, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, shall include human beings, without regard to their legal or natural relationship to such minor, as well as legal or corporate entities.

4. **"Minor"** or **"child,"** as used in 21 CNCA § 856, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, shall include male or female persons who shall not have arrived at the age of eighteen (18) years at the time of the commission of the offense.

§ 858.1. Causing, aiding, abetting or encouraging minor to be in need of supervision or dependent or neglected—Punishment—Second or subsequent conviction

A. Any parent or other person who knowingly and willfully:

1. causes, aids, abets or encourages any minor to be in need of supervision, or deprived; or

2. shall by any act or omission to act have caused, encouraged or contributed to the deprivation, or the need of supervision of the minor, or to such minor becoming deprived, or in need of supervision; shall be deemed guilty of a shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined a sum not to exceed Five Hundred Dollars ($500.00), or imprisonment for a period not to exceed one (1) year, or by both such fine and imprisonment.

B. Upon a second or succeeding conviction for a violation of this section, the defendant shall be fined not more than One Thousand Dollars ($1,000.00), or imprisoned for a term not to exceed one (1) year, or punished by both such fine and imprisonment.

§ 858.2. Neglect of minor adjudicated delinquent, in need of supervision or deprived

In all cases where a minor has been adjudged delinquent, in need of supervision or deprived by a court of competent jurisdiction and such court by order for care or probation, has placed such minor in the care or on probation to the parent, legal guardian, legal custodian of such minor, stepparent or other adult person living in the home, any parent, legal guardian or legal custodian of such minor who shall neglect, fail or refuse to give such minor proper parental care, or to comply with the order for care or probation shall be deemed guilty of a misdemeanor and upon conviction thereof shall, as applicable, be punished as provided in Section 856 or 858.1 of this title.

§ 858.3. Causing, aiding, abetting or encouraging minor to become delinquent, in need of supervision, or dependent and neglected--Penalty

Any person who knowingly and willfully:

1. Causes, aids, abets or encourages a minor to be, to remain or to become delinquent, in need of supervision or deprived, or

2. Omits the performance of any duty, which act or omission causes or tends to cause, aid, abet, or encourage any minor to be delinquent, in need of supervision or deprived, within the purview of the laws of this Nation, upon conviction, shall be guilty of a misdemeanor and, as applicable, shall be punished pursuant to the provisions of Section 856, 858.1 or 858.2 of this title.

CHAPTER 32

CONCEALING DEATH OF CHILDREN

§ 863. Concealing stillbirth or death of child

Every person who endeavors either by themself or by the aid of others to conceal the stillbirth of an issue of a woman's body, or the death of any such issue under the age of two (2) years, is guilty of a misdemeanor punishable by imprisonment for a term not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars ($1,000.00), or both.

§ 864. Reserved

CHAPTER 32A

TRAFFICKING IN CHILDREN

§ 865. Definitions

As used in 21 CNCA § 866, 21 CNCA § 867, 21 CNCA § 868, and 21 CNCA § 869, the terms hereinafter enumerated shall have the following meanings:

1. “Advertising” or “Advertisement” means any communication that originates within this state by newspaper, periodical, telephone book listing, outdoor advertising sign, radio, television or any communication that is disseminated through the use of a computer or related electronic device including, but not limited to, electronic mail, websites, weblogs, search engines, banner messages, pop-up messages, chat rooms, list servers, instant messaging or other Internet presences, and any attachments or links related thereto;

2. **"Child"** means an unmarried or unemancipated person under the age of eighteen (18) years.

3. **"Child-placing agency"** means any child welfare agency licensed by any government and authorized to place minors for adoption.

4. **"Birth parent"** means a parent of a child being placed for adoption and includes, but is not limited to, a woman who is pregnant or who presents herself as pregnant and who is offering to place her child, born or unborn, for adoption.

5. “Person” means any natural person, corporation, association, organization, institution or partnership;

6. **"Department"** means the Cherokee Nation Department of Children, Youth and Family Services.

7. **"Foster home"** means a home or other place, other than the home of a parent, relative within the fourth degree, or guardian of the child concerned, wherein a child is received for permanent care, custody and maintenance.

§ 866. Elements of offense

A. 1. The crime of trafficking in children is defined to consist of any of the following acts or any part thereof:

a. the acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at any time, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child except as otherwise provided by the Cherokee Nation Adoption Code, 10 CNCA § 55 et seq.;

b. the acceptance or solicitation of any compensation, in money, property or other thing of value, by any

person or organization for services performed, rendered or purported to be performed to facilitate or assist in the adoption or foster care placement of a minor child, except by the Cherokee Nation Department of Children, Youth and Family Services or an agency licensed thereby, or an attorney authorized to practice law in Cherokee Nation. The provisions of this paragraph shall not prohibit an attorney licensed to practice law outside of Cherokee Nation or a non-Cherokee Nation child-placing agency from receiving compensation when working with an attorney licensed in Cherokee Nation who is, or when working with a child-placing agency licensed in Cherokee Nation which is, providing adoption services or other services necessary for placing a child in an adoptive arrangement.

c. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for the purpose of an adoption by the birth parent of the child who at the time of the solicitation or receipt had no intent to consent to eventual adoption;

d. the payment of a recognized hospital or a physician qualified under the laws of Cherokee Nation which renders competent and needed hospital and medical care to an expectant mother or reasonable domiciliary care to a mother and child when such hospital and medical care have been approved by the Judge of the District Court shall not be considered as compensation for the adoption of the child or in any sense of the words be referred to as "trafficking in children"; nor shall the charge of a reasonable attorney's fee for services rendered in adoption or custody proceedings, approved by the Court, be considered as trafficking in children; nor shall the fees charged by a licensed child placing agency approved by the Court, for services rendered in the care of any child or its parent, the investigation and counseling services to and on behalf of the child, its parents and prospective adoptive home, be considered as trafficking in children; provided, however, that all such procedure relating to the care of an expectant unwed mother and her child and the adoption procedure therein comprised, or any other adoption, shall remain confidential in its nature, as otherwise provided by law;

e. offering to place, or advertising to place, a child for adoption or for care in a foster home, by any person, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a child;

f. bringing or causing to be brought into this Nation or sending or causing to be sent outside this Nation any child for the purpose of placing such child in a foster home or for the adoption thereof without first obtaining the consent of the Department of Children, Youth and Family Services. Provided, however, that this provision shall have no application to the parent or guardian of the child nor to a person bringing said child into this Nation for the purpose of adopting the child into such person's same into his own family;

g. acceptance of or the offering or payment of any compensation, in money, property or other thing of value, by any person, in connection with the acquisition or transfer of the legal or physical custody of a child, except as ordered by the Court or except as otherwise provided by law;

h. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a woman who knows she is not pregnant but who holds herself out to be pregnant and offers to place a child upon birth for adoption;

i. the receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a birth parent who receives, from one or more parties, an aggregate amount of One Thousand Dollars ($1,000.00) or more in total value without first disclosing to each prospective adoptive parent, child-placing agency, or attorney the receipt of these expenses;

j. advertising of services for compensation to assist with or effect the placement of a child for adoption or for care in a foster home by any person or organization except by the Department of Children, Youth and Family Services, or a child-placing agency licensed thereby. Nothing in this paragraph shall prohibit an attorney authorized to practice law in Cherokee Nation from the advertisement of legal services related to the adoption of children; and

k. Advertising for and solicitation of a woman who is pregnant to induce he to place her child upon birth for adoption, except by the Department of Children, Youth and Family Services or an attorney authorized to practice law in Cherokee Nation.

2.a. Except as otherwise provided by this subsection, the violation of any of the subparagraphs in paragraph 1 of this subsection shall constitute a felony punishable by imprisonment for a term not to exceed three (3) years or a fine of up to Ten Thousand Dollars ($10,000.00) per violation or by both such fine and imprisonment..

b. Prospective adoptive parents who violate subparagraph a of paragraph 1 of this subsection, upon conviction thereof, shall be guilty of a misdemeanor and may be punished by a fine not to exceed Five Thousand Dollars ($5,000.00) per violation.

B. 1. No person shall knowingly publish for circulation within the borders of Cherokee Nation an advertisement of any kind in any print, broadcast or electronic medium, including, but not limited to, newspapers, magazines, telephone directories, handbills, radio or television, which violates subparagraph j or k of paragraph 1 of subsection (A) of this section.

2. Any person violating the provisions of this subsection shall, upon conviction thereof, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed Five Thousand Dollars ($5,000.00) per violation.

C. The payment or acceptance of costs and expenses listed in the Cherokee Nation Adoption Code shall not be a violation of this section as long as the petitioner or birth parent has complied with the applicable procedure specified therein, and such costs and expenses are approved by the Court.

D. Any person knowingly failing to file an affidavit of all adoption costs and expenses before the final decree of adoption as required by the Cherokee Nation Adoption Code shall be be guilty of a misdemeanor and punished by a fine not to exceed Five Thousand Dollars ($5,000.00) per violation.

§ 867. Punishment

A. The offense of trafficking in children by any person shall be a felony punishable by imprisonment for a term not to exceed three (3) years or by a fine not to exceed Fifteen Thousand Dollars, or by both such fine and imprisonment..

B. Conviction of the crime of trafficking in children, subsequent to a prior conviction for such offense in any form, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. No suspension of judgment or sentence shall be permitted.

C. Any person convicted of the offense of trafficking in children shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 868. Partial invalidity

If any provision or section of this act[1] or the application thereof to any person, corporation, organization, association, partnership, or institution shall be held to be invalid or unconstitutional, the remainder of the act and the application of such provision or section to any other person, organization, association, institution, corporation or partnership shall not be affected thereby.

§ 869. Construction of act

Except as otherwise set forth or except in case of conflict between the provisions hereof and other law, the provisions of this act[1] shall be cumulative to existing law.

§ 870. Reporting requirements

A. Every person having reason to believe that a person or child-placing agency is engaging in the crime of trafficking in children as described in Section 866 of this title shall report the matter promptly to the Cherokee Nation Marshal Service. The Marshal Service shall notify the Office of the Attorney General no later than seven (7) days after receiving a report.

1. No privilege or contract shall relieve any person from the reporting requirements in this subsection.

2. The reporting requirements in this subsection are individual, and no employer, supervisor or administrator shall interfere with the reporting requirement of any employee or other person or in any manner discriminate or retaliate against the employee or other person who in good faith reports suspected trafficking in children, or who provides testimony in any proceeding involving trafficking in children. Any employer, supervisor or administrator who discharges, discriminates or retaliates against the employee or other person shall be liable for damages, costs and attorney fees.

B. Any person who knowingly and willfully fails to promptly report suspected trafficking in children or who interferes with the prompt reporting of trafficking in children and who is licensed by a state entity shall be reported to the licensing entity and may be subject to discipline, including license revocation or suspension.

CHAPTER 34

BIGAMY, INCEST AND SODOMY

§ 881. Bigamy defined

Every person who having been married to another who remains living, marries any other person except in the cases specified in the next section is guilty of bigamy.

§ 882. Exceptions to the rule of bigamy

The last preceding section does not extend:

1. To any person whose husband or wife by a former marriage has been absent for five (5) successive years without being known to such person within that time to be living; nor

2. To any person whose husband or wife by a former marriage has absented himself or herself from his wife or her husband and has been continually remaining without the United States for a space of five (5) years together; nor

3. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court; nor

4. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life.

§ 883. Bigamy a felony

Any person guilty of bigamy is guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by a fine of an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

§ 884. Person marrying bigamist

Any person who knowingly marries the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by a fine not exceeding Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

§ 885. Incest

Persons who, being within the degrees of consanguinity within which marriages are by the laws of the Nation declared incestuous and void, intermarry with each other, or commit adultery or fornication with each other, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 886. Crime against nature

Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment for a term for a term not to exceed three (3) years or a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 887. Crime against nature, what penetration necessary

Any sexual penetration, however slight, is sufficient to complete the crime against nature.

§ 888. Forcible sodomy

A. Any person who forces another person to engage in the detestable and abominable crime against nature,

pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a period of not more than twenty (20) years. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, a violation of Section 1123 of this title or sexual abuse of a child pursuant to Section 843.5 of this title, or of any attempt to commit any of these offenses or any combination of the offenses, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.

B. The crime of forcible sodomy shall include:

1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age;

2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime;

3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime;

4. Sodomy committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision of this state;

5. Sodomy committed upon a person who is at least sixteen (16) years of age but less than twenty (20) years of age and is a student of any public or private secondary school, junior high or high school, or public vocational school, with a person who is eighteen (18) years of age or older and is employed by the same school system;

6. Sodomy committed upon a person who is at the time unconscious of the nature of the act, and this fact should be known to the accused;

7. Sodomy committed upon a person where the person is intoxicated by a narcotic or anesthetic agent administered by or with the privity of the accused as a means of forcing the person to submit; or

8. Sodomy committed upon a person who is at least sixteen (16) years of age but less than eighteen (18)

years of age by a person responsible for the child's health, safety or welfare. "Person responsible for a child's health, safety or welfare" shall include, but not be limited to:

a. a parent,

b. a legal guardian,

c. custodian,

d. a foster parent,

e. a person eighteen (18) years of age or older with whom the child's parent cohabitates,

f. any other adult residing in the home of the child,

g. an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, or

h. an owner, operator or employee of a child care facility, as defined by Section 402 of Title 10 of the Oklahoma Statutes.

CHAPTER 35

CHILD STEALING

§ 891. Child stealing--Penalty

Whoever maliciously, forcibly or fraudulently takes or entices away any child under the age of sixteen (16) years, with intent to detain or conceal such child from its parent, guardian or other person having the lawful charge of such child or to transport such child from the jurisdiction of Cherokee Nation or the United States without the consent of the person having lawful charge of such child shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

CHAPTER 36

CRIMES AGAINST RELIGION AND CONSCIENCE

§ 913. Compelling form of belief

Any willful attempt by means of threats or violence to compel any person to adopt, practice or profess any particular form of religious belief, is a misdemeanor.

§ 914. Preventing religious act

Every person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

§ 915. Disturbing religious meeting

Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts or things hereinafter enumerated, is guilty of a misdemeanor.

§916. Definition of disturbance

The following are the acts deemed to constitute disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting.

2. Exhibiting, within one (1) mile, any shows or plays without a license by the proper authority.

3. Engaging in, or aiding or promoting within the like distance, any racing of animals or gaming of any description.

4. Obstructing in any manner, without authority of law, within the like distance, the free passage along any highway to the place of such meeting.

CHAPTER 38

GAMBLING

§ 940. Defined Term.

A. In General.— Subject to subsection (b), in this Chapter 38, the term "person" means any individual, natural person, company, limited liability company, corporation, joint venture, business trust, organization, partnership, association, club, firm, estate, or any other body corporate or politic or group acting as a unit, or any other entity to which this Chapter 38 can be applied, including any Indian tribe (including an office, agency, authority, or instrumentality of an Indian tribe), or the officer, manager, lessee, agent, servant, partner, member, director, or employee of any of them, including an executor, administrator, trustee, receiver, or other representative appointed according to law.

B. Limitation.—Notwithstanding subsection (a), in this Chapter 38, the term “person” does not include—

1. the Cherokee Nation or any entity wholly owned by the Cherokee Nation engaging in activities regulated or operated by the Cherokee Nation pursuant to Title 4 of this Code; or

2. any natural person who, while acting pursuant to and within the scope of such person's employment or official duties as an employee or officer of the Cherokee Nation or an entity wholly owned by Cherokee Nation , is engaging in activities regulated or operated by the Cherokee Nation under Title 4 of the Code.

§ 941. Opening, conducting or carrying on gambling game—Dealing for those engaged in game

Every person who opens, or causes to be opened, or who conducts, whether for hire or not, or carries on either poker, roulette, craps or any banking or percentage, or any gambling game played with dice, cards or any device, for money, checks, credits, or any representatives of value, or who either as owner or employee, whether for hire or not, deals for those engaged in any such game, upon conviction thereof, shall be guilty of a crime.

§ 942. Betting on or playing prohibited game—Punishment

Any person who bets or plays at any of said prohibited games, or who shall bet or play at any game whatsoever, for money, property, checks, credits or other representatives of value with cards, dice or any other device which may be adapted to or used in playing any game of chance or in which chance is a material element, shall be guilty of a crime.

§ 943. Gambling paraphernalia—Disposition

The magistrate to whom anything suitable to be used for gambling purposes, including any vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, or furniture or equipment used in a place conducted in violation of this act is delivered, as provided by law shall, upon the examination of the accused, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him and whether it was actually intended or employed by the accused or others in violation of the provisions of this chapter; and if he finds that it is of a character suitable to be used for gambling purposes, and that it was actually employed or intended to be used by the accused or others in violation of the provisions of this article, he shall so find and cause the same to be delivered to the marshal to await the order of the District Court. Provided, that any of the furniture or equipment susceptible of legitimate use, may be sold under the procedures enumerated in 21 CNCA § 1738(C)(1), and the proceeds thereof placed in the Court Fund of the Nation, and that any money so found by the officers shall be placed in the Court Fund of the Nation.

§ 944. Slot machines—Setting up, operating or conducting—Punishment

Any person who sets up, operates or conducts, or who permits to be set up, operated or conducted in or about his place of business, whether as owner, employee or agent, any slot machine for the purpose of having or allowing the same to be placed by others for money, property, checks, credits or any representative of value shall be deemed guilty of a crime.

§ 945. Use of real estate or buildings for gambling purposes—Punishment

It shall be unlawful for the owner or owners of any real estate buildings, structure or room to use, rent, lease or permit, knowingly, the same to be used for the purposes of violating 21 CNCA § 941. Any person who shall violate the provisions of this section shall be guilty of a crime.

§ 946. Illegal use of building or vessel—Nuisance—Penalty

Any house, room, vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, or place where any of the games prohibited by 21 CNCA § 941 are opened, conducted or carried on, or where persons congregate to play at any such game is a public nuisance and the keepers and managers of any such nuisance, and persons aiding or assisting any such keepers or managers in keeping or managing any such nuisance shall be guilty of a crime.

§ 952. Persons jointly charged—Severance

Persons jointly charged with the violation of any of the provisions of this act shall be tried together, provided the Court for good cause shown may grant a severance.

§ 953. Accomplice testimony—Force of same

Any person charged with a violation of any of the provisions of this chapter may be convicted on the uncorroborated testimony of an accomplice, and the judgment thereon shall not be set aside or reversed by reason of the fact that such conviction was based on the testimony of an accomplice.

§ 956. Permitting gambling in building or on grounds

Every person who shall permit any gaming table, bank, or gaming device prohibited by this chapter, to be set up or used for the purpose of gambling in any house, building, shed, shelter, booth, lot or other premises to him belonging, or by him occupied, or of which he has, at the time, possession or control, shall be, on conviction thereof, adjudged guilty of a crime.

§ 957. Leasing for gambling purposes

Every person who shall knowingly lease or rent to another any house, building or premises for the purpose of setting up or keeping therein, any of the gambling devices prohibited by the preceding provisions of this chapter, is guilty of a crime.

§ 959. Witnesses failing to testify

Every person duly summoned as a witness for the prosecution or defense on any proceedings ordered under this chapter, who neglects or refuses to attend and testify as required, is guilty of a crime.

§ 960. Seizure of apparatus and property and delivery to magistrate

Every person who is authorized or enjoined to arrest any person for a violation of the provisions of this chapter, is equally authorized and enjoined to seize any vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, which have been used for illegal gambling and any table, cards, dice, or other articles or apparatus suitable to be used for gambling purposes found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 961. Testimony, no person excused from giving

No person shall be excused from giving any testimony or evidence upon any investigation or prosecution for violation of this chapter, upon the ground that such testimony would tend to convict him of a crime, but

such testimony or evidence shall not be received against him upon any criminal investigation or prosecution, except in a prosecution against him for perjury committed in giving such testimony.

§ 964. "Slot machine" defined

For the purpose of this act, "slot machine" is defined to be:

First: Any machine, instrument, mechanism or device that operates or may be operated or played mechanically, electrically, electronically automatically or manually, and which can be played or operated by any person by inserting in any manner into said machine, instrument, mechanism or device, a coin, chip, token, check, credit, money, representative of value, or a thing of value, and by which play or operation such person will stand to win or lose, whether by skill or chance, or by both, a thing of value; and

Second: Any machine, instrument, mechanism or device that operates or may be played or operated mechanically, electrically, electronically, automatically, or manually, and which can be played or operated by any person by paying to or depositing with any person, or by depositing with or in any cache, receptacle, slot, or place a coin, chip, token, check, credit, money, representative of value, or a thing of value, and by which play or operation such person will stand to win or lose, whether by skill or chance, or by both, a thing of value.

§ 965. "Thing of value" defined

For the purposes of this act, "a thing of value" is defined to be any money, coin, currency, check, chip, token, credit, property, tangible or intangible, or any representative of value or any other thing, tangible or intangible except amusement or entertainment, calculated or intended to serve as an inducement for anyone to operate or play any slot machine or punch board.

§ 966. "Punch board" defined

For the purposes of this chapter, "punch board" is defined to be any card, board, substance or thing upon or in which is placed or concealed in any manner any number, figure, name, design, character, symbol, picture, substance or thing which may be drawn, uncovered, exposed or removed therefrom by any person paying a thing of value, which number, figure, design, character, symbol, picture, substance or any other thing, when drawn, uncovered, exposed or removed therefrom, will stand the person drawing, uncovering, exposing or removing the same to win or lose a thing of value.

§ 967. Words in singular and plural

Any word or words used in this act in the singular number shall include the plural, and the plural the singular.

§ 969. Possession, sale, or lease of slot machines or punch boards prohibited

It shall be unlawful for any person to have in his possession any slot machine or punch board, or sell or solicit the sale, or take orders for the sale of, or lease or rent any slot machine or punch board in this Nation, and any person violating the provisions of this section shall be deemed guilty of a crime.

§ 971. Punch board—Acts prohibited—Punishment

Any person who sets up, operates, exposes, conducts, displays or plays, or who permits to be set up, operated, exposed, conducted, displayed or played, in or about any place or in or about any place of business, whether as owner, employee or agent, any punch board for the purpose of having or allowing the same to be played by others for money, property, tangible or intangible, coin, currency, check, chip, token, credit, amusement or any representative of value or a thing of value, shall be deemed guilty of a crime.

§ 981. Definitions

As used in this chapter:

1. A "bet" is a bargain in which the parties agree that, dependent upon chance, or in which one of the parties to the transaction has valid reason to believe that it is dependent upon chance, one stands to win or lose something of value specified in the agreement. A "bet" does not include:

a. bona fide business transactions which are valid under the law of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance; or

b. any bingo game or a game of chance with comparable characteristics by or for participants conducted by an authorized organization under the laws of this Nation; or

c. offers of purses, prizes or premiums to the actual participants in public and semipublic events, as follows, to wit: Rodeos, animal shows, expositions, fairs, athletic events, tournaments and other shows and contests where the participants qualify for a monetary prize or other recognition. This subparagraph further excepts an entry fee from the definition of "a bet" as applied to enumerated public and semipublic events;

d. any gambling activity regulated or operated by Cherokee Nation provided by law.

2. "Consideration" as used in this section means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration. As used in this paragraph, the term "consideration" shall not include sums of money paid by or for participants in any bingo game or a game of chance with comparable characteristics as defined by subparagraph b of paragraph 1 of this section and it shall be conclusively presumed that such sums paid by or for said participants were intended by said participants to be for the benefit of the organizations described in subparagraph b of paragraph 1 of this section for the use of such organizations in furthering the purposes of such organizations;

3. A "gambling device" is a contrivance designed primarily for gambling purposes which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device; and

4. A "gambling place" is any place, room, building, vehicle, tent or location which is used for any of the following: making and settling bets; receiving, holding, recording or forwarding bets or offers to bet;

conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places
is admissible on the issue of whether it is a gambling place.

§ 982. Commercial gambling

A. Commercial gambling is:

1. Operating or receiving all or part of the earnings of a gambling place;

2. Receiving, recording or forwarding bets or offers to bet or, with intent to receive, record or forward bets or offers to bet, possessing facilities to do so;

3. For gain, becoming a custodian of anything of value bet or offered to be bet;

4. Conducting a lottery or with intent to conduct a lottery possessing facilities to do so;

5. Setting up for use or collecting the proceeds of any gambling device; or

6. Alone or with others, owning, controlling, managing or financing a gambling business.

B. Any person convicted of commercial gambling shall be guilty of a crime.

§ 983. Permitting premises to be used for commercial gambling

A. Permitting premises to be used for commercial gambling is intentionally:

1. Granting the use or allowing the continued use of a place as a gambling place; or

2. Permitting another to set up a gambling device for use in a place under the offender's control.

B. Any person permitting premises to be used for commercial gambling shall be guilty of a crime.

§ 985. Possession of a gambling device

A. Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee or otherwise, of any gambling device.

B. Any person possessing a gambling device who knows or has reason to know said devices will be used in making or settling commercial gambling transactions and deals in said gambling devices with the intent to facilitate commercial gambling transactions shall be punished for a crime.

§ 987. Dissemination of gambling information

A. Dissemination of gambling information is the transmitting or receiving, by means of any communications facilities, information to be used in making or settling bets. Provided that nothing herein shall prohibit a licensed radio or television station or newspaper of general circulation from
broadcasting or disseminating to the public reports of odds or results of legally staged sporting events.

B. Any person found guilty of disseminating gambling information shall be guilty of a crime.

§ 988. Conspiracy

A. A conspiracy is any agreement, combination or common plan or scheme by two or more persons, coupled with an overt act in furtherance of such agreement, combination or common plan or scheme, to violate any section of this act.

B. Any person found guilty of conspiracy shall be punished to the same extent as provided for in the section of this act which such person conspired to violate.

§ 991. Betting or letting premises for betting on races

A. Except as provided for in the Oklahoma Horse Racing Act, 3A O.S. § 200 et seq., it shall be unlawful for any person, association, or corporation:

1. to bet or wager upon the result of any trial of speed or power of endurance of animals or beasts; or

2. to occupy any room, shed, tenement or building, or any part thereof, or to occupy any place upon any grounds with books, apparatus, or paraphernalia for the purpose of recording or registering bets or wagers or of selling pools, or making books or mutuals upon the result of any trial of speed or power of endurance of animals or beasts; or

3. being the owner or lessee or occupant of any room, tent, tenement, shed, booth, or building, or part thereof at any place knowingly to permit the same to be used or occupied to keep, exhibit, or employ any device or apparatus for the purpose of recording or registering such bets or wagers or the selling or making of such books, pools or mutuals, or to become the custodian or depository for gain, hire or reward of any money, property or thing of value, bet or wagered or to be wagered or bet upon the result of any trial of speed or power of endurance of animals or beasts; or

4. to receive, register, record, forward or purport or pretend to forward to or for any racetrack within or without this Nation, any money, thing or consideration of value offered for the purpose of being bet or wagered upon the result of any trial of speed or power of endurance of any animal or beast; or

5. to occupy any place, or building or part thereof with books, papers, apparatus, or paraphernalia for the purpose of receiving or pretending to receive or for recording or for registering or for forwarding or pretending or attempting to forward in any manner whatever, any money, thing or consideration of value, bet or wagered or to be bet or wagered by any person or to receive or offer
to receive any money, thing, or consideration of value bet or to be bet upon the result of any trial of speed or power of endurance or any animal or beast; or

6. to aid or assist or abet at any racetrack or other place in any manner in any of the acts forbidden by this section.

B. Any person, association, or corporation convicted of violating the provisions of paragraph 1 of subsection (A) of this section shall be fined not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00) and be imprisoned not more than ninety (90) days. Any person, association,

or corporation convicted of violating any provision of paragraphs 2, 3, 4, 5 or 6 of subsection (A) of this section shall be guilty of a crime.

C. Any personal property used for the purpose of violating any of the provisions of this section shall be disposed of as provided for in 22 CNCA § 1261.

§ 993. Evidence for prosecution—Accomplices—Immunity for witnesses

A conviction for the violation of any of the provisions of this act may be had upon the unsupported evidence of an accomplice or participant, and such accomplice or participant shall be exempt from prosecution for any offense in this act about which he may be required to testify.

§ 995.2. Definitions

As used in this section and 21 CNCA §§ 995.11 through 995.15:

1. "Bingo" means a game in which each participant receives one or more cards each of which is marked off into twenty-five (25) squares arranged in five (5) horizontal rows of five (5) squares each and five (5) vertical rows of five (5) squares each, with each square being designated by number, letter or combination of numbers and letters, and the center square designated with the word "free," with no two (2) cards being identical, with the players covering squares as the operator of such game announces a number, letter or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically from a receptacle in which have been placed objects bearing numbers, letters or combinations of numbers and letters corresponding to the system used for designating the squares, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of squares upon the card being used by him or them.

2. "Rip-off games" or "pull-tab games" means games wherein a participant receives a sealed card or tab, which when opened by the participant, reveals some combination of numbers, letters, or symbols the arrangement of which determines if the participant has won a prize.

§ 995.11. Intoxicating and nonintoxicating beverages prohibited

No licensee shall sell, serve or permit to be consumed any intoxicating and nonintoxicating beverages as defined in the laws of Cherokee Nation in any room or outdoor area where bingo is conducted during the time that it is so conducted.

§ 995.12. License required

No person shall conduct any game of bingo or pull tabs for which a charge is made or to the winner of which any prize is awarded except as regulated or operated by Cherokee Nation pursuant to law.

§ 995.13. Minors

No minor shall be permitted to play bingo for which a charge is made or to the winner of which any prize is awarded unless accompanied by a parent or guardian.

§ 995.15. Penalties

Any violation of 21 CNCA §§ 995.2 through 995.15 is hereby declared to be a public nuisance. Any person violating the provisions of this act, 21 CNCA § 995.2 et seq., except as otherwise provided in this section shall be guilty of a crime.

Any person conducting, playing, or offering to play or conduct any rip-off game or pull-tab game in any place where bingo is conducted, except as otherwise provided in this act, 21 CNCA § 995.2 et seq., shall be guilty of a crime.

§ 995.18. Severability

The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this act.

§ 996. Operation of Gambling Establishments—Nuisance—Penalty

Any building, structure, place, establishment, house, room, tent, vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, or location where any game or activity prohibited by any provision of this Chapter 38 are opened, conducted or carried on, or where persons engage in such activity or congregate to play at any such game, is a public nuisance, and the persons who are owners, operators, keepers or managers of any such nuisance, and persons aiding or assisting any such owners, operators, keepers or managers in operating, keeping, maintaining, or managing any such nuisance shall be guilty of a crime. In addition to pursuing any criminal charges for violations of the provisions of this Chapter, the Attorney General may bring an action in District Court in the name of the Cherokee Nation to enjoin and abate the nuisance.

§ 997. Bingo and regulated gaming and activities not prohibited

None of the provisions of this Chapter 38, except 21 CNCA §§ 995.11 and 940(b), shall apply to bingo, gambling, or other activities regulated or operated by Cherokee Nation under Title 4 of the Code.

§ 1021. Indecent exposure—Indecent exhibitions—Obscene material or child pornography—Solicitation of minors

A. Every person who willfully and knowingly either:

1. lewdly exposes his or her person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby;

2. procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;

3. writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, knowingly downloads on a computer, or exhibits any obscene material or child pornography; or

4. makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of of any obscene material or child pornography shall be guilty, upon conviction, or a felony punishable by a fine in an amount not to exceed Fifteen Thousand Dollars

($15,000) or by imprisonment for a term not the exceed three (3) years, or by both such fine and imprisonment, provided that such sentence shall include a term of imprisonment.

B. Every person who:

1. willfully solicits or aids a minor child to perform; or

2. shows, exhibits, loans, or distributes to a minor child any obscene material or child pornography for the purpose of inducing said minor to participate in any act specified in paragraphs 1, 2, 3 or 4 of subsection (A) of this section shall be guilty, upon conviction, of a felony punishable by a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000) or by imprisonment for a term not the exceed three (3) years, or by both such fine and imprisonment, provided that such sentence shall include a term of imprisonment.

C. For purposes of this section, "downloading on a computer" means electronically transferring an electronic file from one computer or electronic media to another computer or electronic media.

D. Any person convicted of a second violation of paragraphs 1 or 2 of subsection (A) of this section, or for a first violation of either paragraph 3 or 4 of subsection (A) of this section when the offense involves child pornography, or for a first violation of subsection (B), shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1021.1. Application

A. 21 CNCA §§ 1021 through 1024.4 shall not apply to persons who may possess or distribute obscene matter or child pornography or participate in conduct otherwise prescribed by this act, when such possession, distribution, or conduct occurs in the course of law enforcement activities.

B. The criminal provisions of this title shall not prohibit the Attorney General from seeking civil or injunctive relief to enjoin the production, publication, dissemination, distribution, sale of or participation in any obscene material or child pornography, or the dissemination to minors of material harmful to minors, or the possession of child pornography.

§ 1021.2. Minors—Procuring for participation in pornography

A. Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any child pornography shall be guilty, upon conviction, of a felony punishable by a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000) or by imprisonment for a term not the exceed three (3) years, or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

B. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

§ 1021.3. Guardians, parents, custodians—Consent to participation of minors in child pornography

A. Any parent, guardian or individual having custody of a minor under the age of eighteen (18) years who knowingly permits or consents to the participation of a minor in any child pornography shall be guilty of a felony punishable by a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000) or by imprisonment for a term not the exceed three (3) years, or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

B. The consent of the minor to the activity prohibited by this section shall not constitute a defense.

§ 1021.4. Disclosure of obscene materials containing minors

A. Any commercial film and photographic print processor or commercial computer technician who has knowledge of or observes, within the scope of such person's professional capacity or employment, any film, photograph, video tape, negative, or slide, or any computer file, recording, CD–ROM, magnetic disk memory, magnetic tape memory, picture, graphic or image that is intentionally saved, transmitted or organized on hardware or any other media including, but not limited to, CDs, DVDs and thumbdrives, whether digital, analog or other means and whether directly viewable, compressed or encoded depicting a child under the age of eighteen (18) years engaged in an act of sexual conduct as defined in 21 CNCA § 1024.1 shall immediately, or as soon as possible, report by telephone such instance of suspected child abuse or child pornography to the Cherokee Nation Marshal Service or the law enforcement agency having jurisdiction over the case and shall prepare and send a written report of the incident to the Cherokee Nation Marshal Service with an attached copy of such material, within thirty-six (36) hours after receiving the information concerning the incident.

For the purposes of this section:

1. "Commercial film and photographic print processor" means any person who develops

exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term shall also include any employee of such a person but shall not include a person who develops film or makes prints for a public agency; and

2. "Commercial computer technician" means any person who repairs, installs, or otherwise services any computer including, but not limited to, any component part, device, memory storage or recording mechanism, auxiliary storage, recording or memory capacity, or any other materials relating to operation and maintenance of a computer or computer network or system, for compensation. The term shall also include any employee ofsuch person.

B. Any person who violates the provisions of this section, upon conviction, shall be guilty of a misdemeanor punishable by a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment for a term not to exceed one (1) year, or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment.

C. Nothing in this section shall be construed to require or authorize any person to act outside the scope of such person's professional capacity or employment by searching for prohibited materials or media.

§ 1022. Seizure of obscene material or child pornography--Delivery to magistrate

Every person who is authorized or enjoined to arrest any person for a violation of 21 CNCA § 1021(A)(3) is equally authorized and enjoined to seize one copy of the obscene material, or all copies of explicit child pornography, found in possession of or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 1023. Finding by magistrate that material is obscene or child pornography--Issuance of factual and legal basis--Delivery to district attorney

The magistrate to whom any child pornography, or any obscene material, is delivered pursuant to Section 1022 of this title, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such child pornography or obscene material, and if the magistrate finds it to be obscene material or child pornography, the magistrate shall cause the same to be delivered to the Attorney General. The magistrate shall issue in writing the factual and legal basis for the determination by the magistrate of the character of the child pornography or obscene material. The Attorney General may transmit the child pornography or obscene material to the United States Attorney's Office for the district wherein a crime occurred upon the written request of said United States Attorney's Office, or may deliver such materials to the Cherokee Nation Marshal Service for storage as evidence pending trial and any appeals.

§ 1024. Repealed

§ 1024.1 Defintions

A. As used in 21 CNCA §§ 1021, 1021.1 through 1021.4, 1022 through 1024, and 1040.8 through 1040.24 of this title, "child pornography" means and includes any visual depiction or individual image stored or contained in any format on any medium including, but not limited to, film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, play or performance wherein a minor under the age of eighteen (18) years is engaged in any act with a person, other than his or her spouse, of sexual intercourse which is normal or perverted, in any act of anal sodomy, in any act of sexual activity with an animal, in any act of sadomasochistic abuse including, but not limited to, flagellation or torture, or the condition of being fettered, bound or otherwise physically restrained in the context of sexual conduct, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual conduct, in any lewd exhibition of the uncovered genitals in the context of masturbation or other sexual conduct, or where the lewd exhibition of the uncovered genitals, buttocks or, if such minor is female, the breast, has the purpose of sexual stimulation of the viewer, or wherein a person under the age of eighteen (18) years observes such acts or exhibitions. Each visual depiction or individual image shall constitute a separate item and multiple copies of the same identical material shall each be counted as a separate item.

B. As used in 21 CNCA §§ 1021 through 1024.4 of this title:

1. "Obscene material" means and includes any representation, performance, depiction or description of sexual conduct, whether in any form or on any medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, optical, magnetic or solid-state storage, CD or

DVD, or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication or electronic or photo-optical format, if said items contain the following elements:

a. depictions or descriptions of sexual conduct which are patently offensive as found by the average person applying contemporary community standards;

b. taken as a whole, have as the dominant theme an appeal to prurient interest in sex as found by the average person applying contemporary community standards; and

c. a reasonable person would find the material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.

The standard for obscenity applied in this section shall not apply to child pornography.

2. "Performance" means and includes any display, live or recorded, in any form or medium.

3. "Sexual conduct" means and includes any of the following:

a. acts of sexual intercourse including any intercourse which is normal or perverted, actual or simulated;

b. acts of deviant sexual conduct, including oral and anal sodomy;

c. acts of masturbation;

d. acts of sadomasochistic abuse including but not limited to:

i. flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature; or

ii. the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed;

e. acts of excretion in a sexual context; or

f. acts of exhibiting human genitals or pubic areas.

4. Each visual depiction or individual image shall constitute a separate item and multiple copies of the same identical material shall each be counted as a separate item.

The types of sexual conduct described in paragraph 4 of this subsection are intended to include situations when, if appropriate to the type of conduct, the conduct is performed alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

§ 1024.2. Purchase, procurement or possession of child pornography—Penalty

It shall be unlawful for any person to buy, procure or possess child pornography in violation of 21 CNCA §§ 1024.1 through 1024.4. Such person shall, upon conviction, be guilty of a felony punishable by a term of imprisonment not to exceed three (3) years or by a fine in an amount not to exceed Fifteen Thousand Dollars

($15,000), or by both such imprisonment and fine, provided that such sentence shall include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1024.3. Seizure of evidentiary copy of obscene material or all copies of explicit child pornography

Every person who is authorized or enjoined to arrest any person for a violation of 21 CNCA §§ 1021, 1021.1 through 1021.3, 1022 through 1024, and 1040.8 through 1040.24 is equally authorized and enjoined to seize an evidentiary copy of any obscene material or child pornography or all copies of explicit child pornography found in the possession of or under the control of the person so arrested and to deliver the obscene material or child pornography to the magistrate before whom the person so arrested is required to be taken, provided that when the arrest is made pursuant to a federal warrant, the federal procedures for delivery of such materials shall be followed without violating this section.

§ 1024.4. Destruction of obscene material or child pornography upon conviction

Upon final conviction of the accused and any codefendant, the judge or the Attorney General shall cause any obscene material or child pornography, in respect whereof the accused and any codefendant stands convicted and which remains in the possession or control of such judge, law enforcement agency or district attorney, to be destroyed including, but not limited to, the destruction of any computer, hard drive or other electronic storage media of the accused or codefendant on which such obscene material or child pornography was located.

§ 1025. Bawdy house, etc.—Penalty

Every person who keeps any bawdy house, house of ill fame, of assignation, or of prostitution, or any other house or place for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene or indecent purpose, is guilty of a misdemeanor punishable by a fine in an amount not to exceed One Thousand Dollars ($1,000) for each offense.

§ 1026. Disorderly house

Every person who keeps any disorderly house, or any house of public resort by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, is guilty of a misdemeanor.

§ 1027. Letting building for unlawful purposes

Every person who lets any building or portion of any building knowing that it is intended to be used for any purpose declared punishable by this chapter, or who otherwise permits any building or portion of a building to be so used, is guilty of a misdemeanor.

§ 1028. Setting up or operating place of prostitution—Ownership—Renting—Procuring—Receiving person for forbidden purpose—Transportation—Receiving proceeds

It shall be unlawful in Cherokee Nation:

1. To keep, set up, maintain, or operate any house, place, building, other structure, or part thereof, or vehicle,

trailer, or other conveyance with the intent of committing an act of prostitution, lewdness, or assignation;

2. To knowingly own any house, place, building, other structure, or part thereof, or vehicle, trailer, or other conveyance used with the intent of committing an act of lewdness, assignation, or prostitution, or to let, lease, or rent, or contract to let, lease, or rent any such place, premises, or conveyance, or part thereof, to another with knowledge or reasonable cause to believe that the intention of the lessee or rentee is to use such place, premises, or conveyance for prostitution, lewdness, or assignation;

3. To offer, or to offer to secure, another with the intent of having such person commit an act of prostitution, or for any other lewd or indecent act;

4. To receive or to offer or agree to receive any person into any house, place, building, other structure, vehicle, trailer, or other conveyance with the intent of committing an act of prostitution, lewdness, or assignation, or to permit any person to remain there with such intent;

5. To direct, take, or transport, or to offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the intent of such directing, taking or transporting is prostitution, lewdness or assignation;

6. To knowingly accept, receive, levy, or appropriate any money or other thing of value without consideration from a prostitute or from the proceeds of any woman engaged in prostitution.

7. To knowingly abet the crime of prostitution by allowing a house, place, building, or parking lot to be used or occupied by a person who is soliciting, inducing, enticing, or procuring another to commit an act of lewdness, assignation, or prostitution or who is engaging in prostitution, lewdness, or assignation on the premises of the house, place, building, or parking lot.

§ 1029. Engaging in prostitution, etc.—Soliciting or procuring—Residing or being in place for prohibited purpose—Aiding, abetting or participating—Child prostitution—Presumption of coercion

A. It shall further be unlawful:

1. To engage in prostitution, lewdness, or assignation;

2. To solicit, induce, entice, or procure another to commit an act of lewdness, assignation, or prostitution, with himself or herself;

3. To reside in, enter, or remain in any house, place, building, or other structure, or to enter or remain in any vehicle, trailer, or other conveyance with the intent of committing an act of prostitution, lewdness, or assignation; or

4. To aid, abet, or participate in the doing of any of the acts prohibited.

B. Any prohibited act described in paragraph 1, 2, 3 or 4 of subsection A of this section committed with a person under eighteen (18) years of age shall be deemed child prostitution, as defined in Section 1030 of this title, and shall be punishable as provided in Section 1031 of this title.

C. In any prosecution of a person sixteen (16) or seventeen (17) years of age for an offense described in subsection A of this section, there shall be a presumption that the actor was coerced into committing such offense by another person in violation of this title.

§ 1030. Definitions

1. “Prostitution” means:

a. the giving or receiving of the body for sexual intercourse for hire, and shall also be construed to include the giving or receiving of the body for indiscriminate sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse without hire. The term "or lewdness"shall be construed to include with any person not his or her spouse, in exchange for money or any other thing of value, or

b. the making of any appointment or engagement for prostitutionsexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse or lewdness orwith any person not his or her spouse, in exchange for money or any other thing of value;

2. “Child prostitution” means prostitution or lewdness as defined in this section with a person under eighteen (18) years of age, in exchange for money or any other thing of value;

3. “Anal intercourse” means contact between human beings of the genital organs of one and the anus of another;

4. “Cunnilingus” means any act of oral stimulation of the vulva or clitoris;

5. “Fellatio” means any act of oral stimulation of the penis;

6. “Lewdness” means:

a. any lascivious, lustful or licentious conduct,

b. the giving or receiving of the body for indiscriminate sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse, or lascivious, lustful or licentious conduct with any person not his or her spouse, or

c. any act in furtherance of such conduct or any appointment or engagement. for prostitution; and

7. “Masturbation” means stimulation of the genital organs by manual or other bodily contact exclusive of sexual intercourse.

§ 1031. Punishment for violations--Fines--Knowingly engaging in prostitution while infected with HIV--Violations within certain distance from school or church

A. Except as provided in subsection B or C of this section, any person violating any of the provisions of Section 1028, 1029 or 1030 of this title shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for a term not to exceed one (1) year or by a fine in an amount not to exceed Five

Thousand Dollars ($5,000), or by both such imprisonment and fine. In addition, the court may require a term of community service of not less than forty (40) nor more than eighty (80) hours.

B. Any person who engages in an act of prostitution with knowledge that they are infected with the human immunodeficiency virus shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years.

C. Any person who engages in an act of child prostitution, as defined in Section 1030 of this title, shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years and by a fine in an amount not the exceed Three Thousand Dollars ($3,000.00).

D. Any person violating any of the provisions of Section 1028, 1029 or 1030 of this title within one thousand (1,000) feet of a school or church shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by a fine in an amount not to exceed Five Thousand Dollars ($5,000), or by both such imprisonment and fine. In addition, the court may require a term of community service of not less than forty (40) nor more than eighty (80) hours.

§ 1040.8. Publication, distribution or participation in preparation of any obscene material or presentation—child pornography--Unsolicited mailings

A. No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, giveaway, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation, or other article which is obscene material or child pornography, as defined in 21 CNCA § 1024.1. In the case of any unsolicited mailing of any of the material listed in this section, the offense is deemed complete from the time such material is deposited in any post office or delivered to any person with intent that it shall be forwarded. Also, unless preempted by federal law, no unsolicited mail which is harmful to minors pursuant to 21 CNCA § 1040.75 shall be mailed to any person. The party mailing the materials specified in this section may be tried where such material is deposited or delivered, or in which it is received by the person to whom it is addressed. Any person convicted of a violation of this section where the offender is age eighteen (18) or over and the offense involved child pornography shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

B. Any person who violates any provision of this section involving obscene materials, upon conviction, shall be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine of not less than Two Thousand Dollars ($2,000.00), or by both such fine and imprisonment.

C. Any person who violates any provision of this section involving child pornography, upon conviction, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine or not less than Ten Thousand Dollars ($10,000), or by both such fine and imprisonment.

§ 1040.11. Short title

Sections 1021 through 1040.77 of this title shall be known as the "Cherokee Nation Obscenity and Child Pornography Act" and may be referred to by that designation.

§ 1040.12a. Aggravated possession of child pornography--Penalties--Definitions

A. Any person who, with knowledge of its contents, possesses one hundred (100) or more separate materials depicting child pornography shall be, upon conviction, guilty of aggravated possession of child pornography. The violator shall be punished by imprisonment for a term not to exceed three (3) years and by a fine in an amount not more than Fifteen Thousand Dollars ($15,000.00). The violator, upon conviction, shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq.

B. For purposes of this section:

1. Multiple copies of the same identical material shall each be counted as a separate item;

2. The term “material” means the same definition provided by Section 1040.75 of Title 21 of the Cherokee Nation Code Annotated and, in addition, includes all digital and computerized images and depictions; and

3. The term “child pornography” means the same definition provided by Section 1040.80 of Title 21 of the Cherokee Nation Code Annotated and, in addition, includes sexual conduct, sexual excitement, sadomasochistic abuse, and performance of material harmful to minors where a minor is present or depicted as such terms are defined in Section 1040.75 of Title 21 of the Cherokee Nation Code Annotated.

§ 1040.13. Acts prohibited--Felony

Every person who, with knowledge of its contents, sends, brings, or causes to be sent or brought into this Nation for sale or commercial distribution, or in this Nation prepares, sells, exhibits, commercially distributes, gives away, offers to give away, or has in his possession with intent to sell, to commercially distribute, to exhibit, to give away, or to offer to give away any obscene material or child pornography or gives information stating when, where, how, or from whom, or by what means obscene material or child pornography can be purchased or obtained, upon conviction, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by a fine of not more than Fifteen Thousand Dollars ($15,000), or by both such imprisonment and fine, provided that such punishment must include a term of imprisonment. Any person convicted of a violation of this section where the offense involved child pornography shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1040.13a. Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor

A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct with a minor, or other individual the person believes to be a minor, by use of any technology, or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology. For purposes of this subsection," by use of any technology" means the use of any telephone or cell phone, computer disk (CD), digital video disk (DVD), recording or sound device, CD–ROM, VHS, computer, computer network or system, Internet or World Wide Web address including any blog site or personal web address, e-mail address, Internet Protocol address (IP), text messaging or paging device, any video, audio, photographic or camera device of any computer, computer network or system, cell phone, any other electrical, electronic, computer or mechanical device, or any other device capable of any transmission of any written or text message, audio or sound message, photographic, video, movie, digital or

computer-generated image, or any other communication of any kind by use of an electronic device.

B. A person is guilty of violating the provisions of this section if the person knowingly transmits any prohibited communication by use of any technology defined herein, or knowingly prints, publishes or reproduces by use of any technology described herein any prohibited communication, or knowingly buys, sells, receives, exchanges, or disseminates any prohibited communication or any information, notice, statement, website, or advertisement for communication with a minor or access to any name, telephone number, cell phone number, e-mail address, Internet address, text message address, place of residence, physical characteristics or other descriptive or identifying information of a minor, or other individual the person believes to be aminor.

C. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

D. Any violation of the provisions of this section shall be a felony punishable by imprisonment for a term not to exceed three (3) years or by a fine of not more than Fifteen Thousand Dollars ($15,000), or by both such imprisonment and fine. For purposes of this section, each communication shall constitute a separate offense. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

E. For purposes of any criminal prosecution pursuant to any violation of this section, the person violating the provisions of this section shall be deemed to be within the jurisdiction of Cherokee Nation by the fact of accessing any computer, cellular phone or other computer-related or satellite-operated device in Cherokee Nation, regardless of the actual jurisdiction where the violator resides.

§ 1040.13b. Nonconsensual dissemination of private sexual images

A. As used in this section:

1. “Image” includes a photograph, film, videotape, digital recording or other depiction or portrayal of an object, including a human body;

2. “Intimate parts” means the fully unclothed, partially unclothed or transparently clothed genitals, pubic area or female adult nipple; and

3. “Sexual act” means sexual intercourse including genital, anal or oral sex.

B. A person commits nonconsensual dissemination of private sexual images when he or she:

1. Intentionally disseminates an image of another person:

a. who is at least eighteen (18) years of age,

b. who is identifiable from the image itself or information displayed in connection with the image, and

c. who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part;

2. Disseminates the image with the intent to harass, intimidate or coerce the person, or under circumstances in which a reasonable person would know or understand that dissemination of the image would harass, intimidate or coerce the person;

3. Obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and

4. Knows or a reasonable person should have known that the person in the image has not consented to the dissemination.

C. The provisions of this section shall not apply to the intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when:

1. The dissemination is made for the purpose of a criminal investigation that is otherwise lawful;

2. The dissemination is for the purpose of, or in connection with, the reporting of unlawful conduct;

3. The images involve voluntary exposure in public or commercial settings; or

4. The dissemination serves a lawful purpose.

D. Nothing in this section shall be construed to impose liability upon the following entities solely as a result of content or information provided by another person:

1. An interactive computer service, as defined in 47 U.S.C., Section 230(f)(2);

2. A wireless service provider, as defined in Section 332(d) of the Telecommunications Act of 1996, 47 U.S.C., Section 151 et seq., Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66; or

3. A telecommunications network or broadband provider.

E. A person convicted under this section is subject to the forfeiture provisions in Section 1040.54 of this title.

F. Any person who violates the provisions of this section shall be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year or by a fine of not more than One Thousand Dollars ($1,000.00), or both such fine and imprisonment.

G. Any person who violates the provisions of this section and who gains or attempts to gain financially or who gains or attempts to gain anything of value as a result of the nonconsensual dissemination of private sexual images shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years. A second or subsequent violation of this subsection shall be a felony punishable by imprisonment for a term not to exceed three (3) years and the offender shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq.

H. The court shall have the authority to order the defendant to remove the disseminated image should the court find it is in the power of the defendant to do so.

§ 1040.14. Action for adjudication of obscenity or child pornographic content of mailable matter

A. Whenever the Attorney General has reasonable cause to believe that any person, with knowledge of its contents, is (1) engaged in sending or causing to be sent, bringing or causing to be brought, into Cherokee Nation for sale or commercial distribution, or is (2) in Cherokee Nation preparing, selling, exhibiting or commercially distributing or giving away, or offering to give away, or has in his possession with intent to sell, or commercially distribute or to exhibit or give away or offer to give away, any obscene material or child pornography, the Attorney General may institute an action in the District Court for an adjudication of the obscenity or child pornographic content of the mailable matter.

B. The procedure to be followed shall be that set forth in this act.

§ 1040.15. Petition

The action described in 21 CNCA § 1040.l4 shall be commenced by filing with the Court a petition:

1. directed against the matter by name or description;

2. alleging it is obscene material or child pornography;

3. listing the names and addresses, if known, of its author, publisher and any other person sending or causing it to be sent, bringing or causing it to be brought into Cherokee Nation for sale or commercial distribution and of any person in Cherokee Nation preparing, selling, exhibiting or commercially distributing it, or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;

4. seeking an adjudication that it is either obscene material or child pornography, as defined in 21 CNCA § 1024.1;

5. seeking a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into Cherokee Nation for sale or commercial distribution, or in the Nation preparing, selling, exhibiting or commercially distributing it, giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;

6. seeking its surrender, seizure and destruction.

§ 1040.16. Summary examination of material—Dismissal or show cause order

A. Upon the filing of the petition described in 21 CNCA § 1040.15, the Court shall summarily examine the obscene material or child pornography.

B. If the Court finds no probable cause to believe it is obscene material or child pornography, the Court shall dismiss the petition.

C. If the Court finds probable cause to believe it is obscene material or child pornography, the Court shall immediately issue an order or rule to show cause why it should not be adjudicated to be obscene material or child pornography.

D. The order or rule to show cause shall be:

1. directed against it by name or description;

2. if their names and addresses are known, served personally in the manner provided in this act for the service of process or in any manner now or hereafter provided by law, upon its author, publisher, and any other person interested in sending or causing it to be sent, bringing or causing it to be brought, into Cherokee Nation for sale or commercial distribution, and on any person in the Nation preparing, selling, exhibiting or commercially distributing it or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;

3. returnable six (6) days after its service.

§ 1040.17. Answer

A. On or before the return date specified in the order or rule to show cause, the author, publisher, or any person interested in sending or causing to be sent, bringing or causing to be brought, into Cherokee Nation for sale or commercial distribution, or any person in Cherokee Nation preparing, selling, exhibiting or commercially distributing, or giving away or offering to give away, or possessing with intent to sell or commercially distribute or exhibit or give away or offer to give away, the matter may appear and file an answer.

B. The Court may, by order, permit any other person to appear and file an answer as amicus curiae. A person granted permission and appearing and filing an answer has all the rights of a party to the proceeding.

C. If no person appears and files an answer on or before the return date specified in the order or rule to show cause, the Court shall enter judgment either:

1. adjudicating the matter not to be obscene material or child pornography, if the Court so finds; or

2. adjudicating it to be obscene material or child pornography, if the Court so finds.

D. Every person appearing and answering shall be entitled, upon request, to a trial of the issues before the Court not less than three (3) days after a joinder of the issue.

§ 1040.18. Trial—Evidence

A. The Court shall conduct the trial in accordance with the rules of civil procedure applicable to the trial of cases by the Court without a jury.

B. The Court shall receive evidence at the trial, including the testimony of experts, pertaining, but not limited, to:

1. whether, to the average person, applying contemporary community standards, the dominant theme of the mailable matter taken as a whole is to prurient interest;

2. the artistic, literary, scientific and educational merits of the mailable matter considered as a whole;

3. the intent of the author and publisher in preparing, writing and publishing the mailablematter;

4. the appeal to prurient interest, or absence thereof, in advertising or other promotion of the mailable matter.

§ 1040.19. Destruction—Injunction

In the event that a judgment is entered adjudicating the matter to be obscene material or child pornography, the Court shall further:

1. order the person or persons having possession of it to surrender it to the Marshal Service for destruction and, in the event that person refuses, order the Marshal to seize and destroy it after all appeals are final;

2. enter a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into Cherokee Nation for sale or commercial distribution, and against any person in Cherokee Nation preparing, selling, exhibiting or commercially distributing it, giving it away or offering to give it away, or having it in his possession with intent to sell or commercially distribute or exhibit or give it away or offer to give it away.

§ 1040.20. Sending or selling of materials with knowledge of judgment

Any matter which, following the entry of a judgment that it is obscene material or child pornography, is sent or caused to be sent, brought or caused to be brought, into Cherokee Nation for sale or commercially distributed, given away or offered to be given away, by any person with knowledge of the judgment, or is in the possession of any such person with intent to sell or commercially distribute or exhibit or give away or offer to give away, is subject to the provisions of 21 CNCA § 1040.13.

§ 1040.21. Contempt

After the entry of a judgment that the matter is obscene material or child pornography, any person who, with knowledge of the judgment or of the order or rule to show cause, sends or causes to be sent, brings or causes to be brought, into Cherokee Nation for sale or commercial distribution, the matter, or who in Cherokee Nation sells, exhibits or commercially distributes it, gives away or offers to give it away, or has it in his possession with intent to sell or commercially distribute or exhibit or give away or offer to give it away, shall be guilty of contempt of court and upon conviction after notice and hearing shall be guilty of a misdemeanor punishable by a term of imprisonment not to exceed one (1) year or by a fine in an amount not to exceed One Thousand Dollars ($1,000), or by both such fine and imprisonment.

§ 1040.22. Extradition

In all cases in which a charge or violation of any section or sections of this act is brought against a person who cannot be found in Cherokee Nation, the Principal Chief may demand extradition of such person from the executive authority of the state or tribal jurisdiction in which such person may be found.

§ 1040.23. Presumptions

The possession of two or more of any single article that is obscene material or child pornography, or the possession of a combined total of any five articles that are obscene material or child pornography (except

the possession of them for the purpose of return to the person from whom received) shall create a presumption that they are intended for sale or commercial distribution, exhibition or gift, but such presumption shall be rebuttable. The burden of proof that their possession is for the purpose of return to the person from whom received shall be on the possessor.

§ 1040.24. Jurisdiction—Service of process—Fines—Execution against property

In order to protect the citizens and residents of Cherokee Nation against unfit articles and printed or written matter or material which originates outside Cherokee Nation, it is the purpose of this section to subject to the jurisdiction of the Courts of Cherokee Nation those persons who are responsible for the importation of those things into Cherokee Nation.

To that end and in the exercise of its power and right to protect its citizens and residents, it is hereby provided that any person, whether or not a citizen or resident of Cherokee Nation, who sends or causes to be sent into Cherokee Nation for resale in Cherokee Nation any article or printed matter or material, is for the purpose of this act transacting business in the Nation and by that act:

1. submits himself to the jurisdiction of the Courts of Cherokee Nation in any proceeding commenced under 21 CNCA § 1014;

2. constitutes the Secretary of State his agent for service of process in any proceeding commenced under 21 CNCA § 1014; and consents that service of process shall be made by serving a copy upon the Secretary of State or by filing a copy in the Secretary of State's office, and that this service shall be sufficient service provided that, within one (1) day after service, notice of the service and a copy of the process are sent by registered mail by the Attorney General to him at his last-known address and proof of such mailing filed with the clerk of the court within one (1) day after mailing;

3. consents that any fine levied against him under any section of this act may be executed against any of his real property, personal property, tangible or intangible, choses in action or property of any kind or nature, including debts owing to him, which are situated or found in Cherokee Nation.

Service of process upon any person who is subject to the jurisdiction of the Courts of Cherokee Nation, as provided in this section, may also be made by personally serving the summons upon him outside Cherokee Nation with the same force and effect as though summons had been personally served within Cherokee Nation. The service of summons shall be made in like manner as service within Cherokee Nation, by any person over twenty-one (21) years of age not a party to the action. No order of court is required. An affidavit of the server shall be filed stating the time, manner and place of service. The Court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

§ 1040.52. Showing at outdoor theaters of pictures depicting sexual intercourse prohibited under certain conditions—Penalty

A. Every owner or operator of an outdoor theater in Cherokee Nation is guilty of a misdemeanor who shows or causes to be shown a motion picture depicting:

1. Any person, whether nude or clad, in an act or simulation of an act of sexual intercourse, unnatural copulation or other sexual activity including the showing of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, or fondling or other erotic touching of human genitals, pubic region,

buttock or female breast; or

2. Nude or partially denuded figures including less than completely and opaquely covered human genitals, pubic regions, buttock and female breast below a point immediately above the top of the areola and including human male genitals in a discernably turgid state, even if completely and opaquely covered.

B. This section shall be applicable, however, only where the viewing portion of the screen of such theater is situated within the view of any residence or where children under eighteen (18) years of age have an understanding view of the picture.

C. Any prosecution under this section must be preceded by a written complaint from a resident affected by the terms of this section.

D. Upon conviction of a violation of this section such person shall be guilty of a misdemeanor punishable by a term of imprisonment not to exceed one (1) year or by a fine in an amount not to exceed Three Thousand Dollars ($3,000), or by both such fine and imprisonment..

§ 1040.53. Projectionists, ushers or cashiers excepted from statutes relating to exhibit of obscene motion pictures

The provisions of statutes of Cherokee Nation prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial theater open to the general public shall not apply to a projectionist or assistant projectionist, usher or cashier, provided he has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist, usher or cashier. Provided further, that such person is not acting as manager or director of such theater. The provisions of this act shall not exempt any projectionist or assistant projectionist, usher or cashier from criminal liability for any act unrelated to projection of motion pictures in a commercial theater open to the general public.

§ 1040.54. Seizure and forfeiture of equipment used in certain offenses relating to obscene material or child pornography

A. Any peace officer of Cherokee Nation is authorized to seize any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in 21 CNCA § 1024.1(B)(1) or child pornography, as defined in 21 CNCA § 1024.1(A). Said equipment may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the Attorney General as petitioner; provided, in the event the Attorney General elects not to file such an action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, a forfeiture action may be brought by the entity seizing such equipment as petitioner.

B. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest by the party seeking forfeiture as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and

2. Upon all other owners or parties in interest, whose addresses are unknown, by one publication in a newspaper of general circulation in the county where the seizure was made.

C. Within sixty (60) days after the mailing or publication of the notice, the owner of the equipment and any other party in interest may file a verified answer and claim to the equipment described in the notice of seizure and of the intended forfeiture proceeding.

D. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the Court shall hear evidence upon the fact of the unlawful use and may order the equipment forfeited to the Nation, if such fact is proven.

E. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

F. At the hearing the party seeking the forfeiture shall prove by clear and convincing evidence that the equipment was used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in 21 CNCA § 1024.1(B)(1) or child pornography, as defined in 21 CNCA § 1024.1(A), with knowledge by the owner of the equipment.

G. The owner or party in interest may prove that the right or interest in the equipment was created without any knowledge or reason to believe that the equipment was being, or was to be, used for the purpose charged.

H. In the event of such proof, the court may order the equipment released to the bona fide or innocent owner or party in interest if the amount due the person is equal to, or in excess of, the value of the equipment as of the date of the seizure.

I. If the amount due to such person is less than the value of the equipment, or if no bona fide claim is established, the equipment shall be forfeited to Cherokee Nation and shall be sold pursuant to the judgment of the Court.

