

TITLE XV

CRIMINAL CODE

Chapter 1. General Provisions

- Section 15-1-1. Title and effective date.
- Section 