J. Equipment taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the Attorney General or in the custody of the party seeking the forfeiture. The Attorney General or the party seeking the equipment may release said equipment to the owner of the equipment if it is determined that the owner had no knowledge of the illegal use of the equipment or if there is insufficient evidence to sustain the burden of showing illegal use of the equipment. Equipment which has not been released by the Attorney General or the party seizing the equipment shall be subject to the orders and decrees of the District Court or the official having jurisdiction thereof.

K. The Attorney General or the party seizing such equipment shall not be held civilly liable for having custody of the seized equipment or proceeding with a forfeiture action as provided for in this section.

L. The proceeds of the sale of any equipment not taken or detained by the Cherokee Nation Marshal Service or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of the person's interest in the equipment, when the Court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the equipment; and

3. The balance to the Marshal Service. Monies from said fund may be used to pay costs for the storage of

such equipment if such equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor and if such monies are available in said fund.

M. When any equipment is forfeited pursuant to this section, the District Court may order that the equipment seized may be retained by the Marshal Service for its official use.

N. If the Court finds the equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in 21 CNCA § 1024.1(B)(1) or child pornography as defined in 21 CNCA § 1024.1(A), the Court shall order the equipment released to the owner.

O. No equipment shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, or by any person other than such owner while such equipment was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

§ 1040.55. Adult cabaret and sexually oriented business exterior advertising signs--Requirements

A. As used in this section:

1. “Adult cabaret” means a nightclub, bar, restaurant, or similar establishment in which persons appear in a state of nudity in the performance of their duties;

2. “Sexually oriented business” means any business which offers its patrons goods of which a substantial portion are sexually oriented materials. Any business where more than ten percent (10%) of display space is used for sexually oriented materials shall be presumed to be a sexually oriented business;

3. “Sexually oriented materials” means any textual, pictorial, or three-dimensional material that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way that is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and

4. “State of nudity” means the showing of either:

a. the human male or female genitals or pubic area with less than a fully opaque covering, or

b. the female breast with less than a fully opaque covering or any part of the nipple.

B. Except as otherwise provided in this subsection, no billboard or other exterior advertising sign for an adult cabaret or sexually oriented business shall be located within one (1) mile of any state highway. If such a business is located within one (1) mile of a state highway, the business may display a maximum of two exterior signs on the premises of the business, consisting of one identification sign and one sign solely giving notice that minors are not permitted on the premises. The identification sign shall be no more than forty (40) square feet in size and shall include no more than the following information: name, street address, telephone number, and operating hours of the business.

C. Signs existing at the time of the adoption of this section, which do not conform to the requirements of

this section, may be allowed to continue as a nonconforming use, but shall be made to conform not later than November 1, 2009.

D. The Attorney General shall represent the state in all actions and proceedings arising from this section. In addition, all costs incurred by the Attorney General to defend or prosecute this section, including payment of all court costs, civil judgments, and, if necessary, any attorney fees, shall be paid from the General Revenue Fund.

E. Any owner of a business who violates the provisions of this section shall be guilty of a misdemeanor.

§ 1040.75. Definitions

As used in 21 CNCA §§ 1040.75 through 1040.77:

1. "Minor" means any unmarried person under the age of eighteen (18) years;

2. "Harmful to minors" means:

a. that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

i. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors; and

ii. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

iii. the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors; or

b. any description, exhibition, presentation or representation, in whatever form, of inappropriate violence.

3. "Inappropriate violence" means any description or representation, in an interactive video game or computer software, of violence which, taken as a whole, has the following characteristics:

a. the average person eighteen (18) years of age or older applying contemporary community standards would find that the interactive video game or computer software is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

b. the interactive video game or computer software lacks serious literary, scientific, medical, artistic, or political value for minors based on, but not limited to, the following criteria:

i. is glamorized or gratuitous;

ii. is graphic violence used to shock or stimulate;

iii. is graphic violence that is not contextually relevant to the material;

iv. is so pervasive that it serves as the thread holding the plot of the material together;

v. trivializes the serious nature of realistic violence;

vi. does not demonstrate the consequences or effects of realistic violence;

vii. uses brutal weapons designed to inflict the maximum amount of pain and damage;

viii. endorses or glorifies torture or excessive weaponry; or

ix. depicts lead characters who resort to violence freely.

4. "Nudity" means the:

a. showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering;

b. showing of the female breast with less than a full opaque covering of any portion of the female breast below the top of the nipple; or

c. depiction of covered male genitals in a discernibly turgid state.

5. “Sexual conduct” means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast;

6. “Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal;

7. “Sadomasochistic abuse” means flagellation or torture by or upon a person clothed or naked or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed or naked;

8. “Material” means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, CD-ROM disk, Magnetic Disk Memory, Magnetic Tape Memory, video tape, computer software or video game;

9. “CD-ROM” means a compact disk with read only memory which has the capacity to store audio, video and written materials and may be used by computer to play or display materials harmful to minors;

10. “Magnetic Disk Memory” means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including but not limited to floppy diskettes;

11. “Magnetic Tape Memory” means a memory system that stores and retrieves binary data on magnetic recording tape;

12. "Performance" means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

13. "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

14. "Reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

§ 1040.76. Material or performances harmful to minors—Prohibited acts

No person, including but not limited to any persons having custody, control or supervision of any commercial establishment, shall knowingly:

1. Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material. Provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds (2/3) of the material is not exposed to view;

2. Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or

3. Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

§ 1040.77. Violations—Penalties

Any person convicted of violating any provision of 21 CNCA § 1040.76 shall be guilty of a misdemeanor and shall be fined a sum not exceeding Five Hundred Dollars ($500.00) for the first or second offense. Any person convicted of a third or subsequent violation of any provision of 21 CNCA § 1040.76 shall be guilty of a misdemeanor and fined a sum not exceeding One Thousand Dollars ($1,000.00). Each day that any violation of 21 CNCA § 1040.76 occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act or transaction prohibited by 21 CNCA § 1040.76 shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material as prohibited by 21 CNCA § 1040.76 shall constitute a single offense.

§ 1040.80. Interactive computer service providers--Removal of child pornography--Court orders--Notice and hearing--Violations--Penalties--Petition for relief

A. As used in this section, the term:

1. “Interactive computer service provider” means any provider to the public of computer access via the

Internet to a computer server or similar device used for the storage of graphic, video or images;

2. "Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks;

3. "Controlled or owned by" with respect to a server or other storage device means a server or other such device that is entirely owned by the interactive computer service provider or is subject to exclusive management by the interactive computer service provider by agreement or otherwise; and

4. "Child pornography" means explicit child pornography as defined in Section 1024.1 of Title 21 of the Oklahoma Statutes.

B. The Attorney General or a law enforcement officer who receives information that an item of alleged child pornography resides on a server or other storage device controlled or owned by an interactive computer service provider shall:

1. Contact the interactive computer service provider that controls or owns the server or other storage device where the item of alleged child pornography is located;

2. Inform the interactive computer service provider of the provisions of this section; and

3. Request that the interactive computer service provider voluntarily comply with this section and remove the item of alleged child pornography from its server or other storage device expeditiously.

C. 1. If an interactive computer service does not voluntarily remove the item of alleged child pornography in a timely manner, the Attorney General or law enforcement officer shall apply for a court order of authorization to remove the item of alleged child pornography under this section. The obligation to remove the item of alleged child pornography shall not apply to the transmitting or routing of, or the intermediate, temporary storage or caching of an image, information or data that is otherwise subject to this section.

2. The application for a court order shall include:

a. the authority of the applicant to make such an application,

b. the identity and qualifications of the investigative or law enforcement officer or agency that, in the official scope of that officer's duties or agency's authority, discovered the images, information, or data,

c. a particular statement of the facts relied upon by the applicant, including:

(1) the identity of the interactive computer service,

(2) identification of the item of alleged child pornography discovered on the server or other storage device controlled or owned by an interactive computer service provider,

(3) the particular images, information, or data to be removed or to which access is to be disabled identified by uniform resource locator (URL) or Internet protocol (IP) address, a statement certifying that such content resides on a server or storage device controlled or owned by such interactive computer service provider, and

(4) the steps taken to obtain voluntary compliance by such interactive computer service provider with the requirements of this act prior to filing the application,

d. such additional testimony and documentary evidence in support of the application as the judge may require, and

e. a showing that there is probable cause to believe that the child pornography items constitutes a violation of this section.

D. The Attorney General shall notify the interactive computer service provider which is identified in the court's order in accordance with the provisions of this section. The Attorney General shall notify an interactive computer service provider upon the issuance of an order authorizing the removal of the items of alleged child pornography.

1. The notice by the Attorney General shall include:

a. a copy of the application made pursuant to subsection C of this section,

b. a copy of the court order issued pursuant to subsection K of this section,

c. notification that the interactive computer service shall remove the item of alleged child pornography contained in the order which resides on a server or other storage device controlled or owned by such interactive service provider and which are accessible to persons located within this state expeditiously after receipt of the notification,

d. notification of the criminal penalties for failure to remove the item of child pornography,

e. notification of the right to appeal the court's order, and

f. contact information for the Attorney General's Office.

2. An interactive computer service may designate an agent within the state to receive notification pursuant to this section.

E. The interactive computer service provider has the right to request a hearing before the court imposes any penalty under this section.

F. Nothing in this section may be construed as imposing a duty on an interactive computer service provider to actively monitor its service or affirmatively seek evidence of illegal activity on its service.

G. Notwithstanding any other provision of law to the contrary, any interactive computer service provider that intentionally violates subsection L of this section commits:

1. A misdemeanor for a first or second offense punishable by a fine of One Thousand Dollars ($1,000.00); and

2. A felony for a third or subsequent offense punishable by a fine of Fifteen Thousand Dollars ($15,000.00) and imprisonment for a maximum of three (3) years.

H. The Attorney General shall have concurrent prosecutorial jurisdiction for violation of this section.

I. The removal of the alleged item of child pornography which resides on a server or other storage device, shall not, to the extent possible, interfere with any request of a law enforcement agency to preserve records or other evidence, which may be kept by the interactive computer service provider in the normal course of business.

J. Upon consideration of an application for authorization to remove the item of alleged child pornography that resides on a server or other storage device controlled or owned by an interactive computer service provider as set forth in subsection C of this section, the judge may enter an ex parte order, as requested or as modified, authorizing the removal of the item of alleged child pornography, if the court determines on the basis of the facts submitted by the applicant that there is or was probable cause for belief that:

1. The item of alleged child pornography constitutes evidence of an act in violation of this section;

2. The investigative or law enforcement officer or agency acted within the official scope of that officer's duties or agency's authority, in discovering the images, information, or data and has complied with the requirements of subsection I and subsection K of this section;

3. An item of alleged child pornography resides on the server or other storage device controlled or owned by the interactive computer service provider and is accessible to persons located in the state; and

4. In the case of an application, other than a renewal or extension, for an order removing the item of alleged child pornography which was the subject of a previous order authorizing the removal or disabling of access, the application is based upon new evidence or information different from and in addition to the evidence or information offered to support the prior order.

K. Each order authorizing the removal or disabling of access to an alleged item of child pornography shall contain:

1. The name of the judge authorized to issue the order;

2. A particular description of the images, information, or data to be removed or access to such disabled, identified by a URL or IP address, and a statement of the particular violation of the section to which the images, information, or data relate;

3. The identity of the investigative or law enforcement officer or agency who discovered the images, information, or data and the identity of whoever authorized the application; and

4. Such additional information or instruction as the court deems necessary to execute the order.

L. The court shall review the application and testimony, if offered, and, upon a finding of probable cause, issue an order that:

1. An item of child pornography resides on a server or other storage device controlled by the interactive computer service provider and is accessible to persons located in the state;

2. The interactive computer service provider shall remove the item residing on a server or other storage

device controlled or owned by the interactive computer service provider expeditiously after receiving the order, if practical;

3. The order shall specify that removal of any item covered by the order shall be accomplished in a fashion that prevents or minimizes the removal of, or restriction of access to, images, information, or data that are not subject to the order;

4. Failure of the interactive computer service provider to comply with the court's order is a violation of this section;

5. The removal of the item on the server or other storage device controlled or owned by the interactive computer service provider may not unreasonably interfere with a request by a law enforcement agency to preserve records for a reasonable period and in accordance with law; and

6. Provides the interactive computer service provider notice and opportunity for a hearing before the court imposes any penalty under this subsection.

M. An interactive computer service provider who is served with a court order under subsection L of this section shall remove the item of child pornography that is the subject of the order expeditiously after receiving the court order, if practicable.

N. 1. An interactive service provider may petition the court for relief for cause from an order issued under subsection L of this section.

2. The petition may be based on considerations of:

a. the cost or technical feasibility of compliance with the order, or

b. the inability of the interactive computer service provider to comply with the order without also removing data, images or information that are not subject to this section.

CHAPTER 40

JUNK DEALERS

§ 1048. Storage or accumulation of wrecked or abandoned motor vehicle or part thereof within view of preexisting residence

No person, firm, partnership or corporation shall with malice or without valid business purpose store, accumulate, allow to accumulate, or allow to remain stored or accumulated after receipt of notice as is hereinafter provided, any wrecked or abandoned motor vehicle, or any recyclable or nonrecyclable hulk or part of a motor vehicle within view of any preexisting residence situated outside the territorial limits of any incorporated municipality. Any homeowner aggrieved by any violation of this section may order the removal of any motor vehicle, hulk or part stored in violation hereof upon thirty (30) days' written notice to the owner of the land where such motor vehicle, hulk or part is stored. Upon the failure of the offending party to comply with said order, the aggrieved party may obtain injunctive and mandamus relief for the removal of matter so stored or accumulated from the district court of the county where the residence is

situated and, further; shall be entitled to recover reasonable attorneys' fees, court costs and other reasonable expenses of bringing suit.

CHAPTER 42

PANDERING

§ 1081. Offense defined—Punishment

Any person who shall procure any other person for prostitution, or who, by promise, threats, violence or by any device or scheme shall cause, induce, persuade or encourage another to become a prositute; or shall procure a place as inmate in a house of prostitution for a person; or who shall, by promise, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or who shall, by fraud, or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority procure any person to become a prostitute, or to enter any place in which prostitution is encouraged or allowed within this Nation, or to come into this Nation or leave this Nation for the purpose of prostitution, or who shall procure any other person, who has not previously practiced prostitution to become a prostitute within this Nation, or to come into this nation or leave this nation for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill-fame within this Nation, or to come into this Nation or leave this Nation for the purpose of prostitution, shall be guilty of pandering, and upon conviction for any offense under this chapter shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

§ 1082. Part of offense outside of Nation no defense

It shall not be a defense to a prosecution for any of the acts prohibited in the foregoing section that any part of such act or acts shall have been committed outside this Nation.

§ 1083. Injured party as witness

Any such person, referred to in the foregoing sections, shall be a competent witness in any prosecution under this chapter, to testify for or against the accused as to any transaction or as to any conversation with the accused or by him with another person or persons in her presence, notwithstanding the fact of her having married the accused before or after the violation of any of the provisions of this chapter, whether called as a witness during the existence of the marriage or after its dissolution.

§ 1084. Marriage no defense

The act or state of marriage shall not be a defense to any violation of this chapter.

§ 1085. Restraining person in house of prostitution a crime

Whoever shall by any means keep, hold, detain, or restrain against their will, any person in a house of prostitution or other place where prostitution is practiced or allowed; or whoever shall, directly or indirectly keep, hold, detain or restrain or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means for the purpose of compelling

such person, directly or indirectly to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment..

§ 1086. Allowing offense on premises—Punishment

Any owner, proprietor, keeper, manager, conductor, or other person, who knowingly permits or suffers the violation of any provision of this chapter, in any house, building, room, tent, lot or premises under his control or of which he has possession, upon first conviction, shall be guilty of a midemeanor punishable by imprisonment for a term not to exceed one (1) year or by imposition of a fine in an amount not to exceed Five Thousand Dollars ($5,000), or by both such fine and imprisonment. Upon conviction of a subsequent offense, a person in violation of any provision of this chapter shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

§ 1087. Child under 18 years of age—Procuring for prostitution, lewdness or other indecent act—Punishment

A. No person shall:

1. Offer, or offer to secure, a child under eighteen (18) years of age for the purpose of prostitution, or for any other lewd or indecent act, or procure or offer to procure a child for, or a place for a child as an inmate in, a house of prostitution or other place where prostitution is practiced;

2. Receive or to offer or agree to receive any child under eighteen (18) years of age into any house, place, building, other structure, vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or

3. Direct, take, or transport, or to offer or agree to take or transport, or aid or assist in transporting, any child under eighteen (18) years of age to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;

B. 1. Any person violating the provisions of subsection (A) of this section shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment.

2. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits any violation of this section in any house, building, room, or other premises or any conveyances under his control or of which he has possession shall, upon conviction for the first offense, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year or by imposition of a fine in an amount not to exceed Five Thousand Dollars ($5,000), or by both such fine and imprisonment. Upon conviction for a subsequent offense pursuant to this subsection such person shall be guilty of a felony punishableby imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1088. Child under eighteen years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment

A. No person shall:

1. By promise, threats, violence, or by any device or scheme, including but not limited to the use of any controlled dangerous substance prohibited pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq., cause, induce, persuade, or encourage a child under eighteen (18) years of age to engage or continue to engage in prostitution or to become or remain an inmate of a house of prostitution or other place where prostitution is practiced;

2. Keep, hold, detain, restrain, or compel against his or her will, any child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or other place where prostitution is practiced or allowed;

3. Directly or indirectly keep, hold, detain, restrain, or compel or attempt to keep, hold, detain, restrain, or compel a child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or any place where prostitution is practiced or allowed for the purpose of compelling such child to directly or indirectly pay, liquidate, or cancel any debt, dues, or obligations incurred, or said to have been incurred by such child.

B. 1. Any person violating the provisions of this section, upon conviction, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment,, provided that such sentence must include a term of imprisonment.

2. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits a violation of this section in any house, building, room, tent, lot or premises under his control or of which he has possession, upon conviction for the offense, upon conviction for the first offense, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year or by imposition of a fine in an amount not to exceed Five Thousand Dollars ($5,000), or by both such fine and imprisonment. Upon conviction for a subsequent offense pursuant to this subsection such person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

CHAPTER 43

PAWNBROKERS

§ 1092. Refusing to exhibit stolen goods

Any pawnbroker or person carrying on the business of a pawnbroker, and every junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, or any peace officer, shall be guilty of a felony.

§ 1093. Selling pledge before default

Every pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, and every pawnbroker who willfully refuses to disclose the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, is guilty of a misdemeanor.

CHAPTER 45

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN AND SEDUCTION

§ 1111. Rape defined

A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished under any of the following circumstances:

1. Where the victim is under sixteen (16) years of age;

2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, or giving legal consent;

3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;

4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; or

5. Where the victim is unconscious of the nature of the act and this fact is known to the accused; or

6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape.

7. Where the victim is under the legal custody or supervision of the Cherokee Nation, other tribal, state, municipal, other governmental subdivision, or federal agency and engages in sexual intercourse with a Cherokee Nation, other tribal, state, municipal, other governmental subdivision, or federal employee that exercises authority over the victim;

8. Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a

student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system;

9. Where the victim is nineteen (19) years of age or younger and is in the legal custody of a state agency, federal agency or tribal court and engages in sexual intercourse with a foster parent or foster parent applicant; or

10. Where the victim is at least sixteen (16) years of age but less than eighteen (18) years of age and the perpetrator of the crime is a person responsible for the child's health, safety or welfare. “Person responsible for a child's health, safety or welfare” shall include, but not be limited to:

a. a parent,

b. a legal guardian,

c. custodian,

d. a foster parent,

e. a person eighteen (18) years of age or older with whom the child's parent cohabitates,

f. any other adult residing in the home of the child,

g. an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, or

h. an owner, operator or employee of a child care facility.

B. Rape is an act of sexual intercourse accomplished if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

B. .

§ 1111.1. Rape by instrumentation

A. Rape by instrumentation is an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person.

B. Provided, further, that at least one of the circumstances specified in Section 1111 of this title has been met; further, where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in conduct prohibited by this section of law with a person who is eighteen (18) years of age or older and is an employee of the same school system, or where the victim is under the legal custody or supervision of a state or federal agency, county, municipal or a political subdivision and engages in conduct prohibited by this section of law with a federal, state, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over

the victim, consent shall not be an element of the crime.

C. Provided, further, that at least one of the circumstances specified in Section 1111 of this title has been met; further, where the victim is nineteen (19) years of age or younger and in the legal custody of a state agency, federal agency or tribal court and engages in conduct prohibited by this section of law with a foster parent or foster parent applicant.

D. Any person in violation of the section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et. seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1112. Age limitations on conviction for rape

No person can be convicted of rape or rape by instrumentation on account of an act of sexual intercourse with anyone over the age of fourteen (14) years, with his or her consent, unless such person was over the age of eighteen (18) years at the time of such act.

§ 1113. Slight penetration is sufficient to complete crime

The essential guilt of rape or rape by instrumentation, except with the consent of a male or female over fourteen (14) years of age, consists in the outrage to the person and feelings of the victim. Any sexual penetration, however slight, is sufficient to complete the crime.

§ 1114. Rape in first degree--Second degree

A. Rape or rape by instrumentation in the first degree shall include:

1. Rape committed by a person over eighteen (18) years of age upon a person under fourteen (14) years of age;

2. Rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime;

3. Rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;

4. Rape accomplished where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;

5. Rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or

6. Rape by instrumentation regardless of the age of the victim or the age of the person committing the crime.

B. In all other cases, rape is rape in the second degree.

§ 1115 Punishment for rape in first degree or second degree

Rape in the first degree is a felony punishable by a term of imprisonment not to exceed three (3) years or by

imposition of a fine in an amount not the exceed Fifteen Thousand Dollars ($15,000), or by both such fine an imprisonment, provided that any sentence shall include a term of imprisonment. Any person in violation of the chapter shall be required to register as a sex offender pursuant to 57 CNCA § 1 et. seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1117. Compelling person to marry

Any person who takes any person against his or her will, and by force, menace or duress, compels him or her to marry him or her or to marry any other person, is guilty of aa felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not the exceed Fifteen Thousand Dollars ($15,000), or by both such fine an imprisonment.

§ 1118. Intent to compel woman to marry

Any person who takes any woman unlawfully against her will, with the intent to compel her by force, menace or duress to marry him, or to marry any other person, is guilty of aa felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not the exceed Fifteen Thousand Dollars ($15,000), or by both such fine an imprisonment.

§ 1119. Abduction of person under fifteen

Every person who takes away or induces to leave any person under the age of fifteen (15) years, from a parent, guardian or other person having the legal charge of the person, without the consent of said parent, guardian, or other person having legal charge, for the purpose of marriage or concubinage, or any crime involving moral turpitude shall be guilty of a felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not the exceed Fifteen Thousand Dollars ($15,000), or by both such fine an imprisonment.

§ 1123. Lewd or indecent proposals or acts as to child under eighteen

A. It is a felony for any person to knowingly and intentionally:

1. make any oral, written, or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, for the child to have unlawful sexual relations or sexual intercourse with any person; or

2. look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or

3. ask, invite, entice, or persuade any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or

4. in any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or

5. in a lewd or lascivious manner and for the purposes of sexual gratification:

a. urinate or defecate upon a child under sixteen (16) years of age, or force or require a child to defecate or urinate upon the body or private parts of another, or for the purpose of sexual gratification,

b. ejaculate upon or in the presence of a child ,

c. cause, expose, force or require a child under to look upon the body or private parts of another person;

d. force or require any child under sixteen (16) years of age or other individual the person believes to be a child under sixteen (16) years of age to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by 21 CNCA § 1024.1 and 21 CNCA § 1040.75;

e. cause, expose, force or require a child under to look upon sexual acts performed in the presence of the child; or

f. force or require a child to touch or feel the body or private parts of said child or another person.

B. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts of any person sixteen (16) years of age or older, in a lewd and lascivious manner:

1. Without the consent of that person;

2. When committed by a Cherokee Nation, state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the Cherokee Nation, state, a county, a municipality or political subdivision upon a person who is under the legal custody, supervision or authority of a Cherokee Nation or state agency, a county, a municipality or a political subdivision of this state, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision of this state;

3. When committed upon a person who is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or in the legal custody or supervision of any public or private elementary or secondary school, or technology center school, by a person who is eighteen (18) years of age or older and is an employee of the same school system that the victim attends; or

4. When committed upon a person who is nineteen (19) years of age or younger and is in the legal custody of a Cherokee Nation agency, federal agency or a tribal court, by a foster parent or foster parent applicant.

As used in this subsection, "employee of the same school system" means a teacher, principal or other duly appointed person employed by a school system or an employee of a firm contracting with a school system who exercises authority over the victim.

C. No person shall in any manner lewdly or lasciviously:

1. Look upon, touch, maul, or feel the body or private parts of any human corpse in any indecent manner relating to sexual matters or sexual interest; or

2. Urinate, defecate or ejaculate upon any human corpse.

D. Any person convicted of a violation of subsection B or C of this section shall be deemed guilty of a felony.

E. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

F. Any person in violation of the section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et. seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

G. Any parent or person responsible for the child's health, safety or welfare who violates subsection A, B or C of this section when the victim is at least sixteen (16) years of age but less than eighteen (18) years of age, upon conviction, shall be guilty of a felony. For purposes of this section, "person responsible for a child's health, safety or welfare" shall include, but not be limited to:

a. a parent,

b. a legal guardian,

c. custodian,

d. a foster parent,

e. a person eighteen (18) years of age or older with whom the child's parent cohabitates,

f. any other adult residing in the home of the child,

g. an agent or employee of a public or private residential home, institution, facility or day treatment program, or

h. an owner, operator or employee of a child care facility.

§ 1123.1. Sexual battery

A. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts, in a lewd and lascivious manner, of:

1. a victim under the age of 14 years of age; or

2. a victim age 14 or older but who has not yet attained the age of 16, except when:

a. the victim otherwise consents, and

b. the accused is not required to register as a sex offender, and

c. the accused is less than 19 years of age or the accused is married to the victim; or

3. any person without the victim's consent when the victim is over age sixteen (16) years, or

4. any person who is a student, or under the legal custody, supervision, or authority of any public or private elementary or secondary school, junior high or high school, or public vocational school, or any Cherokee Nation agency and the accused is a person who is an employee or official of the same school system or Cherokee Nation agency or otherwise exercises power as an official over the school system or Cherokee Nation agency regardless of the ages of the victim and the accused.

B. Any person convicted of violating this section is guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of this section shall not be eligible for any form of probation.

C. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

§ 1124. Using computer networks to violate Cherokee Nation statutes

No person shall communicate with, store data in, or retrieve data from a computer system or computer network for the purpose of using such access to violate any of the provisions of Cherokee Nation statutes. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year or by imposition of a fine in an amount no the exceed Five Thousand Dollars ($5,000), or by both such fine and imprisonment.

§ 1125. Zone of safety--Schools, child care centers, playgrounds, parks, and residences of victims--Restrictions on convicted sex offenders--Exemptions

A. A zone of safety is hereby created around elementary, junior high and high schools, licensed child care centers, playgrounds, parks, or the residence of a victim of a sex crime.

1. A person is prohibited from loitering within five hundred (500) feet of any elementary, junior high or high school, licensed child care center, playground, or park if the person has been convicted of a crime that requires the person to register pursuant to the Sex Offenders Registration and Notification Act, 57 CNCA § 1 et seq., or the person has been convicted of an offense in another jurisdiction, which offense if committed or attempted in the Cherokee Nation, would have been punishable as one or more of the offenses listed in 57 CNCA § 4 and the victim was a child under the age of sixteen (16) years.2. A person is prohibited from entering any park if:

a. the person has been designated as a habitual or aggravated sex offender as provided in 57 CNCA § 1 et seq., or

b. the person has been convicted of an offense in another jurisdiction, which offense, if committed or attempted in this state, would designate the person as a habitual or aggravated sex offender as provided in 57 CNCA § 1 et seq.

3. A person is prohibited from loitering within one thousand (1,000) feet of the residence of his or her victim

if:

a. the person who committed a sex crime against the victim has been convicted of said crime, and

b. the person is required to register pursuant to the Sex Offenders Registration Act.

B. A person convicted of a violation of subsection A of this section shall be guilty of a felony punishable by a fine not exceeding Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment for a term not to exceed three (3) years, or by both such fine and imprisonment. Any person convicted of a second or subsequent violation of subsection A of this section shall be punished by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or by imprisonment for a term not to exceed three (3) years, or by both such fine and imprisonment. This proscription of conduct shall not modify or remove any restrictions currently applicable to the person by court order, conditions of probation or as provided by other provision of law.
C. 1. A person shall be exempt from the prohibition of this section regarding a school or a licensed or permitted child care facility only under the following circumstances and limited to a reasonable amount of time to complete such tasks:

a. the person is the custodial parent or legal guardian of a child who is an enrolled student at the school or child care facility, and

b. the person is enrolling, delivering or retrieving such child at the school or licensed or permitted child care center during regular school or facility hours or for school-sanctioned or licensed-or-permitted-child-care-center-sanctioned extracurricular activities.

Prior to entering the zone of safety for the purposes listed in this paragraph, the person shall inform school or child care center administrators of his or her status as a registered sex offender. The person shall update monthly, or as often as required by the school or center, information about the specific times the person will be within the zone of safety as established by this section.

2. This exception shall not be construed to modify or remove any restrictions applicable to the person by court order, conditions of probation, or as provided by other provision of law.

D. The provisions of subsection A of this section shall not apply to any person receiving medical treatment at a hospital or other facility certified or licensed by any government to provide medical services. As used in this subsection, “medical treatment” shall not include any form of psychological, social or rehabilitative counseling services or treatment programs for sex offenders.

E. Nothing in this section shall prohibit a person, who is registered as a sex offender pursuant to the Sex Offender Registration and Notification Act, from attending a recognized church or religious denomination for worship; provided, the person has notified the religious leader of his or her status as a registered sex offender and the person has been granted written permission by the religious leader.

F. As used in this section, “park” means any outdoor public area specifically designated as being used for recreational purposes that is operated or supported in whole or in part by a homeowners’ association or a city, town, county, state, federal or tribal governmental authority.

CHAPTER 46 DOMESTIC

ABUSE

§ 1130. Domestic violence assault and battery—Definition

Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or who has been in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of the crime of domestic violence assault and battery.

§ 1131. Domestic abuse violence and battery—Punishment

A. Domestic abuse violence and battery shall be punishable by imprisonment in a penal institution not exceeding one (1) year, or by a fine of not more than Five Thousand Dollars ($5,000.00), or both, at the discretion of the Court.

B. Any person convicted of domestic violence as defined in this provision, that was committed in the presence of a child shall be punished by imprisonment in a penal institution not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

C. Any person who is convicted of a second or subsequent domestic violence assault and battery offense shall be punished by imprisonment in a penal institution not exceeding three years, or by fine of not more than Fifteen Thousand Dollars ($15,000.00), or both such fine and imprisonment at the discretion of the Court.

D. For every conviction of domestic violence, the Court shall:

1. specifically order as a condition of a deferred or suspended sentence or probation that a defendant participate in batterer's treatment; or

2. require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse-counseling program approved by the Court. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend and complete the program and be evaluated before and after attendance of the program by a program counselor or a private counselor.

E. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this section. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant (whether or not defendant evaluates as a perpetrator of domestic violence) should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment

program or licensed professional.

F. The Court shall set review hearings within one hundred twenty (120) days to ensure that the defendant attends and fully complies with the provisions of this section and the domestic abuse counseling or treatment requirements. The defendant shall be required to be present at the review hearing. Defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the Court. The victim may attend but is not required to do so.

G. The Court shall set a final review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of Cherokee law. The Court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing.

H. The Court may set interim review, follow-up post-completion review, or other review hearings as the Court determines necessary to assure the defendant attends and fully complies with the provisions of this section and the domestic abuse counseling or treatment requirements. After the initial review hearing referenced in subsection (F), the Court may waive Defendant's appearance at reviews or compel Defendant's attendance at reviews. The Court may review progress reports on the defendant from individual counseling, domestic abuse counseling, or the treatment program without appearances.

I. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, or is not making progress in treatment, the Court may:

1. order the defendant to further or continue counseling, treatment, or other necessary services; and

2. revoke all or any part of a suspended sentence, deferred sentence, or probation; and

3. subject the defendant to any or all remaining portions of the original sentence.

J. Nothing in this provision shall prohibit the Presiding Judge of the District Court from appointing and compensating a Special Master to hear all or designated cases set for review under this section.

K. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the Court.

L. Penalty enhancement—For the purposes of this section, any former conviction in any jurisdiction for assault and battery against any current or former spouse, any present spouse of a former spouse, parents, any foster parent, any child, any person otherwise related by blood or marriage, any person with whom the defendant is in a dating relationship, any individual with whom the defendant has had a child, any person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for an enhanced penalty under subsection (C) of this section as a second or subsequent offense.

M. In addition to any other civil or criminal penalty that may be sentenced, the court may order the defendant to pay the victim resititution the full amount of the victim’s losses as determined by the court to include:

1. Medical services relating to the physical, psychiatric, or psychological care;

2. Physical and occupational therapy or rehabilitation;

3. Necessary transportation, temporary housing, and child care expenses;

4. Lost income;

5. Attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

6. Any other losses suffered by the victim as approximate result of the offense.

§ 1132. Assault and battery domestic violence by strangulation—Definition

Any person who commits any assault or assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against a current or former spouse, a present spouse of a former spouse, parent, a foster parent, child, person otherwise related by blood or marriage, a person with whom the defendant is or who has been in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant, by means of a form of asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck, shall be guilty of the crime of domestic violence by strangulation.

§ 1133. Domestic abuse strangulation—Punishment

Upon conviction of domestic abuse by strangulation, defendant shall be punished by incarceration for a period of not less than one (1) year but no more than three (3) years, or by a fine of not more than Five Thousand Dollars ($5,000.00) plus restitution, or by both such fine and incarceration. Upon a second or subsequent conviction, the defendant shall be punished by imprisonment for a period of not less than three (3) years, or by a fine of not more than Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment. Provided, the prosecutor may refer such case for federal prosecution on a first offense or a second or subsequent offense.

§ 1134. Stalking

A. Definitions. For purposes of this section:

1. **"Course of conduct"** means a pattern of conduct composed of a series of two (2) or more separate acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

2. **"Emotional distress"** means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling.

3. **"Harasses"** means conduct directed toward a person that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the victim. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

4. **"Member of the immediate family"** means any spouse, parent, Child, person related within the third degree of consanguinity or affinity or any other person who regularly resides in the household or who has regularly resided in the household within the prior six (6) months.

5. **"Unconsented contact"** means any contact with another individual that is initiated or continued without the consent of the individual, or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Constitutionally protected activity is not included within the meaning of unconsented contact. Unconsented contact includes but is not limited to any of the following:

a. following or appearing within the sight of that individual;

b. approaching or confronting that individual in a public place or on private property;

c. appearing at the work place or residence of that individual;

d. entering onto or remaining on property owned, leased, or occupied by that individual;

e. contacting that individual by telephone;

f. sending mail or electronic communications to that individual; and

g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

B. Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that:

1. would cause a reasonable person or a member of the immediate family of that person as defined in subsection (F) below to feel frightened, intimidated, threatened, harassed, or molested; or

2. actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested, upon conviction, shall be guilty of the crime of stalking which is punishable by a fine of not more than Five Thousand Dollars ($5,000.00), by imprisonment for not more than one (1) year, or both.

C. Any person who violates the above provisions when any of the following conditions exist at the time of the offense shall be guilty of a separate offense which is punishable by a fine of not more than Five Thousand Dollars ($5,000.00), by imprisonment for a term not exceeding three (3) years, or both:

1. there is a temporary restraining order, a protective order, emergency ex parte order or an injunction in effect prohibiting the behavior described in this section against the same party, when the person violating such provisions has actual notice of the issuance of such order or injunction;

2. said person is on probation or parole, a condition of which prohibits the behavior described in this section against the same party; or

3. said person, within ten (10) years preceding the violation of this section, completed the execution of sentence or conviction of a crime involving the use or threat of violence against the same party, or against a member of the immediate family of such party.

D. Any person who is convicted of a second act of stalking within ten (10) years of the completion of sentence for a prior conviction under this section shall be punished by a fine of not more than Fifteen Thousand Dollars ($15,000.00), by imprisonment for a term not exceeding three (3) years, or both.

E. Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, shall give rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

CHAPTER 47

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD

HUMAN SKELETAL REMAINS AND BURIAL FURNITURE

§ 1151. Disposal of one's own body

A. Any person has the right to direct the manner in which his or her body shall be disposed of after death, and to direct the manner in which any part of his or her body which becomes separated therefrom during his or her lifetime shall be disposed of. The provisions of Section 1151 et seq. of this chapter do not apply where such person has given directions for the disposal of his or her body or any part thereof inconsistent with these provisions.

B. A person may assign the right to direct the manner in which his or her body shall be disposed of after death by executing a sworn affidavit stating the assignment of the right and the name of the person or persons to whom the right has been assigned.

C. If the decedent died while serving in any branch of the United States Armed Forces, the United States Reserve Forces or the National Guard, and completed a United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, the person authorized by the decedent pursuant to that form shall have the right to bury the decedent or to provide other funeral and disposition arrangements, including but not limited to cremation.

D. Any person who knowingly fails to follow the directions as to the manner in which the body of a person shall be disposed of pursuant to subsection A, B or C of this section, upon conviction thereof, shall be guilty of a misdemeanor punishable by a fine of not more than Five Thousand Dollars ($5,000.00).

§ 1151a. Forfeiture of right to dispose of body of decedent

Any person entitled by law to the right to dispose of the body of the decedent shall forfeit that right, and the right shall be passed on to the next qualifying person as listed in Section 1158 of Title 21 of the Oklahoma Statutes, in the following circumstances:

1. Any person charged with first or second degree murder or voluntary manslaughter in connection with the death of the decedent, and whose charges are known to the funeral director; provided, however that if the charges against such person are dropped, or if such person is acquitted of the charges, the right of disposition

shall be returned to the person;

2. Any person who does not exercise the right of disposition within three (3) days of notification of the death of the decedent or within five (5) days of the death of the decedent, whichever is earlier; or

3. If the district court, pursuant to Title 58 of the Oklahoma Statutes, determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this paragraph, "estranged" means a physical and emotional separation from the decedent at the time of death that clearly demonstrates an absence of due affection, trust and regard for the decedent.

§ 1152. Duty of burial

Except in the cases in which a right to dissect a dead body is expressly conferred by law, every dead body of a human being must be decently buried within a reasonable time after the death.

§ 1153. Burial in other states

The last section does not affect the right to carry the dead body of a human being through this Nation, or to remove from this Nation the body of a person dying within it, for the purpose of burying the same in another state or territory.

§ 1154. Autopsy--Definition--When allowed--Retention of tissue and specimens

A. Autopsy means a post mortem dissection of a dead human body in order to determine the cause, seat or nature of disease or injury and includes, but is not limited to, the retention of tissues for evidentiary, identification, diagnostic, scientific and therapeutic purposes.

B. An autopsy may be performed on the dead body of a human being in the following cases:
1. In cases authorized by positive enactment of the Council;

2. Whenever the death occurs under circumstances in which the medical examiner is authorized as provided in Title 63 of the Oklahoma Statutes to conduct such autopsy; or
3. Whenever consent is given to a licensed physician to conduct an autopsy on the body of a deceased person by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, or in the absence of any of the foregoing, a friend, or a person charged by law with the responsibility for burial. If two (2) or more such persons assume custody of the body, the consent of one of them shall be deemed sufficient.

C. 1. Any physician or hospital authorized to perform an autopsy pursuant to this section, whether by statutory authority or by consent from a person entitled to assume custody of the body for burial, shall be and is authorized to retain such tissue and specimens as the examining physician deems proper. Such tissue and specimens may be retained for examination, dissection or study in furtherance of determining the cause of death, or for evidentiary, diagnostic, or scientific purposes. Except with regard to medical examiners and the Office of the Chief Medical Examiner, this provision shall not apply if a person entitled to assume custody of the body for burial notifies the physician or hospital performing the autopsy prior to said autopsy of any objection to the retention of tissue and specimens obtained from the autopsy.

2. No physician or hospital authorized to perform an autopsy pursuant to this section shall be subject to criminal or civil liability for the retention, examination, dissection, or study of tissue and specimens obtained

from said autopsy under existing laws regarding the prevention of mutilation of dead bodies.

§ 1155. Unlawful dissection is a misdemeanor

Every person who makes or procures to be made any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.

§ 1156. Remains after dissection

In all cases in which a dissection has been made, the provisions of this chapter requiring the burial of a dead body, and punishing interference with or injuries to a dead body, apply equally to the remains of the body dissected as soon as the lawful purposes of such dissection have been accomplished.

§ 1157. Dead limb or member of body

All provisions of this chapter requiring the burial of a dead body, or punishing interference with or injuries to a dead body, apply equally to any dead limb or member of a human body, separated therefrom during lifetime.

§ 1158. Right to control disposition of the remains of a deceased person

The right to control the disposition of the remains of a deceased person, the location, manner and conditions of disposition, and arrangements for funeral goods and services vests in the following order, provided the person is eighteen (18) years of age or older and of sound mind:

1. The decedent, provided the decedent has entered into a pre-need funeral services contract or executed a written document that meets the requirements of the State of Oklahoma;

2. A representative appointed by the decedent by means of an executed and witnessed written document meeting the requirements of the State of Oklahoma;

3. The surviving spouse;

4. The sole surviving adult child of the decedent whose whereabouts is reasonably ascertained or if there is more than one adult child of the decedent, the majority of the surviving adult children whose whereabouts are reasonably ascertained;

5. The surviving parent or parents of the decedent, whose whereabouts are reasonably ascertained;

6. The surviving adult brother or sister of the decedent whose whereabouts is reasonably ascertained, or if there is more than one adult sibling of the decedent, the majority of the adult surviving siblings, whose whereabouts are reasonably ascertained;

7. The guardian of the person of the decedent at the time of the death of the decedent, if one had been appointed;

8. The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition;

9. If the decedent was an indigent person or other person the final disposition of whose body is the financial responsibility of the state or a political subdivision of the state, the public officer or employee responsible for arranging the final disposition of the remains of the decedent; and

10. In the absence of any person under paragraphs 1 through 9 of this section, any other person willing to assume the responsibilities to act and arrange the final disposition of the remains of the decedent, including the personal representative of the estate of the decedent or the funeral director with custody of the body, after attesting in writing that a good-faith effort has been made to no avail to contact the individuals under paragraphs 1 through 9 of this section.

§ 1158a. Court authority to award the right of disposition of body of decedent

The district court may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition, and may make decisions regarding the remains of the decedent if those sharing the right of disposition cannot agree. The following provisions shall apply to the determination of the court under this section:

1. If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and cannot, by majority vote, make a decision regarding the disposition of the remains of the decedent, any of the persons or a funeral director with custody of the remains may file a petition asking the district court to make a determination in the matter;

2. In making a determination under this section, the district court shall consider the following:

a. the reasonableness and practicality of the proposed funeral arrangements and disposition,

b. the degree of the personal relationship between the decedent and each person claiming the right of disposition,

c. the desires of the person or persons who are ready, willing and able to pay the cost of the funeral arrangements and disposition,

d. the convenience and needs of other families and friends wishing to pay respects,

e. the desires of the decedent, and

f. the degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;

3. In the event of a dispute regarding the right of disposition, a funeral director shall not be liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral director receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains. If the funeral director retains the remains for final disposition while the parties are in disagreement, the funeral director may embalm, refrigerate, or shelter the body in order to preserve it while awaiting the final decision of the district court and may add the cost of embalming, refrigeration or sheltering to the final disposition costs. If a funeral director brings an action under this section, the funeral director may add the legal fees and court costs associated with a petition under this section to the cost of final disposition. This

section shall not be construed to require or to impose a duty on a funeral director to bring an action under this section. A funeral director shall not be held criminally or civilly liable for choosing not to bring an action under this section; and

4. Except to the degree it may be considered by the district court under subparagraph c of paragraph 2 of this section, the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater right to the right of disposition than the person would otherwise have. The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

§ 1158b. Funeral service agreements--Instructions

Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the authority of the person to order such disposition. A funeral establishment shall have the right to rely on such funeral service contract or authorization and shall have the authority to carry out the instructions of the person or persons who the funeral director reasonably believes holds the right of disposition. The funeral director shall have no responsibility to contact or to independently investigate the existence of any next of kin or relative of the decedent. If there is more than one person in a class who are equal in priority and the funeral director has no knowledge of any objection by other members of such class, the funeral director shall be entitled to rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements; provided that no other person in such class provides written notice of objections to the funeral director.

§ 1158c. Funeral directors--Final disposition--Collection of charges

A funeral director shall have complete authority to control the final disposition and to proceed under this act to recover reasonable charges for the final disposition when both of the following apply:

1. The funeral director has actual knowledge that none of the persons described in paragraphs 1 through 7 of Section 1158 of this title exist or that none of the persons so described whose whereabouts are reasonably ascertained, can be found; and

2. The appropriate public or court authority fails to assume responsibility for disposition of the remains within thirty-six (36) hours after having been given written notice of the facts. Written notice may be delivered by hand, United States mail, facsimile transmission or electronic mail.

§ 1158d. Funeral director--Criminal and civil liability

No funeral establishment or funeral director who relies in good faith upon the instructions of an individual claiming the right of disposition shall be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions.

§ 1159. Neglect of burial

Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and, in addition to the

punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

§ 1160. Persons entitled to custody of body

The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it, except that in the cases in which an inquest is required by law to be held upon a dead body, the officer holding the inquest is entitled to its custody until such inquest has been completed.

§ 1161. Unlawful removal of dead body--Violation of or damage to casket or burial vault

A. No person shall intentionally remove the dead body of a human being or any part thereof from the initial site where such dead body is located for any purpose, unless such removal is authorized by a prosecutor or his authorized representative or medical examiner or his authorized representative, or is not required to be investigated pursuant to the provisions of Section 938 of Title 63 of the Oklahoma Statutes, said authorization by the prosecutor or medical examiner shall not be required prior to the removal of said body. A prosecutor having jurisdiction may refuse to prosecute a violation of this subsection if the prosecutor determines that circumstances existed which would justify such removal or that such removal was not an act of malice or wantonness.

B. No person shall remove any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it without authority of law, or from malice or wantonness.

C. No person shall willfully or with malicious intent violate or cause damage to the casket or burial vault holding the deceased human remains.

D. Any person convicted of violating any of the provisions of this section shall be guilty of a felony and shall be punished by imprisonment in the State Penitentiary not exceeding five (5) years, or in the county jail not exceeding one (1) year, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

§ 1161.1. Desecration of a human corpse--Penalty--Prosecution with other offenses-Definition

A. It is unlawful for any person to knowingly and willfully desecrate a human corpse for any purpose of:

1. Tampering with the evidence of a crime;

2. Camouflaging the death of human being;

3. Disposing of a dead body;

4. Impeding or prohibiting the detection, investigation or prosecution of a crime;

5. Altering, inhibiting or concealing the identification of a dead body, a crime victim, or a criminal offender; or

6. Disrupting, prohibiting or interfering with any law enforcement agency or the Office of the State Medical Examiner in detecting, investigating, examining, determining, identifying or processing a dead body, cause of death, the scene where a dead body is found, or any forensic examination or investigation relating to a dead body or a crime.

B. Upon conviction, the violator of any provision of this section shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not more than seven (7) years, by a fine not exceeding Eight Thousand Dollars ($8,000.00), or by both such fine and imprisonment.

C. This offense may be prosecuted in addition to any prosecution pursuant to Section 1161 of Title 21 of the Oklahoma Statutes for removal of a dead body or any other criminal offense.

D. For purposes of this section, "desecration of a human corpse" means any act committed after the death of a human being including, but not limited to, dismemberment, disfigurement, mutilation, burning, or any act committed to cause the dead body to be devoured, scattered or dissipated; except, those procedures performed by a state agency or licensed authority in due course of its duties and responsibilities for forensic examination, gathering or removing crime scene evidence, presentation or preservation of evidence, dead body identification, cause of death, autopsy, cremation or burial, organ donation, use of a cadaver for medical educational purposes, or other necessary procedures to identify, remove or dispose of a dead body by the proper authority.

§ 1162. Purchasing dead body

Whoever purchases, or who receives, except for the purpose of burial, any dead body of a human being, knowing the same has been removed contrary to Section 1161 of this title shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

§ 1163. Unlawful interference with places of burial

Any person who opens any grave or any place of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent either:
1. To remove any dead body of a human being for the purpose of selling the same, or for the purpose of dissection; or
2. To steal the coffin, or any part thereof or anything attached thereto, or connected therewith, or the vestments or other articles buried with the same,shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Two Hundred Fifty Dollars ($250.00), or by both such fine and imprisonment.

§ 1164. Removal to another burial place

Whenever a cemetery or other place of burial is lawfully authorized to be removed from one place to another, the right and duty to disinter, remove and rebury the remains of bodies there lying buried devolves upon the same persons required to bury the deceased in the order in which they there are named, and if they all fail to act, then upon the lawful custodians of the place of burial so removed. Every omission of such duty is punishable in the same manner as other omissions to perform the duty of making burial.

§ 1165. Arresting or attaching dead body

Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

§ 1166. Disturbing funerals

Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for the purpose

of any funeral, or who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying any dead body of a human being to a place of burial, is guilty of a misdemeanor.

§ 1167. Destruction, mutilation, etc. of cemetery structures, markers, etc.--Sale or barter of veteran markers

Every person who:

1. Shall willfully with malicious intent destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure placed in any cemetery or private burying ground, or any fence, railing, or other work for the protection or ornament of any such cemetery or place of burial of any human being, or tomb, monument or gravestone, memento, veteran marker from any war, or memorial, or other structure aforesaid, or of any lot within a cemetery, or shall willfully or with malicious intent destroy, cut, break, or injure any tree, shrub or plant, within the limits thereof; or

2. Knowingly buys, sells or barters for profit any veteran marker from any war that is placed on a lot within a cemetery or place of burial of any human being, shall be guilty of a misdemeanor if the amount of damage is less than Five Thousand Dollars ($5,000.00), and shall, upon conviction thereof, be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not less than ninety (90) days, or by both such fine and imprisonment. In addition, the court shall require the person to perform not more than one hundred twenty (120) hours of community service. If the amount of damage exceeds Five Thousand Dollars ($5,000.00) the person shall be guilty of a felony and shall, upon conviction thereof, be punished by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or by imprisonment in the county jail for not less than six (6) months, or by both such fine and imprisonment. In addition, the court shall require the person to perform not more than two hundred forty (240) hours of community service. The court shall not suspend any portion of the community service requirement set forth in this section.

HUMAN SKELETAL REMAINS AND BURIAL FURNITURE

§ 1168. Definitions

As used in this section and 21 CNCA §§ 1168.1 to 1168.6:

1. **"Archaeologist"** means the individual of this title appointed by the Principal Chief.

2. **"Burial furniture"** means any items intentionally placed with human remains at the time of burial and shall include but not be limited to burial markers, items of personal adornment, casket and hardware, stone, bone, shell and metal ornaments and elaborately decorated potteryvessels.

3. **"Burial grounds"** means any place where human skeletal remains are buried.

4. **"Historic Preservation Officer"** means the individual of this title appointed by the Principal Chief.

5. **"Human skeletal remains"** means the bony portion of a human body which remains after the **flesh has decomposed.**

§ 1168.1. Buying, selling, transporting or bartering for profit of human skeletal remains or associated burial furniture—Crime

Anyone who knowingly buys, sells, transports or barters for profit human skeletal remains or associated burial furniture, previously buried within Cherokee Nation, shall be guilty of a crime.

§ 1168.2. Certain institutions and museums to consult tribal leaders or certain Nation entities before disposition of remains

Accredited educational institutions, or officially designated institutions or museums as provided by 53 O.S. § 361, coming into possession or knowledge of human skeletal remains or associated burial furniture from Cherokee Nation shall consult with tribal leaders, identified by the Principal Chief, regarding the final disposition of said remains prior to any activities related to scientific or educational purposes. Where direct historical ties to existing tribal groups cannot be established, consultation regarding final disposition shall take place with the Oklahoma Historic Preservation Officer, Oklahoma Nation Archaeologist and the Director of the Oklahoma Museum of Natural History.

§ 1168.3. Display of open burial ground, furniture or skeletal remains for profit or commercial enterprise

A. Anyone who knowingly displays an open burial ground, burial furniture or human skeletal remains previously buried in Cherokee Nation for profit or to aid and abet a commercial enterprise or any other form of exploitation that defers final disposition of said remains, shall be guilty of a crime and each day of display shall be a separate offense.

B. Anyone who knowingly displays human skeletal remains previously buried in Cherokee Nation shall be guilty of a crime and each day of display shall be a separate offense.

§ 1168.4. Discovery of remains or furniture—Reporting and notification procedure

A. All persons who encounter or discover human skeletal remains or what they believe may be human skeletal remains or burial furniture thought to be associated with human burials in or on the ground shall immediately cease any activity which may cause further disturbance and shall report the presence and location of such human skeletal remains to an appropriate law enforcement officer.

B. Any person who willfully fails to report the presence or discovery of human skeletal remains or what they believe may be human skeletal remains within forty-eight (48) hours to an appropriate Cherokee Nation Marshal shall be guilty of a misdemeanor.

C. Any person who knowingly disturbs human skeletal remains or burial furniture other than a law enforcement officer, registered mortician, a representative of the Office of the Chief Medical Examiner, a professional archaeologist or physical anthropologist, or other officials designated by law in performance of official duties, shall be guilty of a felony.

D. Anyone not covered under subsection (C) of this section who disturbs or permits disturbance of a burial ground with the intent to obtain human skeletal remains or burial furniture shall be guilty of a felony.

E. The law enforcement officer, if there is a reason to believe that the skeletal remains may be human,

shall promptly notify the landowner and the Chief Medical Examiner. If remains reported under 21 CNCA §§ 1168.1 through 1168.6 are not associated with or suspected of association with any crime, the Archaeologist and Historic Preservation Officer shall be notified within fifteen (15) days. If review by the Archaeologist and the Historic Preservation Officer of the human skeletal remains and any burial furniture demonstrates or suggests a direct historical relationship to a tribal group, then the Archaeologist shall:

1. Notify the Historic Preservation Officer; and

2. Consult with the tribal leader within fifteen (15) days regarding any proposed treatment or scientific studies and final disposition of the materials. If said remains have a direct relationship to a tribal group which is not specifically found to be in Cherokee Nation then the Archaeologist and the Historic Preservation Officer shall make reasonable attempts to contact the proper tribal group for a determination of the final disposition of the remains.

§ 1168.5. Designation of repository for remains and furniture for scientific purposes

If the human skeletal remains and any burial furniture are not directly related to a tribal group or if the remains are not claimed by the consulted entity, the Archaeologist and the Historic Preservation Officer with the Director of the Oklahoma Museum of Natural History may designate a repository for curation of skeletal remains and burial furniture for scientific purposes.

§ 1168.6. Penalties

A. Any person convicted of a misdemeanor pursuant to the provisions of Sections 1168 through 1168.5 of this title shall be punishable by a fine not exceeding Five Hundred Dollars ($500.00), by imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

B. Any person convicted of a felony pursuant to the provisions of Sections 1168 through 1168.5 of this title shall be punishable by a fine not exceeding One Thousand Dollars ($1,000.00), by imprisonment for a term not exceeding three (3) years, or by both such fine and imprisonment.

CHAPTER 47A

GENERAL AND MISCELLANEOUS PROVISIONS

§ 1171. Peeping Tom—Use of photographic, electronic or video equipment—Offenses and punishment—Definition

A. Every person who hides, waits or otherwise loiters in the vicinity of any private dwelling house, apartment building, any other place of residence, or in the vicinity of any locker room, dressing room, restroom, or any other place where a person has a right to a reasonable expectation of privacy, with the unlawful and willful intent to watch, gaze, or look upon any person in a clandestine manner, is guilty of a misdemeanor punishable by a term of imprisonment not to exceed one (1) year or by imposition of a fine in an amount not to exceed Five Thousand Dollars ($5,000), or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment.

B. Every person who uses photographic, electronic or video equipment in a clandestine manner for any illegal, illegitimate, prurient, lewd or lascivious purpose with the unlawful and willful intent to view, watch, gaze or look upon any person without the knowledge and consent of such person when the person viewed is in a place where there is a right to a reasonable expectation of privacy, or who publishes or distributes any image obtained from such act, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment.

C. Every person who uses photographic, electronic or video equipment in a clandestine manner for any illegal, illegitimate, prurient, lewd or lascivious purpose with the unlawful and willful intent to view, watch, gaze or look upon any person and capture an image of a private area of a person without the knowledge and consent of such person and knowingly does so under circumstances in which a reasonable person would believe that the private area of the person would not be visible to the public, regardless of whether the person is in a public or private place shall, upon conviction, be guilty of a misdemeanor. The violator shall be punished by a term of imprisonment not to exceed one (1) year or by imposition of a fine in an amount not to exceed Five Thousand Dollars ($5,000), or by both such fine and imprisonment.

D. As used in this section, the phrase “private area of the person” means the naked or undergarment-clad genitals, pubic area, buttocks, or any portion of the areola of the female breast of that individual.

E. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

§ 1172. Obscene, threatening or harassing telephone calls—Penalty

A. It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either:

1. Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent;

2. Makes a telecommunication or other electronic communication including text, sound or images with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to any person or property of that person;

3. Makes a telecommunication or other electronic communication, whether or not conversation ensues, with intent to put the party called in fear of physical harm or death;

4. Makes a telecommunication or other electronic communication, including test, sound or images whether or not conversation ensues, without disclosing the identity of the person making the call or communication and with intent to annoy, abuse, threaten, or harass any person at the called number;

5. Knowingly permits any telecommunication or other electronic communication under the control of the person to be used for any purpose prohibited by this section; and

6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications

or simultaneous calls or electronic communications solely to harass any person at the called number(s).

B. As used in this section, **"telecommunication"** and **"electronic communication"** mean any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet. The term includes:

1. A communication initiated by electronic mail, instant message, network call, or facsimile machine including text, sound, or images; and

2. A communication made to a pager; or

3. A communication including text, sound or images posted to a social media or other public media source.

C. Use of a telephone or other electronic communications facility under this section shall include all use made of such a facility between the points of origin and reception. Any offense under this section is a continuing offense and shall be deemed to have been committed at either the place of origin or the place of reception.

D. Except as provided in subsection E of this section, any person who is convicted of the provisions of subsection A of this section, shall be guilty of a misdemeanor.

E. Any person who is convicted of a second offense under this section shall be guilty of a felony.

§ 1173. Stalking--Penalties

A. Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that:

1. Would cause a reasonable person or a member of the immediate family of that person as defined in subsection F of this section to feel frightened, intimidated, threatened, harassed, or molested; and

2. Actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested, shall, upon conviction, be guilty of the crime of stalking, which is a misdemeanor punishable by imprisonment for not more than one (1) year, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

B. Any person who violates the provisions of subsection A of this section when:

1. There is a permanent or temporary restraining order, a protective order, an emergency ex parte protective order, or an injunction in effect prohibiting the behavior described in subsection A of this section against the same party, when the person violating the provisions of subsection A of this section has actual notice of the issuance of such order or injunction;

2. Said person is on probation or parole, a condition of which prohibits the behavior described in subsection A of this section against the same party or under the conditions of a community or alternative punishment; or

3. Said person, within ten (10) years preceding the violation of subsection A of this section, completed the execution of sentence for a conviction of a crime involving the use or threat of violence against the same party, or against any member of the immediate family of such party, shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or by both such fine and imprisonment.

C. Any person who:

1. Commits a second act of stalking within ten (10) years of the completion of sentence for a prior conviction of stalking; or

2. Has a prior conviction of stalking and, after being served with a protective order that prohibits contact with an individual, knowingly makes unconsented contact with the same individual, shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine of not less than Two Thousand Five Hundred Dollars ($2,500.00), or by both such fine and imprisonment.

D. Any person who commits an act of stalking within ten (10) years of the completion of execution of sentence for a prior conviction under subsection B or C of this section shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not exceeding three (3) years, or by a fine of not less than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

E. Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact, as defined in subsection F of this section, with the victim after having been requested by the victim to discontinue the same or any other form of unconsented contact, and to refrain from any further unconsented contact with the victim, shall give rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

F. For purposes of determining the crime of stalking, the following definitions shall apply:

1. “Harasses” means a pattern or course of conduct directed toward another individual that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the victim. Harassment shall include harassing or obscene phone calls as prohibited by Section 1172 of this title and conduct prohibited by Section 850 of this title. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

2. “Course of conduct” means a pattern of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct”;

3. “Emotional distress” means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling;

4. “Unconsented contact” means any contact with another individual that is initiated or continued without the consent of the individual, or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Constitutionally protected activity is not included within the meaning of unconsented contact. Unconsented contact includes but is not limited to any of the

following:

a. following or appearing within the sight of that individual,

b. approaching or confronting that individual in a public place or on private property,

c. appearing at the workplace or residence of that individual,

d. entering onto or remaining on property owned, leased, or occupied by that individual,

e. contacting that individual by telephone,

f. sending mail or electronic communications to that individual, and

g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual;

5. "Member of the immediate family", for the purposes of this section, means any spouse, parent, child, person related within the third degree of consanguinity or affinity or any other person who regularly resides in the household or who regularly resided in the household within the prior six (6) months; and

6. "Following" shall include the tracking of the movement or location of an individual through the use of a Global Positioning System (GPS) device or other monitoring device by a person, or person who acts on behalf of another, without the consent of the individual whose movement or location is being tracked; provided, this shall not apply to the lawful use of a GPS device or other monitoring device or to the use by a new or used motor vehicle dealer or other motor vehicle creditor of a GPS device or other monitoring device, including a device containing technology used to remotely disable the ignition of a motor vehicle, in connection with lawful action after default of the terms of a motor vehicle credit sale, loan or lease, and with the express written consent of the owner or lessee of the motor vehicle.

§ 1174. Burning cross with intent to intimidate

It shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place. Any person who shall violate any provision of this section shall be guilty of a felony.

PART V

CRIMES AGAINST PUBLIC HEALTH AND SAFETY

CHAPTER 48

GENERAL AND MISCELLANEOUS PROVISIONS

§ 1190. Hazing—Prohibition—Presumption as forced activity—Penalty—Definition

A. No student organization or any person associated with any organization sanctioned or authorized by the governing board of any public or private school or institution of higher education in this nation shall engage or participate in hazing.

B. Any hazing activity described in subsection (F) of this section upon which the initiation or admission into or affiliation with an organization sanctioned or authorized by a public or private school or by any institution of higher education in this nation is directly or indirectly conditioned shall be presumed to be a forced activity, even if the student willingly participates in such activity.

C. A copy of the policy or the rules or regulations of the public or private school or institution of higher education which prohibits hazing shall be given to each student enrolled in the school or institution and shall be deemed to be part of the bylaws of all organizations operating at the public school or the institution of higher education.

D. Any organization sanctioned or authorized by the governing board of a public or private school or of an institution of higher education in this Nation which violates subsection (A) of this section, upon conviction, shall be guilty of a crime, and may be punishable by a fine of not more than One Thousand Five Hundred Dollars ($1,500.00) and the forfeit for a period of not less than one (1) year all of the rights and privileges of being an organization organized or operating at the public or private school or at the institution of higher education.

E. Any individual convicted of violating the provisions of subsection (A) of this section shall be guilty of a misdemeanor, and may be punishable by imprisonment for not to exceed ninety (90) days, or by the imposition of a fine not to exceed Five Hundred Dollars ($500.00), or by both such imprisonment and fine.

F. For purposes of this section:

1. **"Hazing"** means an activity which recklessly or intentionally endangers the mental health or physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating subject to the sanction of the public or private school or of any institution of higher education in this Nation;

2. "Endanger the physical health" shall include but not be limited to any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, alcoholic beverage as defined in Section 506 of Title 37 of the Oklahoma Statutes, low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, drug, controlled dangerous substance, or other substance, or any other forced physical activity which could adversely affect the physical health or safety of the individual; and

3. **"Endanger the mental health"** shall include any activity, except those activities authorized by law, which would subject the individual to extreme mental stress, such as prolonged sleep deprivation, forced prolonged exclusion from social contact, forced conduct which could result in extreme embarrassment, or any other forced activity which could adversely affect the mental health or dignity of the individual.

§ 1191. Public nuisance a crime

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

§ 1192. Spread of infectious diseases

Any person who shall inoculate himself or any other person or shall suffer himself to be inoculated with smallpox, syphilis or gonorrhea and shall spread or cause to be spread to any other persons with intent to or recklessly be responsible for the spread of or prevalence of such infectious disease, shall be deemed a felon, and, upon conviction thereof, guilty of a felony and shall be punished by imprisonment for not more than three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00).

§ 1192.1. Knowingly engaging conduct reasonably likely to HIV virus

A. It shall be unlawful for any person knowing that he or she has Acquired Immune Deficiency Syndrome (AIDS) or is a carrier of the human immunodeficiency virus (HIV) and with intent to infect another, to engage in conduct reasonably likely to result in the transfer of the person's own blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another, or through the skin or other membranes of another person, except during in utero transmission of blood or bodily fluids, and:

1. The other person did not consent to the transfer of blood, bodily fluids containing blood, semen, or vaginal secretions; or

2. The other person consented to the transfer but at the time of giving consent had not been informed by the person that the person transferring such blood or fluids had AIDS or was a carrier of HIV.

B. Any person convicted of violating the provisions of this section shall be guilty of afelony, punishable by imprisonment for a term not to exceed three (3) years.

§ 1194. Gas tar, throwing into public water

Every person who throws or deposits any gas tar, or refuse of any gas house or factory, into any public waters, river or stream, or into any sewer or stream emptying into any such public waters, river or stream, is guilty of a misdemeanor.

§ 1195. Quarantine regulations, violating

Every person who having been lawfully ordered by any health officer to be detained in quarantine and not having been discharged leaves the quarantine grounds or willfully violates any quarantine law or regulation, is guilty of a misdemeanor.

§ 1196. Apothecary liable for negligence--Willful or ignorant acts or omissions

Every apothecary or every person employed as clerk or salesman by an apothecary, or otherwise carrying on business as a dealer in drugs or medicines, who, in putting up any drugs or medicines, willfully, negligently or ignorantly omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor.

§ 1197. Poisons, laying out

Whosoever shall willfully lay out poison with the intent that the same be taken by any domestic animal, or in such a manner as to endanger human life; or whoever shall, if in open range livestock territory, lay out poisons except in a safe place on his own premises, is guilty of a misdemeanor.

§ 1198. Fires, refusing to aid at or interfering with others' acts

Every person who, at any burning of a building, is guilty of any disobedience to lawful orders of any public officer or fireman, or of any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or of any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

§ 1199. Contagious disease, exposing oneself or another with

Every person who willfully exposes himself or another person, being affected with any contagious disease in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

§ 1200. Frauds affecting market price

Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false and fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

§ 1201. Newspapers, false statements in

Every editor or proprietor of any newspaper who willfully publishes in such newspaper as true, any statement which he has not good reason to believe to be true, with intent to increase thereby the sales of copies of such paper, is guilty of a misdemeanor.

§ 1202. Eavesdropping

Every person guilty of secretly loitering about any building, with intent to overhear discourse therein, and to repeat or publish the same to vex, annoy, or injure others, is guilty of a misdemeanor.

§ 1204. Reserved.

§ 1205. Throwing, leaving, or depositing trash near highway, road, or occupied dwelling

It shall be unlawful for any person to throw or leave or deposit garbage, tin cans, junk, rubbish or refuse and other items and matters commonly referred to as trash within one hundred (100) yards of any state highway or any county road or the occupied dwelling of another, except when the placement of such materials is along a collection route for the specific intent and purpose of scheduled collection and transportation to a recycling or disposal facility serving the area. Provided, however, that the Nation or any city or town operating or desiring to operate a solid waste disposal site within the distance above prescribed may establish

said solid waste disposal site when said solid waste disposal site is approved by the Oklahoma Department of Environmental Quality or operated under a permit issued by the Cherokee Nation.

§ 1206. Punishment for violations

Any person or any officer of any city or town violating any of the provisions of this act shall upon conviction be fined not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00), or be imprisoned for not more than ninety (90) days, or by both such fine and imprisonment.

§ 1207. Reserved

§ 1208. Abandonment of refrigerators and iceboxes in places accessible to children—Penalty

Any person, firm or corporation who abandons or discards, in any place accessible to children, any refrigerator, icebox, or ice chest, of a capacity of one and one-half (1 1/2) cubic feet or more, which has an attached lid or door which may be opened or fastened shut by means of an attached latch, or who, being the owner, lessee, or manager of such place, knowingly permits such abandoned or discarded refrigerator, icebox or ice chest to remain in such condition, shall be deemed negligent as a matter of law and shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars ($500.00), or imprisoned not more than one (1) year, or both such fine and imprisonment.

DISASTER AREAS

§ 1209. Disaster areas—Prevention of unauthorized persons from hampering rescue operations

The purpose of this act is to prevent sightseers, thrill-seekers, souvenir hunters and other unauthorized persons from hampering the work of rescue operations in a disaster area.

§ 1210. Definitions

For the purpose of, and when used in this act:

1. The term “disaster area” means the scene or location of a natural or military disaster, an explosion, an aircraft accident, a fire, a railroad accident and a major traffic accident.

2. "Authorized person" shall include all nation, county and municipal police and fire personnel; hospital and ambulance crews; National Guard and Emergency Management personnel ordered into the disaster area by proper authority; federal civil and military personnel on official business; persons who enter the disaster area to maintain or restore facilities for the provision of water, electricity, communications, or transportation to the public; and such other officials as have a valid reason to enter said disaster area.

§ 1211. Following of emergency vehicles unlawful

It shall be unlawful for the driver of any vehicle other than one on official business to follow any emergency vehicle or to purposely drive to any location on or near a highway where a disaster area exists.

§ 1211.1. Disruption or prevention of emergency telephone call--Penalties

Any person who intentionally interrupts, disrupts, impedes or interferes with an emergency telephone call or intentionally prevents or hinders another person from placing an emergency telephone call shall be guilty of a misdemeanor. Upon conviction, the person shall be punished by imprisonment for not more than one (1) year, or by a fine of not more than Three Thousand Dollars ($3,000.00), or by both such fine and imprisonment.

§ 1212. Proceeding to or remaining at disaster area unlawful—Removal of objects

It shall be unlawful for any person except an authorized person to proceed to or to remain at a disaster area for the purpose of being a bystander, spectator, sightseer or souvenir hunter; or for any such person to take or remove from the disaster area, or disturb or move, any material objects, equipment or thing either directly or indirectly relating or pertaining to the disaster.

§ 1213. Penalties

A. It is a misdemeanor for any person to violate any of the provisions of Section 1209 et seq. this title.

B. Every person convicted of a misdemeanor for violating any provision of Section 1209 et seq. of this title shall be punished by a fine of not more than Three Thousand Dollars ($3,000.00) or by imprisonment for not more than one (1) year, or by both such fine and imprsionment.

§ 1214. Radio sets capable of receiving on police frequencies—Unlawful uses

It shall be unlawful for any person to operate a mobile radio capable of receiving transmissions made by any law enforcement agency for illegal purposes, or while in the commission of a crime and not otherwise and any person violating the provisions hereof shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than three (3) years, or fined by not more than Five Thousand Dollars ($5,000.00), or by both such imprisonment and fine.

§ 1215. Intoxicating beverages—Possession by persons under age twenty-one unlawful

It shall be unlawful for any person under the age of twenty-one (21) years to be in the possession of any intoxicating beverage containing more than three and two-tenths percent (3.2%) alcohol by weight while such person is upon any public street, road, or highway or in any public building or place.

§ 1216. Penalties

Any person violating the provisions of 21 CNCA § 1215 shall be guilty of a crime and upon conviction thereof shall be punished by imprisonment for a term not to exceed thirty (30) days or by payment of a fine not to exceed Five Hundred Dollars ($500.00) or by both such fine and imprisonment.

§ 1217. Firemen—Interference with performance of duties—Penalty

Any person or persons acting in concert with each other who knowingly and willfully interfere with, molest, or assault firemen in the performance of their duties, or who knowingly and willfully obstruct, interfere with

or impede the progress of firemen to reach the destination of a fire, shall be deemed guilty of a felony and shall be punished therefor by imprisonment for a term not exceeding three (3) years.

§ 1218. Display of names of military dead at demonstrations or protests without consent prohibited

It shall be unlawful for the names of persons killed in military action to be carried, displayed on cards or placards, or otherwise published for the purpose of any antiwar, antipolice action or antidraft demonstration or protest on the grounds of schools, colleges, universities, state institutions or facilities, county or city institutions or facilities, which are wholly or in part supported by public funds, or on any other public property such as parks and streets dedicated to public use, without the written consent of the surviving spouse of such deceased person, if married at time of death or, if unmarried, the written consent of one or both parents, or if they both be deceased, then the next of kin.

§ 1219. Penalties

Any person violating the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than (1) year or shall be fined an amount not to exceed Five Hundred Dollars ($500.00) or by both such imprisonment and fine.

§ 1220. Transporting intoxicating beverage—or low-point beer—Prohibition—Special Assessment--Exceptions—Penalty

A. Except as provided in subsection C of this section, it shall be unlawful for any operator to knowingly transport or for any passenger to possess in any moving vehicle upon a public highway, street or alley any intoxicating beverage or low-point beer, as defined by 37 O.S. §§ 163.1 and 163.2, except in the original container which shall not have been opened and from which the original cap or seal shall not have been removed, unless the opened container be in the rear trunk or rear compartment, which shall include the spare tire compartment in a station wagon or panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while it is in motion. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished as provided in subsection A of Section 566 of Title 37 of the Oklahoma Statutes.

B. Any person convicted of violating any provision of subsection A of this section shall, in addition to any fine imposed, pay a special assessment trauma-care fee of One Hundred Dollars ($100.00) to be deposited into the Trauma Care Assistance Revolving Fund created in Section 1-2522 of Title 63 of the Oklahoma Statutes.

C. The provisions of subsection A of this section shall not apply to the passenger area of buses and limousines; however, it shall be unlawful for the driver of the bus or limousine to consume or have in the driver's immediate possession any intoxicating beverage or low-point beer.

D. No city, town, or county may adopt any order, ordinance, rule or regulation concerning the consumption or serving of intoxicating beverages or low-point beer in buses or limousines.

E. As used in this section:

1. "Bus" means a vehicle as defined in Section 1-105 of Title 47 of the Oklahoma Statutes chartered for transportation of persons for hire. It shall not mean a school bus, as defined by Section 1-160 of Title 47 of the Oklahoma Statutes, transporting children or a vehicle

operated pursuant to a franchise with a city or town operating over a regularly scheduled route; and

2. "Limousine" means a chauffeur-driven motor vehicle, other than a bus or taxicab, as defined by Section 1-174 of Title 47 of the Oklahoma Statutes, designed and used for transportation of persons for compensation.

§ 1220.1. Prohibition of alcohol inhalation device

It is unlawful for any person to buy, sell, furnish, manufacture or possess any alcohol inhalation device, alcohol infuser or any other device capable of causing a blood or breath alcohol concentration in the human body by means of fumes, vapors, gases, air particles or matter inhaled directly into the central nervous system by mouth or nasal passages. Any person convicted of any violation of this section shall be guilty of a misdemeanor punishable by a fine of no more than Three Thousand Dollars ($3,000.00). The Cherokee Nation Tax Commission is prohibited from licensing any establishment for consumption of alcohol from such prohibited devices, and shall permanently revoke any license issued to any person convicted of any violation of this section. Provided, however, that any inhalation device which may contain alcohol and is intended or used for medicinal purposes, whether it is available for over-the-counter or by prescription purchase, shall be exempt from these provisions.

CHAPTER 49

ANIMALS AND CARCASSES

§ 1221. Reserved

§ 1222. Reserved

§ 1223. Leaving carcass in certain places unlawful

A. It shall be unlawful for any person to leave or deposit, or cause to be deposited or left the carcass of any animal, chicken or other fowl in any well, spring, pond or stream of water; or leave or deposit the same within one-fourth (1/4) mile of any occupied dwelling or of any public highway, without burying or disposing of the carcass in accordance with the recommendations and requirements of the Oklahoma Department of Agriculture, Food, and Forestry.

B. It shall be the duty of the owner of any domestic animal in this Nation to dispose of any carcass within twenty-four (24) hours after notice of the knowledge of the death. Disposal shall be in accordance with the recommendations and requirements of the Oklahoma Department of Agriculture, Food, and Forestry. It shall be unlawful to bury any carcass in any land along any stream or ravine where it may become exposed through erosion of the soil, or where the land is at any time subject to overflow.

C. "Owner" shall mean and include any person having possession of domestic animals either by reason of ownership, rent, hire, loan, or otherwise.

D. Any person who violates this section shall be guilty of a misdemeanor.

§ 1224. Reserved

§ 1229. Exhibition livestock--Administration of certain substances or performance of certain surgical

procedures to alter appearance

For livestock utilized for exhibition purposes, it shall be unlawful for any person to inject into the livestock or cause the livestock to ingest any drug, chemical or substance that is not labeled for use on animals, or to administer any chemical or substance used on livestock for the specific purpose of altering the appearance of livestock or to alter the muscle or fat content of the animal's carcass or to perform any surgical procedure to alter the appearance of the livestock. Ordinary and customary veterinarian procedures, including but not limited to dehorning, branding, tagging or notching ears, castrating, deworming, vaccinating or docking the tail of farm animals shall not be prohibited. Surgery of any kind performed to change the natural contour or appearance of the animal's body or hide, shall be prohibited by this section. Any violation of the provisions of this section shall be a misdemeanor, upon conviction, punishable by a fine of not more than Ten Thousand Dollars ($10,000.00), or by imprisonment for a term not more than one (1) year, or by both such fine and imprisonment. A second or subsequent violation of the provisions of this section shall be a felony, upon conviction, punishable by a fine of not more than Ten Thousand Dollars ($10,000.00), or by imprisonment for a term not more than three (3) years, or by both such fine and imprisonment.

CHAPTER 50

TOBACCO

§ 1241. Furnishing cigarettes or other tobacco or vapor products topersons under 21--Punishment

A. Any person who shall furnish to any person under the age of twenty-one (21) by gift, sale or otherwise any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product, or vapor products shall be guilty of a misdemeanor and upon conviction shall be punished by a fine in the amount of not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Dollars ($200.00) or by imprisonment for not more than ninety (90) days for each offense.

B. For the purposes of this chapter, “vapor product” shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. “Vapor products” shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of a solution, that may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic device. “Vapor products” do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

§ 1242. Refusing of minor to disclose place and person from whom obtained

Any person under the age of twenty-one (21) being in possession of cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product, or vapor products and being by any police officer, constable, juvenile court officer, truant officer, or teacher in any school, asked where and from whom such cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product, or vapor products were obtained, who shall refuse to furnish such information, shall be guilty of a misdemeanor and upon conviction thereof before the District Court, or any Judge of the District Court, such minor being of the age of sixteen (16) years or upwards shall be sentenced to pay a fine not exceeding Five Dollars ($5.00) or to undergo an imprisonment in the jail of the proper county not exceeding five (5) days, or both; if such

minor shall be under the age of sixteen (16) years, he or she shall be certified by such magistrate or justice to the juvenile court of the county for such action as the court shall deem proper.

§ 1247. Smoking in certain public areas prohibited—Punishment

A. The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any indoor place used by or open to the public, whether indoors or outdoors, public transportation, or any indoor workplace, except where specifically allowed by law. Commercial airport operators may prohibit the use of lighted tobacco or lighted marijuana or the vaping of marijuana in any area that is open to or used by the public whether located indoors or outdoors, provided that the outdoor area is within one hundred seventy-five (175) feet from an entrance.

As used in this section, "indoor workplace" means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed.

B. All buildings and other properties, or portions thereof, owned or operated by this Nation shall be designated as nonsmoking. Smoking tobacco shall only be allowed in designated outdoor smoking areas.

C. No tobacco or marijuana smoking or marijuana vaping shall be allowed within twenty-five (25) feet of the entrance or exit of any building specified in subsection B of this section.

The restrictions on tobacco smoking provided in this section shall not apply to the following:

1. The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;

2. The room or rooms where bingo, gambling, or other activities licensed, regulated, or operated by the Cherokee Nation under Title 4 of this Code.

3. Up to twenty-five percent (25%) of the guest rooms at a hotel or other lodging establishment;

4. Retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;

5. Workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an employee, present at the business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;

6. Workplaces occupied exclusively by one or more tobacco smokers, if the workplace has only

incidental public access;

7. Private offices occupied exclusively by one or more smokers;

8. Workplaces within private residences, except that smoking tobacco or marijuana or vaping marijuana shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;

9. Medical research or treatment centers, if tobacco smoking is integral to the research or treatment. Furthermore, the restrictions on smoking or vaping of marijuana provided in this section shall not apply to medical research or treatment centers, if marijuana smoking or vaping is integral to the research or treatment;

10. A facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Section 501(c)(8), 501(c)(10) or 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public; and

11. Any outdoor seating area of a restaurant; provided, smoking tobacco or smoking or vaping marijuana shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of a restaurant.

E. An employer not otherwise restricted from doing so may elect to provide tobacco smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for tobacco smoking, provided each tobacco smoking room is fully enclosed and exhausted directly to the outside in such a manner that no tobacco smoke can drift or circulate into a nonsmoking area. No exhaust from a tobacco smoking room shall be located within fifteen (15) feet of any entrance, exit or air intake.

F. If tobacco smoking is to be permitted in any space exempted in this section of this section or in a tobacco smoking room pursuant to subsection H of this section, such tobacco smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the tobacco smoking space shall be fully enclosed, exhausted directly to the outside with no air from the tobacco smoking space circulated to any nonsmoking area, and under negative air pressure so that no tobacco smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a tobacco smoking room shall not be exhausted within fifteen (15) feet of any entrance, exit or air intake. Any employer may choose a more restrictive tobacco smoking policy, including being totally tobacco smoke free.

G. Notwithstanding any other provision of this section, until March 1, 2006, restaurants may have designated tobacco smoking and nonsmoking areas or may be designated as being a totally nonsmoking area. Beginning March 1, 2006, restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated tobacco smoking rooms. Food and beverage may be served in such designated tobacco smoking rooms which shall be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so tobacco smoke cannot escape when a door is opened, and no air is recirculated to nonsmoking areas of the building. No exhaust from such room shall be located within twenty-five (25) feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of

this subsection by the State Department of Health.

H. The person who owns or operates a place where tobacco smoking or use is prohibited by law shall be responsible for posting a sign or decal, at least four (4) inches by two (2) inches in size, at each entrance to the building indicating that the place is smoke-free or tobacco-free.

I. Responsibility for posting signs or decals shall be as follows:

1. In privately owned facilities, the owner or lessee, if a lessee is in possession of the facilities, shall be responsible;

2. In corporately owned facilities, the manager and/or supervisor of the facility involved shall be responsible; and

3. In publicly owned facilities, the manager and/or supervisor of the facility shall be responsible.

J. Any person who knowingly violates the provisions of this section shall be punished by a citation and fine of not more than One Hundred Dollars ($100.00).

§ 1253. Failure to ring bell of locomotive

Every person in charge, as engineer of a locomotive engine, who omits to cause a bell to ring or a steam whistle to sound at the distance of at least eighty (80) rods from the place where the track crosses, on the same level, any traveled public way, is punishable by a fine not exceeding Fifty Dollars ($50.00), or by imprisonment for a term not exceeding sixty (60) days.

§ 1254. Drunken engineer or conductor or driver

Every person who, while in charge, as engineer, of a locomotive engine, or while acting as conductor or driver upon a railroad train or car, whether propelled by steam or drawn by horses, is intoxicated, is guilty of a misdemeanor.

§ 1255. Railroad officers, servants and agents, neglect of duty

Every engineer, conductor, brakeman, switch-tender or other officer, agent or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent or servant, by which human life or safety is endangered or property is injured or destroyed, the punishment for which is not otherwise prescribed, is guilty of a misdemeanor.

PART VI

CRIMES AGAINST PUBLIC PEACE

PART VI

CRIMES AGAINST PUBLIC PEACE

CHAPTER 53

MANUFACTURING, SELLING AND WEARING WEAPONS

CHEROKEE NATION FIREARMS ACT OF 1971

§ 1272. Unlawful carry

Notwithstanding any other provision of law, it shall be unlawful for any person to carry upon or about his person, or in his purse or other container belonging to the person, any pistol, revolver, shotgun or rifle whether loaded or unloaded or any, blackjack, loaded cane, , hand chain, metal knuckles, or any other offensive weapon, whether such weapon be concealed or unconcealed, except this section shall not prohibit:

1. The proper use of guns and knives for self-defense, hunting, fishing, educational or recreational purposes;
2. The carrying or use of weapons in a manner otherwise permitted by statute;
3. The carrying, possession and use of any weapon by a peace officer or other person authorized by law to carry a weapon in the performance of official duties and in compliance with the rules of the employing agency;
4. The carrying or use of weapons in a courthouse by a district judge, associate district judge or special district judge within this state, who is in possession of a valid handgun license issued pursuant to the provisions of relevant Oklahoma law and whose name appears on a list maintained by the Administrative Director of the Courts;
5. The carrying and use of firearms and other weapons provided in this subsection when used for the purpose of living history reenactment. For purposes of this paragraph, "living history reenactment" means depiction of historical characters, scenes, historical life or events for entertainment, education, or historical documentation through the wearing or use of period, historical, antique or vintage clothing, accessories, firearms, weapons, and other implements of the historical period;
6. The carrying of a firearm, concealed or unconcealed, loaded or unloaded, by a person who is twenty-one (21) years of age or older or by a person who is eighteen (18) years of age but not yet twenty-one (21) years of age and the person is a member or veteran of the United States Armed Forces, Reserves or National Guard or was discharged under honorable conditions from the United States Armed Forces, Reserves or National Guard, and the person is otherwise not disqualified from the possession or purchase of a firearm under state or federal law and is not carrying the firearm in furtherance of a crime; or

   Except as provided in subsection B of Section 1283 of this title, a person who has been convicted of any one of the following offenses in this state or a violation of the equivalent law of another state:

   a. assault and battery pursuant to the provisions of provisions of Sections 641 and 642 of this title which caused serious physical injury to the victim,
   b. aggravated assault and battery pursuant to the provisions of Section 646 of this title,
   c. assault and battery that qualifies as domestic abuse as defined in Section 1130 of this title,
   d. stalking pursuant to the provisions of Section 1134 of this title,
   e. a violation of a domestic abuse protection order issued under the laws of the Cherokee Nation or a domestic abuse protection order issued by another state, or
   f. a violation relating to illegal drug use or possession under the provisions of the

shall be prohibited from carrying a firearm under the provisions of this paragraph. Any person who carries a firearm in the manner provided for in this paragraph shall be prohibited from carrying the firearm into any of the places prohibited in subsection A of Section 1277 of this title or any other place currently prohibited by law. Nothing in this section shall modify or otherwise change where a person may legally carry a firearm.

§ 1272.1. Carrying weapons or firearms into establishments wherein beer and intoxicating liquor are consumed

A. It shall be unlawful for any person to carry into or to possess any weapon designated in Section 1372 of this title in any establishment where beer or alcoholic beverages are consumed. This provision shall not apply to a peace officer, as defined in Section 99 of this title, or to private investigators with a firearms authorization when acting in the scope and course of employment, and shall not apply to an owner or proprietor of the establishment having a pistol, rifle, or shotgun on the premises. Provided however, a person possessing a valid handgun license pursuant to the provisions of the relevant applicable provisions of Oklahoma law may carry the concealed or unconcealed handgun into any restaurant or other establishment licensed to dispense low-point beer or alcoholic beverages where the sale of low-point beer or alcoholic beverages does not constitute the primary purpose of the business.

Provided further, nothing in this section shall be interpreted to authorize any peace officer in actual physical possession of a weapon to consume low-point beer or alcoholic beverages, except in the authorized line of duty as an undercover officer.

Nothing in this section shall be interpreted to authorize any private investigator with a firearms authorization in actual physical possession of a weapon to consume low-point beer or alcoholic beverages in any establishment where low-point beer or alcoholic beverages are consumed.

B. Any person violating the provisions of this section shall be punished as provided in Section 1272.2 of this title.

Provided however, nothing in this chapter shall be interpreted to authorize such peace officer or registered security officer in actual physical possession of a weapon to consume beer or alcoholic beverages, except in the authorized line of duty as an undercover officer.

§ 1272.2. Penalties

Any person who intentionally or knowingly carries on his or her person any weapon in violation of Section 1272.1 of this title, shall, upon conviction, be guilty of a felony punishable by a fine not to exceed One Thousand Dollars ($1,000.00), or imprisonment for a period not to exceed two (2) years, or by both such fine and imprisonment.

Any person convicted of violating the provisions of this section after having been issued a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act shall have the license revoked by the

Oklahoma State Bureau of Investigation after a hearing and determination that the person is in violation of Section 1272.1 of this title.

§ 1273. Selling or giving weapons to minors

A. It shall be unlawful for any person within this state to sell or give to any child any of the arms or weapons designated in Section 1272 of this title; provided, the provisions of this section shall not prohibit a parent of a child or legal guardian of a child, or a person acting with the permission of the parent of the child or legal guardian of the child, from giving the child a firearm for participation in hunting animals or fowl, hunter safety classes, education and training in the safe use and handling of firearms, target shooting, skeet, trap or other sporting events or competitions, except as provided in subsection B of this section.

B. It shall be unlawful for any parent or guardian to intentionally, knowingly, or recklessly permit his or her child to possess any of the arms or weapons designated in Section 1272 of this title, including any firearm, if such parent is aware of a substantial risk that the child will use the weapon to commit a criminal offense or if the child has either been adjudicated a delinquent or has been convicted as an adult for any criminal offense that contains as an element the threat or use of physical force against the person of another.

C. It shall be unlawful for any child to possess any of the arms or weapons designated in Section 1272 of this title, except firearms used for participation in hunting animals or fowl, hunter safety classes, education and training in the safe use and handling of firearms, target shooting, skeet, trap or other sporting events or competitions. Provided, this section shall not authorize the possession of such weapons by any person who is subject to the provisions of Section 1283 of this title.

D. Any person violating the provisions of this section shall, upon conviction, be punished as provided in Section 1276 of this title, and, any child violating the provisions of this section shall be subject to adjudication as a delinquent. In addition, any person violating the provisions of subsection A or B of this section shall be liable for civil damages for any injury or death to any person and for any damage to property, resulting from any discharge of a firearm by the child or use of any other weapon that the person had given to the child or permitted the child to possess. Any person convicted of violating the provisions of this section after having been issued a handgun license pursuant to any applicable provisions Oklahoma law may be liable for an administrative violation as provided in Section 1276 of this title.

E. As used in this section, “child” means a person under eighteen (18) years of age.

§ 1272.3. Unlawful discharge of stun gun or deleterious agent—Penalties

It is unlawful for any person to knowingly discharge, or cause to be discharged, any electrical stun gun, tear gas weapon, mace, tear gas, pepper mace or any similar deleterious agent against another person knowing the other person to be a peace officer, corrections officer, probation or parole officer, firefighter, or an emergency medical technician or paramedic who is acting in the course of official duty. Any person violating the provisions of this section, upon conviction, shall be guilty of a felony punishable by imprisonment for a term of not exceeding three (3) years, or by a fine of not more than Fifteen Thousand

Dollars ($15,000), or by both such fine and imprisonment.

§§ 1273-1275. Reserved

§ 1276. Penalty for 1272

Any person violating the provisions of Section 1272 of this title shall, upon a first conviction, be adjudged guilty of a misdemeanor and the party offending shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00), or by imprisonment in the county jail for a period not to exceed thirty (30) days or both such fine and imprisonment. On the second and every subsequent violation, the party offending shall, upon conviction, be punished by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for a period not less than thirty (30) days nor more than three (3) months, or by both such fine and imprisonment.

Any person convicted of violating the provisions of Section 1272 of this title after having been issued a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act shall have the license suspended for a period of six (6) months and shall be liable for an administrative fine of Fifty Dollars ($50.00) upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

§ 1277. Public buildings and gatherings

A. It shall be unlawful for any person, including a person in possession of a valid handgun license appropriately issued pursuant to the relevant applicable provisions of Oklahoma law, to carry any concealed or unconcealed handgun into any of the following places:
   1. Any structure, building, or office space which is owned or leased by a city, town, county, state, tribal, or federal governmental authority for the purpose of conducting business with the public;
   2. Any courthouse, courtroom, prison, jail, detention facility or any facility used to process, hold or house arrested persons, prisoners or persons alleged delinquent or adjudicated delinquent;
   3. Any public or private elementary or public or private secondary school, except as provided in subsections C and D of this section;
   4. Any publicly owned or operated sports arena or venue during a professional sporting event, unless allowed by the event holder;
   5. Any place where gambling is authorized by law, unless allowed by the property owner; and
   6. Any other place specifically prohibited by law.

B. For purposes of subsection A of this section, the prohibited place does not include and specifically excludes the following property:
   1. Any property set aside for the use or parking of any vehicle, whether attended or unattended, by a city, town, county, state or federal governmental authority;
   2. Any property set aside for the use or parking of any vehicle, whether attended or unattended, which is open to the public, or by any entity engaged in gambling authorized by law;
   3. Any property adjacent to a structure, building or office space in which concealed or unconcealed weapons are prohibited by the provisions of this section;
   4. Any property designated by a city, town, county, state, or tribal governmental authority as a park,

recreational area, wildlife refuge, wildlife management area or fairgrounds; provided, nothing in this paragraph shall be construed to authorize any entry by a person in possession of a concealed or unconcealed firearm into any structure, building or office space which is specifically prohibited by the provisions of subsection A of this section; and

5. Any property set aside by a public or private elementary or secondary school for the use or parking of any vehicle, whether attended or unattended; provided, however, the firearm shall be stored and hidden from view in a locked motor vehicle when the motor vehicle is left unattended on school property.

Nothing contained in any provision of this subsection or subsection C of this section shall be construed to authorize or allow any person in control of any place described in subsection A of this section to establish any policy or rule that has the effect of prohibiting any person in lawful possession of a handgun license or otherwise in lawful possession of a firearm from carrying or possessing the firearm on the property described in this subsection.

C. A concealed or unconcealed weapon may be carried onto private school property or in any school bus or vehicle used by any private school for transportation of students or teachers by a person who is licensed pursuant to the relevant applicable provisions of Oklahoma law, provided a policy has been adopted by the governing entity of the private school that authorizes the carrying and possession of a weapon on private school property or in any school bus or vehicle used by a private school. Except for acts of gross negligence or willful or wanton misconduct, a governing entity of a private school that adopts a policy which authorizes the possession of a weapon on private school property, a school bus or vehicle used by the private school shall be immune from liability for any injuries arising from the adoption of the policy. The provisions of this subsection shall not apply to claims pursuant to the Administrative Workers' Compensation Act.

D. Notwithstanding paragraph 3 of subsection A of this section, a board of education of a school district may adopt a policy pursuant to Section 5-149.2 of Title 70 of the Oklahoma Statutes to authorize the carrying of a handgun onto school property by school personnel specifically designated by the board of education, provided such personnel either:

1. Possess a valid armed security guard license as provided for in Section 1750.1 et seq. of Title 59 of the Oklahoma Statutes; or
2. Hold a valid reserve peace officer certification as provided for in Section 3311 of Title 70 of the Oklahoma Statutes. Nothing in this subsection shall be construed to restrict authority granted elsewhere in law to carry firearms.

Nothing in this subsection shall be construed to restrict authority granted elsewhere in law to carry firearms.

E. In any municipal zoo or park of any size that is owned, leased, operated or managed by:

1. A public trust; or
2. A nonprofit entity,

an individual shall be allowed to carry a concealed handgun but not openly carry a handgun on the property.

F. Any person violating the provisions of paragraph 2 or 3 of subsection A of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine not to exceed Two Hundred Fifty Dollars ($250.00). A person violating any other provision of subsection A of this section may be denied entrance onto the property or removed from the property. If the person refuses to leave the property and a peace officer is summoned, the person may be issued a citation for an amount not to exceed Two Hundred Fifty Dollars ($250.00).

G. No person in possession of a valid handgun license issued pursuant to the relevant applicable provisions of Oklahoma law or who is carrying or in possession of a firearm as otherwise permitted by law or who is carrying or in possession of a machete, blackjack, loaded cane, hand chain or metal knuckles shall be authorized to carry the firearm, machete, blackjack, loaded cane, hand chain or metal knuckles into or upon any college, university or technology center school property, except as provided in this subsection. For purposes of this subsection, the following property shall not be construed to be college, university or technology center school property:

1. Any property set aside for the use or parking of any vehicle, whether attended or unattended, provided the firearm, machete, blackjack, loaded cane, hand chain or metal knuckles is carried or stored as required by law and the firearm, machete, blackjack, loaded cane, hand chain or metal knuckles is not removed from the vehicle without the prior consent of the college or university president or technology center school administrator while the vehicle is on any college, university or technology center school property;
2. Any property authorized for possession or use of firearms, machetes, blackjacks, loaded canes, hand chains or metal knuckles by college, university or technology center school policy; and
3. Any property authorized by the written consent of the college or university president or technology center school administrator, provided the written consent is carried with the firearm, machete, blackjack, loaded cane, hand chain or metal knuckles and the valid handgun license while on college, university or technology center school property.

The college, university or technology center school may notify the Oklahoma State Bureau of Investigation within ten (10) days of a violation of any provision of this subsection by a licensee. Upon receipt of a written notification of violation, the Bureau shall give a reasonable notice to the licensee and hold a hearing. At the hearing, upon a determination that the licensee has violated any provision of this subsection, the licensee may be subject to an administrative fine of Two Hundred Fifty Dollars ($250.00) and may have the handgun license suspended for three (3) months.

Nothing contained in any provision of this subsection shall be construed to authorize or allow any college, university or technology center school to establish any policy or rule that has the effect of prohibiting any person in lawful possession of a handgun license or any person in lawful possession of a firearm, machete, blackjack, loaded cane, hand chain or metal knuckles from possession of a firearm, machete, blackjack, loaded cane, hand chain or metal knuckles in places described in paragraphs 1, 2 and 3 of this subsection. Nothing contained in any provision of this subsection shall be construed to limit the authority of any college, university or technology center school in this state from taking administrative action against any student for any violation of any provision of this subsection.

H. The provisions of this section shall not apply to the following:

1. Any peace officer or any person authorized by law to carry a firearm in the course of employment;
2. District judges, associate district judges and special district judges, who are in possession of a valid handgun license issued pursuant to the provisions of the Cherokee Nation Self-Defense Act and whose names appear on a list maintained by the Administrative Director of the Courts, when acting in the course and scope of employment within the courthouses of this state;
3. Private investigators with a firearms authorization when acting in the course and scope of employment;

4. Elected officials of a county, who are in possession of a valid handgun license issued pursuant to the provisions of the Cherokee Nation Self-Defense Act, may carry a concealed handgun when acting in the performance of their duties within the courthouses of the county in which he or she was elected. The provisions of this paragraph shall not allow the elected county official to carry the handgun into a courtroom;
5. The sheriff of any county may authorize certain employees of the county, who possess a valid handgun license issued pursuant to the provisions of the Cherokee Nation Self-Defense Act, to carry a concealed handgun when acting in the course and scope of employment within the courthouses in the county in which the person is employed. Nothing in the Cherokee Nation Self-Defense Act shall prohibit the sheriff from requiring additional instruction or training before receiving authorization to carry a concealed handgun within the courthouse. The provisions of this paragraph and of paragraph 6 of this subsection shall not allow the county employee to carry the handgun into a courtroom, sheriff's office, adult or juvenile jail or any other prisoner detention area; and
6. The board of county commissioners of any county may authorize certain employees of the county, who possess a valid handgun license issued pursuant to the provisions of the Cherokee Nation Self-Defense Act, to carry a concealed handgun when acting in the course and scope of employment on county annex facilities or grounds surrounding the county courthouse.

I. For the purposes of this section, "motor vehicle" means any automobile, truck, minivan, sports utility vehicle or motorcycle as defined in Section 1-135 of Title 47 of the Cherokee Nation Code, equipped with a locked accessory container within or affixed to the motorcycle.

§ 1278. Intent of persons carrying weapons

Any person in this state who carries or wears any deadly weapons or dangerous instrument whatsoever with the intent or for the avowed purpose of unlawfully injuring another person, upon conviction, shall be guilty of a felony punishable by a fine not exceeding Five Thousand Dollars ($5,000.00), by imprisonment in the custody of the Department of Corrections for a period not exceeding two (2) years, or by both such fine and imprisonment. The mere possession of such a weapon or dangerous instrument, without more, however, shall not be sufficient to establish intent as required by this section.

Any person convicted of violating the provisions of this section after having been issued a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act shall have the license permanently revoked and shall be liable for an administrative fine of One Thousand Dollars ($1,000.00) upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

§ 1279. Pointing weapon at another

Except for an act of self-defense, it shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons. . Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable as provided in Section 1280 of this title.

§ 1280. Punishment

Any person violating the provisions Section 1279 of this title, upon conviction, shall, on conviction, be

guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or by a fine of not more than Five Thousand Dollars ($5,000), or by both such imprisonment and fine.

§ 1280.1. Possession of firearm on school property

A. It shall be unlawful for any person to have in his or her possession on any public or private school property or while in any school bus or vehicle used by any school for transportation of students or teachers any firearm or weapon designated in Section 1272 of this title, except as provided in subsection C of this section or as otherwise authorized by law.

B. For purposes of this section:
   1. "School property" means any publicly owned property held for purposes of elementary, secondary or vocational-technical education, and shall not include property owned by public school districts or where such property is leased or rented to an individual or corporation and used for purposes other than educational;
   2. "Private school" means a school that offers a course of instruction for students in one or more grades from prekindergarten through grade twelve and is not operated by a governmental entity; and
   3. "Motor vehicle" means any automobile, truck, minivan or sports utility vehicle.

C. Firearms and weapons are allowed on school property and deemed not in violation of subsection A of this section as follows:
   1. A gun or knife designed for hunting or fishing purposes kept in a privately owned vehicle and properly displayed or stored as required by law, provided such vehicle containing said gun or knife is driven onto school property only to transport a student to and from school and such vehicle does not remain unattended on school property;
   2. A gun or knife used for the purposes of participating in the Oklahoma Department of Wildlife Conservation certified hunter training education course or any other hunting, fishing, safety or firearms training courses, or a recognized firearms sports event, team shooting program or competition, or living history reenactment, provided the course or event is approved by the principal or chief administrator of the school where the course or event is offered, and provided the weapon is properly displayed or stored as required by law pending participation in the course, event, program or competition;
   3. Weapons in the possession of any peace officer or other person authorized by law to possess a weapon in the performance of his or her duties and responsibilities;
   4. A concealed or unconcealed weapon carried onto private school property or in any school bus or vehicle used by any private school for transportation of students or teachers by a person who is licensed pursuant to the Cherokee Nation Self-Defense Act, provided a policy has been adopted by the governing entity of the private school that authorizes the possession of a weapon on private school property or in any school bus or vehicle used by a private school. Except for acts of gross negligence or willful or wanton misconduct, a governing entity of a private school that adopts a policy which authorizes the possession of a weapon on private school property, a school bus or vehicle used by the private school shall be immune from liability for any injuries arising from the adoption of the policy. The provisions of this paragraph shall not apply to claims pursuant to the Workers' Compensation Code;
   5. A gun, knife, bayonet or other weapon in the possession of a member of a veterans group, the national guard, active military, the Reserve Officers' Training Corps (ROTC) or Junior ROTC, in order to participate in a ceremony, assembly or educational program approved by the principal or chief administrator of a school or school district where the ceremony, assembly or educational program is being held; provided, however, the gun or other weapon that uses projectiles is not loaded and is inoperable at all times while on school property;

6. A handgun carried in a motor vehicle pursuant to a valid handgun license authorized by the Cherokee Nation Self-Defense Act onto property set aside by a public or private elementary or secondary school for the use or parking of any vehicle; provided, however, said handgun shall be stored and hidden from view in a locked motor vehicle when the motor vehicle is left unattended on school property; and
7. A handgun carried onto public school property by school personnel who have been designated by the board of education, provided such personnel either:
    a. possess a valid armed security guard license as provided for in Section 1750.1 et seq. of Title 59 of the Oklahoma Statutes, or
    b. hold a valid reserve peace officer certification as provided for in Section 3311 of Title 70 of the Oklahoma Statutes,

if a policy has been adopted by the board of education of the school district that authorizes the carrying of a handgun onto public school property by such personnel. Nothing in this subsection shall be construed to restrict authority granted elsewhere in law to carry firearms.

D. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not to exceed Two Hundred Fifty Dollars ($250.00).

§ 1281. Manufacturing slung shot

Any person who manufactures or causes to be manufactured, or sells or offers or keeps for sale or disposes of any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a misdemeanor.

§ 1282. Felony use of a slung shot

Any person who carries upon his person, whether concealed or not, or uses or attempts to use against another, any instrument or weapon of the kind usually known as slung shot, or of any similar kind, shall be guilty of a felony.

§ 1283. Convicted felons prohibited from carrying firearms—Exceptions

A. Except as provided in subsection B of this section, it shall be unlawful for any person convicted of any felony in any court of this Nation, or of another Indian tribe, or state, or of the United States to have in his or her possession or under his or her immediate control, or in any vehicle which the person is operating, or in which the person is riding as a passenger, or at the residence where the convicted person resides, any pistol, imitation or homemade pistol, altered air or toy pistol, machine gun, sawed-off shotgun or rifle, or any other dangerous or deadly firearm.
B. Any person who has previously been convicted of a nonviolent felony in any court of this state or of another state or of the United States, and who has received a full and complete pardon from the proper authority and has not been convicted of any other felony offense which has not been pardoned, shall have restored the right to possess any firearm or other weapon prohibited by subsection A of this section, the right to apply for and carry a handgun, concealed or unconcealed, pursuant to the Cherokee Nation Self-Defense Act or as otherwise permitted by law, and the right to perform the duties of a peace officer, gunsmith, and for firearms repair.
C. It shall be unlawful for any person serving a term of probation for any felony in any court of this state or of another state or of the United States or under the jurisdiction of any alternative court program to have in his or her possession or under his or her immediate control, or at his or her

residence, or in any passenger vehicle which the person is operating or is riding as a passenger, any pistol, shotgun or rifle, including any imitation or homemade pistol, altered air or toy pistol, shotgun or rifle, while such person is subject to supervision, probation, parole or inmate status.

D. It shall be unlawful for any person previously adjudicated as a delinquent child or a youthful offender for the commission of an offense, which would have constituted a felony offense if committed by an adult, to have in the possession of the person or under the immediate control of the person, or have in any vehicle which he or she is driving or in which the person is riding as a passenger, or at the residence of the person, any pistol, imitation or homemade pistol, altered air or toy pistol, machine gun, sawed-off shotgun or rifle, or any other dangerous or deadly firearm within ten (10) years after such adjudication; provided, that nothing in this subsection shall be construed to prohibit the placement of the person in a home with a full-time duly appointed peace officer who is certified by the Council on Law Enforcement Education and Training (CLEET) pursuant to the provisions of Section 3311 of Title 70 of the Oklahoma Statutes.

E. It shall be unlawful for any person who is an alien illegally or unlawfully in the United States to have in the possession of the person or under the immediate control of the person, or in any vehicle the person is operating, or at the residence where the person resides, any pistol, imitation or homemade pistol, altered air or toy pistol, shotgun, rifle or any other dangerous or deadly firearm; provided, that nothing in this subsection applies to prohibit the transport or detention of the person by law enforcement officers or federal immigration authorities. Any person who violates the provisions of this subsection shall, upon conviction, be guilty of a misdemeanor punishable by a fine of Two Hundred Fifty Dollars ($250.00).

F. Any person having been issued a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act and who thereafter knowingly or intentionally allows a convicted felon or adjudicated delinquent or a youthful offender as prohibited by the provisions of subsection A, C, or D of this section to possess or have control of any pistol authorized by the Cherokee Nation Self-Defense Act shall, upon conviction, be guilty of a felony punishable by a fine not to exceed Five Thousand Dollars ($5,000.00). In addition, the person shall have the handgun license revoked by the Oklahoma State Bureau of Investigation after a hearing and determination that the person has violated the provisions of this section.

G. Any convicted or adjudicated person violating the provisions of this section shall, upon conviction, be guilty of a felony punishable as provided in Section 1284 of this title.

H. For purposes of this section, “sawed-off shotgun or rifle” shall mean any shotgun or rifle which has been shortened to any length.

I. For purposes of this section, “altered toy pistol” shall mean any toy weapon which has been altered from its original manufactured state to resemble a real weapon.

J. For purposes of this section, “altered air pistol” shall mean any air pistol manufactured to propel projectiles by air pressure which has been altered from its original manufactured state.

§ 1284. Penalty

Any previously convicted or adjudicated person who violates any provision of Section 1283 of this title shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than three (3) years, or by a fine of not more than Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

§ 1285. Reserved

§ 1286. Reserved

§ 1287. Use of firearm or other offensive weapon while committing or attempting to commit a crime—Penalties

Any person who, while committing or attempting to commit a felony, possesses a firearm or any other offensive weapon in such commission or attempt, whether the firearm is loaded or not, or who possesses a blank or imitation firearm capable of raising in the mind of one threatened with such device a fear that it is a real firearm, or who possesses an air gun or carbon dioxide or other gas-filled weapon, electronic dart gun, knife, dagger, dirk, switchblade knife, blackjack, ax, loaded cane, billy, hand chain or metal knuckles, in addition to the penalty provided by statute for the felony committed or attempted, upon conviction shall be guilty of a felony for possessing such weapon or device, which shall be a separate offense from the felony committed or attempted and shall be punishable by imprisonment of not more than three (3) years, or by a fine of not more than Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment..

§ 1288. Reserved

CHEROKEE NATION FIREARMS ACT OF 1971

§ 1289.1. Short title

This act shall be known and may be cited as the Cherokee Nation Firearms Act of 1971.

§ 1289.2. Council findings

The Council finds as a matter of public policy and fact that it is necessary for the safe and lawful use of firearms to curb and prevent crime wherein weapons are used by enacting

legislation having the purpose of controlling the use of firearms, and of prevention of their use, without unnecessarily denying their lawful use in defense of life, home and property, and their use by the United States or state military organizations and as otherwise provided by law, including their use and transportation for lawful purposes.

§ 1289.3. "Pistols" or “handguns” defined

"Pistol" or “handguns” as used herein shall mean any firearm capable of discharging single or multiple projectiles from a single round of ammunition composed of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels less than sixteen (16) inches in length, and using propulsion combustible propellant charge, but not to include any firearm with an overall length of twenty-six (26) inches or more, flare guns, underwater fishing guns or blank pistols.

§ 1289.4. "Rifle" defined

"Rifle" as used herein shall mean any firearm capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels more than sixteen (16) inches in length, and using either gunpowder, gas or any means of rocket propulsion, but not to include archery equipment, flare guns or underwater fishing guns. In addition, any rifle capable of firing "shot" but primarily designed to fire single projectiles will be regarded as a "rifle."

§ 1289.5. "Shotgun" defined

"Shotgun" as used herein shall mean any firearm capable of discharging a series of projectiles of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels more than eighteen (18) inches in length, and using propulsion combustible propellant charge, but not to include any weapon so designed with a barrel less than eighteen (18) inches in length unless the overall length is twenty-six (26) inches or more. In addition, any "shotgun" capable of firing single projectiles but primarily designed to fire multiple projectiles such as "shot" will be regarded as a "shotgun."

§ 1289.6. Conditions under which firearms may be carried

A. A person shall be permitted to carry loaded and unloaded shotguns, rifles and pistols without a handgun license , open and not concealed, under the following conditions:

1. When hunting animals or fowl;

2. During competition in or practicing in a safety or hunter safety class, target shooting, skeet, trap or other recognized sporting events;

3. During participation in or in preparation for a military function of the state military forces to be defined as the Oklahoma Army or Air National Guard, federal military reserve and active military forces. It is further provided that Oklahoma Army or Air National Guard personnel with proper authorization and performing a military function may carry loaded or unloaded and concealed weapons on Oklahoma Military Department facilities in accordance with rules promulgated by the Adjutant General;

4. During participation in or in preparation for a recognized police function of either a municipal, county, or state government as functioning police officials;

5. During a practice for or a performance for entertainment purposes;

6. As provided for in subsection A of Section 1272 of this title; or

7. For lawful self-defense and self-protection or any other legitimate purpose not in violation of this code or any applicable legislative enactment regarding the use, ownership and control of firearms.

B. A person shall be permitted to carry unloaded shotguns, rifles and pistols without a handgun license as authorized by the Cherokee Nation Self-Defense Act and when going to or from the person's private residence or vehicle.

C. The provisions of this section shall not be construed to prohibit educational or recreational activities, exhibitions, displays or shows involving the use or display of rifles, shotguns or pistols or other weapons if the activity is approved by the property owner and sponsor of the activity.

§ 1289.7. Firearm in vehicles

A. Any person who is not otherwise prohibited by law from possessing a firearm may transport in a motor vehicle a pistol or handgun, loaded or unloaded, at any time.

B. Any person who is not otherwise prohibited by law from possessing a firearm may transport in a

motor vehicle a rifle or shotgun open or concealed, provided the rifle or shotgun is transported pursuant to the requirements of Section 1289.13 of this title.

C. Any person who is the operator of a motor vehicle or is a passenger in any motor vehicle wherein another person who is licensed pursuant to the Cherokee Nation Self-Defense Act or is otherwise permitted by law to carry a handgun, concealed or unconcealed, and is carrying a handgun or has the handgun in such vehicle, shall not be deemed in violation of the provisions of this section provided the licensee or person permitted by law is in or near the motor vehicle.

D. It shall be unlawful for any person transporting a firearm in a motor vehicle to fail or refuse to identify that the person is in actual possession of a firearm when asked to do so by a law enforcement officer of this state during any arrest, detainment or routine traffic stop. Any person who violates the provisions of this subsection may be issued a citation for an amount not to exceed One Hundred Dollars ($100.00).

§ 1289.7a. Transporting or storing firearms or ammunition—Prohibition proscribed—Liability—Enforcement

A. No person, property owner, tenant, employer, or business entity shall maintain, establish, or enforce any policy or rule that has the effect of prohibiting any person, except a convicted felon, from transporting and storing firearms or ammunition in a locked motor vehicle, or from transporting and storing firearms or ammunition locked in or locked to a motor vehicle on any property set aside for any motor vehicle.

B. No person, property owner, tenant, employer, or business entity shall be liable in any civil action for occurrences which result from the storing of firearms or ammunition in a locked motor vehicle on any property set aside for any motor vehicle, unless the person, property owner, tenant, employer, or owner of the business entity commits a criminal act involving the use of the firearms or ammunition. The provisions of this subsection shall not apply to claims pursuant to the Workers' Compensation Act.

C. An individual may bring a civil action to enforce this section. If a plaintiff prevails in a civil action related to the personnel manual against a person, property owner, tenant, employer or business for a violation of this section, the court shall award actual damages, enjoin further violations of this section, and award court costs and attorney fees to the prevailing plaintiff.

D. As used in this section, “motor vehicle” means any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, and any other vehicle required to be registered under the Oklahoma Vehicle License and Registration Act

§ 1289.8. Carrying weapon

A. Any fire marshal inspector who is retired, state, county or municipal peace officer of this Nation who is retired, or any state, county or municipal peace officer classified as a reserve who is retired, or any federal law enforcement officer who is retired may retain their status as a peace officer, retired, in the State of Oklahoma, and as such may carry a firearm pursuant to the provisions of subsection B of this section. A retired state, county or municipal peace officer may in times of great emergency or danger serve to enforce the law, keep the peace or to protect the public in keeping with their availability and ability at the request of the Governor, the sheriff or the mayor of their retirement jurisdiction. If a retired fire marshal is activated for duty, the peace officer powers of the retired fire marshal are limited to the duties granted prior to retirement.

B. The Council on Law Enforcement Education and Training (CLEET) shall issue an identification card to eligible retired federal, state, county, and municipal peace officers which authorizes the

retired peace officer to carry a firearm throughout the State of Oklahoma. The identification card shall bear the full name of the retired officer, the signature of the retired officer, the date of issuance, and such other information as may be deemed appropriate by CLEET. The card shall expire every ten (10) years and may be denied, suspended or revoked as provided by the rules promulgated by CLEET or upon the discovery of any preclusion prescribed in Section 1290.10 or 1290.11 of this title.

C. The retired peace officer shall be required to submit the following information to the Council on Law Enforcement Education and Training (CLEET) and any other information requested by CLEET:
   1. A statement from the appropriate law enforcement agency verifying the status of the person as a retired peace officer of that jurisdiction; and

2. A notarized statement, signed by the retired peace officer, stating that the officer:

    a. has not been convicted of and is currently not subject to any pending criminal prosecution for any preclusion prescribed in Section 1290.10 or 1290.11 of this title,
    b. has not been forced into retirement due to any mental disorder, and
    c. has not suffered any injury or any physical or mental impairment which would render the person unsafe to carry a firearm.

D. A retired peace officer, who has made application for the CLEET identification card authorized in subsection B of this section, shall be authorized to carry a firearm as an off-duty peace officer, pursuant to Section 1289.23 of this title, until the authority to carry a firearm as a retired officer is finally approved or denied by CLEET.

E. The Council on Law Enforcement Education and Training shall promulgate rules and procedures necessary to implement the provisions of this section.

F. Any peace officer, retired, who carries any firearm in violation of the provisions of this section shall be deemed to be in violation of Section 1272 of this title and may be prosecuted as provided by law for a violation of that section.

§ 1289.9. Carrying or using firearms while under influence of intoxicating liquors or drugs

It shall be unlawful for any person to carry or use shotguns, rifles, or pistols under any circumstances while under the influence of beer, intoxicating liquors or any hallucinogenic, or any unlawful or unprescribed drug, and it shall be unlawful for any person to carry or use shotguns, rifles or pistols when under the influence of any drug prescribed by a licensed physician if the aftereffects of such consumption affect mental, emotional or physical processes to a degree that would result in abnormal behavior. Any person convicted of a violation of the provisions of this section shall be punished as provided in Section 1289.15 of this title.

Any person convicted of a violation of the provisions of this section after having been issued a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act shall have the license suspended for a term of six (6) months and shall be subject to an administrative fine of Fifty Dollars ($50.00), upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

§ 1289.10. Furnishing firearms to mentally incompetent or insane persons

It shall be unlawful for any person to knowingly transmit, transfer, sell, lend or furnish any shotgun, rifle or pistol to any person who is under an adjudication of mental incompetency,

or to any person who is who is mentally deficient or of unsound mind. Any person convicted of a violation of the provisions of this section shall be punished as provided in Section 1289.15 of this title.

Any person convicted of a violation of the provisions of this section after having been issued a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act shall have the license suspended for a term of six (6) months and shall be subject to an administrative fine of Fifty Dollars ($50.00), upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

§ 1289.11. Reckless conduct

It shall be unlawful for any person to engage in reckless conduct while having in his possession any shotgun, rifle, or pistol, such actions consisting of creating a situation of unreasonable risk and probability of death or great bodily harm to another, and demonstrating a conscious disregard for the safety of another person. Any person convicted of a violation of the provisions of this section shall be punished as provided in Section 1289.15 of this title.

Any person convicted of a violation of the provisions of this section after having been issued a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act shall have the license suspended for a term of six (6) months and shall be subject to an administrative fine of Fifty Dollars ($50.00), upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

§ 1289.12. Selling or transferring of firearms to convicted felons, disturbed persons or persons under influence of alcohol or drugs—Displaying notice

It shall be unlawful for any person within the Cherokee Nation to knowingly sell, trade, give, transmit or otherwise cause the transfer of rifles, shotguns, or pistols to any convicted felon or an adjudicated delinquent, and it shall be lawful for any person within the Cherokee Nation to knowingly sell, trade, give, transmit or otherwise cause the transfer of any shotgun, rifle, or pistol to any individual who is under the influence of alcohol or drugs or is mentally or emotionally unbalanced or disturbed. All persons who engage in selling, trading or otherwise transferring firearms will display this section prominently in full view at or near the point of normal firearms sale, trade or transfer. Any person convicted of a violation of the provisions of this section shall be punished as provided in Section 1289.15 of this title.

Any person convicted of a violation of the provisions of this section after having been issued a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act shall

have the license suspended for a term of six (6) months and shall be subject to an administrative fine of Fifty Dollars ($50.00), upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

§ 1289.13. Transporting loaded firearm in motor vehicle

Except as otherwise provided, it shall be unlawful to transport a loaded firearm in a landborne motor vehicle over a public highway or roadway unless the rfile or shotgun is transported clip- or magazine-loaded, and not chamber-loaded, and in an exterior locked compartment of the vehicle or trunk of an the vehicle or in the interior compartment of the vehicle.

Any person convicted of a violation of this section shall be punished as provided in Section 1289.15 of this title.

Any person who is the operator of a vehicle or is a passenger in any vehicle wherein another person who is licensed pursuant to the Cherokee Nation Self-Defense Act to carry a handgun, concealed or unconcealed, and has a rifle or shotgun in such vehicle shall not be deemed in violation of the provisions of this section provided the licensee is in or near the vehicle.

§1289.13a. Improper transportation of firearms

A. Notwithstanding the provisions of Section 1272 or 1289.7 of this title, any person stopped pursuant to a moving traffic violation who is transporting a loaded pistol in the motor vehicle without a valid handgun license authorized by the Cherokee Nation Self-Defense Act or valid license from another state, or in violation of any law related to the carrying or transporting of firearms, whether the loaded firearm is concealed or unconcealed in the vehicle, may be issued a traffic citation in the amount of Seventy Dollars ($70.00), plus court costs for transporting a firearm improperly. In addition to the traffic citation provided in this section, the person may also be arrested for any other violation of law.

B. Any firearm lawfully carried or transported as permitted pursuant to state law shall not be confiscated, unless:
    1. The person is arrested for violating another provision of law other than a violation of subsection A of this section; provided, however, if the person is never charged with an offense pursuant to this paragraph or if the charges are dismissed or the person is acquitted, the weapon shall be returned to the person; or
    2. The officer has probable cause to believe the weapon is:
        a. contraband, or
        b. a firearm used in the commission of a crime other than a violation of subsection A of this section.

C. Nothing in this section shall be construed to require confiscation of any firearm.

§ 1289.14. Reserved

§ 1289.15. Penalties

Any person adjudged guilty of violating any provision of Section 1289.9, 1289.10, 1289.11, 1289.12, or 1289.13 of this title shall, upon conviction, be punished by a fine of not less than Fifty Dollars ($50.00) and not more than Five Hundred Dollars ($500.00), or imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment.

§ 1289.16. Felony Pointing firearms

Except for an act of self-defense, it shall be unlawful for any person to willfully or without lawful cause point a shotgun, rifle or pistol, or any deadly weapon, whether loaded or not, at any person or persons for the purpose of threatening or with the intention of discharging the firearm or with any malice or for any purpose of injuring, either through physical injury or mental or emotional intimidation, or for purposes of whimsy, humor or prank, or in anger or otherwise, but not to include the pointing of shotguns, rifles or pistols by law enforcement authorities in the performance of their duties, appropriately licensed armed security guards in the performance of their duties, members of the state military forces in the performance of their duties, members of the federal military reserve and active military components in the performance of their duties, or any federal government law enforcement officer in the performance of any duty, or in the performance of a play on stage, rodeo, television or on film, or in defense of any person, one's home or property. Any person convicted of a violation of the provisions of this section shall be punished as provided in Section 1289.17 of this title.
Any person convicted of a violation of the provisions of this section after having been issued a handgun license pursuant to the Cherokee Nation Self-Defense Act shall have the license revoked and shall be subject to an administrative fine of One Thousand Dollars ($1,000.00), upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

§ 1289.17. Penalties for 1289.16

Any violation of Section 1289.16 of this title shall constitute a felony, punishable by imprisonment for not more than three (3) years, or a fine of not more than Fifteen Thousand Dollars ($15,000), or both.

§1289.17A. Felony discharging firearms

It shall be unlawful for any person to willfully or intentionally discharge any firearm or other deadly weapon at or into any dwelling, or at or into any building used for public or business

purposes. Any violation of the provisions of this section shall be a felony punishable by imprisonment for a term of not more than three (3) years. The provisions of this section shall not apply to any law enforcement officer in the performance of any lawful duty.

§ 1289.18. "Sawed-off shotgun" and "sawed-off rifle" defined—Violations—Penalties— Defense to prosecution

A. **"Sawed-off shotgun"** shall mean any firearm capable of discharging a series of projectiles of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels less than eighteen (18) inches in length, and using propulsion combustible propellant charge, but does not include any weapon so designed with a barrel less than eighteen (18) inches in length, provided it has an overall length of twenty-six (26) inches or more.

B. **"Sawed-off rifle"** shall mean any rifle having a barrel or barrels of less than sixteen (16) inches in length or any weapon made from a rifle (whether by alteration, modification, or otherwise) if such a weapon as modified has an overall length of less than twenty-six (26) inches in length, including the stock portion.

C. Every person who knowingly has in his possession or under his immediate control a sawed-off shotgun or a sawed-off rifle, whether concealed or not, shall upon conviction be guilty of a felony for the possession of such device, and shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00), or imprisonment for a term not to exceed three (3) years, or both such fine and imprisonment.

D. This section shall not apply to any firearm that is lawfully possessed under federal law or that is otherwise not regulated as a “firearm” pursuant to the National Firearms Act.

E. The term “firearm” as used in this section and in the Cherokee Nation Firearms Act of 1971, shall not include an “antique firearm” as defined in 18 U.S.C., Section 921 (2006).

§ 1289.19. "Restricted bullet" and "body armor" defined

As used in Section 1289.20 through 1289.22 of this title and Section 2 of this act:

1. **"Restricted bullet"** means a round or elongated missile with a core of less than sixty percent (60%) lead and having a fluorocarbon coating, which is designed to travel at a high velocity and is capable of penetrating body armor; and

2. **"Body armor"** means a vest or shirt of ten (10) plies or more of bullet resistant material as defined by the Office of Development, Testing and Dissemination, a division of the United States Department of Justice.

§ 1289.20. Manufacture, importation or advertisement for sale of restricted bullets—Penalty

A. Except for the purpose of public safety or national security, it shall be unlawful to manufacture, cause to be manufactured, import, advertise for sale or sell within this nation any restricted bullet as defined in Section 1289.19 of this title.

B. Any person convicted of violating subsection A of this section shall be guilty of a felony and shall be punished by a fine of not less than Five Hundred Dollars ($500.00) and not more than Fifteen Thousand Dollars ($15,000), or by imprisonment for a term not to exceed three (3) years, or both such fine and imprisonment.

§ 1289.21. Possessing or use of restricted bullet and/or body armor—Penalty

A. It shall be unlawful for any person to possess, carry upon his person, use or attempt to use against another person any restricted bullet as defined in Section 1289.19 of this title.

B. Any person convicted of violating subsection A of this section shall be guilty of a felony and shall be punished by a fine which shall not exceed Fifteen Thousand Dollars ($15,000), or imprisonment for not more than three (3) years, or both such fine and imprisonment.

§ 1289.22. Exemptions

The prohibition of possessing or using a restricted bullet shall not apply to law enforcement agencies when such bullet is used for testing, training or demonstration.

§ 1289.23. Off-duty peace officers authorized to carry weapons

A. Notwithstanding any provision of law to the contrary, a full-time duly appointed peace officer who is certified by the Council on Law Enforcement Education and Training, pursuant to the provisions of Section 3311 of Title 70 of the Oklahoma Statutes, is hereby authorized to carry a weapon approved by his employing agency anywhere in the Cherokee Nation, both while on active duty and during periods when he is not on active duty as provided by the provisions of subsection B of this section.

B. When a full-time duly appointed officer carries a approved weapon, the officer shall be wearing the law enforcement uniform prescribed by the employing agency or plainclothes. When not wearing the prescribed law enforcement uniform, the officer shall be required:

1. To have the official peace officers badge, Commission Card and C.L.E.E.T. Certification

Card on his person at all times when carrying a weapon certified and approved by the employing agency; and

2. To keep the approved weapon concealed from view at all times except when the weapon is used within the guidelines established by the employing agency.

C. Nothing in this section shall be construed to alter or amend the provisions of Section 1272.1 of this title or expand the duties, authority or jurisdiction of any peace officer.

D. A reserve peace officer who has satisfactorily completed a basic police course of not less than one hundred twenty (120) hours of accredited instruction for reserve police officers and reserve deputies from the Council of Law Enforcement Education and Training or a course of study approved by CLEET may carry an approved weapon when such officer is off duty as provided by subsection E of this section, provided:

1. The officer has been granted written authorization signed by the director of the employing agency; and
2. The employing agency shall maintain a current list of any officers authorized to carry an approved weapon while the officers are off duty, and shall provide a copy of such list to the Council on Law Enforcement Education and Training. Any change to the list shall be made in writing and mailed to the Council on Law Enforcement Education and Training within five (5) days.

E. When an off-duty reserve peace officer carries an approved weapon, the officer shall be wearing the law enforcement uniform prescribed by the employing agency or when not wearing the prescribed law enforcement uniform, the officer shall be required:
1. To have his or her official peace officer's badge, Commission Card, CLEET Certification Card; and
2. To keep the approved weapon on his or her person at all times, except when the weapon is used within the guidelines established by the employing agency.

F. Nothing in subsection D of this section shall be construed to alter or amend the provisions of Section 1750.2 of Title 59 of the Oklahoma Statutes or expand the duties, jurisdiction or authority of any reserve peace officer.

G. Nothing in this section shall be construed to limit or restrict any peace officer or reserve peace officer from carrying a handgun, concealed or unconcealed, as allowed by the Cherokee Nation Self-Defense Act after issuance of a valid license. An off-duty, full-time peace officer or reserve peace officer shall be deemed to have elected to carry a handgun under the authority of the Cherokee Nation Self-Defense Act when the officer:
1. Has been issued a valid handgun license and is carrying a handgun not authorized by the employing agency; or

2. Is carrying a handgun in a manner or in a place not specifically authorized for off-duty carry by the employing agency.

H. Any off-duty peace officer who carries any weapon in violation of the provisions of this section shall be deemed to be in violation of Section 1272 of this title and may be prosecuted as provided by law for a violation of that section.

I. On or after November 1, 2004, a reserve or full-time commissioned peace officer may apply to carry a weapon pursuant to the Cherokee Nation Self-Defense Act as follows:

1. The officer shall apply in writing to the Council on Law Enforcement Education and Training (CLEET) stating that the officer desires to have a handgun license pursuant to the Cherokee Nation Self-Defense Act and certifying that he or she has no preclusions to having such handgun license. The officer shall submit with the application:
    a. an official letter from his or her employing agency confirming the officer's employment and status as a full-time commissioned peace officer or an active reserve peace officer,
    b. a fee of Twenty-five Dollars ($25.00) for the handgun license, and
    c. two passport-size photographs of the peace officer applicant;
2. Upon receiving the required information, CLEET shall determine whether the peace officer is in good standing, has CLEET certification and training, and is otherwise eligible for a handgun license. Upon verification of the officer's eligibility, CLEET shall send the information to the Oklahoma State Bureau of Investigation (OSBI) and OSBI shall issue a handgun license in the same or similar form as other handgun licenses. All other requirements in Section 1290.12 of this title concerning application for a handgun license shall be waived for active duty peace officers except as provided in this subsection including, but not limited to, training, fingerprints and criminal history records checks unless the officer does not have fingerprints on file or a criminal history records background check conducted prior to employment as a peace officer. The OSBI shall conduct a check of the National Instant Criminal Background Check System (NICS) prior to the issuance of a handgun license. The OSBI shall not be required to conduct any further investigation into the eligibility of the peace officer applicant and shall not deny a handgun license except when preclusions are found to exist;
3. The term of the handgun license for an active duty reserve or full-time commissioned peace officer pursuant to this section shall be as provided in Section 1290.5 of this title, renewable in the same manner provided in this subsection for an original application by a peace officer. The handgun license shall be valid when the peace officer is in possession of a valid driver license and law enforcement commission card;
4. If the commission card of a law enforcement officer is terminated, revoked or suspended, the handgun license shall be immediately returned to CLEET. When a peace officer in possession of a handgun license pursuant to this subsection changes employment, the person must notify CLEET within ninety (90) days and send a new letter verifying employment and status as a full-time commissioned or reserve peace officer;

5. There shall be no refund of any fee for any unexpired term of any handgun license that is suspended, revoked or voluntarily returned to CLEET, or that is denied, suspended or revoked by the OSBI;
6. CLEET may promulgate any rules, forms or procedures necessary to implement the provisions of this section; and
7. Nothing in this subsection shall be construed to change or amend the application process, eligibility, effective date or fees
8. of any handgun license pending issuance on November 1, 2004, or previously issued to any peace officer prior to November 1, 2004.

§ 1289.24. Reserved

§ 1289.25. Physical or deadly force against intruder

A. The Council hereby recognizes that the citizens of the Cherokee Nation have a right to expect absolute safety within their own homes, places of business or places of worship and have the right to establish policies regarding the possession of weapons on property pursuant to Section 1289.22 of this title.

B. A person, regardless of official capacity or lack of official capacity, within a place of worship or a person, an owner, manager or employee of a business is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

1. a. The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, occupied vehicle, place of business or place of worship, or if that person had removed or was attempting to remove another against the will of that person from the dwelling, residence, occupied vehicle, place of business or place of worship.

   b. The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred; or

2. The person who uses defensive force knew or had reasonable belief that the person against whom the defensive force was used entered or was attempting to enter a dwelling, residence, occupied vehicle, place of business or place of worship for the purpose of committing a forcible felony, as defined in Section 733 of this title, and

that the defensive force was necessary to prevent the commission of the forcible felony.

C. The presumption set forth in subsection B of this section does not apply if:

1. The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not a protective order from domestic violence in effect or a written pretrial supervision order of no contact against that person;
2. The person or persons sought to be removed are children or grandchildren, or are otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or
3. The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, occupied vehicle, place of business or place of worship to further an unlawful activity.

D. A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force, if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

E. A person who unlawfully and by force enters or attempts to enter the dwelling, residence, occupied vehicle of another person, place of business or place of worship is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

F. A person who uses defensive force, as permitted pursuant to the provisions of subsections A, B, D and E of this section, is justified in using such defensive force and is immune from criminal prosecution and civil action for the use of such defensive force. As used in this subsection, the term “criminal prosecution” includes charging or prosecuting the defendant.

G. A law enforcement agency may use standard procedures for investigating the use of defensive force, but the law enforcement agency may not arrest the person for using defensive force unless it determines that there is probable cause that the defensive force that was used was unlawful.

H. The court shall award reasonable attorney fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection F of this section.

I. The provisions of this section and the provisions of the Cherokee Nation Self-Defense Act shall not be construed to require any person using a weapon pursuant to the provisions of

this section to be licensed in any manner.

J. A person pointing a weapon at a perpetrator in self-defense or in order to thwart, stop or deter a forcible felony or attempted forcible felony shall not be deemed guilty of committing a criminal act.

K. As used in this section:

1. **"Defensive force"** includes, but shall not be limited to, pointing a weapon at a perpetrator in self-defense or in order to thwart, stop or deter a forcible felony or attempted forcible felony;

2. **"Dwelling"** means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people;

3. **"Place of worship"** means:
   a. any permanent building, structure, facility or office space owned, leased, rented or borrowed, on a full-time basis, when used for worship services, activities and business of the congregation, which may include, but not be limited to, churches, temples, synagogues and mosques, and

   b. any permanent building, structure, facility or office space owned, leased, rented or borrowed for use on a temporary basis, when used for worship services, activities and business of the congregation including, but not limited to, churches, temples, synagogues and mosques;

4. **"Residence"** means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest; and

5. **"Vehicle"** means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

§ 1289.26. Use of body armor

Any person who commits or attempts to commit a felony while wearing body armor as defined in Section 1289.19 of this title, in addition to the penalty provided by statute for the felony committed or attempted, upon conviction shall be guilty of a felony for wearing such body armor, which shall be a separate offense from the felony committed or attempted, and shall be punishable by a fine not to exceed Fifteen Thousand ($15,000) Dollars, or imprisonment for a period not to exceed three (3) years, or both such fine and imprisonment.

§1289.27. Reserved

§ 1289.28. Definitions--Illegal transfer of a firearm

A. For purposes of this section:

1. "Licensed dealer" means a person who is licensed pursuant to 18 U.S.C., Section 923 and pursuant to any laws of this state and engages in the business of dealing in firearms;

2. "Private seller" means a person who sells or offers for sale any firearm, as defined by the laws of this state, or ammunition;

3. "Ammunition" means any cartridge, shell, or projectile designed for use in a firearm; and

4. "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal.

B. Any person, who knowingly solicits, persuades, encourages or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances which the person knows would violate the laws of this state or the United States is guilty of a felony.

C. Any person who provides to a licensed dealer or private seller of firearms or ammunition what the person knows to be materially false information with intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition is guilty of a felony.

D. Any person who willfully procures another to engage in conduct prohibited by this section shall be held accountable as a principal.

E. This section does not apply to a law enforcement officer acting in his or her official capacity or to a person acting at the direction of such law enforcement officer.

F. A violation of this section is punishable by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by a term of imprisonment not to exceed three (3) years, or by both such fine and imprisonment.

§ 1289.29. United States Attorney or Assistant United States Attorney--Carrying of firearm

Any United States Attorney or Assistant United States Attorney may carry a firearm on his or her person anywhere in the Cherokee Nation if the person has successfully completed a handgun

qualification course for court officials developed by the Council on Law Enforcement Education and Training. The Council on Law Enforcement Education and Training may provide for an identification card to be issued to the United States Attorney or Assistant United States Attorney and may provide application forms. If the person issued an identification card is no longer eligible, that person shall immediately return the identification card to the Council on Law Enforcement Education and Training.

§ 1289.30. Requests for certification for the transfer or making of a firearm--Court review of certification decisions

A. When certification by a chief law enforcement officer is required by federal law or regulation for the transfer or making of a firearm, the chief law enforcement officer shall, within fifteen (15) days of receipt of a request for certification, provide such certification if the applicant is not prohibited by law from receiving the firearm or the applicant is not the subject of a proceeding that could result in the applicant being prohibited by law from receiving the firearm. If the applicant is prohibited by law from receiving the firearm or the applicant is the subject of a proceeding that could result in such prohibition, the chief law enforcement officer shall provide written notification to the applicant that certification has been denied and state the reasons for such findings.

B. An applicant whose request for certification is denied may appeal the decision of the chief law enforcement officer to the district court that is located in the county in which the applicant resides. The court shall review the decision of the chief law enforcement officer to deny the certification de novo. If the court finds that the applicant is not prohibited by law from receiving the firearm or the applicant is not the subject of a proceeding that could result in such prohibition, the court shall order the chief law enforcement officer to issue the certification and shall award court costs and reasonable attorney fees to the applicant.

C. For purposes of this section:

1. **"Certification"** means the participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm;

2. **"Chief law enforcement officer"** means any official that the Bureau of Alcohol, Tobacco, Firearms and Explosives, or any successor agency, identifies by regulation or otherwise as eligible to provide any required certification for applications to transfer or make a firearm; and

3. **"Firearm"** shall have the same meaning as provided for in the National Firearms Act, subsection a of Section 5845 of Title 26 of the United States Code.

§ 1290.1. Cherokee Nation Self-Defense Act

A. The authority to carry a concealed or unconcealed handgun pursuant to a valid handgun license as authorized by the provisions of the Cherokee Nation Self-Defense Act shall not be construed to authorize any person to:

1. Carry or possess any weapon other than an authorized pistol as defined by the provisions of Section 1290.2 of this title;

2. Carry or possess any pistol in any manner or in any place otherwise prohibited by law;

3. Carry or possess any prohibited ammunition or any illegal, imitation or homemade pistol;

4. Carry or possess any pistol when the person is prohibited by state or federal law from carrying or possessing any firearm; or

5. Point, discharge or use the pistol in any manner not otherwise authorized by law.

B. The availability of a license to carry pursuant to the provisions of the Cherokee Nation Self-Defense Act shall not be construed to prohibit the lawful transport or carrying of a handgun or pistol in a vehicle or on or about the person whether concealed or unconcealed, loaded or unloaded, and without a valid handgun license as permitted by law.

§ 1290.2. Definitions

A. As used in the Cherokee Nation Self-Defense Act:

1. “Concealed handgun” means a loaded or unloaded pistol or handgun not openly visible to the ordinary observation of a reasonable person;

2. “Unconcealed handgun” or “open carry” means a loaded or unloaded pistol or handgun carried upon the person in a holster where the firearm is visible, or carried upon the person using a scabbard, sling or case designed for carrying firearms; and

3. “Pistol” or “handgun” shall have the same definition as provided in the Cherokee Nation Firearms Act of 1971, defined in Section 1289.3 of this title.

B. The definition of pistol or handgun for purposes of the Cherokee Nation Self-Defense Act shall not apply to imitation pistols, flare guns, underwater fishing guns or blank pistols.

§ 1290.3. Authority to issue license

The Oklahoma State Bureau of Investigation is hereby authorized to license an eligible person to carry a concealed or unconcealed handgun as provided by the provisions of the Cherokee Nation Self-Defense Act. The authority of the Bureau shall be limited to the provisions specifically provided in the Cherokee Nation Self-Defense Act. The Bureau shall promulgate rules, forms and procedures necessary to implement the provisions of the Cherokee Nation Self-Defense Act.

§ 1290.4. Unlawful carry

As provided by Section 1272 of this title, it is unlawful for any person to carry a concealed or unconcealed handgun in this state, except as hereby authorized by the provisions of the Cherokee Nation Self-Defense Act or as may otherwise be provided by law.

§ 1290.5. Term of license and renewal

A. A handgun license when issued shall authorize the person to whom the license is issued to carry a loaded or unloaded handgun, concealed or unconcealed, as authorized by the provisions of the Cherokee Nation Self-Defense Act, and any future modifications thereto. The license shall be valid in this state for a period of five (5) or ten (10) years, unless subsequently surrendered, suspended or revoked as provided by law. The person shall have no authority to continue to carry a concealed or unconcealed handgun in this state pursuant to the Cherokee Nation Self-Defense Act when a license is expired or when a license has been voluntarily surrendered or suspended or revoked for any reason.

B. A license may be renewed any time within ninety (90) days prior to the expiration date as provided in this subsection. The Bureau may notify each eligible licensee with an email address on file at least ninety (90) days prior to the expiration of the license. There shall be a ninety-day grace period on license renewals beginning on the date of expiration; thereafter the license is considered expired. However, any applicant shall have three (3) years from the expiration of the license to comply with the renewal requirements of this section.

1. To renew a handgun license, the licensee must first obtain a renewal form from the Oklahoma State Bureau of Investigation.

2. The applicant must complete the renewal form, attach two current passport size photographs of the applicant, and submit a renewal fee in the amount of Eighty-five Dollars ($85.00) to the Bureau. The renewal fee may be paid with a nationally recognized credit card as provided in subparagraph b of paragraph 4 of subsection A of Section 1290.12 of this title, by electronic funds transfer, or by a cashier's check or money order made payable to the Oklahoma State Bureau of Investigation.

3. Upon receipt of the renewal application, photographs and fee, the Bureau will conduct

a criminal history records name search, an investigation of medical records or other records or information deemed by the Bureau to be relevant to the renewal application. If the applicant appears not to have any prohibition to renewing the handgun license, the Bureau shall issue the renewed license for a period of five (5) or ten (10) years.

C. Beginning November 1, 2007, any person making application for a handgun license or any licensee seeking to renew a handgun license shall have the option to request that said license be valid for a period of ten (10) years. The fee for any handgun license issued for a period of ten (10) years shall be double the amount of the fee provided for in paragraph 4 of subsection A of Section 1290.12 of this title. The renewal fee for a handgun license issued for a period of ten (10) years shall be double the amount of the fee provided for in paragraph 2 of subsection B of this section.

§ 1290.6. Prohibited ammunition

Any concealed or unconcealed handgun when carried in a manner authorized by the provisions of the Cherokee Nation Self-Defense Act and when loaded with any ammunition which is either a restricted bullet as defined by Section 1289.19 of this title or is larger than .45 caliber or is otherwise prohibited by law shall be deemed a prohibited weapon for purposes of the Cherokee Nation Self-Defense Act. Any person violating the provisions of this section shall be punished for a criminal offense as provided by Section 1272 of this title or any other applicable provision of law. In addition to any criminal prosecution for a violation of the provisions of this section, the licensee shall be subject to an administrative fine of Five Hundred Dollars ($500.00), upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

§ 1290.7. Construing authority of license

A. The authority to carry a concealed or unconcealed handgun pursuant to a valid handgun license as authorized by the provisions of the Cherokee Nation Self-Defense Act shall not be construed to authorize any person to:

1. Carry or possess any weapon other than an authorized pistol as defined by the provisions of Section 1290.2 of this title;

2. Carry or possess any pistol in any manner or in any place otherwise prohibited by law;

3. Carry or possess any prohibited ammunition or any illegal, imitation or homemade pistol;

4. Carry or possess any pistol when the person is prohibited by state or federal law from carrying or possessing any firearm; or

5. Point, discharge or use the pistol in any manner not otherwise authorized by law.

B. The availability of a license to carry pursuant to the provisions of the Cherokee Nation Self-Defense Act shall not be construed to prohibit the lawful transport or carrying of a handgun or pistol in a vehicle or on or about the person whether concealed or unconcealed, loaded or unloaded, and without a valid handgun license as permitted by law.

§ 1290.8. Possession of license required—Notification to police of gun

A. Except as otherwise prohibited by law, an eligible person shall have authority to carry a concealed or unconcealed handgun in this state when:

1. The person has been issued a handgun license from the Oklahoma State Bureau of Investigation pursuant to the provisions of the Cherokee Nation Self-Defense Act, provided the person is in compliance with the provisions of the Cherokee Nation Self-Defense Act, and the license has not expired or been subsequently suspended or revoked; or

2. The person is twenty-one (21) years of age or older, and is either:

a. active military, or

b. a member of the Reserve or National Guard to include Drill Status Guard and Reserve, Active Guard Reserves or Military Technicians, and presents a valid military identification card that shall be considered a valid handgun license issued pursuant to the Cherokee Nation Self-Defense Act.

B. A person in possession of a valid handgun license or who meets the criteria and presents a valid military identification card as provided for in this section and in compliance with the provisions of the Cherokee Nation Self-Defense Act shall be authorized to carry such concealed or unconcealed handgun while scouting as it relates to hunting or fishing or while hunting or fishing.

C. The person shall be required to have possession of his or her valid handgun license or valid military identification card as provided for qualified persons in this section and a valid Oklahoma driver license or an Oklahoma State photo identification at all times when in possession of an authorized pistol. The person shall display the handgun license or a valid military identification card as provided for qualified persons in this section on demand of a law enforcement officer; provided, however, that in the absence of reasonable and articulable suspicion of other criminal activity, an individual carrying an unconcealed or concealed handgun shall not be disarmed or physically restrained unless the individual fails to display a valid handgun license or a valid military identification card as provided for qualified persons in

this section in response to that demand. Any violation of the provisions of this subsection may be punishable as a criminal offense as authorized by Section 1272 of this title or pursuant to any other applicable provision of law. Any second or subsequent violation of the provisions of this subsection shall be grounds for the Bureau to suspend the handgun license for a period of six (6) months, in addition to any other penalty imposed.

Upon the arrest of any person for a violation of the provisions of this subsection, the person may show proof to the court that a valid handgun license and the other required identification has been issued to such person and the person may state any reason why the handgun license, a valid military identification card as provided for qualified persons in this section or the other required identification was not carried by the person as required by the Cherokee Nation Self-Defense Act. The court shall dismiss an alleged violation of Section 1272 of this title upon payment of court costs, if proof of a valid handgun license and other required identification is shown to the court within ten (10) days of the arrest of the person. The court shall report a dismissal of a charge to the Bureau for consideration of administrative proceedings against the licensee.

D. It shall be unlawful for any person to fail or refuse to identify the fact that the person is in actual possession of a concealed or unconcealed handgun firearm pursuant to the authority of the Cherokee Nation Self-Defense Act when the person comes into contact with any law enforcement officer of this state or its political subdivisions or a federal law enforcement officer during the course of any arrest, detainment, or routine traffic stop. Said identification to the law enforcement officer shall be made at required upon the first opportunity demand of the law enforcement officer. No person shall be required to identify himself or herself as a handgun licensee or as lawfully in possession of any other firearm if the law enforcement officer does not demand the information. No person shall be required to identify himself or herself as a handgun licensee when no handgun is in the possession of the person or in any vehicle in which the person is driving or is a passenger. Any violation violator of the provisions of this subsection shall, upon conviction, may be a misdemeanor punishable by a fine issued a citation for an amount not exceeding One Hundred Dollars ($100.00).

E. Any law enforcement officer coming in contact with a person whose handgun license is suspended, revoked, or expired, or who is in possession of a handgun license which has not been lawfully issued to that person, shall confiscate the license and return it to the Oklahoma State Bureau of Investigation for appropriate administrative proceedings against the licensee when the license is no longer needed as evidence in any criminal proceeding.

F. Nothing in this section shall be construed to authorize a law enforcement officer to inspect any weapon properly concealed or unconcealed without probable cause that a crime has been committed.

§ 1290.9. Eligibility

The following requirements shall apply to any person making application to the Oklahoma State Bureau of Investigation for a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act. The person must:

1. Be a citizen of the United States with established residency in the State of Oklahoma; or

2. Be a lawful permanent resident in the United States and have established residency in the State of Oklahoma.

For purposes of the Cherokee Nation Self-Defense Act:

a. the term "residency" shall apply to any person who either possesses a valid Oklahoma driver license or state photo identification card, and physically maintains a residence in this state or to any person, including the spouse of such person, who has permanent military orders within this state and possesses a valid driver license from another state where such person and spouse of such person claim residency, and

b. the term "lawful permanent resident" shall mean a noncitizen who is lawfully authorized to live permanently within the United States;

3. Be at least:

a. twenty-one (21) years of age, or

b. eighteen (18) years of age but not yet twenty-one (21) years of age and the person is a member or veteran of the United States Armed Forces, the Reserves or National Guard, or the person was discharged under honorable conditions from the United States Armed Forces, Reserves or National Guard;

4. Complete a firearms safety and training course and demonstrate competence and qualifications with the type of pistol to be carried by the person as provided in Section 1290.14 of this title, and submit proof of training and qualification or an exemption for training and qualification as authorized by Section 1290.14 of this title;

5. Submit the required fee and complete the application process as provided in Section 1290.12 of this title; and

6. Comply in good faith with the provisions of the Cherokee Nation Self-Defense Act.

§ 1290.10. Mandatory preclusions

In addition to the requirements stated in Section 1290.9 of this title, the conditions stated in this section shall preclude a person from eligibility for a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act. The occurrence of any one of the following conditions shall deny the person the right to have a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act. Prohibited conditions are:

1. Ineligible to possess a pistol due to any felony conviction or adjudication as a delinquent as provided by Section 1283 of this title, except as provided in subsection B of Section 1283 of this title;

2. Any felony conviction pursuant to any law of another state, a felony conviction pursuant to any provision of the United States Code, or any conviction pursuant to the laws of any foreign country, provided such foreign conviction would constitute a felony offense in this state if the offense had been committed in this state, except as provided in subsection B of Section 1283 of this title;

3. Adjudication as a mentally incompetent person pursuant to the provisions of the Oklahoma Mental Health Law, or an adjudication of incompetency entered in another state pursuant to any provision of law of that state, unless the person has been granted relief from the disqualifying disability pursuant to Section 1290.27 of this title;

4. Any false or misleading statement on the application for a handgun license as provided by paragraph 5 of subsection A of Section 1290.12 of this title;

5. Conviction of any one of the following misdemeanor offenses in this state or in any other state:

a. any assault and battery which caused serious physical injury to the victim, or any second or subsequent assault and battery conviction,

b. any aggravated assault and battery,

c. any stalking pursuant to Section 1173 of this title, or a similar law of another state,

d. a violation relating to the Protection from Domestic Abuse Act or any violation of a victim protection order of another state,

e. any conviction relating to illegal drug use or possession, or

f. an act of domestic abuse as defined by Section 644 of this title or an act of domestic assault and battery or any comparable acts under the laws of another state.

The preclusive period for a misdemeanor conviction related to illegal drug use or possession shall be ten (10) years from the date of completion of a sentence. For purposes of this subsection, "date of completion of a sentence" shall mean the day an offender completes all incarceration, probation, and parole pertaining to such sentence;

6. An attempted suicide or other condition relating to or indicating mental instability or an unsound mind which occurred within the preceding ten-year period from the date of the application for a license to carry a concealed firearm or that occurs during the period of licensure;

7. Currently undergoing treatment for a mental illness, condition, or disorder. For purposes of this paragraph, "currently undergoing treatment for a mental illness, condition, or disorder" means the person has been diagnosed by a licensed physician as being afflicted with a substantial disorder of thought, mood, perception, psychological orientation, or memory that significantly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life;

8. Significant character defects of the applicant as evidenced by a criminal record indicating habitual criminal activity;

9. Ineligible to possess a pistol due to any provision of law of this state or the United States Code, except as provided in subsection B of Section 1283 of this title;

10. Failure to pay an assessed fine or surrender the handgun license as required by a decision by the administrative hearing examiner pursuant to authority of the Cherokee Nation Self-Defense Act;

11. Being subject to an outstanding felony warrant issued in this state or another state or the United States; or

12. Adjudication as a delinquent as provided by Section 1283 of this title, except as provided in subsection B of Section 1283 of this title.

§ 1290.11. Other preclusions

A. The following conditions shall preclude a person from being eligible for a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act for a period of time as prescribed in each of the following paragraphs:

1. An arrest for an alleged commission of a felony offense or a felony charge pending in this state, another state or pursuant to the United States Code. The preclusive period shall be until the final determination of the matter;

2. The person is subject to the provisions of a deferred sentence or deferred prosecution in this state or another state or pursuant to federal authority for the commission of a felony offense. The preclusive period shall be three (3) years and shall begin upon the final determination of the matter;

3. Any involuntary commitment for a mental illness, condition, or disorder pursuant to the provisions of Section 5-410 of Title 43A of the Oklahoma Statutes or any involuntary commitment in another state pursuant to any provisions of law of that state. The preclusive period shall be permanent as provided by Title 18 of the United States Code Section 922(g)(4) unless the person has been granted relief from the disqualifying disability pursuant to Section 1290.27 of this title;

4. The person has previously undergone treatment for a mental illness, condition, or disorder which required medication or supervision as defined by paragraph 7 of Section 1290.10 of this title. The preclusive period shall be three (3) years from the last date of treatment or upon presentation of a certified statement from a licensed physician stating that the person is either no longer disabled by any mental or psychiatric illness, condition, or disorder or that the person has been stabilized on medication for ten (10) years or more;

5. Inpatient treatment for substance abuse. The preclusive period shall be three (3) years from the last date of treatment or upon presentation of a certified statement from a licensed physician stating that the person has been free from substance use for twelve (12) months or more preceding the filing of an application for a handgun license;

6. Two or more convictions of public intoxication pursuant to subsection D of Section 6-101 of Title 37A of the Oklahoma Statutes, or a similar law of another state. The preclusive period shall be three (3) years from the date of the completion of the last sentence;

7. Two or more misdemeanor convictions relating to intoxication or driving under the influence of an intoxicating substance or alcohol. The preclusive period shall be three (3) years from the date of the completion of the last sentence or shall require a certified statement from a licensed physician stating that the person is not in need of substance abuse treatment;

8. A court order for a final Victim Protection Order against the applicant, as authorized

by the Protection from Domestic Abuse Act, or any court order granting a final victim protection order against the applicant from another state. The preclusive period shall be sixty (60) days from the date an order was vacated, canceled, withdrawn or otherwise no longer in effect;

9. An adjudicated delinquent or convicted felon residing in the residence of the applicant which may be a violation of Section 1283 of this title. The preclusive period shall be thirty (30) days from the date the person no longer resides in the same residence as the applicant; or

10. An arrest for an alleged commission of, a charge pending for, or the person is subject to the provisions of a deferred prosecution for any one or more of the following misdemeanor offenses in this state or another state:

a. any assault and battery which caused serious physical injury to the victim or any second or subsequent assault and battery,

b. any aggravated assault and battery,

c. any stalking pursuant to Section 1173 of this title, or a similar law of another state,

d. any violation of the Protection from Domestic Abuse Act or any violation of a victim protection order of another state,

e. any violation relating to illegal drug use or possession, or

f. an act of domestic abuse as defined by Section 644 of this title or an act of domestic assault and battery or any comparable acts under the law of another state.

The preclusive period shall be until the final determination of the matter. The preclusive period for a person subject to the provisions of a deferred sentence for the offenses mentioned in this paragraph shall be three (3) years and shall begin upon the final determination of the matter.

B. Nothing in this section shall be construed to require a full investigation of the applicant by the Oklahoma State Bureau of Investigation.

§ 1290.12. Reserved

§ 1290.13. Automatic listing of licenses

The Oklahoma State Bureau of Investigation shall maintain an automated listing of all persons issued a handgun license in this state pursuant to the provisions of the Cherokee Nation Self-Defense Act and all subsequent suspended or revoked licenses. Information from the automated listing shall only be available to a law enforcement officer or law enforcement agency upon request for law enforcement purposes. The Bureau shall also maintain for each applicant the original application or a copy of the original application form and any subsequent renewal application forms together with the photographs, fingerprints and other pertinent information on the applicant which shall be confidential, except to law enforcement officers or law enforcement agencies in the performance of their duties. The Bureau may release a copy of fingerprints of a deceased applicant maintained by the Bureau due to an application for a handgun license pursuant to the Cherokee Nation Self-Defense Act. Provided, however, the Bureau may release a copy of fingerprints of a deceased applicant only to an immediate family member upon written request. Such request shall be accompanied by a payment of Fifteen Dollars ($15.00), which shall be deposited into the OSBI Revolving Fund. For purposes of this section, “immediate family member” shall mean the spouse, a child by birth or adoption, a stepchild, a parent by birth or adoption, a stepparent, a grandparent, a grandchild, a sibling, a stepsibling or the spouse of any immediate family member. To facilitate the Bureau's administration of the Cherokee Nation Self-Defense Act, all licensees shall maintain a current mailing address where the licensee may receive certified mail. The licensee shall within thirty (30) days of a change of name or address inform the Bureau of such change.

§ 1290.14. Safety and training course

A. Each applicant for a license to carry a concealed or unconcealed handgun pursuant to the Cherokee Nation Self-Defense Act must successfully complete a firearms safety and training course in this state conducted by a registered and approved firearms instructor as provided by the provisions of this section or from an interactive online firearms safety and training course available electronically via the Internet approved and certified by the Council on Law Enforcement Education and Training. The applicant must further demonstrate competence and qualification with an authorized pistol of the type or types that the applicant desires to carry as a concealed or unconcealed handgun pursuant to the provisions of the Cherokee Nation Self-Defense Act, except certain persons may be exempt from such training requirement as provided by the provisions of Section 1290.15 of this title.

B. The Council on Law Enforcement Education and Training (CLEET) shall establish criteria for approving firearms instructors and interactive online firearms safety and training courses available electronically via the Internet for purposes of training and qualifying individuals for a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act. Prior to submitting an application for CLEET approval as a firearms instructor, applicants shall attend a firearms instructor school, meeting the following minimum requirements:

1. Firearms instructor training conducted by one of the following entities:

a. Council on Law Enforcement Education and Training,

b. National Rifle Association,

c. Oklahoma Rifle Association,

d. federal law enforcement agencies, or

e. other professionally recognized organizations;

2. The course shall be at least sixteen (16) hours in length;

3. Upon completion of the course, the applicant shall be qualified to provide instruction on revolvers, semiautomatic pistols, or both; and

4. Receive a course completion certificate.

All firearms instructors shall be required to meet the eligibility requirements for a handgun license as provided in Sections 1290.9, 1290.10, and 1290.11 of this title and the application shall be processed as provided for applicants in Section 1290.12 of this title, including the state and national criminal history records search and fingerprint search. A firearms instructor shall be required to pay a fee of One Hundred Dollars ($100.00) to the Council on Law Enforcement Education and Training (CLEET) each time the person makes application for CLEET approval as a firearms instructor pursuant to the provisions of the Cherokee Nation Self-Defense Act. The fee shall be retained by CLEET and shall be deposited into the Firearms Instructors Revolving Fund. CLEET shall promulgate the rules, forms and procedures necessary to implement the approval of firearms instructors as authorized by the provisions of this subsection. CLEET shall periodically review each approved instructor during a training and qualification course to assure compliance with the rules and course contents. Any violation of the rules may result in the revocation or suspension of CLEET and Oklahoma State Bureau of Investigation approval. Unless the approval has been revoked or suspended, a firearms instructor's CLEET approval shall be for a term of five (5) years. Beginning on July 1, 2003, any firearms instructor who has been issued a four-year CLEET approval shall not be eligible for the five-year approval until the expiration of the approval previously issued. CLEET shall be responsible for notifying all approved firearms instructors of statutory and policy changes related to the Cherokee Nation Self-Defense Act. A firearms instructor shall not be required to submit his or her fingerprints for a fingerprint search when renewing a firearms instructor's CLEET approval.

C.

1. All firearms instructors approved by CLEET to train and qualify individuals for a

handgun license shall be required to apply for registration with the Oklahoma State Bureau of Investigation after receiving CLEET approval. All firearms instructors teaching the approved course for a handgun license must display their registration certificate during each training and qualification course. Each approved firearms instructor shall complete a registration form provided by the Bureau and shall have the option to pay a registration fee of either One Hundred Dollars ($100.00) for a five-year registration certificate or Two Hundred Dollars ($200.00) for a ten-year registration certificate to the Bureau at the time of each application for registration, except as provided in paragraph 2 of this subsection. Registration certificates issued by the Bureau shall be valid for a period of five (5) years or ten (10) years from the date of issuance. The Bureau shall issue a five-year or ten-year handgun license to an approved firearms instructor at the time of issuance of a registration certificate and no additional fee shall be required or charged. The Bureau shall maintain a current listing of all registered firearms instructors in this state. Nothing in this paragraph shall be construed to eliminate the requirement for registration and training with CLEET as provided in subsection B of this section. Failure to register or be trained as required shall result in a revocation or suspension of the instructor certificate by the Bureau.

2. On or after July 1, 2003, the registered instructors listed in subparagraphs a and b of this paragraph shall not be required to renew the firearms instructor registration certificate with the Oklahoma State Bureau of Investigation at the expiration of the registration term, provided the instructor is not subject to any suspension or revocation of the firearms instructor certificate. The firearms instructor registration with the Oklahoma State Bureau of Investigation shall automatically renew together with the handgun license authorized in paragraph 1 of this subsection for an additional five-year term and no additional cost or fee may be charged for the following individuals:

a. an active duty law enforcement officer of this state or any of its political subdivisions or of the federal government who has a valid CLEET approval as a firearms instructor pursuant to the Cherokee Nation Self-Defense Act, and

b. a retired law enforcement officer authorized to carry a firearm pursuant to Section 1289.8 of this title who has a valid CLEET approval as a firearms instructor pursuant to the Cherokee Nation Self-Defense Act.

D. The Oklahoma State Bureau of Investigation shall approve registration for a firearms instructor applicant who is in full compliance with CLEET rules regarding firearms instructors and the provisions of subsection B of this section, if completion of the federal fingerprint search is the only reason for delay of registration of that firearms instructor applicant. Upon receipt of the federal fingerprint search information, if the Bureau receives information which precludes the person from having a handgun license, the Bureau shall revoke both the registration and the handgun license previously issued to the firearms instructor.

E. The required firearms safety and training course and the actual demonstration of competency and qualification required of the applicant shall be designed and conducted in such a manner that the course can be reasonably completed by the applicant within an eight-hour period. CLEET shall establish the course content and promulgate rules, procedures and forms necessary to implement the provisions of this subsection. For the training and qualification course, an applicant may be charged a fee which shall be determined by the instructor or entity that is conducting the course. The maximum class size shall be determined by the instructor conducting the course; provided, however, practice shooting sessions shall not have more than ten participating students at one time. CLEET may establish criteria for assistant instructors and any other requirements deemed necessary to conduct a safe and effective training and qualification course. The course content shall include a safety inspection of the firearm to be used by the applicant in the training course; instruction on pistol handling, safety and storage; dynamics of ammunition and firing; methods or positions for firing a pistol; information about the criminal provisions of the Oklahoma law relating to firearms; the requirements of the Cherokee Nation Self-Defense Act as it relates to the applicant; self-defense and the use of appropriate force; a practice shooting session; and a familiarization course. The firearms instructor shall refuse to train or qualify any person when the pistol to be used or carried by the person is either deemed unsafe or unfit for firing or is a weapon not authorized by the Cherokee Nation Self-Defense Act. The course shall provide an opportunity for the applicant to qualify himself or herself on either a derringer, a revolver, a semiautomatic pistol or any combination of a derringer, a revolver and a semiautomatic pistol, provided no pistol shall be capable of firing larger than .45 caliber ammunition. Any applicant who successfully trains and qualifies himself or herself with a semiautomatic pistol may be approved by the firearms instructor on the training certificate for a semiautomatic pistol, a revolver and a derringer upon request of the applicant. Any person who qualifies on a derringer or revolver shall not be eligible for a semiautomatic rating until the person has demonstrated competence and qualifications on a semiautomatic pistol. Upon successful completion of the training and qualification course, a certificate of training and a certificate of competency and qualification shall be issued to each applicant who successfully completes the course. The certificate of training and certificate of competency and qualification shall comply with the forms established by CLEET and shall be submitted with an application for a handgun license pursuant to the provisions of paragraph 2 of subsection A of Section 1290.12 of this title. The certificate of training and certificate of competency and qualification issued to an applicant shall be valid for a period of three (3) years.

F. There is hereby created a revolving fund for the Council on Law Enforcement Education and Training (CLEET), to be designated the “Firearms Instructors Revolving Fund”. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all funds received for approval of firearms instructors for purposes of the Cherokee Nation Self-Defense Act. All funds received shall be deposited to the fund. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Council on Law Enforcement Education and Training, for implementation of the training and qualification course contents,

approval of firearms instructors and any other CLEET requirement pursuant to the provisions of the Cherokee Nation Self-Defense Act or as may otherwise be deemed appropriate by CLEET. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

G. Firearms instructors shall keep on file for a period of not less than three (3) years a roster of each training class, the safety test score of each individual, the caliber and type of weapon each individual used when qualifying and whether or not each individual successfully completed the training course. Firearms instructors shall be authorized to destroy all training documents and records upon expiration of the three-year time period.

§ 1290.15. Persons exempt from training course

A. The following individuals may be exempt from all or part of the required training and qualification course established pursuant to the provisions of Section 1290.14 of this title:

1. A firearms instructor registered with the Oklahoma State Bureau of Investigation for purposes of the Cherokee Nation Self-Defense Act;

2. An active duty or reserve duty law enforcement officer of this state or any of its political subdivisions or of the federal government;

3. A retired law enforcement officer authorized by this state pursuant to Section 1289.8 of this title to carry a firearm;

4. A Council on Law Enforcement Education and Training (CLEET) certified armed security officer, armed guard, correctional officer, or any other person having a CLEET certification to carry a firearm in the course of their employment;

5. A person on active military duty, National Guard duty or regular military reserve duty who is a legal resident of this state and who is trained and qualified in the use of handguns;

6. A person honorably discharged from active military duty, National Guard duty or military reserves within twenty (20) years preceding the date of the application for a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act, who is a legal resident of this state, and who has been trained and qualified in the use of handguns;

7. A person retired as a peace officer in good standing from a law enforcement agency located in another state, who is a legal resident of this state, and who has received

training equivalent to the training required for CLEET certification in this state; and

8. Any person who is otherwise deemed qualified for a training exemption by CLEET.

B. No person who is determined to be exempt from training or qualification may carry a concealed or unconcealed firearm pursuant to the authority of the Cherokee Nation Self-Defense Act until issued a valid handgun license or possesses a valid military identification card as provided for qualified persons in Section 1290.8 of this title.

C. Nothing contained in any provision of the Cherokee Nation Self-Defense Act shall be construed to alter, amend, or modify the authority of any active duty law enforcement officer, or any person certified by the Council on Law Enforcement Education and Training to carry a pistol during the course of their employment, to carry any pistol in any manner authorized by law or authorized by the employing agency.

§ 1290.16. Reserved

§ 1290.17. Suspension and revocation of license

A. The Oklahoma State Bureau of Investigation shall have authority pursuant to the provisions of the Cherokee Nation Self-Defense Act and any other provision of law to suspend or revoke any handgun license issued pursuant to the provisions of the Cherokee Nation Self-Defense Act. A person whose license has been suspended or revoked or against whom a fine has been assessed shall be entitled to an appeal through a hearing in accordance with the Administrative Procedures Act. Any administrative hearing on suspensions, revocations or fines shall be conducted by a hearing examiner appointed by the Bureau. The hearing examiner's decision shall be a final decision appealable to a district court in accordance with the Administrative Procedures Act. After a handgun license has been issued, the discovery of or the occurrence of any condition which directly affects a person's eligibility for a handgun license as provided by the provisions of Section 1290.9 or 1290.10 of this title shall require a revocation of the license by the Bureau. The discovery of or the occurrence of any condition pursuant to Section 1290.11 of this title, after a license has been issued, shall cause a suspension of the handgun license for a period of time as prescribed for the condition. Any provision of law that requires a revocation of a handgun license upon a conviction shall cause the Bureau to suspend the handgun license upon the discovery of the arrest of the person for such offense until a determination of the criminal case at which time the Bureau shall proceed with the appropriate administrative action. A licensee may voluntarily surrender a license to the Oklahoma State Bureau of Investigation at any time. Such surrender of a handgun license will render the license invalid. Nothing in this section may be interpreted to prevent a subsequent new application for a license. The licensee shall be informed and acknowledge in writing as follows:

1. The licensee understands that the voluntary surrender of the license will not be

deemed a suspension or revocation by the Bureau;

2. A voluntary surrender of a license will not be reviewable by a hearing examiner or subject to judicial review under the Administrative Procedures Act; and

3. By surrendering the license, the licensee shall forfeit all fees paid to date.

B. Any handgun license which is subsequently suspended or revoked shall be immediately returned to the Oklahoma State Bureau of Investigation upon notification. Any person refusing or failing to return a license after notification of its suspension or revocation shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not exceeding Five Hundred Dollars ($500.00), by imprisonment in the county jail for not exceeding six (6) months, or by both such fine and imprisonment. In addition, the person shall be subject to an administrative fine of Five Hundred Dollars ($500.00), upon a hearing and determination by the Bureau that the person is in violation of the provisions of this subsection.

C. Any law enforcement officer of this state shall confiscate a handgun license in the possession of any person and return it to the Oklahoma State Bureau of Investigation for appropriate administrative proceedings against the licensee when the license is no longer needed as evidence in any criminal proceeding, as follows:

1. Upon the arrest of the person for any felony offense;

2. Upon the arrest of the person for any misdemeanor offense enumerated as a preclusion to a handgun license;

3. For any violation of the provisions of the Cherokee Nation Self-Defense Act;

4. When the officer has been called to assist or is investigating any situation which would be a preclusion to having a handgun license; or

5. As provided in subsection D of Section 1290.8 of this title.

D. Any administrative fine assessed in accordance with the provisions of the Cherokee Nation Self-Defense Act shall be paid in full within thirty (30) days of assessment. The Oklahoma State Bureau of Investigation shall, without a hearing, suspend the handgun license of any person who fails to pay in full any administrative fine assessed against the person in accordance with the provisions of this subsection. The suspension of any handgun license shall be automatic and shall begin thirty (30) days from the date of the assessment of the administrative fine. The suspension shall be removed and the handgun license returned to its prior standing upon payment of the administrative fine being paid in full to the Bureau.

E. Whenever a handgun license has been suspended in accordance with the provisions of this act or the administrative rules of the Bureau promulgated for purposes of this act, the license shall remain under suspension and shall not be reinstated until:

1. The person whose license has been suspended applies for reinstatement in accordance with the administrative rules of the Bureau. The Bureau shall not charge any fee in conjunction with an application for a license reinstatement. The person whose license has been suspended must demonstrate that the condition or preclusion which was the basis for the suspension has lapsed and is no longer in effect; and

2. Any and all administrative fines assessed against the person have been paid in full.
In the event a handgun license expires during the term of the suspension, the person shall be required to apply for renewal of the license in accordance with Section 1290.5 of this title.

§ 1290.18. Application form contents

The application shall be completed upon the sworn oath of the applicant as provided in paragraph 5 of Section 1290.12 of this title. The application form shall be provided by the Oklahoma State Bureau of Investigation and shall contain the following information in addition to any other information deemed relevant by the Bureau:

1. Applicant's full legal name;
2. Applicant's birth name, alias names or nicknames;
3. Maiden name, if applicable;
4. County of residence;
5. Length of residency at the current address;
6. Previous addresses for the preceding three (3) years;
7. Place of birth;
8. Date of birth;
9. Declaration of citizenship and date United States citizenship was acquired, if applicable;
10. Race;
11. Weight;
12. Height;
13. Sex;
14. Color of eyes;
15. Current driver license number;
16. Military service number, if applicable;
17. Law enforcement identification numbers, if applicable;
18. Current occupation;
19. Authorized type or types of pistol for which the applicant qualified as stated on the

certificate of training or exemption of training which shall be stated as either derringer, revolver, semiautomatic pistol, or some combination of derringer, revolver and semiautomatic pistol and the maximum ammunition capacity of the firearm shall be .45 caliber;

20. An acknowledgment that the applicant desires a handgun license as a means of lawful self-defense and self-protection and for no other intent or purpose;

21. A statement that the applicant has never been convicted of any felony offense in this state, another state or pursuant to any federal offense;

22. A statement that the applicant has none of the conditions which would preclude the issuing of a handgun license pursuant to any of the provisions of Sections 1290.10 and 1290.11 of this title and that the applicant further meets all of the eligibility criteria required by Section 1290.9 of this title;

23. An authorization for the Oklahoma State Bureau of Investigation to investigate the applicant and any or all records relating to the applicant for purposes of approving or denying a handgun license pursuant to the provisions of the Cherokee Nation Self-Defense Act;

24. An acknowledgment that the applicant has been furnished a copy of the Cherokee Nation Self-Defense Act and is knowledgeable about its provisions;

25. A statement that the applicant is the identical person who completed the firearms training course for which the original training certificate is submitted as part of the application or a statement that the applicant is the identical person who is exempt from firearms training for which the original exemption certificate is submitted as part of the application, whichever is applicable to the applicant;

26. A conspicuous warning that the application is executed upon the sworn oath of the applicant and that any false or misleading answer to any question or the submission of any false information or documentation by the applicant is punishable by criminal penalty as provided in paragraph 5 of Section 1290.12 of this title;

27. A signed verification that the contents of the application are known to the applicant and are true and correct;

28. Two separate places for the original signature of the applicant;

29. A place for attachment of a passport size photograph of the applicant; and

30. A place for the signature and verification of the identity of the applicant by the sheriff or the sheriff's designee.

Information provided by the person on an application for a handgun license shall be confidential except to law enforcement officers or law enforcement agencies.

§ 1290.19. License form

The handgun license shall be on a form prescribed by the Oklahoma State Bureau of Investigation and shall contain the following information in addition to any other information deemed relevant by the Bureau:

1. The full name of the person;
2. Current address;
3. County of residence;
4. Date of birth;
5. Weight;
6. Height;
7. Sex;
8. Race;
9. Color of eyes;
10. Handgun license identification number;
11. Expiration date of the handgun license; and
12. Authorized pistol to be either: (D) derringer, (R) revolver, (S) semiautomatic pistol, or some combination of derringer, revolver and semiautomatic pistol as may be authorized by the Cherokee Nation Self-Defense Act for which the person demonstrated qualification pursuant to the certificate of training or an exemption certificate.

§ 1290.20. Penalty for refusal to submit or falsification

It shall be unlawful for any sheriff or designee to fail or refuse to accept an application for a handgun license as authorized by the provisions of the Cherokee Nation Self-Defense Act or to fail or refuse to process or submit the completed application to the Oklahoma State Bureau of Investigation within the time prescribed by paragraph 8 of Section 1290.12 of this title, or to falsify or knowingly allow any person to falsify any information, documentation, fingerprint or photograph submitted with a handgun application. Any violation shall, upon conviction, be a misdemeanor. There is a presumption that the sheriff has acted in good faith to comply with the provisions of the Cherokee Nation Self-Defense Act and any alleged violation of the provisions of this section shall require proof beyond a reasonable doubt.

§ 1290.21. Replacement license

A. In the event a handgun license becomes missing, lost, stolen or destroyed, the license shall be invalid, and the person to whom the license was issued shall notify the Oklahoma State Bureau of Investigation within thirty (30) days of the discovery of the fact that the license is not in the possession of the licensee. The person may obtain a substitute license upon furnishing a notarized statement to the Bureau that the license is missing, lost, stolen or destroyed and paying a fifteen-dollar replacement fee. During any period when a license is missing, lost, stolen or destroyed, the person shall have no authority to carry a concealed or unconcealed handgun pursuant to the provisions of the Cherokee Nation Self-Defense Act. The Bureau shall, upon receipt of the notarized statement and fee from the licensee, issue a substitute license with the same expiration date within ten (10) days of the receipt of the notarized statement and fee.

B. Any person who knowingly or intentionally carries a concealed or unconcealed handgun

pursuant to a handgun license authorized and issued pursuant to the provisions of the Cherokee Nation Self-Defense Act which is stolen shall, upon conviction, be guilty of a felony punishable by a fine of Five Thousand Dollars ($5,000.00).

C. Any person having a valid handgun license pursuant to the Cherokee Nation Self-Defense Act may carry any make or model of an authorized pistol listed on the license, provided the type of pistol shall not be other than the type or types listed on the license. A person may complete additional firearms training for an additional type of pistol during any license period and upon successful completion of the training may request the additional type of pistol be included on the license. The person shall submit to the Bureau a fifteen-dollar replacement fee, the original certificate of training and qualification for the additional type of firearm, and a statement requesting the license be updated to include the additional type of pistol. The Bureau shall issue an updated license with the same expiration date within ten (10) days of the receipt of the request. The person shall have no authority to carry any additional type of pistol pursuant to the provisions of the Cherokee Nation Self-Defense Act until the updated license has been received by the licensee. The original license shall be destroyed upon receipt of an updated handgun license.

D. A person may request during any license period an update for a change of address or change of name by submitting to the Bureau a fifteen-dollar replacement fee, and a notarized statement that the address or name of the licensee has changed. The Bureau shall issue an updated license with the same expiration date within ten (10) days of receipt of the request. The original license shall be destroyed upon the receipt of the updated handgun license.

§ 1290.22. Business Owner Rights

A. Except as provided in subsections B, C and D of this section, nothing contained in any provision of the Cherokee Nation Self-Defense Act shall be construed to limit, restrict or prohibit in any manner the existing rights of any person, property owner, tenant, employer, place of worship or business entity to control the possession of weapons on any property owned or controlled by the person or business entity.

B. No person, property owner, tenant, employer, holder of an event permit, place of worship or business entity shall be permitted to establish any policy or rule that has the effect of prohibiting any person, except a convicted felon, from transporting and storing firearms in a locked vehicle on any property set aside for any vehicle.

C. A property owner, tenant, employer, place of worship or business entity may prohibit any person from carrying a concealed or unconcealed firearm on the property. If the building or property is open to the public, the property owner, tenant, employer, place of worship or business entity shall post signs on or about the property stating such prohibition.

D. No person, property owner, tenant, employer, holder of an event permit, place of worship or business entity shall be permitted to establish any policy or rule that has the effect of prohibiting any person from carrying a concealed or unconcealed firearm on property within the specific exclusion provided for in paragraph 4 of subsection B of Section 1277 of this title; provided that carrying a concealed or unconcealed firearm may be prohibited in the following places:

1. The portion of a public property structure or building during an event authorized by the city, town, county, state, tribal, or federal governmental authority owning or controlling such building or structure;

2. Any public property sports field, including any adjacent seating or adjacent area set aside for viewing a sporting event, where an elementary or secondary school, collegiate, or professional sporting event or an International Olympic Committee or organization or any committee subordinate to the International Olympic Committee event is being held;

3. The portion of a public property structure or building that is leased or under contract to a business or not-for-profit entity or group for offices.

E. The otherwise lawful carrying of a concealed or unconcealed firearm by a person who has been issued a handgun license on property that has signs prohibiting the carrying of firearms shall not be deemed a criminal act but may subject the person to being denied entrance onto the property or removed from the property. If the person refuses:

1. Has been informed by the property owner, business entity or manager of the business that the person is in violation of a policy that prohibits firearms on the property; and

2. Refuses to leave the property and a peace officer is summoned, the person may be issued a citation for an amount not to exceed Two Hundred Fifty Dollars ($250.00) be punished as provided in Section 1276 of this title.

F. A person, property owner, tenant, employer, holder of an event permit, place of worship or business entity that does or does not prohibit any individual, except a convicted felon, from carrying a loaded or unloaded, concealed or unconcealed weapon on property that the person, property owner, tenant, employer, holder of an event permit, place of worship or business entity owns, or has legal control of, is immune from any liability arising from that decision. Except for acts of gross negligence or willful or wanton misconduct, an employer who does or does not prohibit his or her employees from carrying a concealed or unconcealed weapon is immune from any liability arising from that decision. A person, property owner, tenant, employer, holder of an event permit, place of worship or business entity that does not prohibit persons from carrying a concealed or unconcealed weapon pursuant to subsection D of this section shall be immune from any liability arising from the carrying of a concealed or unconcealed weapon,

while in the scope of employment, on the property or in or about a business entity vehicle. The provisions of this subsection shall not apply to claims pursuant to the Administrative Workers' Compensation Act.

G. It shall not be considered part of an employee's job description or within the employee's scope of employment if an employee is allowed to carry or discharge a weapon pursuant to this section.

H. Nothing in subsections F and G of this section shall prevent an employer, employee or person who has suffered loss resulting from the discharge of a weapon to seek redress or damages of the person who discharged the weapon or used the weapon outside the provisions of the Cherokee Nation Self-Defense Act.

§ 1290.23. Reserved

§ 1290.24. Immunity

A. The Cherokee Nation, and its officers, agents and employees shall be immune from liability resulting or arising from:

1. Failure to prevent the licensing of an individual for whom the receipt of the license is unlawful pursuant to the provisions of the Cherokee Nation Self-Defense Act or any other provision of law of this state;

2. Any action or misconduct with a firearm committed by a person pursuant to the provisions of the Cherokee Nation Self-Defense Act or by any person who obtains a firearm;

3. Any injury to any person during a handgun training course conducted by a firearms instructor certified by the Council on Law Enforcement Education and Training to conduct training under the Cherokee Nation Self-Defense Act, or injury from any misfire or malfunction of any handgun on a training course firing range supervised by a certified firearms instructor under the provisions of the Cherokee Nation Self-Defense Act, or any injury resulting from carrying a concealed or unconcealed handgun pursuant to a handgun license; and

B. Firearms instructors certified by the Council on Law Enforcement Education and Training to conduct training for the Cherokee Nation Self-Defense Act shall be immune from liability to third persons resulting or arising from any claim based on an act or omission of a trainee.

§ 1290.25. Reserved

§ 1290.26. Reciprocal agreement authority

The State of Oklahoma hereby recognizes any valid concealed or unconcealed carry weapons permit, valid military identification card as provided for qualified persons in Section 1290.8 of this title or license issued by another state, or if the state is a nonpermitting carry state, this state shall reciprocate under the permitting law of that state.

A. Any person entering this state in possession of a firearm authorized for concealed or unconcealed carry upon the authority and license of another state or a valid military identification card as provided for qualified persons in Section 1290.8 of this title is authorized to continue to carry a concealed or unconcealed firearm and license in this state; provided the license from the other state or valid military identification card as provided for qualified persons in Section 1290.8 of this title remains valid. The firearm must either be carried unconcealed or concealed, and upon coming in contact with any peace officer of this state, the person must disclose the fact that he or she is in possession of a concealed or unconcealed firearm pursuant to a valid concealed or unconcealed carry weapons permit, license or a valid military identification card as provided for qualified persons in Section 1290.8 of this title issued in another state.

B. Any person entering this state in possession of a firearm authorized for concealed carry upon the authority of a state that is a nonpermitted carry state and the person is in compliance with the Cherokee Nation Self-Defense Act, the person is authorized to carry a concealed or unconcealed firearm in this state. The firearm must be carried fully concealed, or unconcealed and upon coming in contact with any peace officer of this state, the person must disclose the fact that he or she is in possession of a concealed or unconcealed firearm pursuant to the nonpermitting laws of the state in which he or she is a legal resident. The person shall present proper identification by a valid photo ID as proof that he or she is a legal resident in such a non-permitting state. The Department of Public Safety shall keep a current list of non-permitting states for law enforcement officers to confirm that a state is nonpermitting.

C. Any person who is twenty-one (21) years of age or older having a valid firearm license from another state may apply for a handgun license in this state immediately upon establishing a residence in this state.

§ 1290.27. Notice to Federal Bureau of Investigation and Oklahoma State Bureau of Investigation--Petition to remove disability--Hearing--Scope of relief

A. When a court adjudicates a person mentally incompetent or orders the involuntary commitment of a person due to a mental illness, condition or disorder under the laws of this state by which a person becomes subject to the provisions of Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, the clerk of the court shall forward a certified copy of the

order or adjudication to the Federal Bureau of Investigation or its successor agency for the sole purpose of inclusion in the National Instant Criminal Background Check System database and to the Oklahoma State Bureau of Investigation. The clerk of the court shall also notify the person of the prohibitions contained within the provisions of Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, paragraph 3 of Section 1290.10 or paragraph 3 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes.

B. When a court adjudicates a person mentally incompetent or orders the involuntary commitment of a person due to a mental illness, condition or disorder under the laws of this state by which a person becomes subject to the provisions of Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, paragraph 3 of Section 1290.10 or paragraph 3 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes, or when a person is otherwise disqualified from eligibility for a handgun license under paragraph 6 or 7 of Section 1290.10 of Title 21 of the Oklahoma Statutes or paragraph 4 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes, the person may petition the court in which the adjudication or commitment proceedings occurred or the district court of the county in which the person currently resides to remove the disability.

C. On filing of the petition, the court shall set a hearing. Not less than thirty (30) days prior to a hearing on the matter, a copy of the petition for relief shall be served upon the district attorney for that county. The court shall receive and consider evidence in a closed hearing.

D. The court shall receive evidence on and consider the following before granting or denying the petition:

1. Psychological or psychiatric evidence from the petitioner and in support of the petition;
2. The circumstances that resulted in the firearm disabilities;
3. The petitioner's criminal history records provided by the state, if any;
4. The petitioner's mental health records;
5. The reputation of the petitioner based on character witness statements, testimony or other character evidence;
6. Whether the petitioner is a danger to self or others;
7. Changes in the condition or circumstances of the petitioner since the original adjudication of mental incompetency or involuntary commitment for a mental illness, condition or disorder relevant to the relief sought; and
8. Any other evidence deemed admissible by the court.

E. The court shall grant the relief requested if the petitioner proves by clear and convincing evidence that:

1. The petitioner is not likely to act in a manner that is dangerous to the public safety;

and

2. Granting the relief requested is not contrary to the public interest.

F. At the conclusion of the hearing, the court shall issue findings of fact and conclusions of law. A record shall be kept of the proceedings, but shall remain confidential and be disclosed only to a court or the parties. No records of the proceedings pursuant to this subsection shall be open to public inspection except by order of the court or to a person's attorney of record. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo.

G. If the court grants the petition for relief, the original adjudication of mental incompetency or order of involuntary commitment due to a mental illness, condition or disorder of the petitioner is deemed not to have occurred for purposes of applying Section 922(d)(4) and (g)(4) of Title 18 of the United States Code, paragraph 3, 6 or 7 of Section 1290.10, or paragraph 3 or 4 of subsection A of Section 1290.11 of Title 21 of the Oklahoma Statutes.

H. The clerk of the court shall promptly forward to the Federal Bureau of Investigation or its successor agency for the sole purpose of inclusion in the National Instant Criminal Background Check System database and the Department of Mental Health and Substance Abuse Services and the Oklahoma State Bureau of Investigation, a certified copy of the order granting relief under this section. The Department of Mental Health and Substance Abuse Services and the Oklahoma State Bureau of Investigation shall as soon thereafter as is practicable, but in no case later than ten (10) business days, update, correct, modify, or remove the record of the person in any databases that these agencies use or refer to for the purposes of handgun licensing, or make available to the National Instant Criminal Background Check System and notify the United States Attorney that the basis for such record being made available no longer applies.

I. In lieu of sending a certified copy of a court order or document, the court clerk may transmit the information required by this section by using an electronic method or data exchange which is authorized by the Federal Bureau of Investigation, the Department of Mental Health and Substance Abuse Services and the Oklahoma State Bureau of Investigation.

CHAPTER 54

§ 1302. Trespass—Masked person demanding admission to premises

Any person, masked or in disguise, who shall enter upon the premises of another or demand admission into the house or enclosure of another (with intent to inflict bodily injury, or injury to property) shall be deemed guilty of assault with intent to commit a crime and such entrance or demand for admission shall be prima facie evidence of such intent, and upon conviction thereof, such person shall be guilty of a crime.

§ 1303. Assaults while masked or disguised

Any person, while masked or in disguise, who shall assault another with a dangerous weapon, or other instrument of punishment, shall be deemed guilty of a crime.

§ 1304. Letters—Mailing threatening or intimidating letters

Any person who shall send, deliver, mail or otherwise transmit to any person, or persons, in this Nation any letter, document or other written or printed matter, anonymous or otherwise, designed to threaten or intimidate such person or persons, or designed to put him or them in fear of life, bodily harm or the destruction of his or their property, upon conviction shall be guilty of a crime.

CHAPTER 55

OTHER CRIMES AGAINST PUBLIC PEACE

§ 1311. Riot defined

Any use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot.

§ 1312. Punishment for riot

Every person guilty of participating in any riot is punishable as follows:

1. If any murder, maiming, robbery, rape or arson was committed in the course of such riot, such person is punishable in the same manner as a principal in such crime;

2. If the purpose of the riotous assembly was to resist the execution of any statute of this Nation or of the United States, or to obstruct any public officer of this Nation or of the United States, in the performance of any legal duty, or in serving or executing any legal process, such person shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years;

3. If such person carried at the time of such riot any species of firearms, or other deadly or dangerous weapon, or was disguised, such person shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years;

4. If such person directed, advised, encouraged or solicited other persons, who participated in the riot to acts of force or violence, such person shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years;

5. In all other cases such person is punishable as for a misdemeanor.

§ 1313. Rout defined

Whenever three or more persons, acting together, make any attempt to do any act toward the commission of an act which would be riot if actually committed, such assembly is a rout.

§ 1314. Unlawful assembly defined

Wherever three or more persons assemble with intent or with means and preparations to do an unlawful act which would be riot if actually committed, but do not act toward the commission thereof, or whenever such persons assemble without authority of law, and in such a manner as is adapted to disturb the public peace, or excite public alarm, such assembly is an unlawful assembly.

§ 1315. Punishment for rout or unlawful assembly

Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

§ 1316. Warning to disperse, remaining after

Every person remaining present at the place of any riot, rout or unlawful assembly after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

§ 1317. Presence after unlawful purpose becomes known

Where three or more persons assemble for a lawful purpose and afterwards proceed to commit an act that would amount to riot if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

§ 1318. One refusing to aid in arrest deemed rioter

Every person present at any riot, and lawfully commanded to aid the magistrate or officers in arresting any rioter, who neglects or refuses to obey such command, is deemed one of the rioters, and punishable accordingly.

§ 1319. Combination to resist process

Every person who resists, or enters into a combination with any other person to resist the execution of any legal process, under circumstances not amounting to a riot, is punishable by imprisonment for a term not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars ($1,000.00), or both.

§ 1320.1. Riot

For the purposes of this chapter, "riot" means that crime defined in 21 CNCA § 1311.

§ 1320.2. Incitement to riot

It shall be unlawful and shall constitute incitement to riot for a person or persons, intending to cause, aid, or abet the institution or maintenance of a riot, to do an act or engage in conduct that urges other persons to commit acts of unlawful force or violence, or the unlawful burning or destroying of property, or the unlawful interference with a police officer, peace officer, fireman or a member of the Oklahoma National Guard or any unit of the armed services officially assigned to riot duty in the lawful performance of his duty.

§ 1320.3. Unlawful assembly

It shall be unlawful and shall constitute an unlawful assembly for a person to assemble or act in concert with four or more persons for the purpose of engaging in conduct constituting the crime of riot, or to remain at the scene of a riot after being instructed to disperse by law authorities.

§ 1320.4. Penalty for riot or incitement to riot

Any person guilty of the crime, as set forth in Section 1320.2 of this title, shall be deemed guilty of a felony, punishable by not more than three (3) years in prison, or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

§ 1320.5. Penalty for unlawful assembly

Any person guilty of the crime, as set forth in Section 1320.3 of this title, shall be deemed guilty of a felony, punishable by not more than three (3) years in prison, or a fine of not more than Five Thousand Dollars ($5,000.00), or both.

§ 1320.6. Labor disputes

The provisions of this chapter shall not apply to employer-employee disputes in any manner or to employees engaged in a labor dispute.

§ 1320.7. Insurance policies

The provisions of this chapter shall not, in any way, be construed to have any bearing on any insurance policy now in effect, or those to be issued in the future.

§ 1320.10. Teaching, demonstrating or training in the use of firearms, explosives or incendiary devices in furtherance of riot or civil disorder

No person, except those specifically authorized by the Nation, state or federal government, shall:

1. Teach or demonstrate to any group of persons the use, application or making of any firearm, explosive or incendiary device or application of physical force capable of causing injury or death to a person knowing or intending that such firearm, explosive or incendiary device or application of physical force will be employed for use in, or in furtherance of, a riot or civil disorder; or

2. Assemble with one or more persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device or application of physical force capable of causing injury or death to a person, intending to employ such firearm, explosive or incendiary device or application of physical force for use in, or in furtherance of, a riot or civil disorder. Any violation of this section shall be a felony.

§ 1351. Forcible entry and detainer

Every person guilty of using or procuring, encouraging or assisting another to use any force, or violence in entering upon or detaining any lands or other possessions of another except in the cases and manner allowed by law, is guilty of a misdemeanor.

§ 1352. Returning to possession after lawful removal

Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterward, without authority by law, returns to settle or reside upon such lands, is guilty of a misdemeanor.

§ 1353. Unlawful intrusion upon lands

Every person who intrudes or squats upon any lot or piece of land within the bounds of any incorporated city or town without license or authority from the owner thereof, or who erects or occupies thereon any hut, hovel, shanty, or other structure whatever without such license or authority; and every person who places, erects or occupies within the bounds of any street or avenue of such city or town, any hut, hovel, shanty or other structure whatever, is guilty of a misdemeanor.

MISCELLANEOUS PROVISIONS

§ 1361. Disturbing lawful meeting

Every person who without authority of law willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than a religious meeting, public meeting of electors, or funeral, is guilty of a misdemeanor.

§ 1362. Disturbance by loud or unusual noise or abusive, violent, obscene, profane or threatening language

If any person shall willfully or maliciously disturb, either by day or night, the peace and quiet of any city of the first class, town, village, neighborhood, family or person by loud or unusual noise, or by abusive, violent, obscene or profane language, whether addressed to the party so disturbed or some other person, or by threatening to kill, do bodily harm or injury, destroy property, fight, or by quarreling or challenging to fight, or fighting, or shooting off any firearms, or brandishing the same, or by running any horse at unusual speed along any street, alley, highway or public road, he shall be deemed guilty of a crime, and, on conviction thereof, shall be fined in any sum not to exceed One Hundred Dollars ($100.00), or by imprisonment for a term not to exceed thirty (30) days, or by both such fine and imprisonment, at the discretion of the Court or jury trying the same.

§ 1363. Use of language calculated to arouse anger or cause breach of peace

If any person shall make use of any profane, violent, abusive or insulting language toward or about another person, in the presence or hearing, which language, in its common acceptation, is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault, every such person shall be deemed guilty of a breach of the peace, and, upon conviction thereof, shall be punished by a fine in any sum not to exceed One Hundred Dollars ($100.00), or by imprisonment in the penal institution not to exceed thirty (30) days, or by both such fine and imprisonment, at the discretion of the Court or jury trying the same.

§ 1364. Discharging firearms in public place

Every person who willfully discharges any pistol, shotgun, airgun or other weapon, or throws any other missile in any public place, or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a misdemeanor.

§ 1365. Trespassing on railway trains a misdemeanor

Any person, other than a railway employee in the discharge of his duty, who, without authority from the conductor of the train, rides, or attempts to ride, on top of any car, coach, engine or tender, on any railroad in this state, or on the drawheads between the cars, or under cars or truss rods or trucks, or in any freight car, or on the platform of any baggage car, express car, or mail car, or any train in this state, shall be guilty of a misdemeanor.

§ 1368. Possession of explosives by convicted felons—Penalty

Any person who has been convicted of a crime under the laws of this Nation or any other state or the laws of the United States who, with an unlawful intent, is in possession of any explosives, upon conviction, shall be guilty of a felony punishable by imposition of a fine in an amount not to exceed Five Thousand Dollars ($5,000.00), or by imprisonment for a term not to exceed third (3) years.

For the purposes of this section, “explosive” means any chemical compound or mechanical mixture that is commonly used or which is intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, by chemical reaction, or by detonation of any part of the compound or mixture may cause gaseous pressures capable of producing destructive effects on contiguous objects or of destroying life or limb. Provided, that dynamite, nitroglycerin, gunpowder, blasting powder and trinitrotoluene shall be deemed explosives without further proof of their explosive nature. The term “explosive” shall also include all material which is classified as explosive by the United States Department of Transportation. The term “explosive” shall not include explosives in the forms prescribed in the official UNITED STATES PHARMACOPOEIA; fireworks as defined by Section 1622 of Title 68 of the Oklahoma Statutes; or small arms ammunition and components therefor, which are subject to the Gun Control Act of 1968 (Title 18, Chapter 44, U.S. Code) and regulations promulgated thereunder;

§ 1377. Projecting object at public event

It shall be unlawful for any person in attendance at an athletic or other public entertainment event to project in any manner an object which could cause bodily harm to another person.

Any person violating the provisions of this section shall be subject to ejection from the event by the officials supervising the event.

A violation of this section shall be a misdemeanor punishable by a fine not exceeding One Hundred Dollars ($100.00).

The provisions of this section shall not apply to the participants in the athletic or other public entertainment event.

§ 1378. Attempting, conspiring or endeavoring to perform act of violence involving serious bodily harm or death--Threats--Devising plan, scheme or program of action to cause serious bodily harm or death

A. Any person who shall attempt, conspire or endeavor to perform an act of violence involving or intended to involve serious bodily harm or death of another person shall be guilty of a felony, punishable upon conviction thereof by imprisonment for a period of not more than three (3) years.

B. Any person who shall threaten to perform an act of violence involving or intended to involve serious bodily harm or death of another person shall be guilty of a misdemeanor, punishable upon conviction thereof by imprisonment in the county jail for a period of not more than six (6) months.

C. Any person who shall devise any plan, scheme or program of action to cause serious bodily harm or death of another person with intent to perform such malicious act of violence, whether alone or by conspiring with others, shall be guilty of a felony, punishable upon conviction thereof by imprisonment for a period of not more than three (3) years.

PART VII

CRIMES AGAINST PROPERTY

CHAPTER 56

ARSON

§ 1401. Arson in the first degree

A. Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device, accelerant, ignition device, heat-producing device or substance destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels or procures the burning or destruction of any building or structure or contents thereof, inhabited or occupied

by one or more persons, whether the property of that person or another, or who willfully and maliciously sets fire to or burns, or by the use of any explosive device, accelerant, ignition device, heat producing device or substance causes a person to be burned, or aids, counsels or procures the burning of a person shall, upon conviction, be guilty of arson in the first degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

B. Any person who, while manufacturing, attempting to manufacture or endeavoring to manufacture a controlled dangerous substance in violation of 21 CNCA § 2101, et seq., destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels or procures the burning or destruction of any building or contents thereof, inhabited or occupied by one or more persons whether the property of that person or another, or who while manufacturing or attempting to manufacture a controlled dangerous substance in violation of 21 CNCA § 2101, et seq. causes a person to be burned, or aids, counsels or procures the burning of a person shall, upon conviction, be guilty of arson in the first degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

§ 1402. Arson in the second degree

Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device or substance or while manufacturing or attempting to manufacture a controlled dangerous substance in violation of 21 CNCA § 2101 et. seq. in whole or in part, or causes to be burned or destroyed, or aids, counsels or procures the burning or destruction of any uninhabited or unoccupied building or structure or contents thereof, whether the property of himself or another, shall be guilty of aarson in the second degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

§ 1403. Arson in the third degree

A. Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device or substance destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels or procures the burning of any property whatsoever, including automobiles, trucks, trailers, motorcycles, boats, standing farm crops, pasture lands, forest lands, or any other property not herein specifically named, such property being worth not less than Fifty Dollars ($50.00), whether the property of himself or another, shall be guilty of a arson in the third degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or

by both such fine and imprisonment.

B. Any person who willfully and maliciously, and with intent to injure or defraud the insurer, sets fire to or burns or by use of any explosive device or substance destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels, or procures the burning or destruction of any building, property, or other chattels, whether the property of himself or another, which shall at the time be insured against loss or damage by fire or explosion, shall be guilty of a arson in the third degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

C. Arson in the third degree is a felony.

§ 1404. Arson in the fourth degree—Punishment

A. Any person who willfully and maliciously attempts to set fire to or burn or attempts by use of any explosive device or substance to destroy in whole or in part, or causes to be burned or destroyed, or attempts to counsel or procure the burning or destruction of any building or property mentioned in 21 CNCA § 1401, 21 CNCA § 1402 or 21 CNCA § 1403 shall be guilty of a arson in the fourth degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

B. The placing or distributing of any flammable, explosive or combustible material or substance or any device in any building or property mentioned in 21 CNCA § 1401, 21 CNCA § 1402 or 21 CNCA § 1403, in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn or to procure the setting fire to or burning of same, shall for the purposes of this section constitute an attempt to burn such building or property, and shall be guilty of a arson in the fourth degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment.

C. Arson in the fourth degree is a felony.

§ 1405. Endangering or causing personal injury to human life during commission of arson

Any person violating any of the provisions of Sections 1401, 1402, 1403 or 1404 of this title who during such violation endangers any human life, including all emergency service personnel, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000), or by both such fine and imprisonment. If personal injury results, the person shall be punished by imprisonment for a term not to exceed three (3) years.

§ 1411. Fraudulent bill of lading

Any person being the master, owner or agent of any vessel, or officer or agent of any railroad, express or transportation company, or otherwise being or representing any carrier who delivers any bill of lading, receipt or other voucher, or by which it appears that any merchandise of any description has been shipped on board of any vessel, or delivered to any railroad, express or transportation company or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding One Thousand Dollars ($1,000.00), or both.

§ 1412. Fraudulent warehouse receipt

Any person carrying on the business of a warehouseman, wharfinger or other depositary of property, who issues any receipt, bill of lading or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding One Thousand Dollars ($1,000.00), or both.

§ 1413. Correspondence between instrument and merchandise received

No person can be convicted of any offense under the last two sections1 by reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue.

§ 1414. Duplicate receipts or vouchers

Any person mentioned in Section 1411 or 1412 of this title, who issued any second or duplicate receipt or voucher of a kind specified in those two sections, at a time while any former receipt or voucher for the merchandise specified in the second receipt is outstanding and uncancelled, without writing across the face of the same the word “Duplicate,” in a plain and legible manner, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding One Thousand Dollars ($1,000.00), or both.

§ 1415. Selling goods without consent of holder of bill of lading

Any person mentioned in Section 1411 or 1412 of this title, who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt or voucher has been issued by him without the consent in writing thereto of the person holding such bill, receipt or voucher, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding One Thousand Dollars ($1,000.00), or both.

§ 1416. Unlawful delivery of goods

Any person mentioned in Section 1412 of this title, who delivers to another any merchandise for which any bill of lading, receipt or voucher has been issued, unless such receipt or voucher bore upon its face the words "Not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of delivery or unless, in the case of partial delivery, a memorandum thereof is endorsed upon such receipt or voucher, shall be punishable as follows:

1. If the value of the property is less than One Thousand Dollars ($1,000.00), the person shall be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

2. If the value of the property is One Thousand Dollars ($1,000.00) or more but less than Two Thousand Five Hundred Dollars ($2,500.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

3. If the value of the property is Two Thousand Five Hundred Dollars ($2,500.00) or more but less than Fifteen Thousand Dollars ($15,000.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine; and

4. If the value of the property is Fifteen Thousand Dollars ($15,000.00) or more, the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine.

§ 1417. When law does not apply

The last two sections do not apply where property is demanded by virtue of process of law.

CHAPTER 58

BURGLARY AND HOUSE BREAKING

§ 1431. Burglary in first degree

Every person who breaks into and enters the dwelling house of another, in which there is at the time some human being, with intent to commit some crime therein, either:

1. By forcibly bursting or breaking the wall, or an outer door, window, or shutter of a window of such house or the lock or bolts of such door, or the fastening of such window or shutter; or

2. By breaking in any other manner, being armed with a dangerous weapon or being assisted or aided by one or more confederates then actually present; or

3. By unlocking an outer door by means of false keys or by picking the lock thereof, or by lifting a latch or opening a window;

is guilty of burglary in the first degree.

§ 1435. Burglary in second degree and third degree—Acts constituting

A. Every person who breaks and enters the dwelling house of another, in which there is at the time no human being present, or any commercial building or any part of any building, room, booth, tent, railroad car or other structure or erection, in which any property is kept, or breaks into or forcibly opens, any coin-operated or vending machine or device with intent to steal any property therein or to commit any felony, is guilty of burglary in the second degree.

B. Every person who breaks and enters any automobile, truck, trailer or vessel of another, in which any property is kept, with intent to steal any property therein or to commit any felony, is guilty of burglary in the third degree.

§ 1436. Punishment of burglary

Burglary is a felony punishable by imprisonment as follows:

1. Burglary in the first degree for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such imprisonment and fine;

2. Burglary in the second degree for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such imprisonment and fine; and

3. Burglary in the third degree for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such imprisonment and fine.

§ 1437. Possession of burglar's implements

Every person who, under circumstances not amounting to a felony has in his possession any dangerous offensive weapon or instrument whatever, or any pick-lock, crow, key, bit, jack, jimmy, nippers, pick, betty or other implement of burglary, with intent to break and enter any building or part of any building, booth, tent, railroad car, vessel or other structure or erection and to commit any felony therein, is guilty of a misdemeanor.

§ 1438. Entering building or other structure with intent to commit felony, larceny or malicious mischief—Breaking and entering dwelling without permission

A. Every person who, under circumstances not amounting to any burglary, enters any building or part of any building, booth, tent, warehouse, railroad car, vessel, or other structure or erection with intent to commit any crime, larceny, or malicious mischief, is guilty of a misdemeanor.

B. Every person who, without the intention to commit any crime therein, shall willfully and intentionally break and enter into any building, trailer, vessel or other premises used as a dwelling without the permission of the owner or occupant thereof, except in the cases and manner allowed by law, shall be guilty of a misdemeanor.

§ 1439. Dwelling and dwelling house defined

A. The term "dwelling house," as used in 21 CNCA § 1431 et seq., includes every house or edifice, any part of which has usually been occupied by any person lodging therein at night, and any structure joined to and immediately connected with such a house or edifice.

B. The term “dwelling” as used in Section 1438 of this title includes every house, trailer, vessel, apartment or other premises, any part of which has usually been occupied by a person lodging therein at night and any structure joined to and immediately connected with such house, trailer or apartment.

§ 1440. "Night time" defined

The words "night time" in this chapter include the period between sunset and sunrise.

§ 1441. Burglary with explosives

Any person who enters any building, railway car, vehicle, or structure and there opens or attempts to open any vault, safe, or receptacle used or kept for the secure keeping of money, securities, books of accounts, or other valuable property, papers or documents, without the consent of the owner, by the use of or aid of dynamite, nitroglycerine, gunpowder, or other explosives, or who enters any such building, railway car, vehicle, or structure in which is kept any vault, safe or other receptacle for the safe keeping of money or other valuable property, papers, books or documents, with intent and without the consent of the owner, to open or crack such vault, safe or receptacle by the aid or use of any explosive, shall in either case be deemed guilty of felony punishable by imprisonment as follows for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such imprisonment and fine.

§ 1442. Possession of certain tools by persons previously convicted of burglary

Any person who has been previously convicted of the crime of burglary who has in his possession, custody or concealed about his person, or transports or causes to be transported, any combination of three (3) or more of the following tools: Sledge hammer, pry bar, punches, chisel, bolt cutters, with the intent to use or employ, or allow the same to be used or employed, in the commission of a crime, or knowing that the tools are to be used in the commission of a crime, shall be guilty of a felony.

CHAPTER 59

EMBEZZLEMENT

§ 1451. "Embezzlement" defined

A. "Embezzlement" is the fraudulent appropriation of property of any person or legal entity, legally obtained, to any use or purpose not intended or authorized by its owner, or the secretion of the property with the fraudulent intent to appropriate it to such use or purpose, under any of the following circumstances:

1. Where the property was obtained by being entrusted. to that person for a specific purpose, use, or disposition and shall include, but not be limited to, any funds “held in trust” for any purpose;

2. Where the property was obtained by virtue of a power of attorney being granted for the sale or transfer of the property;

3. Where the property is possessed or controlled for the use of another person;

4. Where the property is to be used for a public or benevolent purpose;

5. Where any person diverts any money appropriated by law from the purpose and object of the appropriation;

6. Where any person fails or refuses to pay over to the Nation, or appropriate authority, any tax or other monies collected in accordance with relevant law, and who appropriates the tax or monies to the use of that person, or to the use of any other person not entitled to the tax or monies;

7. Where the property is possessed for the purpose of transportation, without regard to whether packages containing the property have been broken;

8. Where any person removes crops from any leased or rented premises with the intent to deprive the owner or landlord interested in the land of any of the rent due from that land, or who fraudulently appropriates the rent to that person or any other person; or

9. Where the property is possessed or controlled by virtue of a lease or rental agreement, and the property is willfully or intentionally not returned within ten (10) days after the expiration of the agreement.

Embezzlement does not require a distinct act of taking, but only a fraudulent appropriation, conversion or use of property.

B. Except as provided in subsection C of this section, embezzlement shall be punished as follows:

1. If the value of the property embezzled is less than Five Hundred Dollars ($500.00), any person convicted shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00), or by imprisonment for a term not to exceed one (1) year, or by both such fine and imprisonment;

2. If the value of the property embezzled is Five Hundred Dollars ($500.00), or more but less than One Thousand Dollars ($1,000.00), any person convicted shall be guilty of a misdemeanor and shall be punished by imprisonment for a term not to exceed one (1) year or by imposition of a fine not exceeding Five Thousand Dollars ($5,000.00) or by both such fine and

imprisonment, and ordered to pay restitution to the victim as provided under the laws of this Nation;

3. If the value of the property embezzled is One Thousand Dollars ($1,000.00) or more but less than Twenty-five Thousand Dollars ($25,000.00), any person convicted shall be guilty of a felony and shall be punished by imprisonment for a term not to exceed three (3) years, or by imposition of a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment, and ordered to pay restitution to the victim as provided under the laws of this Nation; or

4. If the value of the property embezzled is Twenty-five Thousand Dollars ($25,000.00) or more, any person convicted shall be guilty of a felony and shall be punished by imprisonment for a term not to exceed three (3) years, or by imposition of a fine not exceeding Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment, and ordered to pay restitution to the victim as provided under the laws of this Nation.

For purposes of this subsection, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the party's intent to commit a continuing crime.

C. Any Cherokee Nation officer, deputy or employee of such officer, who shall divert any money appropriated by law from the purpose and object of the appropriation, shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, and a fine equal to triple the amount of money so embezzled and ordered to pay restitution to the victim as provided under the laws of this Nation.

§ 1452. Reserved

§ 1453. Reserved

§ 1454. Reserved

§ 1455. Reserved

§ 1456. Reserved

§ 1457. Reserved

§ 1458. Evidence of debt subject of embezzlement

Any evidence of debt, negotiable by delivery only, and actually executed, is equally the subject of embezzlement whether it has been delivered or issued as a valid instrument or not.

§ 1459. Property taken under claim of title

Upon any prosecution for embezzlement it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith even though such claim is untenable. But this provision shall not excuse the retention of the property of another, to offset or pay demand held against him.

§ 1460. Intent to restore no defense

The fact that the accused intended to restore the property embezzled is no ground of defense, or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

§ 1461. Mitigation of punishment

Whenever it is made to appear that prior to any information laid before a magistrate charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such is not a ground of defense to the indictment, but it authorizes the court to mitigate punishment in its discretion.

§ 1462. Reserved

§ 1463. Reserved

§ 1464. Reserved

§ 1465. Property or goods under control of carrier or other person for purpose of interstate transportation--Abandonment without notice to owner

A. No carrier or other person having property or goods under its control for the purpose of interstate transportation for hire shall abandon the property or goods contained therein without notice to the owner of the property or goods.

B. Any person convicted of violating the provisions of subsection A of this section may be guilty of a misdemeanor and punished by imprisonment for a term not to exceed one (1) year, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

CHAPTER 60

EXTORTION AND BLACKMAIL

§ 1481. Extortion defined

Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right.

§ 1482. Threats constituting extortion

Fear such as will constitute extortion, may be induced by a threat, either:

1st. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family; or

2nd. To accuse him, or any relative of his or member of his family, of any

crime; or 3rd. To expose, or impute to him, or them, any deformity or

disgrace; or

4th. To expose any secret affecting him or them.

§ 1483. Extortion or attempted extortion

Every person who extorts or attempts to extort any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat such as is mentioned in 21 CNCA § 1482 is guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00). A conviction for attempted extortion is a felony punishable by imprisonment for a term not to exceed two (2) years.

§ 1484. Extortion under color of official right

Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this code, or by some of the statutes, which it specifies as continuing in force, is guilty of a misdemeanor.

§ 1485. Obtaining signature by extortion

Every person, who by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge or right of action were obtained.

§ 1486. Letters, threatening

Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as is specified in 21 CNCA § 1482, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

§ 1488. Reserved

CHAPTER 61

FALSE PRETENSES, FALSE PERSONATIONS, CHEATS AND FRAUDS

§ 1500. Real property loans—Securing by false instrument—Penalty

A. It shall be unlawful for any person willfully, knowingly, or fraudulently to make, issue, deliver, use or submit, or to participate in making, issuing, delivering, using or submitting any fictitious, false or fraudulent offer, agreement, contract or other instrument concerning any real property or improvements thereon for the purpose either of inducing or attempting to induce any lender, prospective lender or government agency to make any loan, advance or commitment or of securing any guaranty or insurance in connection therewith.

B. Any person violating the provisions of this act shall be deemed to be guilty of a misdemeanor and upon convictions shall be fined not more than One Thousand Dollars ($1,000.00) or shall be imprisoned for not more than one (1) year, or both.

§ 1501. Securing credit fraudulently—Penalty

Any person who shall:

1. Knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself, or any other person, firm or corporation, in whom he is interested, or for whom he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange or promissory note, for the benefit of either himself or of such person, firm or corporation; or

2. With knowledge that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself, or such person, firm or corporation in which he is interested, or for whom he is acting, procures, upon the faith thereof, for the benefit either of himself, or of such person, firm or corporation, either or any of the things of benefit mentioned in paragraph 1st of this section; or

3. With knowledge that a statement in writing has been made, respecting the financial condition or means or ability to pay of such person, or any other person, firm or corporation, in which the person is interested, or for whom the person is acting, represents on a later date in writing, that the statement theretofore made, if then again made on said day, would be then true, when in fact, the statement if then made would be false, and procures upon the faith thereof, for the benefit of either such person or any other person, firm or corporation, either or any of the things of benefit mentioned in paragraph 1 of this section; or

4. Knowingly with intent to defraud, make any false statement or report or willfully falsify the value of any land, property or security for the purpose of influencing in any way the action taken or decision made on any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release or substitution of security;

shall be, upon conviction, guilty of a misdemeanor punishable by imprisonment for not more than six (6) months or by a fine of not more than Five Hundred Dollars ($500.00), or both such fine and imprisonment.

§ 1502. Fraudulent advertising prohibited--Punishment

Any person, firm, corporation or association who, with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person, firm, corporation or

association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates or places before the public, or causes directly or indirectly to be made, published, disseminated, circulated or placed before the public in this state, in a newspaper or publication or in form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than Ten Dollars ($10.00) nor more than Fifty Dollars ($50.00) or by imprisonment for a term not exceeding twenty (20) days, or both such fine and imprisonment.

§ 1503. Value of Five Hundred Dollars or less--Value of more than Five Hundred Dollars but less than One Thousand Dollars--Value of One Thousand Dollars or more

Any person who shall obtain food, lodging, services or other accommodations at any hotel, inn, restaurant, boarding house, rooming house, motel or auto camp, with intent to defraud the owner or keeper thereof, if the value of such food, lodging, services or other accommodations is less than One Thousand Dollars ($1,000.00), shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding Five Hundred Dollars ($500.00), or be imprisoned for a term not exceeding three (3) months, or punished by both such fine and imprisonment, and if the value of such food, lodging, services or accommodations is valued at One Thousand Dollars ($1,000.00) or more, any person convicted hereunder shall be deemed guilty of a felony and shall be punished by a fine not exceeding Fifteen Thousand Dollars ($15,000.00) or imprisonment for a term not exceeding three (3) years, or by both such fine and imprisonment. Any person who shall obtain shelter, lodging, or any other services at any apartment house, apartment, rental unit, rental house, or trailer camp, with intent to defraud the owner or keeper thereof, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding One Hundred Dollars ($100.00), or be imprisoned for a term not exceeding three (3) months, or be punished by both fine and imprisonment. Proof that such lodging, food, services or other accommodations were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or that he gave a check on which payment was refused, or that he left the hotel, inn, restaurant, boarding house, rooming house, motel, apartment house, apartment, rental unit or rental house, trailer camp or auto camp, without payment or offering to pay for such food, lodging, services or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, or that he registered under a fictitious name, shall be prima facie proof of the intent to defraud mentioned in this section; but this section shall not apply where there has been an agreement in writing for delay in payment.

§ 1505. False increase of weight

Every person who puts or conceals in any bag, bale, box, barrel or other package of goods usually sold by weight any other thing whatever for the purpose of increasing the weight of such package shall be punished by a fine of Twenty-five Dollars ($25.00) for each offense.

§ 1506. Mock auction

Any person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding three (3) years or in a county jail not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars ($1,000.00), or by both such fine and imprisonment; and, in addition, the person forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state.

§ 1507. Fraud by auctioneer

Every person carrying on, or employed about the business of selling property or goods by auction, who sells any goods or property in a damaged condition which he offers as sound or in a good condition, is guilty of a misdemeanor.

§ 1508. Fictitious copartnership

Every person transacting business in the name of a person as a partner who is not interested in his firm, or transacting business under a firm name in which the designation “and company” or “& Co.” is used without representing an actual partner except in the cases in which the continued use of a copartnership name is authorized by law, is guilty of a misdemeanor.

§ 1509. Animals, false pedigree of

Every person who by any false pretense shall obtain from any club, association, society or company, for improving the breed of cattle, horses, sheep, swine, or other domestic animals, the registration of any animal in the herd register of any such club, association, society, or company, or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a misdemeanor.

§ 1510. Destroying evidence of ownership of wrecked property

Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof with intent to prevent the owner from discovering its identity,

or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership, is guilty of a misdemeanor.

§ 1511. Fraud in limited partnership

Every member of a limited partnership who is guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor.

§ 1512. Misrepresentations in sale of nursery stock

It shall be unlawful for any person, firm or corporation, acting either as principal or agent to sell to any person, firm or corporation any fruit tree or fruit trees, plants or shrubs representing same to be thrifty or of a certain kind, variety or description and thereafter to deliver to such purchaser in filling such order and in completing such sale any fruit trees, plants or shrubs of a different kind, variety or description than the kind, variety or description of such fruit trees, plants or shrubs so ordered and sold.

§ 1513. Penalty--Time for prosecution

Any person, firm, or corporation, acting either as principal or agent, violating any provisions of the preceding section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment for a term not to exceed more than six (6) months, or by both fine and imprisonment: Provided, that prosecutions under said section may be commenced at any time within seven (7) years from the time of the delivery to the purchaser of the fruit trees, plants or shrubs therein mentioned.

§ 1514. Insignia, badge or pin calculated to deceive, wearing of--Name of society, order or organization calculated to deceive, using--Punishment

Any person who shall wear the badge, pin, or insignia, or shall use the name of any society, order or organization of ten (10) years' standing or existence in this Nation, either in the identical form or in any such near resemblance thereto as might be calculated to deceive, or shall use the same to obtain aid or assistance within this Nation, unless entitled to use or wear the same under the constitution and bylaws, rules and regulations of such order or society, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than Twenty-five Dollars ($25.00), nor more than One Hundred Dollars ($100.00), and in addition thereto, may be imprisoned for a period of time not exceeding thirty (30) days.

§ 1515. Telecommunication services--Unlawful procurement--Penalty

Any individual, corporation, or other person, who, with intent to defraud or to aid and abet

another to defraud any individual, corporation, or other person, of the lawful charge, in whole or in part, for any telecommunications service, shall avoid or attempt to avoid or shall cause or assist another to avoid or attempt to avoid any such charge for such service:

(a) by charging such service to an existing account, or using such services from an existing account, telephone number or credit card number without the authority of the subscriber thereto or the legitimate holder thereof; or

(b) by charging such service to a nonexistent, false, fictitious, or counterfeit account, telephone number or credit card number or to a suspended, terminated, expired, cancelled or revoked telephone number or credit card number; or

(c) by use of a code, prearranged scheme, or other similar strategem or device whereby said person in effect sends or receives information; or

(d) by rearranging, tampering with or making connection with any facilities or equipment of a telephone or other communications company, whether physically, inductively, acoustically, or electrically, or by utilizing such service, having reason to believe that such rearrangement, connection, or tampering existed or occurred;

shall be guilty of a misdemeanor, and shall, upon conviction thereof, be imprisoned not exceeding one (1) year or fined not exceeding One Thousand Dollars ($1,000.00), or both, in the discretion of the court.

§ 1516. Devices or plans to procure services--Making, possessing, etc., prohibited--Penalty

Any individual, corporation or other person who:

(a) makes or possesses any instrument, apparatus, equipment, or device designed, adapted or which can be used

(1) to fraudulently avoid the lawful charge for any telecommunication service in violation of Section 1 of this act; or

(2) to conceal, or to assist another to conceal, from any supplier of telecommunication service or from any lawful authority the existence or place of origin or of destination of any telecommunication; or

(b) sells, gives or otherwise transfers to another, or offers or advertises to sell, give or otherwise transfer, any instrument, apparatus, equipment, or device, described in (a) above, or plans or instructions for making or assembling the same; under circumstances

evidencing an intent to use or employ such instrument, apparatus, equipment, or device, or to allow the same to be used or employed, for a purpose described in (a)(1) or (a)(2), above, or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling such instrument, apparatus, equipment, or device;

shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be imprisoned not exceeding one (1) year or fined not exceeding One Thousand Dollars ($1,000.00), or both, in the discretion of the court.

§ 1517. Amateur radio operators exempt

Nothing herein shall apply to public service and emergency communications performed by holders of valid Federal Communications Commission radio amateur licenses without charge on the part of such licensees; provided that nothing herein shall excuse any person from compliance with lawful tariffs of any telecommunications company.

§ 1518. Misrepresentation of age by false document

It shall be unlawful for any person, for the purpose of violating any statutes of Cherokee Nation, to willfully and knowingly misrepresent his age by presenting a false document purporting to state his true age.

§ 1519. Penalties

Any person violating the provisions of 21 CNCA § 1518 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not to exceed One Hundred Dollars ($100.00), or shall be imprisoned for a period of not to exceed thirty (30) days, or by both such fine and confinement.

§ 1520. Provisions as cumulative

The provisions of this act shall be cumulative to existing laws.

§ 1522. Publication of telephone credit card information for fraudulent purposes

Any person who publishes or causes to be published the number or code of an existing, canceled, revoked, expired or nonexistent telephone credit card, or the numbering or coding system which is employed in the issuance of telephone credit cards, with the intent that it be used to fraudulently avoid the payment of any lawful toll charge, is guilty of a misdemeanor.

As used in this section, "published" means the communication of information to any one or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article or book.

§ 1523. Penalties--Civil action for damages

Any person convicted of violating a prohibition contained in this act[1] shall be imprisoned for a term not exceeding one (1) year or fined not more than One Thousand Dollars ($1,000.00), or both. Such person also shall be liable for the amount of the damages, loss and expense, including attorney fees and expenses of investigation incurred by any transmission company by reason of or resulting from the unlawful publication, directly or indirectly, such damages to be recovered in a civil action.

§ 1524. Falsely holding out as notary or performing notarial act—Penalty

A. No person in this Nation shall hold himself out as a notary public, attach his signature as a notary public, use a notary public seal, or perform any notarial act unless he is authorized pursuant to the provisions of 49 CNCA § 114 to perform such acts.

B. Any person convicted of knowingly and willfully violating any of the provisions of this section shall be guilty of a crime.

FALSE PERSONATION

§ 1531. Marriage by impersonator—Becoming bail or surety—Execution of instrument— Creating liability or benefit

Any person who falsely personates another, and in such assumed character:

1. Marries or pretends to marry, or to sustain the marriage relation toward another, with or without the connivance of such other person; or

2. Becomes bail or surety for any party, in any proceeding whatever, before any court or officer authorized to take such bail or surety; or

3. Subscribes, verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true; or

4. Does any other act whereby, if it were done by the person falsely personated, he might in any event become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00).

§ 1532. Receiving money or property intended for individual personated

Every person who falsely personates another, and in such assumed character receives any money or property, that knowing it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

§ 1533. Penalties--Definitions--Certain defenses excluded

A. Except as provided in subsection B of this section, every person who falsely personates any public officer, civil or military, any firefighter, any law enforcement officer, any emergency medical technician or other emergency medical care provider, or any private individual having special authority by law to perform any act affecting the rights or interests of another, or who assumes, without authority, any uniform or badge by which such officers or persons are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, harassed, vexed or annoyed, upon conviction, is guilty of a misdemeanor punishable by imprisonment for a term not exceeding six (6) months, or by a fine not exceeding Two Thousand Dollars ($2,000.00), or by both such fine and imprisonment.

B. Every person who falsely personates any public officer or any law enforcement officer in connection with or relating to any sham legal process shall, upon conviction, be guilty of a felony, punishable by imprisonment for not more than three (3) years, or a fine not exceeding Five Thousand Dollars ($5,000.00), or both such fine and imprisonment.

C. Every person who falsely asserts authority of law not provided for by federal or state law in connection with any sham legal process shall, upon conviction, be guilty of a felony, punishable by imprisonment for not more than three (3) years, or a fine not exceeding Five Thousand Dollars ($5,000.00), or both such fine and imprisonment.

D. Every person who, while acting falsely in asserting authority of law, attempts to intimidate or hinder a public official or law enforcement officer in the discharge of official duties by means of threats, harassment, physical abuse, or use of sham legal process shall, upon conviction, be guilty of a felony punishable by imprisonment for not more than three (3) years, or a fine not exceeding Five Thousand Dollars ($5,000.00), or both such fine and imprisonment.

E. Any person who, without authority under federal or state law, acts as a supreme court justice, a district court judge, an associate district judge, a special judge, a magistrate, a clerk of the court or deputy, a notary public, a juror or other official holding authority to determine a controversy or adjudicate the rights or interests of others, or signs a document in such capacity, shall, upon conviction, be guilty of a felony punishable by imprisonment for not more than three (3) years, or a fine not exceeding Five Thousand Dollars ($5,000.00), or both such fine and imprisonment.

F. Every person who uses any motor vehicle or motor-driven cycle usually distinguished as a law enforcement vehicle or equips any motor vehicle or motor-driven cycle with any spot lamps, audible sirens, or flashing lights, in violation of Section 12-217, 12-218 or 12-227 of Title 47 of the Cherokee Nation Code Annotated, or in any other manner uses any motor vehicle or motor-driven cycle:

1. Which, by markings that conform to or imitate the markings required or authorized in subsection B of Section 151 of Title 47 of the Cherokee Nation Code Annotated and used by the Oklahoma Highway Patrol Division of the Department of Public Safety, conveys to any person the impression or appearance that it is a vehicle of the Oklahoma Highway Patrol shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or by a fine not exceeding Five Hundred Dollars ($500.00), or both fine and imprisonment; provided, nothing in this paragraph shall be construed to prohibit the use of such a vehicle for exhibitions, club activities, parades, and other functions of public interest and which is not used on the public roads, streets, and highways for regular transportation; or

2. For the purpose of falsely personating a law enforcement officer and who in such assumed character commits any act whereby another person is injured, defrauded, harassed, vexed or annoyed shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine not exceeding Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

G. 1. Any person who displays or causes to be displayed words alone or in conjunction with any other word or words on any motor vehicle, badge, clothing, identification card, or any other object or document with the intent to communicate peace officer or investigating authority shall, upon conviction, be guilty of a misdemeanor punishable by a fine not exceeding One Thousand Dollars ($1,000.00). This paragraph shall not apply to any officer with the appropriate investigatory or law enforcement authority within the Nation.

2. Any person who displays or causes to display such words as provided in this subsection for the purpose of falsely personating a law enforcement officer and as such commits any act whereby another person is injured, defrauded, harassed, vexed or

annoyed shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine not exceeding Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

H. As used in this section:

1. "Sham legal process" means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, and purports to do any of the following:

a. to be a summons, subpoena, judgment, arrest warrant, search warrant, or other order of a court recognized by the laws of this state, a law enforcement officer commissioned pursuant to state or federal law or the law of a federally recognized Indian tribe, or a legislative, executive, or administrative agency established by state or federal law or the law of a federally recognized Indian tribe,

b. to assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of any person or property, or

c. to require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property; and

2. "Lawfully issued" means adopted, issued, or rendered in accordance with the applicable statutes, rules, regulations, and ordinances of the United States, this Nation, a state, or a political subdivision of a state.

I. It shall not be a defense to a prosecution under subsection B, C, D or E of this section that:

1. The recipient of the sham legal process did not accept or believe in the authority falsely asserted in the sham legal process;

2. The person violating subsection B, C, D or E of this section does not believe in the jurisdiction or authority of this state or of the United States government; or

3. The office the person violating subsection B, C, D or E of this section purports to hold does not exist or is not an official office recognized by tribal, state, or federal law.

§ 1533.1. Identity theft--Penalties--Civil action

A. It is unlawful for any person to willfully and with fraudulent intent obtain the name, address, Social Security number, date of birth, place of business or employment, debit, credit or account numbers, driver license number, or any other personal identifying information of another person, living or dead, with intent to use, sell, or allow any other person to use or sell such personal identifying information to obtain or attempt to obtain money, credit, goods, property, or service in the name of the other person without the consent of that person.

B. It is unlawful for any person to use with fraudulent intent the personal identity of another person, living or dead, or any information relating to the personal identity of another person, living or dead, to obtain or attempt to obtain credit or anything of value.

C. It is unlawful for any person with fraudulent intent to lend, sell, or otherwise offer the use of such person's own name, address, Social Security number, date of birth, or any other personal identifying information or document to any other person with the intent to allow such other person to use the personal identifying information or document to obtain or attempt to obtain any identifying document in the name of such other person.

D. It is unlawful for any person to willfully create, modify, alter or change any personal identifying information of another person with fraudulent intent to obtain any money, credit, goods, property, service or any benefit or thing of value, or to control, use, waste, hinder or encumber another person's credit, accounts, goods, property, title, interests, benefits or entitlements without the consent of that person.

E. Any person convicted of violating any provision of this section shall be guilty of identity theft. Any person who violates the provisions of subsection A, B or D of this section shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment. Any person who violates the provisions of subsection C of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. Restitution to the victim may be ordered in addition to any criminal penalty imposed by the court. The victim of identity theft may bring a civil action for damages against any person participating in furthering the crime or attempted crime of identity theft.

§ 1533.2. Fraudulently obtaining another person's information of financial institution--Presenting false or fraudulent information to officer, employee, agent or another customer of financial institution

A. It is unlawful for any person to willfully and knowingly obtain, or attempt to obtain, another person's personal, financial or other information of a financial institution by means of any false or fraudulent statement made to any officer, employee, agent or customer of such financial

institution.

B. It is unlawful for any person to willfully and knowingly present any false or fraudulent document or information, or any document or information obtained or used without lawful consent or authority, to any officer, employee, agent or another customer of such financial institution to obtain, or attempt to obtain, another person's personal, financial or other information from a financial institution or to commit any crime.

C. Any person violating any provision of this section shall, upon conviction, be guilty of a felony punishable by imprisonment for a term of not more than three (3) years. In addition, the court may order restitution to be paid by the defendant to every customer whose information was obtained or otherwise utilized in violation of this provision.

§ 1533.3. Identity theft incident report--Preparation and filing by local law enforcement--Reports not considered open cases

A. Notwithstanding that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, victims of identity theft have the right to contact the local law enforcement agency where the victim is domiciled and have an incident report about the identity theft prepared and filed. The local law enforcement agency that prepares and files the incident report shall, upon request, provide the victim with a copy of the incident report. The law enforcement agency may share the incident report with law enforcement agencies located in other jurisdictions. For purposes of this section, “incident report” means a loss or other similar report prepared and filed by a local law enforcement agency.

B. Nothing in this section shall interfere with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. An incident report prepared and filed pursuant to this section shall not be an open case for purposes of compiling open case statistics.

§ 1541.1. False or bogus checks

Every person who, with intent to cheat and defraud, shall obtain or attempt to obtain from any person, firm or corporation any money, property or valuable thing, of a value less than One Thousand Dollars ($1,000.00), by means or by use of any trick or deception, or false or fraudulent representation or statement or pretense, or by any other means or instruments or device commonly called the “confidence game”, or by means or use of any false or bogus checks, or by any other written or printed or engraved instrument or spurious coin, shall, upon conviction, be guilty of a misdemeanor punishable by a fine not to exceed One Thousand Dollars ($1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

§ 1541.2. Value of money, property or valuable thing—Penalty

A. If the value of the money, property or valuable thing referred to in Section 1541.1 of this title is:

1. One Thousand Dollars ($1,000.00) or more but less than Two Thousand Five Hundred Dollars ($2,500.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment;

2. Two Thousand Five Hundred Dollars ($2,500.00) or more but less than Fifteen Thousand Dollars ($15,000.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such imprisonment and fine; or

3. Fifteen Thousand Dollars ($15,000.00) or more, the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such imprisonment and fine.

B. Any person convicted pursuant to this section shall also be ordered to pay restitution to the victim as provided under the laws of this Nation.

§ 1541.3. Value of bogus checks, drafts or orders--Penalty

Any person making, drawing, uttering or delivering two or more false or bogus checks, drafts or orders, as defined by Section 1541.4 of this title, the total sum of which is Two Thousand Dollars ($2,000.00) or more, even though each separate instrument is written for less than One Thousand Dollars ($1,000.00), all in pursuance of a common scheme or plan to cheat and defraud, shall be deemed guilty of a felony and shall be punished by imprisonment for a term not more than three (3) years, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. If the total sum of two or more false or bogus checks, drafts or orders is Five Hundred Dollars ($500.00) or more, but less than Two Thousand Dollars ($2,000.00), the person shall, upon conviction, be guilty of a misdemeanor and shall be punished by incarceration in the county jail for not more than one (1) year, and shall be subject to a fine of not more than Five Thousand Dollars ($5,000.00) and ordered to provide restitution to the victim as provided under the laws of this Nation.

§ 1541.4. "False or bogus check or checks" defined

A. The term "false or bogus check or checks" shall include checks or orders, including those converted to electronic fund transfer, which are not honored on account of insufficient funds

of the maker to pay same, or because the check or order was drawn on a closed account or on a nonexistent account when such checks or orders are given:

1. In exchange for money or property ;

2. In exchange for any benefit or thing of value;
3. As a down payment for the purchase of any item of which the purchaser is taking immediate possession, as against the maker or drawer thereof; or
4. As payment made to a landlord under a lease or rental agreement.

B. The making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence of intent to defraud and the knowledge of insufficient funds in, or credit with, such bank or other depository; provided, such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with the protest fees, within five (5) days from the date the same is presented for payment; and provided, further, that the check or order is presented for payment within thirty (30) days after same is delivered and accepted.

C. A check offered for the purchase of goods or livestock that is refused by a drawee shall not be considered to be an extension of credit by the seller of goods or livestock to the maker or drawer of the check.

D. A check or order offered to a merchant in payment on an open account of the maker with the merchant shall mean “a check or order given in exchange for a benefit or thing of value”, notwithstanding that the merchant may debit the account of the maker or impose other charges pursuant to applicable law in the event the check or order is not honored.

§ 1541.5. "Credit" defined

The word "credit," as used in Section 1541.1 through 1541.4 of this title, shall be construed to mean an arrangement or understanding with the bank , depository, or seller of goods or livestock for the payment of such check, draft or order.

§ 1541.6. Refund fraud--Penalties

A. No person shall give a false or fictitious name or address as his own, or give the name or address of any other person without the knowledge and consent of that person, for the purpose of obtaining or attempting to obtain a refund for merchandise from a business establishment.

B. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor punishable by the imposition of a fine of not more than One Thousand Dollars

($1,000.00) or by imprisonment for not more than one (1) year, or by both said fine and imprisonment.

§ 1541.7. Revolving Fund Established

There is hereby established a revolving fund to be designated the "Bogus Check Restitution Revolving Fund" ("Fund") which shall be held and administered by the Treasurer in accordance with the purposes stated herein. The Fund shall be authorized by the Tribal Council as a continuing fund, which shall initially receive a direct appropriation to begin the Fund and thereafter, shall receive a direct continuing appropriation from all monies accruing to the credit of said Fund. Such monies are hereby appropriated and may be budgeted and expended by the Treasurer for the purpose of providing restitution to victims of bogus checks.

Expenditures from said fund shall be made by the Treasurer against claims filed as prescribed by policies created by the Cherokee Nation Attorney General for approval and payment. Such policies shall be subject to approval by the Chief/Council. The fund shall be maintained as authorized by law for investments by the Treasurer. The interest earned by any investment of monies from the fund shall be credited to the fund for expenditure as provided by herein.

§ 1542. Obtaining property or signature under false pretenses--Use of retail sales receipt or Universal Price Code Label to cheat or defraud

A. Every person who, with intent to cheat or defraud another, designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property is, upon conviction, guilty of a felony punishable by imprisonment for a term not exceeding three (3) years or in a county jail not exceeding one (1) year if the value is One Thousand Dollars ($1,000.00) or more, or by a fine not exceeding three times the value of the money or property so obtained, or by both such fine and imprisonment. If the value is less than One Thousand Dollars ($1,000.00), the person is, upon conviction, guilty of a misdemeanor punishable by imprisonment for a term not exceeding one (1) year, or by a fine not exceeding three times the value of the money or property so obtained, or by both such fine and imprisonment.

B. Every person who, with intent to cheat or defraud another, possesses, uses, utters, transfers, makes, manufactures, counterfeits, or reproduces a retail sales receipt or a Universal Price Code Label is, upon conviction, guilty of a felony punishable by imprisonment for a term not exceeding three (3) years or in a county jail not exceeding one (1) year if the value is One Thousand Dollars ($1,000.00) or more, or by a fine not exceeding three times the value represented on the retail sales receipt or the Universal Price Code Label, or by both such fine and imprisonment. If the value is less than One Thousand Dollars ($1,000.00), the person is, upon conviction, guilty of a misdemeanor punishable by imprisonment for a term not exceeding one (1) year, or by a fine not exceeding three times the value represented on the retail sales

receipt or the Universal Price Code Label, or by both such fine and imprisonment. For purposes of this subsection, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

§ 1543. Obtaining signature or property for charitable purposes by false pretenses

Any person who designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property for any alleged charitable or benevolent purpose whatever, shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine not exceeding the value of the money or property so obtained, or by both such fine and imprisonment.

§ 1544. False negotiable paper

If the false token by which any money or property is obtained in violation of the first and second preceding sections of this article, is a promissory note or negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine not exceeding the value of the money or property so obtained, or by both such fine and imprisonment.

§ 1545. Using false check--False token

The use of a matured check or other order for the payment of money, as a means of obtaining any signature, money or property, such as is specified in the last two sections, by a person who knows that a drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections although no representation is made in respect thereto.

§ 1546. Removing, defacing, altering or obliterating--Subsequent sale

Any person, firm or corporation who removes, defaces, alters, changes, destroys, covers, obliterates or makes a substitution of any trademark, distinguishing or identification number, serial number or mark, on or from any machine or electrical or mechanical device or apparatus, and thereafter sells or resells or offers for sale or resale the same in such condition, is guilty of a misdemeanor.

§ 1547. Person acquiring machine or device with mark removed, altered, etc.

Any person, firm or corporation who acquires, for the purpose of sale or resale and possesses any machine or electrical or mechanical device or apparatus, or any of the parts thereof, from or on which any trademark, distinguishing or identification number, serial number or mark has been removed, covered, altered, changed, defaced, destroyed, obliterated or substituted for, is guilty of a misdemeanor, unless within ten (10) days after such machine or electrical or mechanical device or apparatus, or any such part thereof, shall have come into his or its possession, said person, firm or corporation files with the chief law enforcement officer of the municipality in which the machine or electrical or mechanical device or apparatus or any such part thereof is located, or to the county sheriff of the county wherein said property is located if not within a municipality, a verified statement showing: The source of his or its title, identification or distinguishing number or serial number or mark, if known, and, if known, the manner of and reason for such mutilation, change, alteration, concealment, defacement or substitution, the length of time such machine or electrical or mechanical device or apparatus or part has been held, and the price paid therefor, and provided further, that any and all such verified statements shall be available for inspection by any interested person.

§ 1548. Vehicles excepted

The provisions of this act shall not apply to motor vehicles and other vehicles as defined in Section 1102 of Title 47 of the Cherokee Nation Code Annotated.

§ 1549. Changes of serial numbers by original manufacturer

The provisions of this act shall not apply to changes of serial numbers authorized and made by the original manufacturer.

§ 1550. Person committing felony in possession or control of firearm with removed, defaced, etc. serial number

A. Any person who, while in the commission or attempted commission of a crime, has in his possession or under his control a firearm, the factory serial number or identification number of which has been removed, defaced, altered, obliterated or mutilated in any manner, upon conviction, shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

B. Any person who removes, defaces, alters, obliterates or mutilates in any manner the factory serial number or identification number of a firearm, or in any manner participates therein, upon conviction, shall be guilty of a misdemeanor punishable by imprisonment for a term not to

exceed one (1) year, or by a fine of not to exceed One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

C. 1. Upon a conviction of a violation of this section, the Marshal, the Court Clerk, Sheriff, peace officer or other person having custody of the firearm shall immediately deliver the firearm to the Cherokee Nation Marshal, who shall preserve the firearm pending an order of the Court.

2. At the conclusion of a trial or proceeding for a violation of this section, if a finding is made that the factory serial number or identification number of the firearm has been removed, defaced, altered, obliterated or mutilated, the Court shall issue a written order to the Cherokee Nation Marshal for destruction of the firearm, unless the defendant files a timely motion to preserve the firearm pending appeal. At the conclusion of the appeal, if a finding is made that the factory serial number or identification number of the firearm has been removed, defaced, altered, obliterated or mutilated, the Supreme Court or the Trial Court shall issue a written order to the Marshal for destruction of the firearm.

§ 1550.1. Definitions

1. The term “credit card” means an identification card or device issued to a person, firm or corporation by a business organization which permits such person, firm or corporation to purchase or obtain goods, property or services on the credit of such organization.

2. “Debit card” means an identification card or device issued to a person, firm or corporation by a business organization which permits such person, firm or corporation to obtain access to or activate a consumer banking electronic facility.

§ 1550.2. Value of Five Hundred Dollars or less--Value of more than Five Hundred Dollars

Any person who knowingly uses or attempts to use in person, by telephone or by the Internet, for the purpose of obtaining credit, or for the purchase of goods, property or services, or for the purpose of obtaining cash advances in lieu of these items, or to deposit, obtain or transfer funds, either a credit card or a debit card which has not been issued to such person or which is not used with the consent of the person to whom issued or a credit card or a debit card which has been revoked or cancelled by the issuer of such card and actual notice thereof has been given to such person, or a credit card or a debit card which is false, counterfeit or nonexistent is guilty of a misdemeanor and punishable by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment if the amount of the credit or purchase or funds deposited, obtained or transferred by such use does not exceed Five Hundred Dollars ($500.00); or, by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment if the amount of the credit or purchase

or funds deposited, obtained or transferred by such use exceeds Five Hundred Dollars ($500.00).

§ 1550.3. Actual notice

The words "actual notice" as used herein shall be construed to include either notice given to the purchaser in person or notice given to him in writing. Such actual notice in writing shall be presumed to have been given when deposited as registered or certified mail, in the United States mail, addressed to such person at his last-known address.

§ 1550.21. Definitions

As used in this act:

1. "Cardholder" means the person or organization named on the face of a credit card or a debit card to whom or for whose benefit the credit card or debit card is issued;

2. "Credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit and all such credit cards lawfully issued shall be considered the property of the cardholder or the issuer for all purposes;

3. "Debit card" means any instrument or device, whether known as a debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds from a consumer banking electronic facility;

4. "Issuer" means any person, firm, corporation, financial institution or its duly authorized agent which issues a credit card or a debit card;

5. "Receives" or "receiving" means acquiring possession or control or accepting as security for a loan;

6. "Reencoder" means an electronic device that places encoded information from the computer chip, magnetic strip or stripe or other storage mechanism of a credit card or debit card onto the computer chip, magnetic strip or stripe or other storage mechanism of a different card;

7. "Revoked card" means a credit card or a debit card which is no longer valid because permission to use it has been suspended or terminated by the issuer;

8. “Scanning device” means a scanner, reader or any other electronic device that may be used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip, magnetic strip or stripe or other storage mechanism of a credit card or debit card or from another device that directly reads the information from a credit card or debit card; and

9. “Skimming device” means a self-contained device that:

a. is designed to read and store in the internal memory of the device information encoded on the computer chip, magnetic strip or stripe or other storage mechanism of a credit card or debit card or from another device that directly reads the information from a credit card or debit card, and

b. is incapable of processing the credit card or debit card information for the purpose of obtaining, purchasing or receiving goods, services, money or anything else of value from a person or organization.

§ 1550.22. Taking credit card or debit card--Receiving taken credit or debit card

(a) A person who takes a credit card or debit card from the person, possession, custody or control of another without the cardholder's consent, or who, with knowledge that it has been so taken, receives the credit card or debit card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder, is guilty of card theft and is subject to the penalties set forth in Section 1550.33(a) of this title.

(b) Taking a credit card or a debit card without consent includes obtaining it by the crime of larceny, larceny by trick, larceny by the bailee, embezzlement or obtaining property by false pretense, false promise, extortion or in any manner taking without the consent of the cardholder or issuer.

(c) A person who has in his possession or under his control any credit card or debit card obtained under subsection (b) of this section is presumed to have violated this section.

§ 1550.23. Receiving, holding or concealing lost or mislaid card

A person who receives, holds or conceals a credit card or a debit card which has been lost or mislaid under circumstances which give him knowledge or cause to inquire as to the true owner and appropriates it to his use or the use of another not entitled thereto is subject to the penalties set forth in Section 1550.33(a) of this title.

§ 1550.24. Selling or buying credit card or debit card

A person other than the issuer who sells a credit card or debit card or a person who buys a credit card or a debit card from a person other than the issuer is guilty of theft and is subject to the penalties set forth in Section 1550.33(a) of this title.

§ 1550.25. Controlling credit or debit card as security for debt

A person with intent to defraud (a) the issuer, (b) a person or organization providing money, goods, services or anything else of value, or (c) any other person, who obtains control over a credit card or debit card as security for debt is guilty of theft and is subject to the penalties set forth in Section 1550.33(a) of this title.

§ 1550.26. Receiving taken or retained card upon giving consideration

A person, other than the issuer, who receives, on giving of any consideration, credit cards or debit cards issued to any other person, which he has reason to know were taken or retained under circumstances which constitute card theft, is guilty of card theft and is subject to the penalties set forth in Section 1550.33(a) of this title.

§ 1550.27. False making or embossing of credit or debit card

A. A person, with intent to defraud:

1. A purported issuer;

2. A person or organization providing money, goods, services or anything else of value; or

3. Any other person,

who falsely makes or falsely embosses a purported credit card or debit card or utters such a credit card or debit card is guilty of forgery in the third degree and is subject to the penalties set forth in subsection A of Section 1550.33 of this title.

B. A person other than the purported issuer who possesses any credit card or debit card which is falsely made or falsely embossed is presumed to have violated this section.

C. A person “falsely makes” a credit card or debit card when the person makes or draws, in whole or in part, a device or instrument which purports to be the credit card or debit card of a named issuer but which is not such a credit card or debit card because the issuer did not authorize the making or drawing, or when the person alters a credit card or debit card which was validly issued.

D. A person "falsely embosses" a credit card or debit card when, without the authorization of the named issuer, the person completes a credit card or debit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card or debit card before it can be used by a cardholder.

§ 1550.28. Signing of card--Possession of signed or unsigned card

(a) A person other than the cardholder or a person authorized by him who, with intent to defraud (1) the issuer, (2) a person or organization providing money, goods, services or anything else of value, or (3) any other person, signs a credit card or debit card violates this subsection and is subject to the penalties set forth in Section 1550.33(a) of Title 21 of this title.

(b) When a person, other than the cardholder or a person authorized by him, possesses any credit card or debit card which is signed or not signed, such possession shall be a crime and subject to the penalties set forth in Section 1550.33 of Title 21 of this title.

§ 1550.29. Forged or revoked card

A person who, with intent to defraud (a) the issuer, (b) a person or organization providing money, goods, services or anything else of value, or (c) any other person, uses for the purpose of obtaining money, goods, services or anything else of value a credit card or debit card obtained or retained in violation of any provision of Sections 1550.22 through 1550.28 of this title or a credit card or debit card which he knows is forged or revoked, or obtains money, goods, services or anything else of value by representing, without the consent of the cardholder, that he is the holder of a specified card or by representing that he is the holder of a card and such card has in fact not been issued, has violated this subsection and is guilty of an offense and is subject to the penalties set forth in Section 1550.33(a) of this title. Knowledge of revocation shall be presumed to have been received by a cardholder fourteen (14) days after it has been mailed to him at the address in this state set forth on the credit card application or at his last-known address by registered or certified mail, return receipt requested.

§ 1550.30. Failure to furnish money, goods or services represented to have been furnished

A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card or debit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer or cardholder, fails to furnish money, goods, services or anything else of value which he represents in writing to the issuer that he has furnished violates this subsection and is subject to the penalties set forth in Section 1550.33(a) of this title.

§ 1550.31. Possessing incomplete cards

(a) A person other than the cardholder possessing one or more incomplete credit cards or debit cards, with intent to complete them without the consent of the issuer, or a person possessing, with knowledge of its character, machinery, plates or any other contrivance designed to reproduce instruments purporting to be the credit cards or debit cards of an issuer who has not consented to the preparation of such credit cards or debit cards, is guilty of an offense and is subject to the penalties set forth in Section 1550.33(b) of this title.

(b) A credit card or debit card is "incomplete" if part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card or debit card before it can be used by a cardholder has not yet been stamped, embossed, imprinted, or written on it.

§ 1550.32. Receiving of money, goods, or services in violation of Section 1550.29

A person who receives money, goods, services or anything else of value obtained in violation of Section 1550.29 of this title, with the knowledge or belief that it was so obtained, is guilty of an offense and is subject to the penalties set forth in subsection C of Section 1550.33 of this title.

§ 1550.33. Penalties

A. A person who is subject to the penalties of this subsection shall be guilty of a misdemeanor and fined not more than One Thousand Dollars ($1,000.00) or imprisoned for a term not to exceed one (1) year, or both fined and imprisoned.

B. A person who is subject to the penalties of this subsection shall be guilty of a felony and shall be punished by imprisonment for not more than three (3) years.

C. A person subject to the penalties of this subsection who received goods or services or any other item which has a value of One Thousand Dollars ($1,000.00) or more shall be guilty of a felony and fined not more than Three Thousand Dollars ($3,000.00), imprisoned for not more than three (3) years, or both fined and imprisoned. If the value is less than One Thousand Dollars ($1,000.00), the person shall be guilty of a misdemeanor and fined not more than One Thousand Dollars ($1,000.00), imprisoned for not more than one (1) year, or both fined and imprisoned. For purposes of this subsection, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

§ 1550.34. Other criminal law not precluded--Exception

This act shall not be construed to preclude the applicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates this act, unless such provision is inconsistent with the terms of this act.

§ 1550.39. Use of scanning or skimming device on credit or debit cards--Use of reencoder on credit or debit cards--Possession of skimming device

A. Every person who:

1. Uses a scanning device or skimming device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip, magnetic strip or stripe or other storage mechanism of a credit card or debit card without the permission of the authorized user of the credit card or debit card and with the intent to defraud the authorized user or the issuer of the credit card or debit card or a person or organization providing money, goods, services or anything else of value;

2. Uses a reencoder to place information encoded on the computer chip, magnetic strip or stripe or other storage mechanism of a credit card or debit card onto the computer chip, magnetic strip or stripe or other storage mechanism of a different card without the permission of the authorized user of the credit card or debit card from which the information is being reencoded and with the intent to defraud the authorized user or the issuer of the credit card or debit card or a person or organization providing money, goods, services or anything else of value; or

3. Possesses with the intent to sell, deliver or use a skimming device,

is, upon conviction, guilty of an offense and is subject to the penalties set forth in subsection B of Section 1550.33 of Title 21 of the Oklahoma Statutes.

B. The provisions of paragraph 3 of subsection A of this section shall not apply to the following individuals while acting within the scope of their official duties:

1. An employee, officer or agent of:

a. a law enforcement agency or criminal prosecuting authority for the state or federal government,

b. the state court system or federal court system, or

c. an executive branch agency in this state; or

2. A financial or retail security investigator employed by a person or organization providing money, goods, services or anything else of value.

§ 1550.41. Definitions--Offenses--Penalties

A. As used in this section and Section 1550.42 of this title, "identification document", "identification card", or "identification certificate" means any printed form which contains:

1. The name and photograph of a person;

2. The name and any physical description of a person;

3. The name and social security number of a person; or

4. Any combination of information provided for in paragraphs 1 through 3 of this subsection; and

which by its format, is capable of leading a person to believe said document, card, or certificate has been issued for the purpose of identifying the person named thereon, but shall not include any printed form which, on its face, conspicuously bears the term "NOT FOR IDENTIFICATION" in not less than six-point type.

B. It is a misdemeanor for any person:

1. To purchase an identification document, identification card, or identification certificate which bears altered or fictitious information concerning the date of birth, sex, height, eye color, weight, a fictitious or forged name or signature or a photograph of any person, other than the person named thereon;

2. To display or cause or permit to be displayed or to knowingly possess an identification document, identification card or identification certificate which bears altered or fictitious information concerning the date of birth, sex, height, eye color, weight, or fictitious or forged name or signature or a photograph of any person, other than the person named thereon;

3. To display or cause or permit to be displayed or to knowingly possess any counterfeit or fictitious identification document, identification card, or identification certificate; or

4. To use the Seal of the Cherokee Nation or facsimile thereof, on any identification

document, identification card, or identification certificate which is not issued by an entity of this state or political subdivision thereof, or by the United States. Provided, nothing in this paragraph shall be construed to prohibit the use of the Seal of the Cherokee Nation for authorized advertising, including, but not limited to, business cards, calling cards and stationery.

C. It is a felony for any person:

1. To create, publish or otherwise manufacture an identification document, identification card or identification certificate or facsimile thereof, or to create, manufacture or possess an engraved plate or other such device for the printing of an identification document, identification card or identification certificate or facsimile thereof, which purports to identify the bearer of such document, card, or certificate whether or not intended for use as identification, and includes, but is not limited to, documents, cards, and certificates purporting to be driver licenses, nondriver identification cards, birth certificates, social security cards, and employee identification cards, except as authorized by state or federal law;

2. To sell or offer for sale an identification document, identification card, or identification certificate or facsimile thereof, which purports to identify the bearer of such document, card, or certificate whether or not intended for use as identification, and includes, but is not limited to, documents, cards, and certificates purporting to be driver licenses, nondriver identification cards, birth certificates, social security cards, and employee identification cards, except as authorized by tribal, state, or federal law; or

3. To display or present an identification document, identification card or identification certificate which bears altered, false or fictitious information for the purpose of:

a. committing or aiding in the commission of a felony in any commercial or financial transaction,

b. misleading a peace officer in the performance of duties, or

c. avoiding prosecution.

D. 1. The violation of any of the provisions of subsection B of this section shall constitute a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than Twenty-five Dollars ($25.00), nor more than Two Hundred Dollars ($200.00).

2. The violation of any of the provisions of subsection C of this section shall constitute a felony and, upon conviction thereof, shall be punishable by a fine not exceeding Ten Thousand Dollars ($10,000.00) or a term of imprisonment for a term not to exceed three (3) years, or by both such

fine and imprisonment.

E. Notwithstanding any provision of this section, the chief administrator of a federal or state law enforcement, military, or intelligence agency may request the Commissioner of the Department of Public Safety or State Commissioner of Health to authorize the issuance of an identification document, identification card, or identification certificate within the scope of their authority which would otherwise be a violation of this section, to identify a law enforcement officer or agent as another person for the sole purpose of aiding in a criminal investigation or a military or intelligence operation. A person displaying or possessing such identification shall not be prosecuted for a violation of this section. Upon termination of the investigation or operation, the person to whom such identification document, identification card or identification certificate was issued shall return such identification to the Department of Public Safety or State Department of Health, as appropriate.

§ 1550.42. Entities authorized to print identification documents, cards and certificates-- Issuance of certain documents limited to citizens, nationals and legal permanent resident aliens

A. The following entities may create, publish or otherwise manufacture an identification document, identification card, or identification certificate and may possess an engraved plate or other such device for the printing of such identification; provided, the name of the issuing entity shall be clearly printed upon the face of the identification:

1. Businesses, companies, corporations, service organizations and federal, state and local governmental agencies for employee identification which is designed to identify the bearer as an employee;

2. Businesses, companies, corporations and service organizations for customer identification which is designed to identify the bearer as a customer or member;

3. Federal, tribal, state and local government agencies for purposes authorized or required by law or any legitimate purpose consistent with the duties of such an agency, including, but not limited to, voter identification cards, driver licenses, nondriver identification cards, passports, birth certificates and social security cards;

4. Any public school or state or private educational institution, as defined by Sections 1-106, 21-101 or 3102 of Title 70 of the Oklahoma Statutes, to identify the bearer as an administrator, faculty member, student or employee;

5. Any professional organization or labor union to identify the bearer as a member of

the professional organization or labor union; and

6. Businesses, companies or corporations which manufacture medical-alert identification for the wearer thereof.

B. All identification documents as provided for in paragraph 3 or 4 of subsection A of this section shall be issued only to United States citizens, nationals and legal permanent resident aliens.

C. The provisions of subsection B of this section shall not apply when an applicant presents, in person, valid documentary evidence of:

1. A valid, unexpired immigrant or nonimmigrant visa status for admission into the United States;

2. A pending or approved application for asylum in the United States;

3. Admission into the United States in refugee status;

4. A pending or approved application for temporary protected status in the United States;

5. Approved deferred action status; or

6. A pending application for adjustment of status to legal permanent residence status or conditional resident status. Upon approval, the applicant may be issued an identification document provided for in paragraph 3 or 4 of subsection A of this section. Such identification document shall be valid only during the period of time of the authorized stay of the applicant in the United States or, if there is no definite end to the period of authorized stay, a period of one (1) year. Any identification document issued pursuant to the provisions of this subsection shall clearly indicate that it is temporary and shall state the date that the identification document expires. Such identification document may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the identification document has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

D. The provisions of subsection B of this section shall not apply to an identification document described in paragraph 4 of subsection A of this section that is only valid for use on the campus or facility of that educational institution and includes a statement of such restricted validity clearly and conspicuously printed upon the face of the identification document.

E. Any driver license issued to a person who is not a United States citizen, national or legal

permanent resident alien for which an application has been made for renewal, duplication or reissuance shall be presumed to have been issued in accordance with the provisions of subsection C of this section; provided that, at the time the application is made, the driver license has not expired, or been cancelled, suspended or revoked. The requirements of subsection C of this section shall apply, however, to a renewal, duplication or reissuance if the Department of Public Safety is notified by a local, state or federal government agency of information in the possession of the agency indicating a reasonable suspicion that the individual seeking such renewal, duplication or reissuance is present in the United States in violation of law. The provisions of this subsection shall not apply to United States citizens, nationals or legal permanent resident aliens.

§ 1550.43. False or fraudulent identification cards, etc.--Seizure and forfeiture of cards and equipment--Service of notice--Hearing--Claim for equipment--Liability--Expenses--Proceeds--Definitions

A. Any false or fraudulent identification document, card or certification in violation of Section 1550.41 of this title or any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes that is possessed, transferred, sold or offered for sale in violation of law shall be seized and summarily forfeited when no longer needed as evidence.

B. Any peace officer of this state is authorized to seize any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of any identification document, card, or certificate in violation of Section 1550.41 of this title or of any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes. Said equipment may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such an action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, a forfeiture action may be brought by the entity seizing such equipment as petitioner.

C. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest by the party seeking forfeiture as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and

2. Upon all other owners or parties in interest, whose addresses are unknown, by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the

equipment and any other party in interest may file a verified answer and claim to the equipment described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the equipment forfeited to the state, if such fact is proven.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At the hearing the party seeking the forfeiture shall prove by clear and convincing evidence that the equipment was used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of any identification document, card, or certificate in violation of Section 1550.41 of Title 21 of the Oklahoma Statutes or of any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes with knowledge by the owner of the equipment.

H. The owner or party in interest may prove that the right or interest in the equipment was created without any knowledge or reason to believe that the equipment was being, or was to be, used for the purpose charged.

I. In the event of such proof, the court may order the equipment released to the bona fide or innocent owner or party in interest if the amount due the person is equal to, or in excess of, the value of the equipment as of the date of the seizure.

J. If the amount due to such person is less than the value of the equipment, or if no bona fide claim is established, the equipment shall be forfeited to the state and shall be sold pursuant to the judgment of the court.

K. Equipment taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county where the equipment was seized or in the custody of the party seeking the forfeiture. The district attorney or the party seeking the equipment may release said equipment to the owner of the equipment if it is determined that the owner had no knowledge of the illegal use of the equipment or if there is insufficient evidence to sustain the burden of showing illegal use of the equipment. Equipment which has not been released by the district attorney or the party seizing the equipment shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

L. The district attorney or the party seizing such equipment shall not be held civilly liable for having custody of the seized equipment or proceeding with a forfeiture action as provided for in this section.

M. If the court finds that the equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of any identification document, card, or certificate in violation of Section 1550.41 of this title or of any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes, the court shall order the equipment released to the owner.

N. No equipment shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, or by any person other than such owner while such equipment was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

O. For the purposes of this section, the term "equipment" shall include computers, printers, copy machines, other machines, furniture, supplies, books, records, files, data, currency, or negotiable instruments including, but not limited to, money orders or cashier's checks but shall not include vehicles or real property.

CHAPTER 62

FALSE WEIGHTS AND MEASURES

§ 1551. Use of false weights and measures

If any person with intent to defraud, use a false balance, weight or measure, in the weighing or measuring of anything whatever that is purchased, sold, bartered, shipped or delivered, for sale or barter, or that is pledged, or given in payment, he shall be punished by a fine not exceeding One Hundred Dollars ($100.00) nor less than Five Dollars ($5.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment, and shall be liable to the injured party in double the amount of damages.

§ 1552. Retaining same knowingly

Every person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, shall be punished as therein provided.

§ 1553. False weights and measures may be seized

Every person who is authorized or enjoined by law to arrest another person for violation of the first two sections of this article, is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the judge before whom the person so arrested is required to be taken.

§ 1554. Testing seized weights and measures--Disposition

The magistrate to whom any weight or measure is delivered, pursuant to the last section,[1] shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he shall cause it to be destroyed, or to be delivered to the prosecutor in which the accused is liable to indictment or trial, as the interests of justice in his judgment require.

§ 1555. Destruction of false weights or measures after conviction

Upon the conviction of the accused, such prosecutor shall cause any weight or measure in respect whereof the accused stands convicted, and which remains in the possession or under the control of such prosecutor, to be destroyed.

§ 1556. Marking false weight or false tare

Every person who knowingly marks or stamps false or short weight, or false tare on any cask or package or knowingly sells or offers for sale any cask or package so marked is guilty of a misdemeanor.

CHAPTER 63

FORGERY OR COUNTERFEITING

§ 1561. Wills, deeds and certain other instruments, forgery of

Every person who, with intent to defraud, forges, counterfeits or falsely alters:

1st. Any will or codicil of real or personal property, or any deed or other instrument being or purporting to be the act of another, by which any right or interest in real property is, or purports to be, transferred, conveyed or in any way changed or affected; or

2nd. Any certificate or endorsement of the acknowledgment by any person of any deed or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any officer duly authorized to make such certificate or endorsement; or

3rd. Any certificate of the proof of any deed, will, codicil or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any court or officer duly authorized to make such certificate;

is guilty of forgery in the first degree.

§ 1562. Forgery of public securities

Every person who, with intent to defraud, forges, counterfeits, or falsely alters:

1st. Any certificate or other public security, issued or purporting to have been issued under the authority of this nation, by virtue of any law thereof, by which certificate or other public security, the payment of any money absolutely or upon any contingency is promised, or the receipt of any money or property acknowledged; or

2nd. Any certificate of any share, right or interest in any public stock created by virtue of any law of this nation, issued or purporting to have been issued by any public officer, or any other evidence of any debt or liability, of the people of this nation, either absolute or contingent, issued or purporting to have been issued by any public officer; or

3rd. Any endorsement or other instrument transferring or purporting to transfer the right or interest of any holder of any such certificate, public security, certificate of stock, evidence of debt or liability, or of any person entitled to such right or interest;

is guilty of forgery in the first degree.

§ 1571. Public and corporate seals, forgery of

Every person who, with intent to defraud, forges, or counterfeits the great or privy seal of this nation, the seal of any public office authorized by law, the seal of any court of record, including judge of county seals, or the seal of any corporation created by the laws of this Nation, or of any other nation, government or country, or any other public seal authorized or recognized by the laws of this Nation, or of any other nation, government or country, or who falsely makes, forges or counterfeits any impression purporting to be the impression of any such seal, is guilty of forgery in the second degree.

§ 1572. Records, forgery of

Every person who, with intent to defraud, falsely alters, destroys, corrupts or falsifies:

1. Any record of any will, codicil, conveyance or other instrument, the record of which is, by law, evidence; or

2. Any record of any judgment in a court of record, or any enrollment of any decree of a court of equity; or

3. The return of any officer, court or tribunal to any process of any court;

is guilty of forgery in the second degree.

§ 1573. Making false entries in record

Every person who, with intent to defraud, falsely makes, forges or alters, any entry in any book of records, or any instrument purporting to be any record or return specified in 21 CNCA § 1572, and any abstractor, his officer, agent or employee, who, with intent to defraud, falsely makes or alters any abstract entry or copy thereof in any material matter, is guilty of forgery in the second degree.

§ 1574. Making false certificate of acknowledgment

If any officer authorized to take the acknowledgment or proof of any conveyance of real property, or of any other instrument which by law may be recorded, knowingly and falsely certifies that any such conveyance or instrument was acknowledged by any party thereto, or was proved by any subscribing witness, when in truth such conveyance or instrument was not acknowledged or proved as certified, he is guilty of forgery in the second degree.

§ 1575. False bank note plates

Every person who, makes or engraves, or causes or procures to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposit or other evidence of debt issued by any banking corporation or association, or individual banker, incorporated or carrying on business under the laws of this nation, or of any other state, government or country, without the authority of such bank, or has or keeps in his custody or possession any such plate, without the authority of such bank, with intent to use or permit the same to be used for the purpose of taking therefrom any impression, to be passed, sold or altered, or has or keeps in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same filled up and completed for the purpose of being passed, sold or altered; or makes or causes to be made, or has in his custody or possession, any plate upon which are engraved any figures, or words, which may be used for the purpose of falsely altering any evidence of debt issued by any such bank, with intent to use the same, or to permit them to be used for such purpose, is guilty of forgery in the second degree.

§ 1576. Imitation of genuine bank note defined

Every plate specified in the last section shall be deemed to be in the form and similitude of the genuine instrument imitated, in either of the following cases:

1. When the engraving on such plate resembles and conforms to such parts of the genuine

instrument as are engraved; or,

2. When such plate is partly finished, and the part so finished resembles and conforms to similar parts of the genuine instrument.

§ 1577. Notes, checks, bills, drafts--Sale, exchange or delivery

Every person who sells, exchanges or delivers for any consideration any forged or counterfeited promissory note, check, bill, draft or other evidence of debt, or engagement for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intent to have the same uttered or passed, or who offers any such note or other instrument for sale, exchange or delivery for any consideration, with the like knowledge and intent, or who receives any such note or other instrument upon a sale, exchange or delivery for any consideration with the like knowledge and intent, is guilty of forgery in the second degree if the value of the instrument is One Thousand Dollars ($1,000.00) or more and forgery in the third degree if the value of the instrument is less than One Thousand Dollars ($1,000.00).

For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

§ 1577. Notes, checks, bills, drafts--Sale, exchange or delivery

A. Every person who sells, exchanges or delivers for any consideration any forged or counterfeited promissory note, check, bill, draft, or other evidence of debt, or engagement for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intent to have the same uttered or passed, or who offers any such note or other instrument for sale, exchange or delivery for any consideration, with the like knowledge and intent, or who receives any such note or other instrument upon a sale, exchange or delivery for any consideration with the like knowledge and intent, is punishable as follows:

1. If the value of the instrument is less than One Thousand Dollars ($1,000.00), the person shall be guilty of misdemeanor forgery punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

2. If the value of the instrument is One Thousand Dollars ($1,000.00) or more but less than Two Thousand Five Hundred Dollars ($2,500.00), the person shall be guilty of

felony forgery punishable by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

3. If the value of the instrument is Two Thousand Five Hundred Dollars ($2,500.00) or more but less than Fifteen Thousand Dollars ($15,000.00), the person shall be guilty of felony forgery punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine; or

4. If the value of the instrument is Fifteen Thousand Dollars ($15,000.00) or more, the person shall be guilty of felony forgery punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine.

B. For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

§ 1578. Possession of forged evidences of debt

Every person who, with intent to defraud, has in his or her possession any forged, altered or counterfeit negotiable note, bill, draft or other evidence of debt issued or purporting to have been issued by any corporation or company duly authorized for that purpose by the laws of this state or of any other state, government or country, the forgery of which is hereinbefore declared to be punishable, knowing the same to be forged, altered or counterfeited, with intent to utter the same as true or as false, or to cause the same to be so uttered, is guilty of forgery in the second degree if the value of the instrument is One Thousand Dollars ($1,000.00) or more and forgery in the third degree if the value of the instrument is less than One Thousand Dollars ($1,000.00).

For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

§ 1578. Possession of forged evidences of debt

A. Every person who, with intent to defraud, has in his or her possession any forged, altered or counterfeit negotiable note, bill, draft or other evidence of debt issued or purporting to have been issued by any corporation or company duly authorized for that purpose by the laws of this state or of any other state, government or country, the forgery of which is hereinbefore declared to be punishable, knowing the same to be forged, altered or counterfeited, with intent to utter the same as true or as false, or to cause the same to be so uttered, is punishable as follows:

1. If the value of the instrument is less than One Thousand Dollars ($1,000.00), the person shall be guilty of misdemeanor forgery punishable by imprisonment in the county jail for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

2. If the value of the instrument is One Thousand Dollars ($1,000.00) or more but less than Two Thousand Five Hundred Dollars ($2,500.00), the person shall be guilty of felony forgery punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed two (2) years or in the county jail for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

3. If the value of the instrument is Two Thousand Five Hundred Dollars ($2,500.00) or more but less than Fifteen Thousand Dollars ($15,000.00), the person shall be guilty of felony forgery punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed five (5) years or in the county jail for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine; or

4. If the value of the instrument is Fifteen Thousand Dollars ($15,000.00) or more, the person shall be guilty of felony forgery punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed eight (8) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine.

B. For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

§ 1579. Possession of other forged instruments

Every person who has in his or her possession any forged or counterfeited instrument, the forgery of which has previously been declared to be punishable, other than such as are enumerated in Section 1578 of this title, knowing the same to be forged, counterfeited or falsely altered with intent to injure or defraud by uttering the same to be true, or as false, or by causing the same to be uttered, is guilty of forgery in the second degree if the value of the instrument is One Thousand Dollars ($1,000.00) or more and forgery in the third degree if the value of the instrument is less than One Thousand Dollars ($1,000.00).

For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

§ 1579. Possession of other forged instruments

A. Every person who has in his or her possession any forged or counterfeited instrument, the forgery of which is hereinbefore declared to be punishable, other than such as are enumerated in the last section, knowing the same to be forged, counterfeited or falsely altered with intent to injure or defraud by uttering the same to be true, or as false, or by causing the same to be uttered, is punishable as follows:

1. If the value of the instrument is less than One Thousand Dollars ($1,000.00), the person shall be guilty of misdemeanor forgery punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

2. If the value of the instrument is One Thousand Dollars ($1,000.00) or more but less than Two Thousand Five Hundred Dollars ($2,500.00), the person shall be guilty of felony forgery punishable by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

3. If the value of the instrument is Two Thousand Five Hundred Dollars ($2,500.00) or more but less than Fifteen Thousand Dollars ($15,000.00), the person shall be guilty of felony forgery punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine; or

4. If the value of the instrument is Fifteen Thousand Dollars ($15,000.00) or more, the person

shall be guilty of felony forgery punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine.

B. For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

§ 1580. Issuing spurious certificates of stock

Any officer or agent of any corporation or joint-stock association formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully signs or procures to be signed, with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who willfully issues, sells or pledges, or causes to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, whether of full paid shares or otherwise, or of any interest in its property or profits, or of any certificate or other evidence of such ownership, transfer or interest, or any instrument purporting to be a certificate or other evidence of such ownership, transfer or interest, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or other managing body of such corporation or association having authority to issue the same, is guilty of forgery in the second degree.

§ 1581. Reissuing cancelled certificates of stock

Any officer or agent of any corporation or joint-stock association formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully reissues, sells or pledges, or causes to be reissued, sold or pledged, any surrendered or canceled certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, or of an interest in its property or profits, with intent to defraud, is guilty of forgery in the second degree.

§ 1582. False evidences of debt

Any officer or agent of any corporation, municipal or otherwise, of any joint-stock association formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully signs or procures to be signed with intent to issue, sell or pledge, or cause to be issued, sold or pledged, or who willfully issues, sells or pledges,

or causes to be issued, sold or pledged, any false or fraudulent bond or other evidence of debt against such corporation or association of any instrument purporting to be a bond or other evidence of debt against such corporation or association, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or common council or other managing body of officers of such corporation having authority to issue the same, is guilty of forgery in the second degree.

§ 1583. Counterfeiting coin

Every person who counterfeits any gold or silver coin, whether of the United States or any foreign government or country, with intent to sell, utter, use or circulate the same as genuine, within this state, is guilty of forgery in the second degree.

§ 1584. Counterfeiting coin for exportation

Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign country or government, with intent to export the same, or permit them to be exported to injure or defraud any foreign government, or the subjects thereof, is guilty of forgery in the second degree.

§ 1585. Forging process of court or title to property, etc.

Every person who, with intent to defraud, falsely marks, alters, forges or counterfeits:

1. Any instrument in writing, being or purporting to be any process issued by any competent court, magistrate, or officer of being or purporting to be any pleading, proceeding, bond or undertaking filed or entered in any court, or being or purporting to be any license or authority authorized by any statute; or

2. Any instrument of writing, being or purporting to be the act of another by which any pecuniary demand or obligation is, or purports to be created, increased, discharged or diminished, or by which any rights or property whatever, are, or purport to be, transferred, conveyed, discharged, diminished, or in any manner affected, the punishment of which is not hereinbefore prescribed, by which false marking, altering, forging or counterfeiting, any person may be affected, bound or in any way injured in his person or property;

is guilty of a forgery in the second degree.

§ 1586. Making false entries in public book

Every person who, with intent to defraud, makes any false entry or falsely alters any entry made in any book of accounts kept in the office of the State Auditor and Inspector, or in the office

of the Treasurer of this Nation or of any county treasurer, by which any demand or obligation, claim, right or interest either against or in favor of the people of this Nation, or any county or town, or any individual, is or purports to be discharged, diminished, increased, created, or in any manner affected, is guilty of forgery in the second degree.

§ 1587. Forging tickets of passage

Every person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, check or other paper or writing to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance; and every person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery any such ticket, knowing the same to have been forged, counterfeited or falsely altered is guilty of forgery in the second degree.

§ 1588. Postage stamps, forging

Every person who forges, counterfeits or alters any postage or revenue stamp of the United States, or who sells or offers to keep for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the second degree.

§ 1589. False entries in corporation books

Every person who, with intent to defraud, makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this state, or in any book of accounts kept by any such corporation or its officers, and delivered or intended to be delivered to any person dealing with such corporation, by which any pecuniary obligation, claim or credit is, or purports to be, discharged, diminished, increased, created or in any manner affected, is guilty of forgery in the second degree.

§ 1590. Officer or employee of corporation making false entries

Every person who being a member or officer or in the employment of any corporation, association or partnership, falsifies, alters, erases, obliterates or destroys any account or book of accounts or records belonging to such corporation, association or partnership, or appertaining to their business or makes any false entries in such account or book or keeps any false account in such business with intent to defraud his employers, or to conceal any embezzlement of their money, or property, or any defalcation or other misconduct, committed by any person in the management of their business, is guilty of forgery in the second degree.

§ 1591. Possession of counterfeit coin

Every person who has in his possession any counterfeit of any gold or silver coin, whether of

the United States or any foreign country or government, knowing the same to be counterfeit, with intent to sell or to use, circulate or export the same, as true or as false, or by causing the same to be uttered or passed, is guilty of forgery in the second degree.

§ 1592. Uttering forged instruments or coin

A. Every person who, with intent to defraud, utters or publishes as true any forged, altered or counterfeited instrument or any counterfeit gold or silver coin, the forging, altering or counterfeiting of which has previously been declared to be punishable, knowing such instrument or coin to be forged, altered or counterfeited, is punishable as follows:

1. If the value of the instrument is less than One Thousand Dollars ($1,000.00), the person shall be guilty of forgery as a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

2. If the value of the instrument is One Thousand Dollars ($1,000.00) or more but less than Two Thousand Five Hundred Dollars ($2,500.00), the person shall be guilty of forgery as a felony punishable by imprisonment for a term not to exceed two (2) years, or in the county jail not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

3. If the value of the instrument is Two Thousand Five Hundred Dollars ($2,500.00) or more but less than Fifteen Thousand Dollars ($15,000.00), the person shall be guilty of forgery as a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine; and

4. If the value of the instrument is Fifteen Thousand Dollars ($15,000.00) or more, the person shall be guilty of forgery as a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine.

B. For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

§ 1593. Falsely obtaining signature

Every person who, by any false representation, artifice or deceit, procures from another his signature to any instrument, the false making of which would be forgery, and which the party signing would not have executed had he known the facts and effect of the instrument, is guilty of forgery in the second degree.

CHAPTER 63

FORGERY OR COUNTERFEITING

§ 1621. First, second, and third degree forgery--Penalties

A. Forgery in the first degree is a felony punishable by imprisonment for a not more than three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

B. Forgery in the second degree is a felony punishable by imprisonment for not more than three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

C. Forgery in the third degree is:

a. If the value of the forgery is less than One Thousand Dollars ($1,000.00), a misdemeanor punishable by confinement for not more than one (1) year or by a fine not exceeding One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

b. If the value of the forgery is One Thousand Dollars ($1,000.00) or more, a felony punishable by imprisonment not exceeding three (3) years, or by both such fine and imprisonment.

c. If the total or aggregate value of the forgery is Two Thousand Dollars ($2,000.00) or more, a felony punishable by imprisonment not exceeding three (3) years.

§ 1622. Fraudulently uttering one's signature as that of another of same name

Every person who, with intent to defraud, makes or subscribes any instrument in his own name, intended to create, increase, discharge, defeat or diminish any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and utters or passes such instrument, under the pretense that it is the act of another who bears the same name, is guilty of forgery in the same degree as if he had forged the instrument of a person bearing a different name from his own.

§ 1623. Fraudulently uttering one's endorsement as another's

Every person who, with intent to defraud, endorses any negotiable instrument in his own name, and utters or passes such instrument, under the fraudulent pretense that it is endorsed by another person who bears the same name, is guilty of forgery in the same degree as if he had forged the endorsement of a person bearing a different name from his own.

§ 1624. Erasure and obliterations

The total or partial erasure or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property is or is intended to be created, increased, discharged, diminished or in any manner affected, is forgery in the same degree as the false alteration of any part of such instrument or writing.

§ 1625. Writing and written defined

Every instrument partly printed and partly written, or wholly printed with a written signature thereto, and every signature of an individual, firm or corporation, or of any officer of such body, and every writing purporting to be such signature, is a writing or a written instrument, within the meaning of the provisions of this chapter.

§ 1626. Signing fictitious names as officers of corporations

The false making or forging of an evidence of debt purporting to have been issued by any corporation and bearing the pretended signature of any person as an agent or officer of such corporation, is forgery in the same degree as if such person was at the time an officer or agent of such corporation; notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

§ 1627. False or bogus order directing payment of money

Every person who, with intent to cheat or defraud, shall obtain or attempt to obtain from any person any labor or personal services, or the postponement of actual payment due for labor or personal services theretofore performed, by means or use of any false or bogus written, printed or engraved order directing the payment of money, shall be guilty of a misdemeanor, and upon

conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars ($500.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

The term "false or bogus written, printed or engraved order directing the payment of money," in addition to its common meaning, also shall include any check, draft or order on any bank or trust company which is not honored on presentation on account of insufficient funds to the credit of the maker or drawer thereof with which to pay same. The word "credit," as used herein, shall mean any arrangement or understanding with a bank or trust company for the payment by it of any check, draft or money payment order.

As against the maker or drawer of any false or bogus written, printed or engraved order directing the payment of money, and as against any officer or employee of the maker or drawer thereof, who shall authorize or direct the making, drawing, uttering or delivering, or who shall make, draw, utter or deliver any such false or bogus written, printed or engraved order directing the payment of money, to obtain or to attempt to obtain from any person any labor or personal services, or the postponement of actual payment due for labor or personal services, the fact of dishonor or refusal to pay the amount of money specified in said false or bogus order shall be prima facie evidence of intent to cheat or defraud, and of knowledge of insufficient funds to the credit of the maker or drawer, with the drawer specified therein, to pay the same; provided, said fact shall not constitute prima facie evidence as above set forth if the maker or drawer shall pay the amount of such false or bogus order, together with protest fees, within five (5) days from the date the same shall have been presented to the drawer for payment; and provided further, that said fact shall not constitute prima facie evidence as above set forth unless the said false or bogus order be presented to the drawer within thirty (30) days after the same shall have been uttered or delivered.

§ 1627.1. False or bogus orders as payment for labor—Penalties

In addition to the criminal penalties imposed pursuant to the provisions of 21 CNCA § 1627, any person who obtains or attempts to obtain from any person, with the intent to cheat or defraud, any labor or personal services, or the postponement of actual payment due for labor or personal services performed, by means or use of any false or bogus written, printed or engraved order directing the payment of money, shall also be liable to the payee, in addition to the amount owing upon such order, for damages of double the amount so owing, but in no case shall the amount of damages awarded be less than Two Hundred Dollars ($200.00), plus reasonable attorney fees and court costs. Said damages shall be recoverable in a civil action.

§ 1628. Fraudulently altering, forging, reproducing abstractor's certificate or signature

Any person who, with intent to defraud, alters, forges, falsely makes, photographs, or by any method reproduces any certificate of authority provided for in Title 1 of the Oklahoma Statutes, or other instrument, document, paper or abstract of title entry signed or executed by

any abstractor to whom a certificate of authority has been lawfully issued, shall be guilty of the commission of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than One Thousand Dollars ($1,000.00) for each reproduction thereof.

CHAPTER 64

FRAUDS AND OFFENSES IN CORPORATION AFFAIRS

§ 1631. Fraud in subscription for stock

Any person who signs the name of a fictitious person to any subscription for, or agreement to take stock in any corporation, existing or proposed; and every person who signs, to any subscription or agreement, the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

§ 1632. Fraud in procuring organization of stock company

Any officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital with intent to deceive such officer or board in respect thereto, shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years or by imposition of a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 1633. Unauthorized use of names

Any person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in any prospectus, circular, or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

§ 1634. Omitting to enter receipt

Any director, officer or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise

than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, is guilty of a misdemeanor.

§ 1635. Destroying or falsifying books

Any director, officer, agent or member of any corporation or joint stock association, who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 1636. False reports of corporation--Refusal to make report

Any director, officer or agent of any corporation or joint-stock association, who knowingly concurs in the making, or publishes any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than as are mentioned in Sections 2722 and 2723,1 or willfully refuses or neglects to make or deliver any written report, exhibit or statement required by law, is guilty of a misdemeanor.

§ 1637. Inspection of corporate books, refusing to permit

Any officer or agent of any corporation having or keeping an office within this state, who has in his custody, or control, any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

§ 1638. Insolvencies deemed fraudulent

Every insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

§ 1639. Fraudulent insolvency--Penalties

A. In every case of a fraudulent insolvency of a moneyed corporation not licensed to conduct insurance business in the State of Oklahoma, every director thereof who participated in such fraud is guilty of a misdemeanor.

B. In every case of a fraudulent insolvency of a moneyed corporation licensed to conduct the business of insurance in the State of Oklahoma, every director thereof who participated in such fraud is guilty of a felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not the exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 1640. Violation of duty by officer of corporation

Any director of any moneyed corporation who willfully does any act, as such director, which is expressly forbidden by law, or willfully omits to perform any duty expressly imposed upon him as such director, by law, the punishment for which act or omission is not otherwise prescribed by this article, or by some of the acts which it specifies as continuing in force, is guilty of a misdemeanor.

§ 1641. Director presumed to have knowledge

Any director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors, is a violation of this article.

§ 1642. Director presumed to have assented, when

Any director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding or omission of such directors, in violation of this article1 occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

§ 1643. Presumption of assent when director was absent from meeting

Any director of a corporation or joint-stock association, although not present at the meeting of the directors at which any act, proceeding or omission of such directors, in violation of this article, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the same company for six (6) months thereafter, and does not, within that time, cause or in writing require his dissent from such illegality to be entered in the minutes of the directors.

§ 1644. Foreign corporation no defense

It is no defense to a prosecution for a violation of the provisions of this article, that the corporation was one created by the laws of another state, government or country, if it was one carrying on business, or keeping an officer thereof, within this Nation.

§ 1645. Director defined

The term director, as used in this article, embraces any of the persons having by law the direction or management of the affairs of a corporation by whatever name such persons are described in its charter, or known by law.

CHAPTER 65

FRAUDS ON INSURANCE COMPANIES

§ 1662. False claim or proof of loss in insurance

Any person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance, for the payment of any loss, or who prepares, makes or subscribes any account, certificate, survey affidavit, proof of loss, or other book, paper or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding three (3) years, or by a fine not exceeding twice the amount of the aggregated loss sum, or both.

§ 1663. Workers' compensation fraud--Punishment

A. Any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years or by a fine not exceeding Ten Thousand Dollars ($10,000.00) or by both such fine and imprisonment.

B. For the purposes of this section, workers' compensation fraud shall include, but not be limited to, any act or omission prohibited by subsection C of this section and committed by a person with the intent to injure, defraud or deceive another with respect to any of the following:

1. A claim for payment or other benefit pursuant to a contract of insurance;

2. An application for the issuance of a contract of insurance;

3. The rating of a contract of insurance or any risk associated with the contract;

4. Premiums paid on any contract of insurance whether or not the contract was actually issued;

5. Payments made in accordance with the terms of a contract of insurance;

6. An application for any license which is required by the Oklahoma Insurance Code, Title 36 of the Oklahoma Statutes;

7. An application for a license which is required for the organization, operation or maintenance of a health maintenance organization pursuant to Section 2501 et seq. of Title 63 of the Oklahoma Statutes;

8. A request for any approval, license, permit or permission required by the Workers' Compensation Act,1 by the rules of the Workers' Compensation Court or by the rules of the Workers' Compensation Court Administrator necessary to secure compensation as required by Section 61 of Title 85 of the Oklahoma Statutes;

9. The financial condition of an insurer or purported insurer;

10. The acquisition of any insurer; or

11. A contract of insurance or a Certification of Non-Coverage Under the Workers' Compensation Act.

C. A person is guilty of workers' compensation fraud who:

1. Presents, causes to be presented or intends to present to another, any statement as part of or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose for the statement;

2. Assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to, used by or relied upon by another in connection with or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose of the statement;

3. Conceals, attempts to conceal or conspires to conceal any information concerning any fact material to any of the purposes described in subsection B of this section;

4. Solicits, accepts or conspires to solicit or accept new or renewal insurance risks by or for an insolvent insurer;

5. Removes, attempts to remove or conspires to remove the assets or records of the insurer or a material part thereof, from the place of business of the insurer or from a place of safekeeping of the insurer;

6. Conceals, attempts to conceal or conspires to conceal the assets or records of the insurer or a material part thereof;

7. Diverts, attempts to divert, or conspires to divert funds of an insurer or other person in connection with:

a. a contract of insurance,

b. the business of an insurer, or

c. the formation, acquisition or dissolution of an insurer;

8. Solicits, accepts or conspires to solicit or accept any benefit in exchange for violating any provision of this section;

9. Conceals, attempts to conceal, conspires to conceal or fails to disclose any change in any material fact, circumstance or thing for which there is a duty to disclose to another; or

10. Alters, falsifies, forges, distorts, counterfeits or otherwise changes any material statement, form, document, contract, application, certificate, or other writing with the intent to defraud, deceive, or mislead another.

D. It shall not be a defense to an allegation of a violation of this section that the person accused did not have a contractual relationship with the insurer.

E. For the purposes of this section:

1. "Contract of insurance" includes, but is not limited to, workers' compensation insurance or any other means of securing compensation permitted by the Workers' Compensation Act or reinsurance for such insurance or other means of securing compensation;

2. "Insurer" includes, but is not limited to, any person who is engaged in the business of making contracts of insurance;

3. "Person" means any individual or entity, whether incorporated or not, and in the case of an entity, includes those persons directly responsible for the fraudulent actions of the entity;

4. "Statement" includes, but is not limited to, any oral, written, computer-generated or otherwise produced notice, proof of loss, bill of lading, receipt for payment, invoice, account, certificate, survey affidavit, book, paper, writing, estimate of property damage, bill for services, diagnosis, prescription, medical record, x-ray, test result or other evidence of loss, injury or expense; and

5. "Work" does not include activities that result in nominal economic gain.

§ 1671. Fraudulent conveyance

Every person who being a party to any conveyance or assignment of any real or personal property, or of any interest therein, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, and every person being privy to or knowing of such conveyance, assignment or charge, who willfully puts the same in use as having been made in good faith, is guilty of a misdemeanor.

§ 1672. Fraudulent removal of property

Every person who removes any of his property out of any county, with intent to prevent the same from being levied upon by any execution or attachment, or who secretes, assigns, conveys or otherwise disposes of any of his property, with intent to defraud any creditor, or to prevent such property being made liable for the payment of his debts, and every person who receives any such property with such intent, is guilty of a misdemeanor.

§ 1673. Assignment to creditor with preference

Every person who, knowing that his property is insufficient for the payment of all his lawful debts, assigns, transfers or delivers any property for the benefit of any creditor or creditors, upon any trusts or condition, that any creditor shall receive a preference or priority over any other, except in the cases in which such preference is expressly allowed to be given by law, or with intent to create such preference or priority, is guilty of a misdemeanor.

§ 1674. Frauds by insolvent debtor

Every person who, upon making or prosecuting any application for a discharge as an insolvent debtor, under the provision of any law now in force, or that may hereafter be enacted, either:

1. Fraudulently presents, or authorizes to be presented on his behalf such application, in a case in which it is not authorized by law; or,

2. Makes or presents to any court or officer, in support of such application, any petition, schedule, book, account, voucher or other paper or document, knowing the same to contain any false statement; or,

3. Fraudulently makes or exhibits, or alters, obliterates or destroys any account or voucher relating to the condition of his affairs, or any entry or statement in such account or voucher; or

4. Practices any fraud upon any creditor, with intent to induce him to petition for, or consent to such discharge; or

5. Conspires with or induces any person fraudulently to unite as a creditor in any petition for such discharge, or to practice any fraud in aid thereof, is guilty of a misdemeanor.

CHAPTER 67

INJURIES TO ANIMALS

§ 1681. Poisoning animals

Any person who willfully administers poison to any animal, the property of another, and every person who maliciously exposes any poisonous substance with intent that the same shall be taken by any such animal, shall be guilty of a felony and shall be punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Two Hundred Fifty Dollars ($250.00), or by both such fine and imprisonment.

§ 1682. Instigating fights between animals

Every person who maliciously, or for any bet, stake or reward, instigates or encourages any fight between animals with the exception of dogs, or instigates or encourages any animal with the exception of dogs to attack, bite, wound or worry another, upon conviction, is guilty of a misdemeanor.

§ 1683. Keeping places for fighting animals

Every person who keeps any house, pit or other place, to be used in permitting any fight between animals with the exception of dogs or in any other violation of 21 CNCA § 1682, upon conviction, is guilty of a misdemeanor.

§ 1685. Cruelty to animals

Any person who shall willfully or maliciously overdrive, overload, torture, destroy or kill, or cruelly beat or injure, maim or mutilate, any animal in subjugation or captivity, whether wild or tame, and whether belonging to himself or to another, or deprive any such animal of necessary food, drink or shelter; or who shall cause, procure or permit any such animal to be so overdriven, overloaded, tortured, destroyed or killed, or cruelly beaten or injured, maimed or mutilated, or deprived of necessary food, drink or shelter; or who shall willfully set on foot, instigate, engage in, or in any way further any act of cruelty to any animal, or any act tending to produce such cruelty, shall be guilty of a crime.

§ 1685.1. Greyhounds--Using live animal as lure in training--Penalties

A. No person may knowingly use any live animal as a lure or bait in training a greyhound for entry in any race.

B. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine not exceeding Two Hundred Fifty Dollars ($250.00).

C. The provisions of subsection B of this section shall be the exclusive remedy for any violation of the provisions of subsection A of this section.

§ 1686. Abandoned animals—Euthanasia—Custody of animal following arrest

A. Any person owning or having charge or custody of a maimed, diseased, disabled, or infirm animal who abandons said animal or who allows said animal to lie in a public street, road, or public place one (1) hour after said person receives notice by a duly constituted authority that the animal is disabled or dead, upon conviction, shall be guilty of a misdemeanor.

B. Any peace officer, animal control officer may humanely destroy or cause to be humanely destroyed any animal found abandoned and for which no proper care has been given.

C. When any person who is arrested, and who is at the time of such arrest in charge of any animal or of any vehicle drawn by or containing any animal, any peace officer, or animal control officer may take custody of the animal or of the vehicle and its contents, or deliver the animal or the vehicle and its contents into the possession of the police or sheriff of the county or place where such arrest was made, who shall assume the custody thereof. All necessary expenses incurred in taking custody of the animal or of the vehicle and its contents shall be a lien on such property.

D. For the purpose of the provisions of this section and 21 CNCA § 1691, the term abandon

means the voluntary relinquishment of an animal and shall include but shall not be limited to vacating a premises and leaving the animal in or at the premises, or failing to feed the animal or allowing it to stray or wander onto private or public property with the intention of surrendering ownership or custody over said animal.

§ 1688. Animals in transit

Any person who carries or causes to be carried in or upon any vessel or vehicle, or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture is guilty of a misdemeanor.

§ 1689. Poisonous drugs, unjustifiable administration of

Any person who unjustifiably administers any poisonous or noxious drug or substance to any animal, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal, whether such animal be the property of himself or another, is guilty of a misdemeanor.

§ 1691. Abandoning of domestic animals along streets or highways or in any public place prohibited

Any person who deposits any live dog, cat, or other domestic animal along any private or public roadway, or in any other private or public place with the intention of abandoning the domestic animal upon conviction, shall be guilty of a misdemeanor.

§ 1692. Penalty

Any person found guilty of violating the provisions of Sections 1686, 1688, 1689, and 1691 of this title shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not more than one (1) year, or both such fine and imprisonment.

§ 1692.1. Definitions

As used in this act:

A. “Cockfight” or “cockfighting” is a fight between birds, whether or not fitted with spurs, knives, or gaffs, and whether or not bets or wagers are made on the outcome of the fight, and includes any training fight in which birds are intended or encouraged to attack or fight with one another.

B. “Equipment used for training or handling a fighting bird” includes knives or gaffs, cages, pens, feeding apparatuses, training pens and other related devices and equipment, and is hereby declared contraband and subject to seizure.

§ 1692.2. Instigating or encouraging cockfight

Every person who willfully instigates or encourages any cockfight, upon conviction, shall be guilty of a felony. The penalty for a violation of this section shall be as provided in Section 1692.8 of this chapter.

§ 1692.3. Keeping place, equipment or facilities for cockfighting

Every person who keeps any pit or other place, or knowingly provides any equipment or facilities to be used in permitting any cockfight, upon conviction, shall be guilty of a felony. The penalty for a violation of this section shall be as provided in Section 1692.8 of this chapter.

§ 1692.4. Servicing or facilitating cockfight

Every person who does any act or performs any service in the furtherance of or to facilitate any cockfight, upon conviction, shall be guilty of a felony. Such activities and services specifically prohibited by this section include, but are not limited to: promoting or refereeing of birds at a cockfight, advertising a cockfight, or serving as a stakes holder of any money wagered on any cockfight. The penalty for a violation of this section shall be as provided in Section 1692.8 of this chapter.

§ 1692.5. Owning, possessing, keeping or training bird for fighting

Every person who owns, possesses, keeps, or trains any bird with the intent that such bird shall be engaged in a cockfight, upon conviction, shall be guilty of a felony. The penalty for a violation of this section shall be as provided in Section 1692.8 of this chapter.

§ 1692.6. Spectators

Every person who is knowingly present as a spectator at any place, building, or other site where preparations are being made for a cockfight with the intent to be present at such preparation or cockfight, or is knowingly present at such cockfight, upon conviction shall be guilty of a misdemeanor.

§ 1692.7. Seizure, destruction, or forfeiture of cockfighting equipment or facilities

Following the conviction of a person for Sections 1692.2, 1692.3, 1692.4, or 1692.5 of this chapter, the court entering the judgment shall order that the birds and knives or gaffs used in violation of this act2 be forfeited to the state, and may order that any and all equipment described in Section 1 used in violation of this act be forfeited to the state.

§ 1692.8. Punishment

A. Every person who is guilty of a felony under any of the provisions of Sections 1692.2, 1692.3, 1692.4, or 1692.5 of this chapter shall be punished by imprisonment for not less than one (1) year, or shall be fined not more than Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

B. Every person who upon conviction is guilty of any of the provisions of Section 6 of this chapter shall be punished by imprisonment for not more than one (1) year, or shall be fined not more than Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

§ 1692.9. Exemption

Nothing in this chapter shall prohibit any of the following:

A. Hunting birds or fowl in accordance with applicable regulation or statute, including but not limited to the sport of hunting game with trained raptors.

B. Agricultural production of fowl for human consumption.

DOGFIGHTING

§ 1693. Definitions

As used in this act:

1. "Equipment used for training or handling a fighting dog" includes harnesses, treadmills, cages, decoys, pens, houses, feeding apparatuses, training pens and other related devices and equipment.

2. "Equipment used for transporting a fighting dog" includes any automobile, or other vehicle, and its appurtenances which are intended to be used as a vehicle for transporting a fighting dog to a fight.

3. “Concession equipment” includes any stands, equipment or devices intended to be used to sell or otherwise to dispense food, drinks, liquor, souvenirs, or spectator comforts.

4. "Equipment used to promote or advertise a dogfight" includes any printing presses or similar equipment, any paper, ink, photography equipment, and related items and equipment intended to be used to transport same.

5. "Equipment used to stage a dogfight" includes, but is not limited to, dogfighting arenas,

bleachers, or spectators' stands or other seating, tents, canopies, buildings, fences, cages, speakers, public address systems, portable toilet facilities and related equipment.

6. "Fighting dog" includes any dog trained, being trained, intended to be used for training, or intended to be used to attack, bite, wound or worry another dog.

§ 1694. Instigating or encouraging dogfight—Felony--Penalty

Every person who willfully or for any bet, stake or reward, instigates or encourages any fight between dogs, or instigates or encourages any dog to attack, bite, wound or worry another dog, except in the course of protection of life and property, upon conviction, is guilty of a felony, punishable as provided in Section 1699.1 of this title.

§ 1695. Keeping place, equipment or facilities for dogfighting—Felony--Penalty

Every person who keeps any house, pit or other place, or provides any equipment or facilities to be used in permitting any fight between dogs or in furtherance of any activity described in 21 CNCA § 1693, upon conviction, shall be guilty of a felony, punishable as provided in Section 1699.1 of this title.

§ 1696. Servicing or facilitating dogfight—Felony--Penalty

Every person who does any act or performs any service in the furtherance of or to facilitate any dogfight, upon conviction, shall be guilty of a felony. Such activities and services specifically prohibited by this section include, but are not limited to: promotion, refereeing, handling of dogs at a fight, transportation of spectators to or from a dogfight, providing concessions at a dogfight, advertising a dogfight, or serving as a stakes holder of any money wagered on any dogfight, punishable as provided in Section 1699.1 of this title.

§ 1697. Owning, possessing, keeping or training dog for fighting—Felony--Penalty

Every person who owns, possesses, keeps or trains any dog with the intent that such dog shall be engaged in an exhibition of fighting with another dog, upon conviction, shall be guilty of a felony, punishable as provided in Section 1699.1 of this title..

§ 1698. Spectators

Every person who is knowingly present as a spectator at any place, building or other site where preparations are being made for an exhibition of dogfighting with the intent to be present at such preparation or fight, or is knowingly present at such exhibition, upon conviction, shall be guilty of a misdemeanor.

§ 1699. Seizure, destruction or forfeiture of dogfighting equipment and facilities

Following the conviction of a person for the offense of keeping a place for fighting dogs, providing facilities for fighting dogs, performing services in the furtherance of dogfighting, training, owning, possessing, handling fighting dogs, the Court entering the judgment shall order that the machine, device, gambling equipment, training or handling instruments or equipment, transportation equipment, concession equipment, dogfighting equipment and instruments, and fighting dogs used in violation of this act be destroyed or forfeited to the Nation.

§ 1699.1. Punishment

A. Every person who is guilty of a felony under any of the provisions of Sections 1694, 1695, 1696 and 1697 of this title shall be punished by imprisonment for not more than three (3) years, or a fine not less than Two Thousand Dollars ($2,000.00) nor more than Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

B. Every person who upon conviction is guilty of any of the provisions of Section 1698 of this title shall be punished by imprisonment for not more than one (1) year, or shall be fined not more than Five Hundred Dollars ($500.00).

§ 1699.2. Exemptions

Nothing in this act shall prohibit any of the following:

1. The use of dogs in hunting as permitted by the Game and Fish Code and by the rules and regulations adopted by the Oklahoma Wildlife Conservation Commission;

2. The use of dogs in the management of livestock by the owner of such livestock or his employees or agents or other persons in lawful custody thereof;

3. The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law; or

4. The raising, breeding, keeping or training of dogs or the use of equipment for the raising, breeding, keeping or training of dogs for sale or show purposes.

§ 1700. Bear wrestling--Horse tripping

A. It is unlawful for any person to:

1. Promote, engage in, or be employed at a bear wrestling exhibition or horse tripping

event;

2. Receive money for the admission of another person to any place where bear wrestling or horse tripping will occur;

3. Sell, purchase, possess, or offer a horse for any horse tripping event;

4. Sell, purchase, possess, or train a bear for any bear wrestling exhibition;

5. Subject a bear to alteration in any form for purposes of bear wrestling including, but not limited to, removal of claws or teeth, or severing tendons; or

6. Give any substance to a bear, inject any substance into a bear, or cause a bear to ingest or inhale any substance for the purposes of bear wrestling.

B. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not exceeding one (1) year, or by a fine of not more than Two Thousand Dollars ($2,000.00), or by both such fine and imprisonment. In addition, the court may require the violator to make restitution and reimbursements to the state, any of its political subdivisions, or to any society which is incorporated for the prevention of cruelty to animals for housing, feeding, or providing medical treatment to any animals used or intended for use in violation of this section.

C. Upon the arrest of any person pursuant to any provision of this section, the arresting law enforcement agency or animal control office shall have authority to seize and take custody of all animals in the possession of the arrested person which are the basis of an arrest pursuant to the provisions of this section. Upon conviction, the court shall have authority to order the forfeiture of all animals seized which are the basis of the conviction pursuant to the provisions of this section. Any animals ordered forfeited may be placed in the custody of a society which is incorporated for the prevention of cruelty to animals.

D. As used in this section, “horse tripping” means to cause an animal of the equine species to fall or lose its balance with the use of a wire, pole, stick, rope or other object. The term does not include the lawful laying down of a horse for medical purposes or for the purposes of identification.

CHAPTER 68

LARCENY

§ 1701. Larceny defined

Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof.

§ 1702. Larceny of lost property

One who finds lost property under circumstances which gives him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made such effort to find the owner and restore the property to him as the circumstances render reasonable and just, is guilty of larceny punishable as follows:

1. If the value of the property is less than One Thousand Dollars ($ 1,000.00), the person shall be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed Five Hundred Dollars ($500.00), or by both such imprisonment and fine;

2. If the value of the property is One Thousand Dollars ($1,000.00) or more but less than Two Thousand Five Hundred Dollars ($2,500.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

3. If the value of the property is Two Thousand Five Hundred Dollars ($2,500.00) or more but less than Fifteen Thousand Dollars ($15,000.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine; and

4. If the value of the property is Fifteen Thousand Dollars ($15,000.00) or more, the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such imprisonment and fine.

§ 1703. Degrees of larceny

Larceny is divided into two degrees; the first of which is termed grand larceny, the second petit larceny.

§ 1704. Grand and petit larceny defined

Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of value exceeding One Thousand Dollars ($1,000.00); or

2. When such property, although not of value exceeding One Thousand Dollars

($1,000.00), is taken from the person of another.

Larceny in other cases is petit larceny.

§ 1705. Punishment for grand larceny

Grand larceny is a felony punishable as follows:

A. Grand larceny is a felony punishable as follows:

1. If the value of the property is less than One Thousand Dollars ($1,000.00), the person shall be punished by imprisonment for a term not to exceed one (1) year or by incarceration in the county jail for one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Cherokee Nation Code Annotated, at the option of the court, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

2. If the property is one or more firearms, the property is taken from the person of another, or the value of the property is One Thousand Dollars ($1,000.00) or more but less than Two Thousand Five Hundred Dollars ($2,500.00), the person shall be punished by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine;

3. In the event the value of the property is Two Thousand Five Hundred Dollars ($2,500.00) or more but less than Fifteen Thousand Dollars ($15,000.00), the person shall be punished by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine; or

4. If the value of the property is Fifteen Thousand Dollars ($15,000.00) or more, the person shall be punished by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment and fine.

B. The person shall also be ordered to pay restitution to the victim as provided in Section 991f of Title 22 of the Cherokee Nation Code Annotated.

§ 1706. Punishment for petit larceny

Petit larceny shall be punishable by a fine of not less than Ten Dollars ($10.00) or more than Five Hundred Dollars ($500.00), or imprisonment for a term not to exceed six (6) months, or by both such fine and imprisonment, at the discretion of the Court.

§ 1707. Grand larceny in house or vessel—a felony

When it appears upon a trial for grand larceny that the larceny alleged was committed in any dwelling house or vessel, the offender shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such imprisonment and fine..

§ 1708. Grand larceny in night time from person—Punishment

When it appears upon such trial, that such larceny was committed by stealing in the night time, from the person of another, the offender shall be guilty of felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such imprisonment and fine.

§ 1709. Larceny of written instrument—Value

If the thing stolen consists of any evidence of debt or other written instrument, the amount of money due thereon or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum of which might be recovered in the absence thereof, as the case may be, shall be deemed the value of the thing stolen.

§ 1710. Larceny of passage ticket--Value

If the thing stolen is any ticket, or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance shall be deemed the value of such ticket.

§ 1711. Securities not yet issued or delivered, larceny of

All the provisions of this article1 shall apply where the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed and ready to be issued or delivered, though the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

§ 1712. Severed fixture, larceny of

Any fixture or part of realty, the instant it is severed from the realty becomes personal property, and the subject of larceny within the meaning of this chapter.

§ 1713. Receiving stolen property—Presumption

A. Every person who buys or receives, in any manner, upon any consideration, any personal property of any value whatsoever that has been stolen, embezzled, obtained by false pretense or robbery, knowing or having reasonable cause to believe the same to have been stolen, embezzled, obtained by false pretense, or robbery, or who conceals, withholds, or aids in concealing or withholding such property from the owner, is guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such imprisonment and fine. If the personal property that has been stolen, embezzled, obtained by false pretense or robbery has a value of less than One Thousand Dollars ($1,000.00), the person shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment not to exceed one (1) year.

B. Every person who, without making reasonable inquiry, buys, receives, conceals, withholds, or aids in concealing or withholding any property which has been stolen, embezzled, obtained by false pretense or robbery, or otherwise feloniously obtained, under such circumstances as should cause such person to make reasonable inquiry to ascertain that the person from whom such property was bought or received had the legal right to sell or deliver it shall be presumed to have bought or received such property knowing it to have been so stolen or wrongfully obtained. This presumption may, however, be rebutted by proof.

§ 1713. Receiving stolen property--Presumption

A. Every person who buys or receives, in any manner, upon any consideration, personal property of a value of One Thousand Dollars ($1,000.00) or more that has been stolen, embezzled, obtained by false pretense or robbery, knowing or having reasonable cause to believe the same to have been stolen, embezzled, obtained by false pretense, or robbery, or who conceals, withholds, or aids in concealing or withholding such property from the owner shall, upon conviction, be guilty of a felony punishable as follows:

1. If the value of the personal property is One Thousand Dollars ($1,000.00) or more but less than Two Thousand Five Hundred Dollars ($2,500.00), the person shall be punished by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed Five Hundred Dollars ($500.00), or by both such fine and imprisonment;

2. If the value of the personal property is Two Thousand Five Hundred Dollars ($2,500.00) or more but less than Fifteen Thousand Dollars ($15,000.00), the person shall be punished by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Five Hundred Dollars ($500.00), or by both such fine and imprisonment; or

3. If the value of the personal property is Fifteen Thousand Dollars ($15,000.00) or more, the person may be punished by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Five Hundred Dollars ($500.00), or by both such imprisonment and fine.

B. If the personal property that has been stolen, embezzled, obtained by false pretense or robbery has a value of less than One Thousand Dollars ($1,000.00), the person shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed six (6) months.

C. Every person who, without making reasonable inquiry, buys, receives, conceals, withholds, or aids in concealing or withholding any property which has been stolen, embezzled, obtained by false pretense or robbery, or otherwise feloniously obtained, under such circumstances as should cause such person to make reasonable inquiry to ascertain that the person from whom such property was bought or received had the legal right to sell or deliver it shall be presumed to have bought or received such property knowing it to have been so stolen or wrongfully obtained. This presumption may, however, be rebutted by proof.

§ 1713.1. Purchase or receipt of stolen, etc., construction or farm equipment

Every person who buys or receives, in any manner, upon any consideration, any construction equipment or farm equipment of any value whatsoever that has been stolen, embezzled, obtained by false pretense or robbery, knowing or having reasonable cause to believe the same to have been stolen, embezzled, obtained by false pretense, or robbery, or who conceals, withholds, or aids in concealing or withholding such construction equipment or farm equipment from the owner, shall be guilty of a felony punishable by imprisonment for a term of not more than three (3) years or by a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00) or by both such fine and imprisonment and may be ordered to pay restitution pursuant to Section 991f of Title 22 of the Cherokee Nation Code Annotated.

§ 1714. Fraudulent consumption of gas

Every person who, with intent to defraud, makes or causes to be made, any pipe or other instrument or contrivance, and connects the same, or causes it to be connected, with any pipe laid for conducting illuminating gas, so as to conduct gas to a point where the same may be consumed without its passing through the meter providing for registering the quantity consumed, or in any other manner so as to evade paying therefor, and every person who with like intent injures or alters any gas meter, or obstructs its action, is guilty of a misdemeanor.

§ 1715. Bringing stolen property into the nation

Every person who steals the property of another in any other nation or state or country, and brings the same into this nation may be convicted and punished in the same manner as if such larceny had been committed in this Nation, and such larceny may be charged to have been committed in any town or city into or through which such stolen property has been brought.

§ 1716. Theft of domestic animals or implements of husbandry

A. Any person in this Nation who shall steal any horse, jackass, jennet, mule, cow, hog or implement of husbandry as defined in Section 1-125 of Title 47 of the Cherokee Nation Code Annotated, shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment. Each head of cattle stolen may constitute a separate offense and may be punishable as a separate violation.

B. Any person in this Nation who shall steal any dog, sheep or goat shall, upon conviction, be guilty of a felony punishable by imprisonment for a term of not more than three (3) years, or by a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

C. The word "horse" as used in this section, includes all animals of the equine species and the word "cow" includes all animals of the bovine species.

§ 1717. Dog as personal property

All animals of the dog kind, whether male or female, shall be considered the personal property of the owner thereof, for all purposes.

§ 1718. Larceny of dogs

The taking of personal property of the kind defined in 21 CNCA § 1717, accomplished by fraud or stealth, and with the intent to deprive another thereof, is hereby defined as larceny and punishable in the same manner and to the same degree as in larceny of other descriptions of personal property.

§ 1719. Domestic fowls, larceny of—Receiving stolen fowls

Every person who shall take, steal and carry away any domestic fowl, or fowls, and any person purchasing or receiving such domestic fowl, or fowls, knowing them to have been stolen, shall be guilty of grand larceny, regardless of the value thereof, and upon conviction shall be punished by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 1719.1. Larceny of certain fish and game

A. For the purpose of this section:

1. "Domesticated fish or game" means all birds, mammals, fish and other aquatic forms and all other animals, regardless of classifications, whether resident, migratory or imported, protected or unprotected, dead or alive, and shall extend to and include every part of any individual species when such domesticated fish or game are not in the wild and are in the possession of a person currently licensed to possess such fish or game; and

2. "Taking" means the pursuing, killing, capturing, trapping, snaring and netting of domesticated fish or game or placing, setting, drawing or using any net, trap or other device for taking domesticated fish or game and includes specifically every attempt to take such domesticated fish or game.

B. Any domesticated fish or game shall be considered the personal property of the owner.

C. Any person who shall take any domesticated fish or game, with the intent to deprive the owner of said fish or game, and any person purchasing or receiving such domesticated fish or game knowing them to have been stolen, shall:

1. Upon conviction, if the current market value of said domesticated fish or game is less than One Thousand Dollars ($1,000.00), be guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or imprisonment in the penal institution for a term not to exceed sixty (60) days, or by both such fine and imprisonment; or

2. Upon conviction, if the current market value of said domesticated fish or game is One Thousand Dollars ($1,000.00) or more, be guilty of a felony and shall be punished by a fine of not less than One Thousand Dollars ($1,000.00) or imprisonment for a term of not more than one (1) year, or by both such fine and imprisonment.

§ 1719.2. Taking, stealing or carrying away exotic livestock--Penalties--Definition

A. Any person who shall take, steal or carry away any exotic livestock, any person purchasing or receiving such exotic livestock, knowing them to have been stolen, shall be deemed guilty of grand larceny, regardless of the value thereof, and upon conviction thereof shall be punished by imprisonment not exceeding three (3) years, or by a fine not exceeding Fifteen Thousand Dollars ($15,000.00) or by both such fine and imprisonment.

B. For purposes of this section the term “exotic livestock” means commercially raised exotic livestock including animals of the families bovidae, cervidae and antilocapridae

or birds of the ratite group.

§ 1720. Automobile, aircraft or other motor vehicle

Any person in this Nation who shall steal an aircraft, automobile or other automotive-driven vehicle shall be guilty of a, construction equipment or farm equipment, shall be guilty of a felony, and upon conviction shall be punished by imprisonment for a term not exceeding three (3) years or by a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00) or by both such fine and imprisonment and shall be ordered to pay restitution pursuant to Section 991f of Title 22 of the Cherokee Nation Code Annotated.

§ 1721. Tapping pipeline

Any person who shall unlawfully make or cause to be made any connection with or in any way tap or cause to be tapped, or drill or cause to be drilled a hole in any pipe or pipeline or tank laid or used for the conduct or storage of crude oil, naphtha, gas or casinghead gas, or any of the manufactured or natural products thereof, with intent to deprive the owner thereof of any of said crude oil, naphtha, gas, casinghead gas or any of the manufactured or natural products thereof, shall be guilty of a felony, and upon conviction the person shall be punished by forfeiture of the instrumentality of the crime and by a fine of not less than One Hundred Dollars ($100.00), and not more than Fifteen Thousand Dollars ($15,000.00), or confinement for a term of not less than three (3) years, or by both such fine and imprisonment.

§ 1722. Taking oil, gas, gasoline or any product thereof—When misdemeanor or felony

Any person who shall unlawfully take any crude oil or gasoline, or any product thereof, from any pipe, pipeline, tank, tank car, or other receptacle or container and any person who shall unlawfully take or cause to be taken any machinery, drilling mud, equipment or other materials necessary for the drilling or production of oil or gas wells, with intent to deprive the owner or lessee thereof of said crude oil, gas, gasoline, or any product thereof, machinery, drilling mud, equipment or other materials necessary for the drilling or production of oil or gas wells :

1. Be guilty of a misdemeanor if the value of said product so taken is less than One Thousand Dollars ($1,000.00), and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment for a term not to exceed sixty (60) days, or by both such fine and imprisonment;

2. Be guilty of a felony if the value of such product so taken is One Thousand Dollars ($1,000.00) or more and upon conviction thereof, shall be punished by forfeiture of the instrumentality of the crime and by a fine of not less than One Hundred Dollars ($100.00), and not more than Fifteen Thousand Dollars ($15,000.00), or by

imprisonment for a term not to exceed three (3) years, or by both such fine and imprisonment.

§ 1723. Larceny from the house

Any person entering and stealing any money or other thing of value from any house, railroad car, tent, booth or temporary building shall be guilty of larceny from the house. Larceny from the house is declared to be a felony.

§ 1724. Larceny from the house a felony

Any person convicted of larceny from the house shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years.

§ 1726. Mercury--Possession of more than one pound without written evidence of title--Penalty--Defenses

A. Any person who may be found in this state with more than one (1) pound of mercury in his possession, and who does not have valid written evidence of his title to such mercury, shall be guilty of a felony and upon conviction thereof shall be punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

B. It shall be a defense to any charge under this section that the person so charged (1) is a bona fide miner or processor of mercury or (2) that the mercury possessed by such person is, while in his possession, an integral part of a tool, instrument, or device used for a beneficial purpose. In any complaint, information, or indictment brought under this section, it shall not be necessary to negative any exception, excuse, exemption, or defense provided in this section, and the burden of proof of any such exception, excuse, exemption or defense shall be upon the defendant.

§ 1727. Copper--Stealing or removing--Penalties

Any person who shall enter upon any premises, easement, or right of way with intent to steal or remove without the consent of the owner, or with intent to aid or assist in stealing or removing any copper wire, copper cable, or copper tubing from and off of any appurtenance on such premises, easement, or right of way shall be guilty of a felony and upon conviction shall be punished by confinement for a term not to exceed three (3) years, or shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

§ 1728. Possessing, receiving or transporting stolen copper--Penalty

Any person who shall receive, transport, or possess in this state stolen copper wire, copper cable, or copper tubing under such circumstances that he knew or should have known that the same was stolen shall upon conviction thereof be guilty of a felony and shall be confined for a term not exceeding three (3) years, or shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or both such fine and imprisonment.

§ 1730. Act as cumulative—Definitions

This act shall be cumulative of all laws of the Nation and any violation hereof may be prosecuted, irrespective of whether or not the acts complained of constitute any or some of the essential elements of other or different offenses against the penal laws of this Nation; and for the purposes of this act the word "stolen" or "steal" shall mean larceny as defined by 21 CNCA § 1701, and the word "stolen" or "steal" need not be defined in any indictment, complaint, or information for the prosecution of any offense hereunder.

§ 1731. Larceny of merchandise from retailer or wholesaler--Punishment--Recidivists

A. Larceny of merchandise held for sale in retail or wholesale establishments shall be punishable as follows:

1. For the first conviction, in the event the value of the goods, edible meat or other corporeal property which has been taken is less than One Thousand Dollars ($1,000.00), the defendant shall be guilty of a misdemeanor and shall be punished by imprisonment for a term not exceeding thirty (30) days, and by a fine not less than Ten Dollars ($10.00) nor more than Five Hundred Dollars ($500.00); provided, for the first conviction, in the event more than one item of goods, edible meat or other corporeal property has been taken, punishment shall be by imprisonment for a term not to exceed thirty (30) days, and by a fine not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00);

2. If it be shown, in the trial of a case in which the value of the goods, edible meat or other corporeal property is less than One Thousand Dollars ($1,000.00), that the defendant has been once before convicted of the same offense, the defendant shall, on a second conviction, be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a term not to exceed one (1) year, and by a fine not exceeding One Thousand Dollars ($1,000.00);

3. If it be shown, upon the trial of a case where the value of the goods, edible meat or other corporeal personal property is less than One Thousand Dollars ($1,000.00), that the defendant has two or more times before been convicted of the same offense, regardless of the value of the goods, edible meat or other corporeal personal property involved in the first two convictions, upon the third or any subsequent conviction, the

defendant shall be guilty of a felony and shall be punished by imprisonment for a term not to exceed three (3) years; and

4. In the event the value of the goods, edible meat or other corporeal property is One Thousand Dollars ($1,000.00) or more, the defendant shall be guilty of a felony and shall be punished by imprisonment for a term not to exceed three (3) years. The defendant shall also be subject to a fine of not more than Five Thousand Dollars ($5,000.00) and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Cherokee Nation Code Annotated.

B. When three or more separate offenses under this section are committed within a ninety-day period, the value of the goods, edible meat or other corporeal property involved in each larceny offense may be aggregated to determine the total value for purposes of determining the appropriate punishment under this section.

C. In the event any person engages in conduct that is a violation of this section in concert with at least one other individual, such person shall be liable for the aggregate value of all items taken by all individuals. Such person may also be subject to the penalties set forth in Section 421 of this title, which shall be in addition to any other penalties provided for by law.

D. Any person convicted pursuant to the provisions of this section shall also be ordered to pay restitution to the victim as provided in Section 991f of Title 22 of the Cherokee Nation Code Annotated.

§ 1731.1. Shoplifting--Civil liabilities--Public service in lieu of damages--Limitations--Jurisdiction

A. As used in this section:

1. “Merchant” means an owner or operator of any mercantile establishment, and includes the merchant’s employees, servants, security agents or other agents;

2. “Mercantile establishment” means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale;

3. “Unemancipated minor” means any unmarried person under eighteen (18) years of age under direct supervision and care of the parent or legal guardian of the minor; and

4. “Emancipated minor” means any person under eighteen (18) who is married and/or not under direct supervision and care of the parent or legal guardian of the minor.

B. An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner, seller, or merchant and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be liable in a civil action for the retail price of the merchandise if it is unsalable or the percentage of the diminished value of the merchandise due to the conversion together with attorney fees and court costs.

C. The parent or legal guardian having custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner, seller, or merchant, and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof shall be liable in a civil action for the retail price of the merchandise if it is unsalable or the percentage of the diminished value of the merchandise due to the conversion together with attorney fees and court costs.

D. An adult, emancipated minor or unemancipated minor against whom judgment is rendered for taking possession of any goods, wares or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner, seller or merchant and with the intention of converting such goods, wares or merchandise to his or her own use without having paid the purchase price thereof, may also be required to pay exemplary damages.

E. In lieu of the exemplary damages prescribed by subsection D of this section, any adult, emancipated minor or unemancipated minor against whom a judgment for exemplary damages has been rendered hereunder may be required to perform public services designated by the court; provided, that in no event shall any such person be required to perform less than the number of hours of such public service necessary to satisfy the damages assessed by the court at the federal minimum wage prevailing in the state at the time of judgment, but in no case less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00).

F. The provisions of this section are in addition to criminal penalties and other civil remedies and shall not limit merchants or other persons from electing to pursue criminal penalties and other civil remedies, so long as a double recovery does not result.

G. For the purpose of this section, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the Nation.

H. Notwithstanding any other provision of law, a civil action or proceeding pursuant to this section may be commenced at any time within two (2) years after the conduct in violation of a provision of this section terminates or the cause of action accrues. If a criminal prosecution

is brought by the Nation or by the United States to punish, prevent, or restrain any criminal action contained or described in this section, the running of the period of limitations prescribed by this section shall be suspended during the pendency of such prosecution, action, or proceeding and for one (1) year following its termination or conclusion.

§ 1732. Larceny of trade secrets--Applicability of section

A. Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another:

(a) steals or embezzles an article representing a trade secret, or,

(b) without authority makes or causes to be made a copy of an article representing a trade secret,

shall be guilty of larceny under Section 1704 of this title. For purposes of determining whether such larceny is grand larceny or petit larceny under this section, the value of the trade secret and not the value of the article shall be controlling.

B. (a) The word "article" means any object, material, device, customer list, business records, or substance or copy thereof, including any writing, record, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, information stored in any computer-related format, or map.

(b) The word "representing" means describing, depleting, containing, constituting, reflecting or recording.

(c) The term "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, customer list, business records or process, that:

1. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(d) The word "copy" means any facsimile, replica, photograph or other reproduction of an article, including copying, transferring and e-mailing of computer data, and any note, drawing or sketch made of or from an article.

C. In a prosecution for a violation of this chapter it shall be no defense that the person so charged returned or intended to return the article so stolen, embezzled or copied.

D. The provisions of this section shall not apply if the person acted in accordance with a written agreement with the person's employer that specified the manner in which disputes involving clients are to be resolved upon termination of the employer-employee relationship.

§ 1737. Larceny of cable, information, or telecommunications services

A. Any person who:

1. Shall knowingly obtain or attempt to obtain cable, information, or telecommunications service of any type or kind including but not limited to cable television, telephony, internet, and data transmission service from another by means, artifice, trick, deception, or device without the payment to the operator of said service of all lawful compensation for each type of service obtained; or

2. Shall knowingly assist or instruct any other person in obtaining or attempting to obtain cable, information, or telecommunications service of any type or kind including but not limited to cable television, telephony, internet, and data transmission service without the payment to the operator of all lawful compensations; or

3. Shall knowingly tamper or otherwise interfere with or connect to by any means, whether mechanical, electrical, acoustical, or other means, any cables, wires, or other devices used for the distribution of cable, information, or telecommunications service of any type or kind including but not limited to cable television, telephony, internet, and data transmission service without authority from the operator of said service; or

4. Shall knowingly manufacture, import into this state, distribute, sell, offer for sale, rental, or use, possess for sale, rental, or use, or advertise for sale, rental, or use any device of any description, or any plan, or kit for a device, designed in whole or in part to facilitate the doing of any of the acts specified in paragraphs 1, 2 and 3 of this subsection;

shall be guilty, upon conviction, of the misdemeanor of larceny of cable television, cable, information, or telecommunications service or tampering with cable television, cable, information, or telecommunications service, which offenses are punishable by imprisonment

for not more than six (6) months or by a fine not exceeding One Thousand Dollars ($1,000.00), or both said fine and imprisonment.

B. In any prosecution as set forth in subsection A of this section, the existence on the property and in the actual possession of the accused, of (1) any connection, wire, conductor, or any device whatsoever, which is connected in such a manner as would appear to permit the use of cable, information, or telecommunications service of any type or kind including but not limited to cable television, telephony, internet, and data transmission service without the same being reported for payment to and specifically authorized by the operator of the cable, information, or telecommunications service of any type or kind including but not limited to cable television, telephony, internet, and data transmission service or (2) the existence on the property and in the actual possession of the accused, in quantities or volumes suggesting possession for resale, of any device designed in whole or in part to facilitate the performance of any of the illegal acts mentioned in subsection A of this section shall be prima facie evidence of intent to violate and of the violation of the provisions of subsection A of this section by the accused.

C. Any person who violates the provisions of this section shall be liable to the franchised or otherwise duly licensed cable television system, information service provider, or other telecommunications service or equipment provider for the greater of the following amounts:

1. Two Thousand Five Hundred Dollars ($2,500.00); or

2. Three times the amount of actual damages, if any, sustained by the plaintiff, plus reasonable attorneys fees.

D. Any franchised or otherwise duly licensed cable television system, information service provider, or other telecommunications service or equipment provider may bring an action to enjoin and restrain any violation of the provisions of this section or an action of conversion, or both, and may in the same action seek damages as provided for in subsection C of this section.

E. It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

F. The provisions of this section shall not be construed or otherwise interpreted to prohibit an individual from owning or operating a device commonly known as a "satellite receiving dish" for the purpose of receiving and utilizing satellite-relayed television signals for his own use.

§ 1738. Seizure and forfeiture proceedings—Vehicles, airplanes, vessels, etc., used in attempt or commission of certain crimes

A. Any commissioned peace officer of this Nation is authorized to seize any vehicle, airplane,

vessel, vehicles or parts of vehicles whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of said property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined, or equipment which is used in the attempt or commission of any act of burglary in the first or second degree, larceny of livestock, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by 21 CNCA § 1431, 21 CNCA § 1435, 21 CNCA § 1716, 21 CNCA § 1719 and 21 CNCA § 1720 or 47 CNCA §§ 4–104 and 4–107. Said property may be held as evidence until a forfeiture has been declared or are lease ordered.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the Clerk of the District Court for the county wherein such property is seized and shall be given all owners and parties in interest.

C. Notice shall be given according to one (1) of the following methods:

Upon each owner or party in interest whose right, title, or interest is of record in the Oklahoma Tax Commission or with the county clerk for filings under the Uniform Commercial Code, served in the manner of service of process in civil cases prescribed by 12 O.S. § 2004;

1. Upon each owner or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by 12 O.S. § 2004; or

2. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the property forfeited to the Nation, if such fact is proven.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At the hearing the Nation shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection (A) of this section with knowledge by the owner of the property.

H. The claimant of any right, title, or interest in the property may prove his lien, mortgage, or conditional sales contract to be bona fide and that his right, title, or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the Court may order the property released to the bona fide or innocent owner, lien holder, mortgagee, or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Nation and shall be sold pursuant to judgment of the Court, as on sale upon execution, except as otherwise provided for by law.

Property taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the prosecutor of the county wherein the property was seized. The prosecutor shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the prosecutor may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property which has not been released by the prosecutor shall be subject to the orders and decrees of the Court or the official having jurisdiction thereof.

K. The prosecutor shall not be held civilly liable for having custody of the seized property or proceeding with a forfeiture action as provided for in this section.

L. Attorney fees shall not be assessed against the Nation or the prosecutor for any actions or proceeding pursuant to 21 CNCA § 1701 et seq.

M. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual reasonable expenses of preserving the property;

3. To the victim of the crime to compensate said victim for any loss he may have incurred as a result of the act for which such property was forfeited; and

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-third (1/3) to the office of the arresting authorities; one-third (1/3) of said fund to be used and maintained as a revolving fund by the prosecutor for the victim-witness fund, a reward fund or the evidence fund; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in whose county the fund is established. Monies from said fund may be used to pay costs for the storage of such property if such property is ordered released to a bona fide or innocent owner, lien holder, mortgagee, or vendor and if such funds are available in said fund.

N. If the Court finds that the property was not used in the attempt or commission of an act specified in subsection (A) of this section, the Court shall order the property released to the owner as his right, title, or interest appears on record in the Oklahoma Tax Commission as of the seizure.

O. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection (A) of this section. No property shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any nation.

§ 1739. Library theft

A. As used in this section:

1. "Demand" means either actual notice to the possessor of any library materials or the mailing of written notice to the possessor at the last address of record which the library facility has for said person, demanding the return of designated library materials. If demand is made by mail it shall be deemed to have been given as of the date the notice is mailed by the library facility.

2. "Library facility" means any:

a. public library; or

b. library of an educational, historical or eleemosynary institution, organization, or society; or

c. museum; or

d. repository of public or institutional records.

3. "Library material" means any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, record, microform, sound recording, audiovisual materials in any format, magnetic or other tapes, catalog cards or catalog records, electronic data processing records, computer software, artifacts, or other documentary, written or printed materials regardless of physical form or characteristics, belonging or on loan to, or otherwise in the custody of a library facility.

B. Any person shall be guilty, upon conviction, of library theft who willfully:

1. Removes or attempts to remove any library material from the premises of a library facility without authority; or

2. Mutilates, destroys, alters or otherwise damages, in whole or in part, any library materials; or

3. Fails to return any library materials which have been lent to said person by the library facility, within seven (7) days after demand has been made for the return of the library materials.

C. A person convicted of library theft shall be guilty of a crime and shall be subject to the fine and restitution provisions of this subsection but shall not be subject to imprisonment. The punishment for conviction of library theft shall be:

1. If the aggregate value of the library material is Five Hundred Dollars ($500.00) or less, by fine not exceeding One Thousand Dollars ($1,000.00), or the offender shall make restitution to the library facility, including payment of all related expenses incurred by the library facility as a result of the actions of the offender, or both such fine and restitution; or

If the aggregate value of the library material is greater than Five Hundred Dollars ($500.00), by fine not exceeding Five Thousand Dollars ($5,000.00), or the offender shall make restitution to the library facility, including payment of all expenses incurred by the library facility as a result of the actions of the offender, or both such fine and restitution.

D. Copies of the provisions of this section shall be posted on the premises of each library facility.

CHAPTER 60

MALICIOUS MISCHIEF

§ 1740. Pump Pirates Act

Any person who pumps gasoline into the gasoline tank of a vehicle and leaves the premises where the gasoline was pumped without making payment for the gasoline shall be guilty of a

misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or imprisonment for a period of not more than sixty (60) days, or by both such fine and imprisonment.

§ 1740.1. Dimensional stone product--Stealing or removing

A. It shall be unlawful for any person to enter upon any premises with intent to steal or remove without the consent of the owner, or with intent to aid or assist in stealing or removing any dimensional stone product. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or by a fine of not less than One Thousand Dollars ($1,000.00) but not more than Two Thousand Dollars ($2,000.00), or by both such fine and imprisonment.

B. As used in this section, "dimensional stone product" means any natural rock material quarried for the purpose of obtaining blocks or slabs that meet specifications as to size and shape. Varieties of dimensional stone shall include, but not be limited to, granite, limestone, marble, sandstone or slate.

§ 1740.2. Holding, concealing, destroying or taking mail from another person

A. As used in this section:

1. "Mail" means a letter, postal card, package, bag or any other article or thing contained therein, or other sealed article addressed to a person, that:

a. is delivered by a common carrier or delivery service and not yet received by the addressee, or

b. has been left to be collected for delivery by a common carrier or delivery service; and

2. "Person" means an individual, partnership, corporation, limited liability company, association or other legal entity.

B. It shall be unlawful for any person to hold, conceal, destroy or take mail from the mailbox or premises of another person or from a delivery vehicle at any point throughout the delivery route without the effective consent of the addressee and with the intent to deprive the addressee of the mail.

C. Any person who violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

D. When three or more separate offenses under this section are committed within a sixty-day period, the person shall be guilty of a felony punishable by imprisonment for a term of not more than three (3) years, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

E. Any person convicted pursuant to the provisions of this section shall also be ordered to pay restitution to the victim as provided in Section 991f of Title 22 of the Cherokee Nation Code Annotated.

§ 1741. Unlawful Use of a Recording Device--Definitions--Violations--Penalties--Liability--Exclusions--Other laws

A. This act shall be known as and may be cited as the "Unlawful Use of a Recording Device Act".

B. As used in the Unlawful Use of a Recording Device Act:

1. "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed; and

2. "Facility" does not include a personal residence.

C. Any person, where a motion picture is being exhibited, who knowingly operates an audiovisual recording function of a device without the consent of the owner or lessee of the facility and of the licensor of the motion picture being exhibited shall be guilty of unlawful use of a recording device and shall be punished by imprisonment for a term not to exceed one (1) year, by a fine not more than Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

D. The owner or lessee of a facility where a motion picture is being exhibited, or the authorized agent or employee of said owner or lessee, or the licensor of the motion picture being exhibited or the licensor's agent or employee, who alerts law enforcement authorities of an alleged violation of this section shall not be liable in any civil action arising out of measures taken in good faith by said owner, lessee, licensor, agent or employee to detain, identify, or collect evidence from a person believed to have violated this section while awaiting the arrival of law enforcement authorities, unless the plaintiff can show by clear and convincing evidence that the measures were manifestly unreasonable or the period of detention was unreasonably long.

E. This act shall not prevent any lawfully authorized investigative, law enforcement protective, or intelligence gathering employee or agent, of the state or federal government, from operating

any audiovisual recording device in any facility where a motion picture is being exhibited, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

F. This act shall not apply to a person who operates an audiovisual recording function of a device in a retail establishment solely to demonstrate the use of that device for sales purposes.

G. Nothing in this section shall be construed to prevent prosecution for any act of recording or transmitting under any other provision of law providing for greater penalty.

§ 1742.1. Telephone records--Definitions

As used in this chapter:

1. "Telephone record" means information retained by a telephone company that relates to the telephone number dialed by the customer or any other person using the telephone of the customer with the permission of the customer, or the incoming number of a call directed to a customer or any other person using the telephone of the customer with the permission of the customer, or other data related to such calls typically contained on a customer telephone bill such as the time the call started and ended, the duration of the call, the time of day the call was made, and any charges applied. For purposes of this act, any information collected and retained by or on behalf of a customer utilizing a Caller I.D. or equivalent service, or other similar technology, does not constitute a telephone record;

2. "Telephone company" means any person that provides commercial telephone services to a customer, irrespective of the communications technology used to provide such service including, but not limited to, traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over Internet telephone service;

3. "Telephone" means any device used by a person for voice communications, in connection with the services of a telephone company, whether such voice communications are transmitted in analog, data, or any other form;

4. "Customer" means the person who subscribes to telephone service from a telephone company or in whose name such telephone service is listed;

5. "Person" means any individual, partnership, corporation, limited liability company, trust, estate, cooperative association, or other entity; and

6. "Procure" in regard to such a telephone record means to obtain by any means, whether

electronically, in writing, or in oral form, with or without consideration.

§ 1742.2. Unauthorized or fraudulent procurement, sale or receipt of telephone records

A. Whoever:

1. Knowingly procures, attempts to procure, solicits, or conspires with another to procure a telephone record of any resident of this Nation without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means;

2. Knowingly sells or attempts to sell a telephone record of any resident of this state without the authorization of the customer to whom the record pertains; or

3. Receives a telephone record of any resident of this state knowing that the record has been obtained without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means,

shall be punished in accordance with the provisions of subsection B of this section and shall be liable for restitution in accordance with subsection C of this section.

B. An offense under subsection A of this section is a felony and the punishment is:

1. Imprisonment for not more than three (3) years; and

4. In all cases, forfeiture of any personal property used or intended to be used to commit the offense.

C. A person found guilty of an offense under subsection A of this section, in addition to any other punishment, shall be ordered to make restitution for any financial loss sustained by the customer or any other person who suffered financial loss as the direct result of the offense.

D. A prosecution pursuant to subsection A of this section shall not prevent prosecution pursuant to any other provision of law when the conduct also constitutes a violation of some other provision of law.

E. Subsection A of this section shall not apply to any person acting pursuant to a valid court order, warrant, or subpoena.

§ 1742.3. Limitation on applicability of act

No provision of this act shall be construed:

1. So as to prevent any action by a law enforcement agency, or any officer, employee, or agent of a law enforcement agency, to obtain telephone records in connection with the performance of the official duties of the agency;

2. To prohibit a telephone company from obtaining, using, disclosing, or permitting access to any telephone record, either directly or indirectly, through its agents:

a. as otherwise authorized by law,

b. with the lawful consent of the customer or subscriber,

c. as may be reasonably incident to the rendition of the service or to the protection of the rights or property of the telephone company, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to such services,

d. to a governmental entity, if the telephone company reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information, or

e. to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under Section 227 of the Victims of Child Abuse Act of 1990;

3. To apply to or expand upon the obligations and duties of any telephone company to protect telephone records beyond those otherwise established by federal and state law or as set forth in Section 4 of this act; or

4. To create a cause of action against a telephone company, its agents and/or representatives, who reasonably and in good faith act pursuant to this act, notwithstanding any later determination that such action was not in fact authorized.

§ 1751. Railroads, injuries to

Any person who maliciously, wantonly or negligently either:

1. Removes, displaces, injures or destroys any part of any railroad, or railroad equipment, whether for steam or horse cars, or any track of any railroad, or of any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or

2. Places any obstruction upon the rails or tracks of any railroad, or any branch, branchway, or turnout connected with any railroad, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding four (4) years or in a county jail not less than six (6) months.

§ 1752. Death from displacing of railroad equipment

Whenever any offense specified in Section 1751 of this title results in the death of any human being, the offender shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 1752.1. Trespass upon or interference with railroad property

A. Any person shall be guilty of a misdemeanor if the person:

1. Without consent of the owner or the owner's agent, enters or remains on railroad property, knowing that it is railroad property;

2. Throws an object at a train, or rail-mounted work equipment; or

3. Maliciously or wantonly causes in any manner the derailment of a train, railroad car or rail-mounted work equipment.

B. Any person shall be guilty of a felony if the person commits an offense specified in subsection A of this section which results in a demonstrable monetary loss, damage or destruction of railroad property when said loss is valued at more than One Thousand Five Hundred Dollars ($1,500.00) or results in bodily injury to a person. Any person shall be guilty of a felony if the person discharges a firearm or weapon at a train, or rail-mounted work equipment.

C. Any person violating the misdemeanor provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment for a term not exceeding one (1) year or by a fine not exceeding One Thousand Dollars ($1,000.00), or both such fine and imprisonment. Any person violating the felony provisions of this section shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment for a term not exceeding three (3) years. If personal injury results, such person shall be punished by some term of imprisonment.

D. Subsection A of this section shall not be construed to interfere with the lawful use of a public or private crossing.

E. Nothing in this section shall be construed as limiting a representative of a labor organization which represents or is seeking to represent the employees of the railroad, from conducting such business as provided under the Railway Labor Act, 45 U.S.C., Section 151 et seq.

F. As used in this section "railroad property" includes, but is not limited to, any train, locomotive, railroad car, caboose, rail-mounted work equipment, rolling stock, work equipment, safety device, switch, electronic signal, microwave communication equipment, connection, railroad track, rail, bridge, trestle, right-of-way or other property that is owned, leased, operated or possessed by a railroad.

§ 1753. Highways, injuries to

Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such way, shall be guilty of a felony.

§ 1753.3. Throwing, dropping, depositing or otherwise placing litter upon highways, roads or public property--Penalties

A. The operator of a vehicle, unless any other person in the vehicle admits to or is identified as having committed the act, shall be liable pursuant to subsection B of this section for any act of throwing, dropping, depositing, or otherwise placing any litter from a vehicle upon highways, roads, or public property.

B. Any person convicted of violating the provisions of subsection A of this section shall be subject to a Cherokee Nation traffic offense punishable by a fine of not more than One Thousand Dollars ($1,000.00) and upon conviction shall be sentenced to perform not less than five (5) nor more than twenty (20) hours of community service in a litter abatement work program as approved by the court, or the violator may be subject to criminal prosecution as provided by the provisions of Section 1761.1 of this title.

C. Any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, or any substance which may cause a fire shall be subject to a state traffic offense punishable by a fine of not more than Two Thousand Dollars ($2,000.00) and, upon conviction, shall be sentenced to perform not less than ten (10) nor more than forty (40) hours of community service in a litter abatement work program as approved by the court, or the violator may be subject to criminal prosecution as provided by the provisions of Section 1761.1 of this title.

D. During a declared burn ban by the Governor, any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances except those

which by law may be placed upon highway rights-of-way, or any substance which may cause a fire shall be subject to a state traffic offense punishable by a fine of not more than Four Thousand Dollars ($4,000.00) and, upon conviction, shall be sentenced to perform not less than twenty (20) nor more than eighty (80) hours of community service in a litter abatement work program as approved by the court, or the violator may be subject to criminal prosecution as provided by the provisions of Section 1761.1 of this title. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded.

E. As used in this section, "litter" means any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, any substance which may cause a fire, any bottles, cans, trash, garbage, or debris of any kind. As used in this section, "litter" shall not include trash, garbage, or debris placed beside a public road for collection by a garbage or collection agency, or deposited upon or within public property designated by the state or by any of its agencies or political subdivisions as an appropriate place for such deposits if the person making the deposit is authorized to use the property for such purpose.

§ 1753.4. Erection of signs and markers along state and federal highways

The State Highway Department is hereby authorized to cause to be erected upon the property of or rights-of-way of state and federal highways, at locations most appropriate for carrying out the purposes and intent of this act, signs or markers for each prohibited act enumerated herein, of a size not less than thirty (30) inches square with plainly visible wording to inform users of said highways that the acts enumerated herein do constitute a crime and the maximum penalty for violations, and such additional wording as the State Highway Department deems desirable to assist in carrying out the purposes and intent of this act. Any sign or marker so erected or placed shall be placed at a right angle to the roadbed. The location of signs or markers upon the right-of-way shall in no manner interfere with the signs or markers used to designate route numbers or traffic control markers, signs, signals or devices.

§ 1753.5. Erection of signs and markers along county roads

The boards of county commissioners are hereby authorized to erect signs or markers, as provided herein, upon the property of or right-of-way of county roads within their respective jurisdictions.

§ 1753.6. Enforcement

The State Highway Patrol, the sheriffs of the several counties, and all other peace officers in this Nation shall have the authority and it shall be their duty to enforce the provisions of 21 CNCA § 1753.3.

§ 1753.7. Exceptions

The provisions of this act shall not apply to:

1. Flaming or glowing substances which by law may be placed upon highway rights-of-way for the purposes of highway safety; or

2. Trash, garbage or debris placed beside a public road for collection by an established garbage or collection agency.

§ 1753.8. Defacing, stealing or possessing road signs or markers—Violation resulting in personal injury or death--Penalties

A. Any person who defaces, steals or possesses any road sign or marker posted by any city, state or county, or Cherokee Nation shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars ($100.00), or restitution which shall be paid to the Nation, or by not more than twenty (20) days of community service, or by imprisonment for a term of not more than thirty (30) days, or by both such fine and, imprisonment, community service, or restitution, as the Court may order.

B. If a violation of subsection A of this section results in personal injury to or death of any person, the person committing the violation shall, upon conviction, be guilty of a felony, punishable by imprisonment for not more than two (2) years, or by a fine of not more than One Thousand Dollars ($1,000.00). In addition, the person may be ordered to pay restitution, which shall be paid to the Nation, or to perform not less than forty (40) days of community service, or to such combination of fine, imprisonment, community service, and/or restitution, as the Court may order.

§ 1754. Obstructing highways—Punishment—Damages

Every person who shall knowingly and willfully obstruct or plow up, or cause to be obstructed or plowed up, any public highway or public street of any town, except by order of the road supervisors for the purpose of working the same, or injure any bridge on the public highway, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding One Hundred Dollars ($100.00), and shall be liable for all damages to person or property by reason of the same.

§ 1757. Reserved

§ 1758. Irrigation ditches, canals, water lines or conduits—Interference with

It shall be unlawful for any person to divert any of the waters from any irrigation ditch, canal, waterline or conduit, in this Nation, or to interfere in any manner whatever with any irrigation

ditch, canal, water line or conduit, without first having obtained the permission of the owner of such ditch, canal, waterline or conduit, or of the person or persons lawfully in charge thereof.

§ 1759. Penalty

Any person violating any of the provisions of 21 CNCA § 1758 shall be deemed guilty of a misdemeanor.

§ 1760. Malicious injury or destruction of property generally—Punishment—Damages

A. Every person who maliciously injures, defaces or destroys any real or personal property not his or her own, in cases other than such as are specified in 21 CNCA § 1761 and following sections, is guilty of :

1. A misdemeanor, if the damage, defacement or destruction causes a loss which has an aggregate value of less than One Thousand Dollars ($1,000.00);

2. A felony, if the damage, defacement or destruction causes a loss which has an aggregate value of One Thousand Dollars ($1,000.00) or more; or

3. A felony, if the defendant has two or more prior convictions for an offense under this section, notwithstanding the value of loss caused by the damage, defacement or destruction.

B. In addition to any other punishment prescribed by law for violations of subsection (A) of this section, he or she is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property or public officer having charge thereof.

§ 1761. Following sections do not restrict 21 CNCA § 1760

The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of 21 CNCA § 1760.

§ 1761.1. Dumping, etc. of trash on public or private property prohibited—Penalties

A. Any person who deliberately places, throws, drops, dumps, deposits or discards any garbage, trash, waste, rubbish, refuse, debris or other deleterious substance on any public property, on any private property of another without consent of the property owner or on his or her own private property in violation of any county or state zoning or public health regulations shall, upon conviction, be deemed guilty of a misdemeanor.

B. Any person convicted of violating the provisions of subsection (A) of this section shall be

punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

C. Any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substance, or any substance which may cause a fire shall be punished by a fine of not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than sixty (60) days, or by both such fine and imprisonment.

D. During a burn ban, any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances, or any substance which may cause a fire shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than one hundred twenty (120) days, or by both such fine and imprisonment.

E. Any person convicted of violating the provisions of subsection A of this section with any item of furniture, or item that exceeds fifty (50) pounds, shall be punished by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($6,500.00) or by imprisonment for not more than sixty (60) days, or by both such fine and imprisonment.

F. In addition to the penalty prescribed by subsection (B) of this section, the Court shall direct the person to make restitution to the property owner affected; to remove and properly dispose of the garbage, trash, waste, refuse or debris from the property; to pick up, remove and properly dispose of garbage, trash, waste, rubbish, refuse, debris and other nonhazardous deleterious substances from public property; or perform community service or any combination of the foregoing which the Court, in its discretion, deems appropriate. The dates, times and locations of such activities shall be scheduled by the marshal pursuant to the order of the Court in such a manner as not to interfere with the employment or family responsibilities of the person.

G. In addition to the penalty prescribed in subsection (B) and the restitution prescribed in subsection (C), the Court may order the defendant to pay into the reward fund as prescribed in 22 CNCA § 1334 an amount not to exceed One Thousand Dollars ($1,000.00).

H. The discovery of two or more items which have been dropped, dumped, deposited, discarded, placed, or thrown at one location which bear a common address in a form which tends to identify the latest owner of the items shall create a rebuttable presumption that any competent person residing at such address committed the unlawful act. The discovery or use of such evidence shall not be sufficient to qualify for the reward provided in 22 CNCA § 1334.

I. Any person may report a violation of this section, if committed in his or her presence, to an officer of the State Highway Patrol, a county sheriff or deputy, a municipal law enforcement officer or any other peace officer in this state. The peace officer shall then conduct an investigation into the allegations, if warranted. If a violation of this section has in fact been committed, and the peace officer has reasonable cause to believe a particular person or persons have committed the violation, a report shall be filed with the district attorney for prosecution.

J.

Notwithstanding the provisions of subsection I of this section any peace officer of this Nation or of any cross-deputized peace officer may issue a traffic citation to any person committing a violation of subsection A of this section. Such traffic citation shall be in an amount of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00).
K. The amount of bail for littering offenses specified in Section 1753.3 of this title and for trash dumping offenses specified in this section shall be the amount of fine specified in each statute plus costs.

§ 1762. Mining claims--Unlawful to tear down legal notice or deface any record

Any person who shall willfully or maliciously tear down or deface any legal notice posted on any mining claim, or take up or destroy any stakes or monument used for marking such mining claims, or who shall willfully or maliciously throw or place any dirt, water, brush, stones or other foreign substance into any mining shaft or tunnel belonging to or claimed by another, or who shall willfully or maliciously alter, erase, deface or destroy any record kept by any legally-elected mining recorder shall be deemed guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00), or by imprisonment for not less than ten (10) days nor more than six (6) months or by both such fine and imprisonment.

§ 1765. House of worship or contents, injuring

Any person who willfully breaks, defaces, or otherwise injures any house of worship, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, shall be guilty of a felony.

§ 1767.1. Use or threat to use explosive, incendiary device, or simulated bomb to damage or injure persons or property

A. Any person who shall willfully or maliciously commit any of the following acts shall be

deemed guilty of a felony:

1. Place in, upon, under, against or near to any building, car, truck, aircraft, motor or other vehicle, vessel, railroad, railway car, or locomotive or structure, any explosive or incendiary device with unlawful intent to destroy, throw down, or injure, in whole or in part, such property, or conspire, aid, counsel or procure the destruction of any building, public or private, or any car, truck, aircraft, motor or other vehicle, vessel, railroad, railway car, or locomotive or structure; or

2. Place in, upon, under, against or near to any building, car, truck, aircraft, motor or other vehicle, vessel, railroad, railway car, or locomotive or structure, any explosive or incendiary device with intent to destroy, throw down, or injure in whole or in part, under circumstances that, if such intent were accomplished, human life or safety would be endangered thereby; or

3. By the explosion of any explosive or the igniting of any incendiary device destroy, throw down, or injure any property of another person, or cause injury to another person; or

4. Manufacture, sell, transport, or possess any explosive, the component parts of an explosive, an incendiary device, or simulated bomb with knowledge or intent that it or they will be used to unlawfully kill, injure or intimidate any person, or unlawfully damage any real or personal property; or

5. Place in, upon, under, against or near to any building, car, truck, aircraft, motor or other vehicle, vessel, railroad, railway car, or locomotive or structure, any foul, poisonous, offensive or injurious substance or compound, explosive, incendiary device, or simulated bomb with intent to wrongfully injure, molest or coerce another person or to injure or damage the property of another

6. Injure, damage or attempt to damage by an explosive or incendiary device any person, persons, or property, whether real or personal; or

7. Make any threat or convey information known to be false, concerning an attempt or alleged attempt to kill, injure or intimidate any person or unlawfully damage any real or personal property by means of an explosive, incendiary device, or simulated bomb; or

8. Manufacture, sell, deliver, mail or send an explosive, incendiary device, or simulated bomb to another person; or

9. While committing or attempting to commit any felony, possess, display, or threaten to use any explosive, incendiary device, or simulated bomb.

B. Nothing contained herein shall be construed to apply to, or repeal any laws pertaining to, the acts of mischief of juveniles involving no injurious firecrackers or devices commonly called "stink bombs".

§ 1767.2. Violations of preceding section

Any person violating any of the provisions of Section 1767.1 of this title shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the State Penitentiary for not less than three (3) years nor more than ten (10) years, or by a fine not to exceed Ten Thousand Dollars ($10,000.00) or by both. If personal injury results, such person shall be punished by imprisonment in the State Penitentiary for not less than seven (7) years or life imprisonment.

§ 1767.3. Definitions

As used in 21 CNCA § 1767.1:

1. "Component parts" means separate parts which if assembled would form an explosive device. Component parts of an "incendiary device" shall consist of an inflammable material, a breakable container and a source of ignition.

2. "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association, and includes any trustee, receiver, assignee or personal representative thereof.

3. "Explosive" or "explosives" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion or which, although not its primary or common purpose, has been modified, manipulated, altered, enhanced, or otherwise caused to function by explosion (that is, with substantial instantaneous release of gas, heat, debris, or concussive pressure or force, or any combination of such actions), unless such compound, mixture or device is otherwise specifically classified by the United States Department of Transportation. The term "explosive" or "explosives" shall include but not be limited to gunpowder, dynamite, any bomb, and all material which is classified as explosives by the United States Department of Transportation;

Incendiary device" means any chemical compound, mixture or device, the primary purpose of which is to ignite on impact or as a result of chemical reaction such as a "Molotov cocktail" or "firebomb" which is ignited on impact, causing a mechanical reaction of the container's breaking and permitting the inflammable matter to spread or splatter and is ignited from the burning wick or hypergolic reaction of chemicals;

4. "Component parts" means separate parts which if assembled would form an explosive device. Component parts of an "incendiary device" shall consist of an inflammable material, a breakable container and a source of ignition; and

5. "Simulated bomb" means any device or object that by its design, construction, content, or characteristics appears to be, or to contain, an incendiary device, explosive, or explosives, as defined in this section, but is, in fact, an inoperative facsimile or imitation of such a device or explosive.

§ 1767.4. Tracing of telephone calls—Immunity

Any telephone company, its officers, agents or employees, when acting upon any request by the state or any governing body of a political subdivision thereof, which shall expressly include school districts, shall make reasonable effort to identify the telephone from which any telephone communication claimed to be prohibited by this act is being or has been made. If identification of such telephone is made, the telephone company, its officers, agents or employees shall provide to state law enforcement officials the location of such telephone. Any telephone company, its officers, agents or employees, in acting pursuant to this section of this act, shall be immune from any civil or criminal action or liability under this or any other state or local act, rule, regulation or ordinance.

§ 1767.5. Possession, manufacture, storage, or use of explosive without permit

A. Any person who shall possess, manufacture, store, or use any explosive, as defined in Section 121.1 of Title 63 of the Oklahoma Statutes, without having in the possession of the person a permit, or a copy thereof, issued pursuant to the Oklahoma Explosives and Blasting Regulation Act, shall be deemed guilty of a misdemeanor.

B. This section shall not be construed to:

1. Apply to any person or activity expressly exempted from the Oklahoma Explosives and Blasting Regulation Act;

2. Apply to, or repeal any laws pertaining to, the acts of mischief of juveniles involving noninjurious firecrackers or devices commonly called "stink bombs";

3. Apply to explosives while in transit in, into, or through this state, if the operator of the vehicle transporting the explosives carries in the vehicle the shipping papers required by 49 C.F.R., Section 172.200 et seq., and displays such papers to any law enforcement officer upon request;

4. Apply to any person who may possess, store or use gunpowder in a quantity reasonably calculated to be necessary for hunting or shooting purposes; or

5. Apply to any certified bomb technician employed by a federally accredited bomb squad of an agency of the federal government, this state, or any political subdivision of this state.

§ 1768. Malicious injury to freehold—Carrying away earth, soil or stone

Every person who willfully commits any trespass by either:

1. Cutting down or destroying any kind of wood or timber, standing or growing upon the lands of another; or, driving or riding through, into, or across any cultivated hedge or tree row, or any grove of ornamental trees or orchard of fruit trees growing upon the land of another, or in any other manner injuring the same; or

2. Carrying away any kind of wood or timber that has been cut down, and is lying on such lands; or

3. Maliciously severing from the freehold any produce thereof, or anything attached thereto; or

4. Digging, taking, or carrying away from any lot situated within the bounds of any incorporated city, without the license of the owner, or legal occupant thereof, any earth, soil or stone, being a part of the freehold, or severed therefrom at some previous time, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property; or

5. Digging, taking, or carrying away from any land in any incorporated city or town of this state, laid down on the map or plan of said city or town as a street or avenue, or otherwise established or recognized as a street or avenue, without the license of the mayor and common council or other governing body of such city or town, or owner of the fee thereof, any earth, soil or stone under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property;

is guilty of a misdemeanor.

§ 1770. Standing crops, injuring

Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this chapter or by some other statute, is guilty of a misdemeanor.

§ 1771. Injuring fruit, melons or flowers in the day time

Every person who maliciously or mischievously enters in the day time, the enclosure, or goes upon the premises of another, with the intent to knock off, pick, destroy, or carry away, or having lawfully entered or gone upon does afterward wrongfully knock off, pick, destroy, or carry away any apples, peaches, pears, plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, shall be punished by a fine not exceeding One Hundred Dollars ($100.00) and not less than Five Dollars ($5.00), or by imprisonment for a term not exceeding thirty (30) days.

§ 1772. Injuring fruit, melons or flowers in the night time

Every person who shall maliciously or mischievously enter the enclosure, or go upon the premises of another in the night time, and knock off, pick, destroy, or carry away, any apples, peaches, pears, plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, or having entered the enclosure or gone upon the premises of another, in the night time, with the intent to knock off, pick, destroy, or carry away any fruit or flowers, as aforesaid, be actually found thereon, shall, on conviction thereof, be punished by fine not exceeding One Hundred Dollars ($100.00) and not less than Ten Dollars ($10.00), or by imprisonment for a term not exceeding thirty (30) days.

§ 1773. Injuring fruit or ornamental trees

Every person who shall maliciously or mischievously, bruise, break or pull up, cut down, carry away, destroy, or in anywise injure any fruit or ornamental tree, shrub, vine or material for hedge, being, growing, or standing on the land of another, shall be punished by fine not exceeding One Hundred ($100.00) and not less than Ten Dollars ($10.00), or by imprisonment in the for a term not exceeding thirty (30) days.

§ 1774. Removing or altering landmarks

Every person who either:

1. Maliciously removes any monuments of stone, wood, or other material, erected for the purpose

of designating any point in the boundary of any lot or tract of land; or

2. Maliciously defaces or alters the marks upon any tree, post or other monument, made for the purpose of designating any point, course, or line in any such boundary; or

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

is guilty of a misdemeanor.

§ 1775. Piers or dams, interfering with

Every person who, without authority of law, interferes with any pier, booms or dams, lawfully erected or maintained upon any waters within this Nation, or hoists any gate in or about said dams, is guilty of a misdemeanor.

§ 1776. Destroying dam

Every person who maliciously destroys any dam or structure erected to create hydraulic power, or any embankment necessary for the support thereof, or maliciously makes, or causes to be made, any aperture in such dam or embankment, with intent to destroy the same, is guilty of a misdemeanor.

§ 1777. Piles, removing or injuring

Every person who maliciously draws up or removes or cuts or otherwise injures any piles fixed in the ground and used for securing any bank or dam of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, dock, quay, jetty or lock, is guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by imposition of a fine in an amount not to exceed Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

§ 1778. Train signal light, removing or masking—False light or signal

Any person who unlawfully masks, alters or removes any light or signal, or willfully exhibits any false light or signal, with intent to bring any locomotive or any railway car or train of cars into danger, is guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

§ 1779. Injuring written instruments the false making of which would be forgery

Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument being the property of another, the false making of which would be forgery, is punishable **in the same manner as the forgery of such instrument is made punishable.**

§ 1781. Letters, opening and reading--Publishing letters

Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed, and every person who without like authority publishes any letter,

knowing it to have been opened in violation of this section or any part thereof, is guilty of a misdemeanor.

§ 1782. Messages—Disclosing contents of

Any person who shall disclose the contents of any telegraphic dispatch or telephone message or communication, or any part thereof, addressed to or which he knows to be intended for another person without the permission of such person, except upon the lawful order of a Court, or the Judge thereof, with intent to cause injury, damage or disgrace to such other person, or which does in fact cause injury, damage or disgrace to such other person, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Fifty Dollars ($50.00), nor more than Five Hundred Dollars ($500.00), or by imprisonment for a term not to exceed one (1) year, or by both such imprisonment and fine. Provided, that nothing herein shall apply to public officers in the discharge of their duties.

§ 1783. Secreting telegraphic dispatches

Every person who, having in his possession any telegraphic dispatch addressed to another, maliciously secretes, conceals or suppresses the same, is guilty of a misdemeanor.

§ 1784. Works of art or ornamental improvements, injuring

Every person who willfully injures, disfigures or destroys, not being the owner thereof, any monument work of art, or useful or ornamental improvement, or any shade tree or ornamental plant, growing therein, whether situated upon private ground, or on any street, sidewalk or public park or place, is guilty of a misdemeanor.

§ 1785. Works of literature or art in public place, injuring

Every person who maliciously cuts, tears, disfigures, soils, obliterates, breaks or destroys any book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen or other work of literature or art, or object of curiosity deposited in any public library, gallery, museum, collection, fair or exhibition, is guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment..

§ 1786. Injuries to pipes and wires

Any person who willfully breaks, digs up or obstructs any pipes or mains for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances

or appendages therewith connected, or injures, cuts, breaks down or destroys any electric light wires, poles or appurtenances, or any telephone or telegraph wires, cable or appurtenances, is guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment..

§ 1787. Automobile or motor vehicle, loitering in, injuring or molesting

From and after the passage of this act, it shall be unlawful for any person or persons to loiter in or upon any automobile or motor vehicle, or to deface or injure such automobile or motor vehicle, or to molest, drive, or attempt to drive any automobile, for joyriding or any other purpose, or to manipulate or meddle with any machinery or appliances thereof without the consent of the owner of such automobile or motor vehicle.

§ 1788. Penalty

Any person violating Section 1787 of this title, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

§ 1789. Caves or caverns, injuring

A. It shall be unlawful for any person to willfully or knowingly break, break off, crack, carve upon, write or otherwise mark upon, or in any manner destroy, mutilate, deface, mar or harm any natural material found in any cave or cavern located on any public lands or other lands owned by the United States, Cherokee Nation or, on private property without the prior written consent of the owner; to kill, harm or disturb any plant or animal life found in any cave or cavern, and, whether inside or outside a cave, any fish of the genera cologaster, typhlicthys or amblyopsis (commonly known as cavefish, springfish or blindfish), any salamander of the genus typhlotriton (commonly known as the Ozark blind, grotto or spring grotto salamander), or the species eurycea lucifuga (commonly known as cave salamander); provided, nothing in this chapter shall be construed as prohibiting the commercial mining of bat guano or the destruction of any predatory terrestrial mammal or poisonous snake seeking shelter within a cave if such destruction is not otherwise unlawful.

B. Any person who deliberately places, throws, drops, deposits or discards any garbage, trash, waste, rubbish, refuse, debris or other deleterious substance in or near any cave, cavern or natural subterranean drainage system shall be subject to the provisions of 21 CNCA § 1751.

§ 1790. Reserved

§ 1791. Damage to fence--Punishment--Exceptions

A. Any person violating who, without good cause, maliciously and knowingly cuts or damages a fence used for the production or containment of cattle, bison, horses, sheep, swine, goats, domestic fowl, exotic livestock, exotic poultry or any provision of this act shall be punished by a fine game animals or domesticated game such that there is a loss or damage to the property is guilty of a misdemeanor. Any person convicted of a second or subsequent offense pursuant to this section shall be guilty of a felony punishable by a fine not exceeding Fifteen Thousand Dollars ($15,000.00)), or by imprisonment for a term not exceeding two (2) years, or by both such fine and imprisonment.

B. The provisions of subsection A of this section shall not apply to any activities:

1. Performed pursuant to the Seismic Exploration Regulation Act;

2. Performed pursuant to Sections 318.2 through 318.9 of Title 52 of the Oklahoma Statutes; or

3. That are subject to the regulation of the Oklahoma Corporation Commission or the Federal Energy Regulatory Commission.

§ 1792. Critical infrastructure facility--Trespass--Damage--Penalties

A. Any person who shall willfully trespass or enter property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not less than One Thousand Dollars ($1,000.00), or by imprisonment for a term of six (6) months, or by both such fine and imprisonment. If it is determined the intent of the trespasser is to willfully damage, destroy, vandalize, deface, tamper with equipment, or impede or inhibit operations of the facility, the person shall, upon conviction, be guilty of a felony punishable by a fine of not less than Ten Thousand Dollars ($10,000.00), or by imprisonment for a term of one (1) year, or by both such fine and imprisonment.

B. Any person who shall willfully damage, destroy, vandalize, deface or tamper with equipment in a critical infrastructure facility shall, upon conviction, be guilty of a felony punishable by a fine of Fifteen Thousand Dollars ($15,000.00), or by imprisonment in the custody of the Department of Corrections for a term of not more than three (3) years, or by both such fine and imprisonment.

C. If an organization is found to be a conspirator with persons who are found to have committed any of the crimes described in subsection A or B of this section, the conspiring organization shall be punished by a fine that is ten times the amount of said fine authorized by the appropriate provision of this section.

D. As used in this section, "critical infrastructure facility" means:

1. One of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization:

a. a petroleum or alumina refinery,

b. an electrical power generating facility, substation, switching station, electrical control center or electric power lines and associated equipment infrastructure,
c. a chemical, polymer or rubber manufacturing facility,
d. a water intake structure, water treatment facility, wastewater treatment plant or pump station,
e. a natural gas compressor station,
f. a liquid natural gas terminal or storage facility,
g. a telecommunications central switching office,
h. wireless telecommunications infrastructure, including cell towers, telephone poles and lines, including fiber optic lines,
i. a port, railroad switching yard, railroad tracks, trucking terminal or other freight transportation facility,
j. a gas processing plant, including a plant used in the processing, treatment or fractionation of natural gas or natural gas liquids,
k. a transmission facility used by a federally licensed radio or television station,
l. a steelmaking facility that uses an electric arc furnace to make steel,
m. a facility identified and regulated by the United States Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS) program,
n. a dam that is regulated by the state or federal government,
o. a natural gas distribution utility facility including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, aboveground piping, a regulator station and a natural gas storage facility, or
p. a crude oil or refined products storage and distribution facility including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, below or aboveground pipeline or piping and truck loading or offloading facility; or

2. Any aboveground portion of an oil, gas, hazardous liquid or chemical pipeline, tank, railroad facility or other storage facility that is enclosed by a fence, other physical barrier or is clearly marked with signs prohibiting trespassing, that are obviously designed to exclude intruders.

CHAPTER 70

OTHER OFFENSES AGAINST PROPOERTY RIGHTS

§ 1834. Chattels encumbered by mortgage, conditional sales contract or security agreement--Removal or destruction

Any mortgagor, conditional sales contract vendee, pledgor or debtor under a security agreement of personal property, or his or her legal representative, who, while such mortgage, security agreement or conditional sales contract remains in force and unsatisfied, conceals, sells or in any manner disposes of such property, or any part thereof, or removes such property, or any part thereof, beyond the limits of the county, or materially injures or willfully destroys such property, or any part thereof, without the written consent of the holder of such mortgage or conditional sales contract, secured party or pledgee under a security agreement shall, upon conviction, be guilty of a felony if the value of the property is One Thousand Dollars ($1,000.00) or more and shall be punished by imprisonment in the custody of the Department of Corrections for a period not exceeding three (3) years, or by a fine of not to exceed Five Hundred Dollars ($500.00). If the value of the property is less than One Thousand Dollars ($1,000.00), the person shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not exceeding one (1) year, or by a fine not exceeding Five Hundred Dollars ($500.00). Provided, however, the writing containing the consent of the holder of the mortgage or conditional sales contract, secured party or pledgee under a security agreement, as before specified, shall be the only competent evidence of such consent, unless it appears that such writing has been lost or destroyed.

§ 1834.1. Sale of secured personal property--Debtor as trustee of funds received

Every debtor owning personal property in this Nation in which a creditor has a security interest who, with the consent of the secured party or his assignee, shall sell such collateral, or any part thereof, while the security agreement remains in force and unsatisfied, shall be deemed and conclusively held to be the trustee of the funds received upon the sale thereof, for the benefit of such secured party, or assignee, to the extent of the indebtedness secured thereby or any balance due thereof.

§ 1835. Trespass on posted property after being forbidden or without permission—Penalties--Exceptions

A. Whoever shall willfully or maliciously enter the garden, yard, pasture or field of another after being expressly forbidden to do so or without permission by the owner or lawful occupant thereof when such property is posted shall be deemed guilty of trespass and upon conviction thereof shall be fined in any sum not to exceed Two Hundred Fifty Dollars ($250.00); provided, that this provision shall not apply to registered land surveyors and registered professional engineers for the purpose of land surveying in the performance of their professional services; and, provided further, that anyone who willfully or maliciously enters any such garden, yard, pasture or field, and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for a term not to exceed six (6) months, or both such fine and imprisonment. For purposes of this section, "posted" means exhibiting signs to read as follows: "PROPERTY RESTRICTED"; "POSTED–KEEP OUT"; "KEEP OUT"; "NO TRESPASSING"; or similar signs which are displayed. Property that is fenced or not fenced must have such signs placed conspicuously and at all places where entry to the property is normally expected.

B. Whoever shall willfully enter the pecan grove of another without the prior consent of the owner or occupant thereof to so do shall be deemed guilty of trespass and upon conviction thereof shall be fined in any sum not to exceed Twenty-five Dollars ($25.00); provided, that anyone who willfully enters any such pecan grove and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not more than Five Hundred Dollars ($500.00), or by imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

C. Whoever shall willfully or maliciously enter upon property owned or managed by the Grand River Dam Authority without permission when such property is posted shall be deemed guilty of misdemeanor trespass and upon conviction thereof shall be fined in any sum not to exceed Two Hundred Fifty Dollars ($250.00); provided, that this provision shall not apply to registered land surveyors and registered professional engineers for the purpose of land surveying in the performance of their professional services; and, provided further, that anyone who willfully or maliciously enters upon property owned or managed by the Grand River Dam Authority without permission and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of misdemeanor trespass, and upon conviction thereof shall be fined in any sum not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not more than six (6) months, or both such fine and imprisonment. For purposes of this section, “posted” means exhibiting signs to read as follows: “PROPERTY RESTRICTED”; “POSTED -- KEEP OUT”; “KEEP OUT”; “NO TRESPASSING”; or similar signs which are displayed. Property that is fenced or not fenced must have such signs placed conspicuously and at all places where entry to the property is normally expected.

§ 1835.1. Entry or presence upon premises of place of business of persons convicted of certain crimes

A. Every person, partnership, corporation or other legal entity engaged in any public business, trade, or profession of any kind wherein merchandise, goods or services are offered for sale may forbid the entry or presence of any person upon the premises of the place of business, if the person has been convicted of a crime involving entry onto or criminal acts occurring upon any real property owned, leased, or under the control of such person, partnership, corporation or other legal entity. Such crimes shall include, but are not limited to, shoplifting, vandalism, and disturbing the peace while upon the premises of any place of business of the person, partnership, corporation, or other legal entity.

B. In order to exercise the authority conferred by subsection (A) of this section, the owner or an agent of the owner of a public business, trade, or profession must notify the person whom the owner or agent desires to prohibit from such owner's place ofbusiness.

C. No person shall willfully enter or remain upon the premises after being expressly forbidden to do so in the manner provided for in this section. Any person convicted of violating the provisions of this section, upon conviction, shall be guilty of trespass and shall be punished by a fine of not more than Two Hundred Fifty Dollars ($250.00) or by imprisonment for a term of not more than thirty (30) days, or by both such fine and imprisonment.

D. The provisions of this section shall not preclude any other remedy allowed by law.

SERIAL NUMBERS ON FARM MACHINERY

§ 1841. Destruction, removal, altering, covering or defacing

No person, firm, association or corporation shall destroy, remove, alter, cover or deface the manufacturer's serial number from any tractor, combine, corn picker, corn sheller or hay baler, or any other piece of farm machinery having a retail value of more than Twenty-five Dollars ($25.00) upon which the manufacturer has placed a serial number; nor shall any person, firm, corporation or association, sell, offer for sale, or lease, or otherwise dispose of any such equipment on which the serial numbers have been destroyed, removed, altered, covered or defaced.

§ 1842. Exception to application of act

The provisions of 21 CNCA § 1841 shall not apply to any machine or part thereof now owned and used by a bona fide farmer who has had such equipment in his possession prior to the effective date of this act.

§ 1843. Violations—Punishment

Any person violating the provisions of 21 CNCA § 1841, shall, upon conviction thereof, be fined not less than Fifty Dollars ($50.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned for not less than thirty (30) days nor more than one (1) year, or both, for each offense.

REPORTING OF FIRES

§ 1851. False reporting

It shall be unlawful for any person to report, or cause to be reported, directly or indirectly, the existence of a fire to a fire department, fire station or other agency charged with the responsibility of extinguishing fires, unless such person knows or reasonably believes that such fire is in existence.

§ 1852. Posting of act

The fire chief or principal officer of every fire department shall post, or cause to be posted, a copy of this act at every fire alarm box or place specially designed for the reporting of fires in his jurisdiction.

§ 1853. Penalty

Any person violating any of the provisions of this section or 21 CNCA § 1851 or 1852 shall be guilty of a misdemeanor.

TELEPHONE SOLICITATION

§ 1861. Information to be furnished by solicitor—Calls exempt—Penalties

A. The name and organizational or business affiliation of every person who by telephone engages in the solicitation or sale of any item, tangible or intangible, shall, by such person, be given to the person answering such telephone call. Such information shall be given immediately and prior to any solicitation or sales presentation. The telephone number of the person placing the call must be given upon request of the party being called. The person in whose name the telephone is registered is responsible for his agents and employees conforming with the provisions of this section and 21 CNCA § 1862. This section and 21 CNCA § 1862 do not apply to calls between persons known to each other and to religious groups, or nonprofit organizations within their own membership, and political activities.

B. No person may solicit contributions by telephone for a charitable non-profit organization

unless that organization has complied with the provisions of the Oklahoma Solicitation of Charitable Contributions Act, 18 O.S. § 552.1 et seq. Such person may charge a reasonable fee for his services, which shall not exceed ten percent (10%) of the net receipts of the solicitation; provided, however, that in the event the fee charged is based upon a predetermined flat fee, then this provision shall not apply. Provided, further, that all sums shall be paid directly to the nonprofit organization.

C. Violation of this act by a person, business or organization shall constitute a misdemeanor. A third and subsequent conviction under this act shall constitute a felony.

ELECTRONIC SOLICITATION

§ 1862. Commercial solicitation by facsimile device—Definitions

As used in this section and 21 CNCA § 1863:

1. "Commercial solicitation" means an unsolicited electronic or telephonic transmission to a facsimile device to encourage the purchase of goods, realty, services or to advertise availability of such goods, realty or services. Commercial solicitation shall not include an electronic or telephonic transmission to a facsimile device:

a. made in the course of prior negotiations;

b. made to a party with whom there was a prior business relationship or an existing relationship;

c. made in the course of a follow up to a sales call, sales lead or other business-related contact; or

d. made after normal business hours and two pages or less in length.

2. "Facsimile device" means a machine capable of receiving and reproducing facsimiles of text or images transmitted electronically or telephonically through telecommunication lines connecting to the machine.

§ 1863. Commercial solicitation by facsimile device—Penalties

A. A person shall not intentionally make an electronic or telephonic transmission to a facsimile device located in this nation by means of any connection with a telephone network for the purpose of transmitting a commercial solicitation, as defined by 21 CNCA § 1862. Each commercial solicitation prohibited by this act shall be a separate violation.

B. Any person violating the provisions of this act shall upon conviction be guilty of a

misdemeanor punishable by a fine of not less than Five Hundred Dollars ($500.00) or more than One Thousand Dollars ($1,000.00) for each separate violation.

C. A person violating the provisions of this act shall be deemed to have committed the violation either at the place where the electronic or telephonic transmission is made or at the place where the transmission is received.

§ 1870. Definitions

As used in this act:

1. "Access device" means any telecommunication device including the telephone calling card number, electronic serial number, account number, mobile identification number, or personal identification number that can be used to obtain telephone services;

2. "Clone cellular telephone" or "counterfeit cellular telephone" means a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer;

3. "Cloning paraphernalia" means materials that, when possessed in combination, could be used to create a cloned cellular telephone. These materials include scanners to intercept the electronic serial number and mobile identification number, cellular telephones, cables, EPROM chips, EPROM burners, software for programming the cloned telephone with a false electronic serial number and mobile identification number combination, a computer containing such software, and lists of electronic serial number and mobile identification number combinations;

4. "Electronic serial number" means the unique number that:

a. was programmed into a cellular telephone by its manufacturer,

b. is transmitted by the cellular telephone, and

c. is used by cellular telephone providers to validate radio transmissions to the system as having been made by an authorized device;

5. "EPROM" or "Erasable programmable read-only memory" means an integrated circuit memory that can be programmed from an external source and erased, for reprogramming, by exposure to ultraviolet light;

6. "Intercept" means to electronically capture, record, reveal, or otherwise access the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver, by means of any instrument, device or equipment;

7. “Manufacture of an unlawful telecommunication device” means to produce or assemble an unlawful telecommunication device, or to modify, alter, program, or reprogram a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider;

8. “Mobile identification number” means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier;

9. “Possess” means to have a physical possession or otherwise to exercise control over tangible property;

10. “Sell” means to offer to, agree to offer to, or to sell, exchange, give, or dispose of an unlawful telecommunications device to another;

11. “Telecommunication device” means:

a. any type of instrument, device, machine, or equipment which is capable of transmitting or receiving telephonic, electronic, or radio communications, or

b. any part of an instrument, device, machine, equipment, or other computer circuit, computer chip, electronic mechanism, or other component, which is capable of facilitating the transmission or reception of telephonic or electronic communications within the radio spectrum allocated to cellular radio telephone;

12. “Telecommunication service” means any service provided for a charge or compensation to facilitate the origination, transmission, emission, or receipt of signs, signals, writings, images, and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, television option or other electromagnetic system;

13. “Telecommunication service provider” means any person or entity providing telecommunication service including a cellular telephone or paging company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching officer, or other equipment or telecommunication service; and

14. “Unlawful telecommunication device” means any telecommunication device that is capable of, or has been altered, modified, programmed, or reprogrammed, along or in conjunction with another access device, so as to be capable of acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. Unlawful devices include tumbler phones, counterfeit phones, tumbler microchips, counterfeit microchips, and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider.

§ 1871. Use with intent to avoid payment of service charges

A. Any person who uses a telecommunication device with the intent to avoid the payment of any lawful charge for telecommunication service or with the knowledge that it was to avoid the payment of any lawful charge for telecommunication service and the value of the telecommunication service is not more than One Thousand Dollars ($1,000.00) or such value cannot be ascertained shall, upon conviction, be guilty of a misdemeanor.

B. Any person who uses a telecommunication device with the intent to avoid the payment of any lawful charge for telecommunication service or with the knowledge that it was to avoid the payment of any lawful charge for telecommunication service and the value of the telecommunication service exceeds One Thousand Dollars ($1,000.00) shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years.

C. If the cloned cellular telephone used in violation of this section was used to facilitate the commission of a felony the person, upon conviction, shall be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years.

D. Any person who has been convicted previously of an offense under this section shall be guilty of a felony upon a second and any subsequent conviction punishable by imprisonment for a term not to exceed three (3) years.

§ 1872. Possession of unlawful telecommunication or cloning devices

A. Any person who knowingly possesses an unlawful telecommunication device shall, upon conviction, be guilty of a misdemeanor.

B. Any person who knowingly possesses five or more unlawful telecommunication devices at the same time shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years.

C. Any person who:

1. Knowingly possesses an instrument capable of intercepting electronic serial number and mobile identification number combinations under circumstances evidencing an intent to clone; or

2. Knowingly possesses cloning paraphernalia under circumstances evidencing an intent to clone,

shall, upon conviction, be guilty of a schedule F felony, if the offense occurs on or after the effective date of Section 20.1 of this title. If the offense occurs before the effective date of Section 20.1 of this title, the crime shall be punishable by incarceration in the custody of the Department of Corrections for a term not to exceed two (2) years.

§ 1873. Sale of unlawful telecommunication devices or material

A. Any person who intentionally sells an unlawful telecommunication device or material, including hardware, data, computer software, or other information or equipment, knowing that the purchaser or a third person intends to use such material in the manufacture of an unlawful telecommunication device shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years.

B. If the offense under this section involves the intentional sale of five or more unlawful telecommunication devices within a six-month period, the person committing the offense, upon conviction, shall be guilty of a felony punishable by incarceration in the custody of the Department of Corrections for a term not to exceed three (3) years.

§ 1874. Manufacture of unlawful telecommunication devices

A. Any person who intentionally manufacturers an unlawful telecommunication device shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years.

B. If the offense under this section involves the intentional manufacture of five or more unlawful telecommunication devices within a six-month period, the person committing the offense shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed five (5) years.

BUS PASSENGER SAFETY ACT

§ 1901. Short title

This act may be cited as the “Bus Passenger Safety Act”.

§ 1902. Definitions

As used in the Bus Passenger Safety Act:

1. “Bus” means a vehicle designed to carry passengers that is part of a network of passenger vehicles for use by the public, running on a regular schedule of routes, times and fares;

2. "Bus transportation company" or "company" means any person or governmental entity providing for-hire transport to passengers or cargo by bus upon the roads, streets, highways and turnpikes of this state;

3. "Deadly or dangerous weapon" includes all weapons listed in Section 1287 of this title, and any other weapon capable of inflicting serious bodily injury, except for a weapon carried for lawful self-defense in compliance under the Cherokee Nation Self Defense Act;

4. "Passenger" means any person served by the bus transportation company; and

5. "Terminal" means a bus station or depot or any facility operated or leased by or operated on behalf of a bus transportation company. This term shall include a reasonable area immediately adjacent to any designated stop along the route traveled by any bus operated by a bus transportation company and parking lots or parking areas adjacent to a terminal.

§ 1903. Seizure of bus--Assault or battery--Dangerous or deadly weapon--Discharge of a firearm

A. No person shall by force or violence, or threat of force or violence, seize or exercise control of any bus. Any person violating this subsection shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not more than three (3) years, or by a fine of not more than Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

B. In addition, no person shall intimidate, threaten, assault or batter any driver, attendant, guard or passenger of any bus with intent to violate subsection A of this section. Any person violating this subsection shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not more than three (3) years, or by a fine of not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

C. In addition, any person violating subsection A or B of this section using a dangerous or deadly weapon shall be guilty of a felony, and shall, upon conviction, be punished by imprisonment for not more than three (3) years, or by a fine of not more than Fifteen Thousand Dollars ($15,000.00), or by both such fine and imprisonment.

D. It shall be unlawful for any person to discharge any firearm into or within any bus, terminal or other transportation facility, unless such action is determined to have been in defensive force resulting from reasonable fear of imminent peril of death or great bodily harm to himself or herself or another. Such person shall, upon conviction, be guilty of a felony punishable by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than three (3) years, or both.

§ 1904. Unauthorized removal of baggage, cargo or other item

It shall be unlawful to remove any baggage, cargo or other item transported upon a bus or stored in a terminal without consent of the owner of such property or the company, or its duly authorized representative. Any person violating this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than Ten Thousand Dollars ($10,000.00), or by imprisonment for not more than three (3) years, or by both such fine and imprisonment.

The actual value of an item removed in violation of this section shall not be material to the crime herein defined.

COMPUTER CRIMES ACT

§ 1951. Short title

This act shall be known and may be cited as the Cherokee Nation Computer Crimes Act.

§ 1952. Definitions

As used in the Cherokee Nation Computer Crimes Act:

1. "Access" means to approach, gain entry to, instruct, communicate with, store data in, retrieve data from or otherwise use the logical, arithmetical, memory or other resources of a computer, computer system or computer network;

2. "Computer" means an electronic device which performs work using programmed instruction having one or more of the capabilities of storage, logic, arithmetic or communication. The term includes input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network;

3. "Computer network" means the interconnection of terminals by communication modes with a computer, or a complex consisting of two or more interconnected computers;

4. "Computer program" means a set or series of instructions or statements and related data which when executed in actual or modified form directs or is intended to direct the functioning of a computer system in a manner designed to perform certain operations;

5. "Computer software" means one or more computer programs, procedures and associated documentation used in the operation of a computer system;

6. "Computer system" means a set of related, connected or unconnected, computer equipment,

devices including support devices, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control and software. "Computer

system" does not include calculators which are not programmable and are not capable of being connected to or used to access other computers, computer networks, computer systems or support devices;

7. "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a displaydevice;

8. "Property" means any tangible or intangible item of value and includes, but is not limited to, financial instruments, geophysical data or the interpretation of that data, information, computer software, computer programs, electronically-produced data and computer-produced or stored data, supporting documentation, computer software in either machine or human readable form, electronic impulses, confidential, copyrighted or proprietary information, private identification codes or numbers which permit access to a computer by authorized computer users or generate billings to consumers for purchase of goods and services, including but not limited to credit card transactions and telecommunications services or permit electronic fund transfers and any other tangible or intangible item of value;

9. "Services" includes, but is not limited to, computer time, data processing and storage functions and other uses of a computer, computer system or computer network to perform useful work;

10. "Supporting documentation" includes, but is not limited to, all documentation in any form used in the construction, design, classification, implementation, use or modification of computer software, computer programs or data; and

11. "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program or data was or was not altered, deleted, disrupted, damaged or destroyed by the access.

§ 1953. Prohibited acts

A. It shall be unlawful to:

1. Willfully, and without authorization, gain or attempt to gain access to and damage, modify, alter, delete, destroy, copy, make use of, disclose or take possession of a computer, computer system, computer network or any other property;

2. Use a computer, computer system, computer network or any other property as hereinbefore defined for the purpose of devising or executing a scheme or artifice with the intent to defraud, deceive, extort or for the purpose of controlling or obtaining money, property, services or other thing of value by means of a false or fraudulent pretense or representation;

3. Willfully exceed the limits of authorization and damage, modify, alter, destroy, copy, delete, disclose or take possession of a computer, computer system, computer network or any other property;

4. Willfully and without authorization, gain or attempt to gain access to a computer, computer system, computer network or any other property;

5. Willfully and without authorization use or cause to be used computer services;

6. Willfully and without authorization disrupt or cause the disruption of computer services or deny or cause the denial of access or other computer services to an authorized user of a computer, computer system or computer network;

7. Willfully and without authorization provide or assist in providing a means of accessing a computer, computer system or computer network in violation of this section;

8. Willfully use a computer, computer system, or computer network to annoy, abuse, threaten, or harass another person; and

9. Willfully use a computer, computer system, or computer network to put another person in fear of physical harm or death.

B. Any person convicted of violating paragraphs 1, 2, 3, 6, 7, 8, or 9 of subsection (A) of this section shall be guilty of a felony punishable as provided in Section 1955 of this title.

C. Any person convicted of violating paragraphs 4, 5, or 8 of subsection (A) of this section shall be guilty of a misdemeanor.

D. Nothing in the Oklahoma Computer Crimes Act shall be construed to prohibit the monitoring of computer usage of, or the denial of computer or Internet access to, a child by a parent, legal guardian, legal custodian, or foster parent. As used in this subsection, "child" shall mean any person less than eighteen (18) years of age.

§ 1954. Certain acts as prima facie evidence of violation of act

Proof that any person has accessed, damaged, disrupted, deleted, modified, altered, destroyed, caused to be accessed, copied, disclosed or taken possession of a computer, computer system, computer network or any other property, or has attempted to perform any of these enumerated acts without authorization or exceeding the limits of authorization, shall be prima facie evidence of the willful violation of the Cherokee Nation Computer Crimes Act.

§ 1955. Penalties—Civil actions

A. Upon conviction of a felony under the provisions of the Cherokee Nation Computer Crimes Act, punishment shall be by a fine of not more than Fifteen Thousand Dollars ($15,000.00), or by imprisonment for a term of not more than three (3) years, or by both such fine and imprisonment.

B. B. Upon conviction of a misdemeanor under the provisions of the Oklahoma Computer Crimes Act, punishment shall be by a fine of not more than Five Thousand Dollars ($5,000.00), or by imprisonment for a term not to exceed thirty (30) days, or by both such fine and imprisonment.

C. In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program or data may bring a civil action against any person convicted of a violation of the Cherokee Nation Computer Crimes Act for compensatory damages, including any victim expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program or data was or was not altered, damaged, deleted, disrupted or destroyed by the access. In any action brought pursuant to this subsection the Court may award reasonable attorneys fees to the prevailing party.

§ 1957. Access of computer, computer system or computer network in one jurisdiction from another jurisdiction—Bringing of action

For purposes of bringing a civil or a criminal action under the Cherokee Nation Computer Crimes Act, a person who causes, by any means, the access of a computer, computer system or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system or computer network in each jurisdiction.

§ 1958. Access to computers, computer systems and computer networks prohibited for certain purposes—Penalty

No person shall communicate with, store data in, or retrieve data from a computer system or computer network for the purpose of using such access to violate any of the provisions of the Cherokee Nation Code.

Any person convicted of violating the provisions of this section shall be guilty of a felony punishable by imprisonment for a term of not more than three (3) years, or by a fine of not more than Five Thousand Dollars ($5,000.00), or by both such imprisonment and fine.

§ 1959. Subpoenas prior to commencement of proceedings--Noncompliance--Misdemeanor

A. When any person has engaged in, is engaged in, or is attempting or conspiring to engage in any conduct constituting a violation of any of the provisions of Section 1953 of Title 21 of the Cherokee Nation Code Annotated, the Cherokee Nation Attorney General may conduct an investigation of the activity. On approval of the district judge, the Attorney General, in accordance with the provisions of Section 258 of Title 22 the Cherokee Nation Code Annotated and pursuant to the provisions of the Cherokee Nation Computer Crimes Act, is authorized before the commencement of any civil or criminal proceeding to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any business papers or records by subpoena duces tecum. Evidence collected pursuant to this section shall not be admissible in any civil proceeding.

B. Any business papers and records subpoenaed by the Attorney General shall be available for examination by the person who produced the material or by any duly authorized representative of the person. Transcripts of oral testimony shall be available for examination by the person who produced such testimony and their counsel.

Except as otherwise provided for in this section, no business papers, records, or transcripts or oral testimony, or copies of it, subpoenaed by the Attorney General shall be available for examination by an individual other than another law enforcement official without the consent of the person who produced the business papers, records or transcript.

C. All persons served with a subpoena by the Attorney General pursuant to the provisions of the Cherokee Nation Computer Crimes Act shall be paid the same fees and mileage as paid witnesses in the courts of this state.

D. No person shall, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the Attorney General pursuant to the provisions of this section, knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any business papers or records that are the subject of the subpoena duces tecum.

E. Any person violating the provisions of this section shall be guilty, upon conviction, of a misdemeanor.

§ 1992. Short title--Penalties--Definitions

A. This section shall be known and may be cited as the "Laser Safety Act".

B. Any person who knowingly and maliciously projects a laser, as defined in this section, on or at a law enforcement officer without the consent of the officer while the officer is acting within the scope of the official duties of the officer shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than One Hundred Dollars ($100.00). Any person who commits a second or subsequent violation of this section shall be guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00), a term of imprisonment for a term of not more than six (6) months, or by both such fine and imprisonment.

C. Anyone who knowingly aims the beam of a laser pointer at an aircraft in flight or at the flight path of an aircraft shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than One Hundred Dollars ($100.00). Any person who commits a second or subsequent violation of this section shall be guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00), a term of imprisonment for a term of not more than six (6) months, or by both such fine and imprisonment.

D. This section does not prohibit aiming a beam of a laser pointer at an aircraft, or the flight path of such an aircraft by:

1. An authorized individual in the conduct of research and development or flight test operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other person authorized by the Federal Aviation Administration to conduct research and development or flight test operations;

2. Members or elements of the Department of Defense or Department of Homeland Security acting in an official capacity for the purpose of research, development, operations, testing or training; or

3. By an individual using a laser emergency signaling device to send an emergency distress signal.

E. As used in this section:

1. "Laser" or "laser pointer" means any device designed or used to amplify electromagnetic radiation by stimulated emission that emits a beam designed to be used by the operator as a pointer or highlighter to indicate, mark or identify a specific position, place, item or object; and

2. "Law enforcement officer" means any police officer, peace officer, sheriff, deputy

sheriff, correctional officer, probation or parole officer, emergency management employee, judge, magistrate, or any employee of a governmental agency who is authorized by law to engage in the investigation, arrest, prosecution, or supervision of the incarceration of any person for any violation of law and has statutory powers of arrest.

§ 1993. Tampering with or disabling security or surveillance camera or security system

A. It shall be unlawful for any unauthorized person to refocus, reposition, cover, manipulate, disconnect, or otherwise tamper with or disable a security or surveillance camera or security system. Any person violating the provisions of this subsection shall be guilty, upon conviction, of a misdemeanor punishable by a fine of not more than Five Thousand Dollars ($5,000.00).

B. It shall be unlawful for any person to use, refocus, reposition, cover, manipulate, disconnect, or otherwise tamper with or disable a security or surveillance camera or security system for the purpose of avoiding detection when committing, attempting to commit, or aiding another person to commit or attempt to commit any misdemeanor. Any person violating the provisions of this section shall be guilty, upon conviction, of a misdemeanor punishable by imprisonment for not more than one year, or a fine of not more than Five Thousand Dollars ($5,000.00), or by both such imprisonment and fine.

C. It shall be unlawful for any person to use, refocus, reposition, cover, manipulate, disconnect, or otherwise tamper with or disable a security or surveillance camera or security system for the purpose of avoiding detection when committing, attempting to commit, or aiding another person to commit or attempt to commit any felony. Any person violating the provisions of this section shall be guilty, upon conviction, of a felony, punishable by imprisonment for not more than three (3) years, or a fine of not more than Ten Thousand Dollars ($10,000.00), or by both such imprisonment and fine.

PART VIII

CONTROLLED DANGEROUS SUBSTANCES

CHAPTER 75

UNIFORM CONTROLLED DANGEROUS SUBSTANCES

ACT ARTICLE I. DEFINITIONS

§ 2101. Definitions

As used in the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.:

1. **"Administer"** means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient, animal or research subject by:

a. A practitioner (or, in his presence, by his authorized agent); or

b. The patient or research subject at the direction and in the presence of the practitioner.

2. **"Agent"** means a peace officer appointed by and who acts in behalf of Cherokee Nation or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances but does not include a common or contract carrier, public warehouseman or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act.

3. **"Bureau of Narcotics and Dangerous Drugs"** means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice.

4. **"Coca leaves"** includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine.

5. **"Commissioner"** or **"Director"** means the Director of the Oklahoma State Bureau of Narcotics

and Dangerous Drugs Control.

6. **"Control"** means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act.

7. **"Controlled dangerous substance"** means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act.

8. **"Counterfeit substance"** means a controlled substance which, or the container or labeling of which without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

9. **"Deliver"** or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance whether or not there is an agency relationship.

10. **"Dispense"** means to deliver a controlled dangerous substance to an ultimate use or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding, necessary to prepare the substance for such distribution. **"Dispenser"** is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject.

11. **"Distribute"** means to deliver other than by administering or dispensing a controlled dangerous substance.

12. **"Distributor"** means a person who distributes.

13. **"Drug"** means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the Unites States, or official National Formulary, or any supplement to any of them; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and articles intended for use as a component of any article specified in the paragraph; but does not include devices or their components, parts or accessories.

14. **"Drug-dependent person"** means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

15. **"Drug paraphernalia"** means all equipment, products and materials of any kind which are used or intended 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 controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act. It includes, but is not limited to:

a. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived;

b. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances;

c. Isomerization devices used or intended for use in increasing the potency of any species of

plant which is a controlled dangerous substance;

d. Testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances;

e. Scales and balances used or intended for use in weighing or measuring controlled dangerous substances;

f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances;

g. Separation gins and sifters used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining, marijuana;

h. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances;

i. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances;

j. Containers and other objects used or intended for use in parenterally injecting controlled substances into the human body;

k. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body;

l. Objects used or intended for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

i. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls,

ii. Water pipes,

iii. Carburetion tubes and devices,

iv. Smoking and carburetion masks,

v. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand,

vi. Miniature cocaine spoons and cocaine vials,

vii. Chamber

pipes,

viii. Carburetor

pipes,

ix. Electric pipes,

x. Air-driven pipes,

xi. Chillums,

xii. Bongs,

xiii. Ice pipes or chillers.

Provided however, drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco.

16. **"Hazardous material"** means materials, whether solid, liquid or gas; which are toxic to human, animal, aquatic or plant life, and the disposal of which materials is controlled by Nation or federal guidelines.

17. **"Imitation controlled substance"** means a substance that is not a controlled dangerous substance, which by dosage unit appearance, color, shape, size, markings or by representations made would lead a reasonable person to believe that the substance is a controlled dangerous substance. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance", the court or authority concerned should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is an imitation controlled substance:

a. Statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect;

b. Statements made to the recipient that the substance may be resold for inordinate profit;

c. Whether the substance is packaged in a manner normally used for illicit controlled

substances;

d. Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;

e. Prior convictions, if any, of an owner, or any other person in control of the object, under Nation, state, or federal law related to controlled substances or fraud;

f. The proximity of the substance to controlled dangerous substances.

18. **"Immediate precursor"** means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture.

19. **"Indian"** includes:
   a. Any person who is a citizen of the Cherokee Nation;
   b. Any person who a citizen or member of any other federally recognized Indian tribe, including Alaska Native entities;
   c. Any person who is eligible to become a member of any federally recognized Indian tribe; and
   d. Any person who would be considered an "Indian" for the purposes of federal criminal prosecution under 18 U.S.C. § 1152 and/or 18 U.S.C. § 1153.

20. **"Indian country"** means that area defined by 18 U.S.C. § 1151.

21. **"Isomer"** means the optical isomer, except as used in 21 CNCA § 2204(C) and 21 CNCA § 2206(A)(4), **"isomer"** means the optical, positional or geometric isomer. As used in 21 CNCA § 2206(A)(4), the term **"isomer"** means the optical or geometric isomer.

22. **"Laboratory"** means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances for scientific and medical purposes and for purposes of instruction.

23. **"Manufacture"** means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

24. **"Marijuana"** means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

25. **"Medical purposes"** means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition not in violation of any state or federal law and not for the purpose of physiological or psychological dependence or other abuse.

26. **"Narcotic drug"** means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium, coca leaves and opiates;

b. A compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates;

c. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

d. Ecgonine, its derivatives, their salts, isomers and salts of isomers;

e. A substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically identical with any of the substances referred to in subparagraphs a through d of this paragraph, except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

27. **"Nation"** means Cherokee Nation.

28. **"Opiate"** means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3– methoxy-n-methyl-morphinan and its salts (detromethorphan). It does include its racemic and levorotatory forms.

29. **"Opium poppy"** means the plant of the species Papaver somniferum L., except the seeds

thereof.

30. **"Peace officer"** means a police officer, marshal, deputy marshal, sheriff, deputy sheriff, prosecuting attorney's investigator, investigator from the Office of the Attorney General, or any other person elected or appointed by law to enforce any of the criminal laws of this Nation or of the United States.

31. **"Person"** means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

32. **"Poppy straw"** means all parts, except the seeds, of the opium poppy, after mowing.

33. **"Practitioner"** means:

a. A physician, dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this Nation; or

b. A pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this Nation.

34. **"Production"** includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance.

35. **"Synthetic controlled substance"** means a substance that is not a controlled dangerous substance, but a substance that produces a like or similar physiological or psychological effect on the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse. The court or authority concerned with establishing that the substance is a synthetic controlled substance should consider, in addition to all other factors, the following factors as related to **"representations made"** in determining whether the substance is a synthetic controlled substance:

a. Statements made by an owner or by any other person in control of the substance concerning the nature of the substance, its use or effects;

b. Statements made to the recipient that the substance may be resold for an inordinate profit;

c. Prior convictions, if any, of an owner or any person in control of the substance, under Nation or federal law related to controlled dangerous substances;

d. The proximity of the substance to any controlled dangerous substance.

36. **"Tetrahydrocannabinols"** means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marijuana.

37. **"Tribal citizen"** means any person who is a citizen or is eligible for citizenship in Cherokee Nation.

38. **"Ultimate user"** means a person who lawfully possesses a controlled dangerous substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

§ 2101.1. Drug paraphernalia—Factors used in determining

In determining whether an object is "drug paraphernalia", a court shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use.

2. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Dangerous Substances Act.

3. The proximity of the object to controlled dangerous substances.

4. The existence of any residue of controlled dangerous substances on the object.

5. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who intend to use the object to facilitate a violation of the Uniform Controlled Dangerous Substances Act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is drug paraphernalia.

6. Instructions, oral or written, provided with the object which either state directly or imply that the object is to be used for the consumption of controlled substances.

7. Descriptive materials accompanying the object which explain or depict its use as an object for the consumption of controlled substances.

8. The manner in which the object is displayed for sale.

9. 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 licensed distributor or dealer of tobacco products.

10. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.

11. The existence and scope of legitimate uses for the object in the community.

12. Expert testimony concerning its use.

§ 2103.1. Investigations—Subpoena power

A. In the investigation by any Cherokee Nation peace officer pursuant to the provisions of the Uniform Controlled Dangerous Substances Act with respect to controlled substances, the officer, if recommended and approved by the Prosecuting Attorney of Cherokee Nation District Court, may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records, including books, papers, documents, and other tangible things which are determined to be relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in the Nation to a designated location at the seat of government. Witnesses summoned pursuant to this section shall be paid the same fees and mileage that are paid witnesses in the courts of this Nation.

B. The witness shall have the option of complying with said subpoena by:

1. Appearing and/or producing documents, as requested; or

2. Notifying the Marshal office, in writing, of refusal to appear or produce documents, within ten
(10) days of the date of service.

C. A subpoena issued pursuant to this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

D. In the case of contumacy by or refusal to obey a subpoena issued to any person, the aid of

the District Court of Cherokee Nation may be invoked. The court may issue an order requiring the subpoenaed person to appear and to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the Court may be punished by the Court as an indirect contempt thereof.

E. The District Court of Cherokee Nation wherein the subpoena is served may quash a subpoena issued pursuant to this section, upon a motion to quash the subpoena filed with the Court by the party to whom the subpoena is issued.

§ 2107. Narcotics Revolving Fund

There is hereby created in the National Treasury a revolving fund for the control of narcotics and dangerous drugs to be designated the "Narcotics Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies received from the sale of surplus and confiscated property, fees and receipts collected pursuant to the Oklahoma Open Records Act, gifts, bequests, devises, contributions or grants, public or private, including federal law or regulation, registration fees and receipts relating to prescription pads and receipts from any other source. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended for the control of narcotics and dangerous drugs.

ARTICLE II. STANDARDS AND SCHEDULES

§ 2201. Future "controlled dangerous substances" included

Any substances, not listed in the following schedules, which are subsequently determined to be "controlled dangerous substances" and included in 63 O.S.§ 2–201 et seq. are included as controlled dangerous substances in this title.

§ 2202. Nomenclature in schedules

The schedules provided by this act include the controlled dangerous substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

§ 2203. Schedule I characteristics

Schedule I includes substances with the following characteristics:

1. High potential for abuse;

2. No accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision.

§ 2204. Schedule I

The controlled substances listed in this section are included in Schedule I.

1. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

    a. Acetylmethadol,

    b. Allylprodine,

    c. Alphacetylmethadol,

    d. Alphameprodine,

    e. Alphamethadol,

    f. Benzethidine,

    g. Betacetylmethadol,

    h. Betameprodine,

    i. Betamethadol,

    j. Betaprodine,

    k. Clonitazene,

    l. Dextromoramide,

    m. Dextrorphan (except its methyl ether),

    n. Diampromide,

    o. Diethylthiambutene,

    p. Dimenoxadol,

q. Dimepheptanol,

r. Dimethylthiambutene,

s. Dioxaphetyl butyrate,

t. Dipipanone,

u. Ethylmethylthiambutene,

v. Etonitazene,

w. Etoxeridine,

x. Furethidine,

y. Hydroxypethidine,

z. Ketobemidone,

aa. Levomoramide,

bb. Levophenacylmorphan,

cc. Morpheridine,

dd. Noracymethadol,

ee. Norlevorphanol,

ff. Normethadone,

gg. Norpipanone,

hh. Phenadoxone,

ii. Phenampromide,

jj. Phenomorphan,

kk. Phenoperidine,

ll. Piritramide,

mm. Proheptazine,

nn. Properidine,

oo. Racemoramide,

pp. Trimeperidine.

2. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

a. Acetorphine,

b. Acetyldihydrocodeine,

c. Benzylmorphine,

d. Codeine methylbromide,

e. Codeine–N–Oxide,

f. Cyprenorphine,

g. Desomorphine,

h. Dihydromorphine,

i. Etorphine,

j. Heroin,

k. Hydromorphinol,

l. Methyldesorphine,

m. Methylhydromorphine,

n. Morphine methylbromide,

o. Morphine methylsulfonate,

p. Morphine–N–oxide,

q. Myrophine,

r. Nicocodeine,

s. Nicomorphine,

t. Normorphine,

u. Phoclodine,

v. Thebacon.

3. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. 3, 4–methylenedioxy amphetamine,

b. 5–methoxy–3, 4–methylenedioxy amphetamine,

c. 3, 4, 5–trimethoxy amphetamine,

d. Bufotenine,

e. Diethyltryptamine,

f. Dimethyltryptamine,

g. 4–methyl–2, 5–dimethoxyamphetamine,

h. Ibogaine,

i. Lysergic acid diethylamide,

j. Marijuana,

k. Mescaline,

l. N-ethyl–3–piperidyl benzilate,

m. N-methyl–3–piperidyl benzilate,

n. Psilocybin,

o. Psilocyn,

p. 2, 5 dimenthoxyamphetamine,

q. 4 bromo–2, 5–dimethoxyamphetamine,

r. 4 methoxyamphetamine,

s. Cyclohexamine,

t. Thiphene analog of phencyclidine, also known as 1–(1–(2–thienyl) cyclohexl) piperidine; 2– thienyl analog of phencyclidine; TPCP, TCP,

u. Phencyclidine (PCP),

v. Pyrrolidine analog for phencyclidine, also known as1–(1–phenycly-clohexyl)—pyrrolidine, PCPy, PHP.

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:

a. Fenethylline,

b. Mecloqualone,

c. N-ethylamphetamine,

d. Methaqualone.

§ 2204.1. Exception for Marijuana

Any act or omission involving medical or minor offenses of use or possession of marijuana, which would not be punishable if committed or omitted within the jurisdiction of the State of Oklahoma, or which would subject the individual to a lessor punishment than prescribed herein, by the laws thereof in force at the time of such act or omission, shall not be guilty under the laws of the Cherokee Nation or not subject to more severe punishment under the laws of the Cherokee Nation.

Provided that whoever commits an act or omission involving marijuana which would be punishable if committed or omitted within the jurisdiction of the State of Oklahoma, by the laws thereof in force at the time of such act or omission, shall be guilty under the laws of the Cherokee Nation of a like offense and subject to a like punishment.

§ 2205. Schedule II characteristics

Schedule II includes substances with the following characteristics:

1. High potential for abuse;

2. Currently accepted medical use in the United States, or currently accepted medical use with severe restrictions;

3. The abuse of the substance may lead to severe psychic or physical dependence.

§ 2206. Schedule II

The controlled substances listed in this section are included in Schedule II.

1. Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1, but not including the isoquinoline alkaloids of opium;

c. Opium poppy and poppy straw;

d. Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers and salts of isomers; or any compound, mixture or preparation which contains any quantity of any of the substances referred to in this paragraph.

2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

a. Alphaprodine,

b. Anileridine,

c. Bezitramide,

d. Dihydrocodeine,

e. Diphenoxylate,

f. Fentanyl,

g. Isomethadone,

h. Levomethorphan,

i. Levorphanol,

j. Metazocine,

k. Methadone,

l. Methadone–Intermediate, 4–cyano–2–dimethylamino–4, 4–diphenyl butane,

m. Moramide–Intermediate, 2–methyl–3–morpholino–1,1–diphenyl-propane-carboxylic acid,

n. Pethidine. Meperidine,

o. Pethidine–Intermediate–A, 4–cyano-l-methyl–4–phenylpiperidine,

p. Pethidine–Intermediate–B, ethyl–4–phenylpiperidine–4–carboxylate,

q. Pethidine–Intermediate–C,l-methyl–4–phenylpiperidine–4–carboxylic acid,

r. Phenazocine,

s. Piminodine,

t. Racemethorphan,

u. Racemorphan,

v. Etorphine hydrochloride salt only,

w. Alfentanil hydrochloride.

3. Any substance which contains any quantity of:

a. Methamphetamine, including its salts, isomers, and salts of isomers,

b. Amphetamine, its salts, optical isomers, and salts of its optical isomers.

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:

a. Phenmetrazine and its salts,

b. Methylphenidate,

c. Amobarbital,

d. Pentobarbital,

e. Secobarbital,

f. Tetrahydrocannabinols.

§ 2207. Schedule III characteristics

Schedule III includes substances with the following characteristics:

1. A potential for abuse less than the substances listed in Schedules I and II;

2. Currently accepted medical use in treatment in the United States; and

3. Abuse may lead to moderate or low physical dependence or high psychological dependence.

§ 2208. Schedule III

The controlled substances listed in this section are included in Schedule III.

1. Unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances or any other substance having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid unless specifically excepted or unless listed in another schedule,

b. Chlorhexadol,

c. Glutethimide,

d. Lysergic acid,

e. Lysergic acid amide,

f. Methyprylon,

g. Sulfondiethylmethane,

h. Sulfonethylmethane,

i. Sulfonmethane,

j. Benzephetamine and its salts,

k. Chlorphentermine and its salts,

l. Clortermine,

m. Mazindol,

n. Phendimetrazine,

o. Phenylacetone (P2P),

p. 1–Phenycyclohexylamine,

q. 1–Piperidinocychexanecarbo nitrile (PCC).

2. Nalorphine.

3. Unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

a. Not more than one and eight-tenths (1.8) grams of codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium,

b. Not more than one and eight-tenths (1.8) grams of codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

c. Not more than three hundred (300) milligrams of dihydrocodeinone or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium,

d. Not more than three hundred (300) milligrams of dihydrocodeinone or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

e. Not more than one and eight-tenths (1.8) grams of dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

f. Not more than three hundred (300) milligrams of ethylmorphine or any of its

salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts,

g. Not more than five hundred (500) milligrams of opium per one hundred (100)milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

h. Not more than fifty (50) milligrams of morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

§ 2209. Schedule IV characteristics

Schedule IV includes substances with the following characteristics:

1. Low potential for abuse relative to substances listed in Schedule III;

2. Currently accepted medical use in treatment in use in the United States; and

3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule III.

§ 2210. Schedule IV

The controlled substances listed in this section are included in Schedule IV.

1. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

a. Chloral betaine,

b. Chloral hydrate,

c. Ethchlorvynol,

d. Ethinamate,

e. Meprobamate,

f. Paraldehyde,

g. Petrichloral,

h. Diethylpropion,

i. Phentermine,

j. Pemoline,

k. Chlordiazepoxide,

l. Chlordiazepoxide and its salts, but not including chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and watersoluble esterified estrogens,

m. Diazepam,

n. Oxazepam,

o. Clorazepate,

p. Flurazepam and its salts,

q. Clonazepam,

r. Barbital,

s. Mebutamate,

t. Methohexital,

u. Methylphenobarbital,

v. Phenobarbital,

w. Fenfluramine,

x. Pentazocine,

y. Dextropropoxyphene,

z. Butorphanol,

aa. Alprazolam,

bb. Halazepam,

cc. Lorazepam,

dd. Prazepam,

ee. Temazepam,

2. In addition to the anabolic steroids listed in paragraphs gg through mm of subdivision 1 of this section, "anabolic steroids" shall include any salt, optical and geometric isomers, and salts of isomers, compound, or derivative which is a chemical analog to any of the substances listed in paragraphs gg through mm of subdivision 1 of this section.

§ 2211. Schedule V characteristics

Schedule V includes substances with the following characteristics:

1. Low potential for abuse relative to the controlled substances listed in Schedule IV;

2. Currently accepted medical use in treatment in the United States; and

3. Limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

§ 2212. Schedule V

The controlled substances listed in this section are included in Schedule V.

Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,

2. Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,

3. Not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,

4. Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit,

5. Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams.

ARTICLE IV. OFFENSES AND PENALTIES

TRAFFICKING IN ILLEGAL DRUGS ACT

§ 2401. Prohibited acts A—Penalties

A. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person:

1. To distribute, dispense, or solicit the use of or use the services of a person less than eighteen (18) years of age to distribute or dispense a controlled dangerous substance or possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance;

2. To create, distribute, or possess with intent to distribute, a counterfeit controlled dangerous substance; or

3. To distribute any imitation controlled substance as defined by 21 CNCA § 2101, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services.

B. Any person who violates the provisions of this section with respect to:

1. A substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a crime;

2. Any other controlled dangerous substance classified in Schedule I, II, III, or IV, upon conviction, shall be guilty of a crime;

3. A substance classified in Schedule V, upon conviction, shall be guilty of a crime;

4. An imitation controlled substance as defined by 21 CNCA § 2101, upon conviction, shall be guilty of a crime and shall be sentenced to a term of imprisonment for a period of not more than one (1) year and a fine of not more than One Thousand Dollars ($1,000.00). A person convicted of a second or subsequent violation of the provisions of this paragraph shall be sentenced to a term of imprisonment for not more than three (3) years and a fine of not more than Five Thousand Dollars ($5,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment; or

5. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance. Any person convicted of violating the provisions of this paragraph is guilty of a crime.

C. Any person who is at least eighteen (18) years of age and who violates the provisions of this section by using or soliciting the use of services of a person less than eighteen (18) years of age to distribute or dispense a controlled dangerous substance or by distributing a controlled dangerous substance to a person under eighteen (18) years of age is punishable by twice the fine and by twice the imprisonment otherwise authorized.

D. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled dangerous substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, upon conviction, is guilty of a crime.

E. Any person convicted of any offense described in this section may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed. Such assessment shall be paid into a revolving fund for enforcement of controlled dangerous substances created pursuant to 21 CNCA § 2107.

§ 2401A. School property—Distribution, dispensing or possession of controlled dangerous substance or Imitation with intent to distribute

A. It shall be unlawful for any person to distribute, dispense, or possess with intent to distribute a controlled dangerous substance or imitation controlled dangerous substance, as defined by 21 CNCA § 2101, while on any school property used for school purposes which is owned by any private school, public school district, or vocational-technical school district, or within one thousand (1,000) feet of any such school property or while on any school bus owned or operated by any private school, public school district. Any person convicted of violating this section shall be guilty of a crime.

B. It shall be no defense to a prosecution for a violation of this section that the violator of this section was unaware that the prohibited conduct took place while on or within one thousand (1,000) feet of any school property.

C. A conviction arising under this section shall not merge with a conviction pursuant to 21 CNCA

§ 2402. Prohibited acts B—Penalties

A. 1. It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by 21 CNCA § 2101 et seq.

2. It shall be unlawful for any person to purchase any preparation excepted from the provisions of 21 CNCA § 2101 et seq. pursuant to 21 CNCA § 2313 in an amount or within a time interval other than that permitted by 21 CNCA § 2313.

B. Any person who violates this section with respect to:

1. Any Schedule I or II substance, except marijuana or a substance included in subsection (D) of 21 CNCA § 2206, is guilty of a crime.

2. Any Schedule III, IV or V substance, marijuana, a substance included in 21 CNCA § 2206(D), or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act is guilty of a crime.

§ 2403. Prohibited acts C—Penalties

A. Any person found guilty of larceny, burglary or theft of controlled dangerous substances is guilty of a crime.

B. Any person found guilty of robbery or attempted robbery of controlled dangerous substances from a practitioner, manufacturer, distributor or agent thereof as defined in 21 CNCA § 2101 is guilty of a crime.

§ 2404. Prohibited acts D—Penalties

A. It shall be unlawful for any person:

1. To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or this act;

2. To refuse any entry into any premises or inspection authorized by this act; or,

3. To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled dangerous substances in violation of this act for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this act.

B. Any person who violates this section is punishable by a civil fine of not more than One Thousand Dollars ($1,000.00) unless the violation is prosecuted by an information which alleges that the violation was committed knowingly or intentionally, and the trier of fact specifically finds that the violation was committed knowingly or intentionally.

§ 2405. Prohibited acts E—Penalties

A. No person shall use tincture of opium, tincture of opium camphorated, or any derivative thereof, by the hypodermic method, either with or without a medical prescription therefor.

B. No person shall use or possess drug paraphernalia 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 controlled dangerous substance in violation of 21 CNCA § 2101 et seq., except those persons holding an unrevoked license in the professions of podiatry, dentistry, medicine, nursing, optometry, osteopathy, veterinary medicine, or pharmacy.

C. No person shall deliver, possess or manufacture drug paraphernalia knowing 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 controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.

D. Any person eighteen (18) years of age or over who violates subsection (C) of this section by delivering drug paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior shall, upon conviction, be guilty of a crime.

E. Any person who violates subsections (A), (B) or (C) of this section is guilty of a crime.

§ 2407. Prohibited acts G—Penalties

A. No person shall obtain or attempt to obtain any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act pursuant to 21 CNCA § 2313 in a

manner inconsistent with the provisions of 21 CNCA § 2313(B)(1), or a controlled dangerous substance or procure or attempt to procure the administration of a controlled dangerous substance:

1. by fraud, deceit, misrepresentation, or subterfuge;

2. by the forgery or alteration of a prescription or of any written order;

3. by the concealment of a material fact; or

4. by the use of a false name or the giving of a false address.

B. Information communicated to a physician in an effort unlawfully to procure a controlled dangerous substance, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

C. Any person who violates this section is guilty of a crime.

§ 2407.1. Certain substances causing intoxication, distortion or disturbances of auditory, visual, muscular or mental processes prohibited—Exemptions—Penalties

A. For the purpose of inducing intoxication or distortion or disturbance of the auditory, visual, muscular, or mental process, no person shall ingest, use, or possess any compound, liquid, or chemical which contains butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite, or mixtures containing butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite, or any of their esters, isomers, or analogues, or any other similar compound.

B. No person shall possess, buy, sell, or otherwise transfer any substance specified in subsection (A) of this section for the purpose of inducing or aiding any other person to inhale or ingest such substance or otherwise violate the provisions of this section.

C. The provisions of subsections (A) and (B) of this section shall not apply to:

3. The possession and use of a substance specified in subsection (A) of this section which is used as part of the care or treatment by a licensed physician of a disease, condition or injury or pursuant to a prescription of a licensed physician; and

4. The possession of a substance specified in subsection (A) of this section which is used as part of a known manufacturing process or industrial operation when the possessor has

obtained a permit from the Oklahoma State Department of Health or the federal government.

D. Any person convicted of violating any provision of subsection (A) or (B) of this section shall be guilty of a crime punishable by imprisonment of not more than ninety (90) days or by the imposition of a fine not to exceed Five Hundred Dollars ($500.00), or by both such imprisonment and fine. Each violation shall be considered a separate offense.

§ 2408. Endeavor and conspiracy

Any person who offers, solicits, attempts, endeavors, or conspires to commit any offense defined in 21 CNCA § 2101 et seq. shall be subject to the penalty prescribed for the offense, the commission of which was the object of the endeavor or conspiracy.

§ 2409. Additional penalties

Any penalty imposed for violation of this article shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

§ 2410. Conditional discharge for possession as first offense

Whenever any person who has not previously been convicted of any offense under this act or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant,

depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled dangerous substance under 21 CNCA § 2402, the Court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require including the requirement that such person cooperate in a treatment and rehabilitation program of a state-supported or state-approved facility, if available. Upon violation of a term or condition, the Court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the Court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

Any expunged arrest or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire or any other public or private purpose; provided, that, any such plea of guilty or finding of guilt

shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant.

§ 2411. General penalty clause

Any person who violates any provision of this act not subject to a specific penalty provision is guilty of a crime punishable by confinement for not more than three (3) years, or by a fine of not more than Fifteen Thousand Dollars ($15,000.00), or both.

§ 2412. Second or subsequent offenses

An offense shall be considered a second or subsequent offense under this act, if, prior to his conviction of the offense, the offender has at any time been convicted of an offense or offenses under this act, under any statute of the United States, or of any nation or state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, as defined by this act.

§ 2413. Bar to prosecution

If a violation of this act is a violation of a federal law or the law of another state or Indian nation, a conviction or acquittal under federal law or the law of another state or nation for the same act is a bar to prosecution in this Nation.

§ 2413.1. Gasoline or paint sniffing illegal

A. It shall be a crime for any person to sniff or inhale gasoline or any other motor fuel or any paint, thinner, glue or cleaner or substance which provides and intoxicating vapor with the intent to become intoxicated.

B. It shall be a crime for any person to distribute to any person gasoline or any other motor fuel or any paint, thinner, glue, cleaner or substance which provides and intoxicating vapor knowing or having reasonable cause to believe the person receiving the substance will use the substance for the purpose of inhaling the intoxicating vapor with the intent to become intoxicated.

C. It shall be a crime for any person to fail to report local law enforcement, the act of any person who inhales gasoline or any other motor fuel or any paint, thinner, cleaner, glue or substance which provides an intoxicating vapor for the purpose of intoxication.

TRAFFICKING IN ILLEGAL DRUGS ACT

§ 2414. Short title

This act shall be known and may be cited as the Trafficking in Illegal Drugs Act.

§ 2415. Application—Fines and penalties

A. The provisions of the Trafficking in Illegal Drugs Act, 21 CNCA § 2414 et seq., shall apply to persons convicted of violations with respect to the following substances:

1. Marijuana,

2. Cocaine or coca leaves,

3. Heroin,

4. Amphetamine or methamphetamine,

5. Lysergic acid diethylamide (LSD),

6. Phencyclidine (PCP),

7. Cocaine base, commonly known as "crack" or "rock".

B. Except as otherwise authorized by the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq., it shall be unlawful for any person to:

1. Knowingly distribute, manufacture, bring into this Nation or possess a controlled substance specified in subsection (A) of this section in the quantities specified in subsection (C) of this section; or

2. Possess any controlled substance with the intent to manufacture a controlled substance specified in subsection (A) of this section in quantities specified in subsection (C) of this section; or

3. Use or solicit the use of services of a person less than eighteen (18) years of age to distribute or manufacture a controlled dangerous substance specified in subsection (A) of this title in quantities specified in subsection (C) of this section.

Violation of this section shall be known as "trafficking in illegal drugs".

Any person who commits the conduct described in paragraph 1, 2 or 3 of this subsection and represents the quantity of the controlled substance to be an amount described in subsection (C) of this section shall be deemed guilty of a crime.

C. In the case of a violation of the provisions of subsection (B) of this section, involving:

1. Marijuana: twenty-five (25) pounds or more of a mixture or substance containing a detectable amount of marijuana, such violation shall be a crime;

2. Cocaine or coca leaves: twenty-eight (28) grams or more of a mixture or substance containing a detectable amount of cocaine or coca leaves, such violation shall be a crime;

3. Heroin: ten (10) grams or more of a mixture or substance containing a detectable amount of heroin, such violation shall be a crime;

4. Amphetamine or methamphetamine: twenty (20) grams or more of a mixture or substance containing a detectable amount of amphetamines or methamphetamine, such violation shall be a crime;

5. Lysergic acid diethylamide (LSD): one (1) gram or more of a substance containing a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD), such violation shall be a crime;

6. Phencyclidine (PCP): one (1) ounce or more of a substance containing a mixture or substance containing a detectable amount of phencyclidine (PCP), such violation shall be a crime;

7. Cocaine base: five (5) grams or more of a mixture or substance described in paragraph 2 of this subsection which contains cocaine base, such violation shall be a crime.

D. Any person who violates the provisions of this section with respect to a controlled substance specified in subsection (A) of this section in a quantity specified in subsection (C) shall be deemed guilty of a crime.

§ 2416. Apportionment of fines

The fines collected pursuant to 21 CNCA § 2415 shall be apportioned as follows:

1. Forty percent (40%) shall be distributed to the revolving fund established pursuant to the provisions of 21 CNCA § 2107 to be used for the enforcement of the Uniform Controlled Dangerous Substances Act;

2. Forty percent (40%) shall be distributed to the Drug Abuse Education Revolving Fund to be used for drug abuse education programs within the Nation;

3. Twenty percent (20%) shall be distributed to the Court Fund.

§ 2417. Drug Abuse Education Revolving Fund

There is hereby created in the National Treasury a revolving fund to be designated the "Drug Abuse Education Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fines collected pursuant to the Trafficking in Illegal Drugs Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the for drug abuse education programs.

§ 2418. Distributing controlled substance within 1,000 feet of educational facilities, recreation centers or public parks—Penalties

A. Any person who violates 21 CNCA § 2401 by distributing a controlled substance to an individual, in or on, or within one thousand (1,000) feet of the real property comprising a public or private elementary or secondary school, public vocational school, public or private college or university, recreation center or public park, including state parks and recreation areas, shall be guilty of a crime.

B. It shall not be a defense to prosecution for a violation of this section that the violator was unaware that the prohibited conduct took place:

1. While on or within one thousand (1,000) feet of any school property; or

2. While on recreation center grounds or on public park grounds, including state parks and recreation areas.

§ 2419. Use of minors in transportation, sale, etc. of controlled dangerous substances—Penalties

A. It shall be unlawful for any individual eighteen (18) or more years of age to solicit, employ, hire, or use an individual under eighteen (18) years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled dangerous substance.

B. A person who violates subsection (A) of this section shall be guilty of a crime.

C. It shall not be a defense to this section that a person did not know the age of an individual.

ARTICLE V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

§ 2501. Powers of enforcement personnel

Any peace officer may:

1. Carry firearms;

2. Execute search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this Nation;

3. Make an arrest without warrant of any person he has probable cause for believing has committed a crime under this act or a violation of 21 CNCA § 2402;

4. Make seizures of property pursuant to the provisions of this act;

5. Perform such other lawful duties as are required to carry out the provisions of this act.

§ 2502. Inspections

A. Prescriptions, orders, and records, required by this act, and stock of substances specified in this act shall be open for inspection only to specifically designated or assigned Nation officers, whose duty it is to enforce the laws of this Nation relating to controlled dangerous substances. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

B. Any peace officer or agency charged with administration of this act is authorized to make administrative inspections of controlled premises in accordance with the following provisions:

1. For purposes of this act only, **"controlled premises"** means:

a. Places where persons registered or exempted from registration requirements under this act are required to keep records; and

b. Places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled dangerous substance.

2. This section shall not be construed to prevent the inspection of books and records pursuant to the provisions of this act; nor shall this section be construed to prevent entries and administrative inspections at reasonable times without a warrant:

a. With the consent of the owner, operator, or agent in charge of the controlled premises;

b. In situations presenting imminent danger to health or safety;

c. In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

d. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

e. In all other situations where a warrant is not constitutionally required.

3. Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to:

a. Financial data;

b. Sales data other than shipment data; or

c. Pricing data.

§ 2503. Property subject to forfeiture

A. The following shall be subject to forfeiture:

1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act;

2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Act;

3. All property which is used, or intended for use, as a container for property described in paragraphs 1 and 2 of this subsection;

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in 21 CNCA §

2101, or in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection or when such property is unlawfully possessed by an occupant thereof, except that:

a. No conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act; and

b. No conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state or Indian nation or tribe;

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of the Uniform Controlled Dangerous Substances Act;

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act;

7. All moneys, coin and currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under this act. The burden of proof is upon claimants of the property to rebut this presumption;

8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner.

B. Any property or thing of value of a person is subject to forfeiture if it is established by a

preponderance of the evidence that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.

C. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all or part of a fine imposed pursuant to the provisions of 21 CNCA § 2415.

D. All items forfeited in this section shall be forfeited under the procedures established in 21 CNCA § 2506. Whenever any item is forfeited pursuant to this section the Cherokee Nation District Court shall order that such item, money, or monies derived from the sale of such item be deposited by the law enforcement agency which seized the item in the revolving fund provided for in 21 CNCA § 2107; provided, such item, money or monies derived from the sale of such item forfeited due to nonpayment of a fine imposed pursuant to the provisions of 21 CNCA § 2415 shall be apportioned as provided in 21 CNCA § 2416. Items, money or monies seized pursuant to subsections (A) and (B) of this section shall not be applied or considered toward satisfaction of the fine imposed by 21 CNCA § 2415. All raw materials used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act shall be summarily forfeited pursuant to the provisions of 21 CNCA § 2505.

E. All property taken or detained under this section shall not be repleviable, but shall remain in the custody of Cherokee Nation, subject only to the orders and decrees of a court of competent jurisdiction. The Attorney General of Cherokee Nation shall follow the procedures outlined in 21 CNCA § 2506 dealing with notification of seizure, intent of forfeiture, final disposition procedures, and release to innocent claimants with regard to all property included in this section detained by Cherokee Nation.

§ 2503.1. Transactions involving proceeds derived from illegal drug activity prohibited—Penalties

A. It is unlawful for any person knowingly or intentionally to receive or acquire proceeds and to conceal such proceeds, or engage in transactions involving proceeds, known to be derived from any violation of this act. The subsection does not apply to any transaction between an individual and the counsel of the individual necessary to preserve the right to representation of the individual, as guaranteed by the Cherokee Nation Constitution and by the Sixth Amendment of the United States Constitution. However, this exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of this act.

B. It is unlawful for any person knowingly or intentionally to give, sell, transfer, trade, invest, conceal, transport, or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any violation of this act.

C. It is unlawful for any person knowingly or intentionally to direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of this act.

D. It is unlawful for any person knowingly or intentionally to conduct a financial transaction involving proceeds derived from a violation of this act, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds known to be derived from a violation of this act, or to avoid a transaction reporting requirement under Nation or federal law.

E. Any person convicted of violating any of the provisions of this section is guilty of a crime.

§ 2503.2. Assessment for violation of act

A. Every person convicted of a violation of this act, must be assessed for each offense a sum of not less than Five Hundred Dollars ($500.00) nor more than Three Thousand Dollars ($3,000.00). The assessment is in addition to and not in lieu of any fines, restitution costs, other assessments, or forfeitures authorized or required by law.

B. The assessment provided for in this section must be collected as provided for collection of restitution costs and probation and parole fees and must be forwarded to the Drug Abuse Education Revolving Fund. Expenditures may be made only for drug abuse education and prevention.

§ 2504. Seizure of property

Any peace officer of this Nation shall seize property subject to forfeiture under this act when:

1. The seizure is incident to arrest or search warrant;

2. The property has been the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding under this act;

3. Probable cause exists to believe the property is dangerous to health or safety; or

4. Probable cause exists to believe the property has been used, or will be used, in violation of this act.

§ 2505. Summary forfeiture of certain substances

A. All controlled substances in Schedule I of this act and all controlled substances in Schedules II, III, IV, and V that are not in properly labeled containers in accordance with this act that are possessed, transferred, sold, or offered for sale in violation of this act are deemed contraband and shall be seized and summarily forfeited.

B. All hazardous materials and all property contaminated with hazardous materials described in 21 CNCA § 2503(A)(2), used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance, shall be summarily forfeited to the Nation and submitted to the Oklahoma State Bureau of Investigation for prompt destruction in accordance with Nation and federal law.

C. Species of plant from which controlled substances in Schedule I or II of this act, may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growth, may be seized by peace officers, summarily forfeited, and, in lieu of the eradication procedures contained in 21 CNCA § 2509, promptly cut and burned where seized.

§ 2506. Seizure of property—Notice of seizure and intended forfeiture proceeding—Verified answer and claim to property—Hearing—Evidence and proof—Proceeds of sale

A. Any peace officer of this Nation shall seize the following property:

1. Any property described in 21 CNCA § 2503(A)(4) or (6). Such property shall be held as evidence until a forfeiture has been declared or release ordered;

2. Any property described in 21 CNCA § 2503(B); or

3. Any property described in 21 CNCA § 2503(C).

B. Notice of seizure and intended forfeiture proceeding shall be filed in the Office of the Court Clerk of the Cherokee Nation District Court and shall be given all owners and parties in interest.

C. Notice shall be given according to one of the following methods:

1. Upon each owner or party in interest whose right, title or interest is of record in the Cherokee Nation Tax Commission, by mailing a copy of the notice by certified mail to the address as given upon the records of the Tax Commission;

2. Upon each owner or party in interest whose name and address is known to the Prosecuting Attorney of the Cherokee Nation District Court, by mailing a copy of the notice by registered mail to the last-known address; or

3. Upon all other owners or interested parties, whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the Nation.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the Court shall hear evidence upon the fact of the unlawful use and shall order the property forfeited to the state, if such fact is proved.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At a hearing in a proceeding against property described in 21 CNCA § 2503(A)(4) or (6) or (B) or (C), the requirements set forth in said paragraph or subsection, respectively, shall be satisfied by the Nation by a preponderance of the evidence.

H. The claimant of any right, title or interest in the property may prove his lien, mortgage or conditional sales contract to be a bona fide or innocent ownership interest and that his right, title or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the Court shall order the property released to the bona fide or innocent owner, lien holder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Nation and sold under judgment of the court, as on sale upon execution, except as otherwise provided for in 21 CNCA § 2503.

K. Property taken or detained under this section shall not be repleviable, but shall be deemed

to be in the custody of the Office of the Prosecuting Attorney of the Cherokee Nation District Court, subject only to the orders and decrees of the Court or the official having jurisdiction thereof.

L. The proceeds of the sale of any property not taken or detained by Cherokee Nation shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the property; and

3. The balance to the Narcotics Revolving Fund.

M. Whenever any vehicle, airplane or vessel is forfeited under this act, the Cherokee Nation District Court may order that the vehicle, airplane or vessel seized may be retained by the law enforcement agency which seized the vehicle, airplane or vessel for its official use.

N. If the Court finds that the Nation failed to satisfy the required showing provided for in subsection (G) of this section, the Court shall order the property released to the owner or owners.

§ 2507. Itemization and submission for destruction

Any peace officer of this Nation seizing any of the property described in 21 CNCA § 2503(1) or (2) shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted unless such property has been placed in lawful custody of a court or state or federal law enforcement agency. After all legal actions have been exhausted with respect to such property, the property shall be surrendered by the Court, law enforcement agency or person having custody of the same to the Oklahoma State Bureau of Investigation to be destroyed as provided in 21 CNCA § 2508. The property shall be accompanied with a written inventory on forms to be furnished by the Oklahoma State Bureau of Investigation.

§ 2508. Destruction of seized property

A. Except as otherwise provided, all property described in 21 CNCA § 2503(A)(1) and (2) which is seized or surrendered pursuant to the provisions of the Uniform Controlled Dangerous Substances Act shall be destroyed. The destruction shall be done by or at the direction of the Oklahoma State Bureau of Investigation, who shall have the discretion prior

to destruction to preserve samples of the substance for testing. Any such property submitted to the Oklahoma State Bureau of Investigation which it deems to be of use for investigative, training, educational, or analytical purposes may be retained by the Oklahoma State Bureau of Investigation in lieu of destruction.

B. All other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of a Cherokee Nation peace officer or the Prosecuting Attorney of the Cherokee Nation District Court may be disposed of by order of the District Court of Cherokee Nation when no longer needed in connection with any litigation. If the owner of the property is unknown to the Marshal service or Prosecuting Attorney of the Cherokee Nation District Court, the Marshal service shall hold the property for at least two (2) years prior to filing a petition for disposal with the District Court except for laboratory equipment which may be forfeited when no longer needed in connection with litigation, unless the property is perishable. The Prosecuting Attorney of the Cherokee Nation District Court shall file a petition in the District Court requesting the authority to conduct a sale of the property or to convert title of the property to Cherokee Nation for donation in accordance with subsection (F) of this section. The Prosecuting Attorney shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Marshal service or Prosecuting Attorney, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property, except laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner at least ten (10) days prior to the date of the hearing. Notice of a hearing on a petition for forfeiture or sale of laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the Uniform Controlled Dangerous Substances Act shall not be required. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the Nation, one such place being the Cherokee Nation Courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the Court may enter an order authorizing the Prosecuting Attorney of Cherokee Nation to donate the property pursuant to subsection (F) of this section or to sell the property to the highest bidder after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the Nation. The Prosecuting Attorney shall make a return of the sale and, when confirmed by the Court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be used for the purpose of purchasing controlled dangerous substances to be used as evidence in narcotic cases and fees for informers, or employees and other associated expenses necessary to apprehend and convict violators of the laws of Cherokee Nation regulating controlled dangerous substances. These funds shall be transferred to the Narcotics Revolving Fund. A return of the sale and, when confirmed by the

court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be used for the purpose of purchasing controlled dangerous substances to be used as evidence in narcotic cases and fees for informers, or employees and other associated expenses necessary to apprehend and convict violators of the laws of the Cherokee Nation regulating controlled dangerous substances. These funds shall be transferred to the Narcotics Revolving Fund.

C. Any property, including but not limited to uncontaminated laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, upon a Court order, may be donated for classroom or laboratory use by the Marshal Service or the Prosecuting Attorney of Cherokee Nation District Court to any public secondary school or vocational-technical school in this Nation or the State of Oklahoma.

§ 2509. Eradication

A. All species of plants from which controlled dangerous substances in Schedules I and II may be derived are hereby declared inimical to health and welfare of the public, and the intent of the Council is to control and eradicate these species of the plants in Cherokee Nation.

B. It shall be unlawful for any person to cultivate or produce, or to knowingly permit the cultivation, production, or wild growing of any species of such plants, on any lands owned or controlled by such person, and it is hereby declared the duty of every such person to destroy all such plants found growing on lands owned or controlled by him.

C. 1. Whenever any peace officer of the Nation shall receive information that any species of any such plants has been found growing on any private lands in Cherokee Nation, he shall notify the Marshal office; within five (5) days of receipt of such notice, the Marshal office shall notify the owner or person in possession of such lands that such plants have been found growing on the said lands and that the same must be destroyed within fifteen (15) days; when the fifteen (15) days have elapsed, the reporting peace officer shall cause an investigation to be made of the aforesaid lands, and if any such plants be found growing thereon, the Marshal office shall cause the same to be destroyed by cutting and burning the same.

2. Whenever any such plants are destroyed by order of the Marshals as provided herein, the cost of the same shall, if the work or labor be furnished by the marshals, be taxed against the lands whereon the work was performed, and shall be a lien upon such land in all manner and respects as a lien of judgment.

D. Knowingly violating the provisions of subsection (B) of this section is hereby declared, as to the owner, or person in possession of such lands, to be a crime.

E. In lieu of the eradication procedures provided for in subsections (B) and (C) of this section, all species of plants from which controlled dangerous substances in Schedules I and II of the Uniform Controlled Dangerous Substances Act may be derived, may be disposed of pursuant to the provisions of 21 CNCA § 2505(C).

§ 2510. Defenses—Descriptions

A. An exemption or exception set forth in this act shall constitute an affirmative defense. Such affirmative defense shall be in accordance with the presentation of an alibi defense prescribed in 22 CNCA § 585.

B. In any prosecution for a violation of any of the provisions of this act relating to a controlled dangerous substance named in any of the schedules set out in the act, it shall be sufficient in any information to allege a general description of the controlled dangerous substance and the schedule wherein listed without other specific description. Upon a trial under such information, it shall be sufficient to prove that the controlled dangerous substance is one listed within a particular Schedule without further identification.

ARTICLE VI. MISCELLANEOUS

§ 2603. Uniformity of interpretation

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states and nations which enact it.

§ 2604. Short title

This act shall be known and may be cited as the Uniform Controlled Dangerous Substances Act.

§ 2606. Severability

The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this act.

§ 2608. Headings

Article and section headings contained in this act shall not affect the interpretation of the meaning or intent of any provisions of this act.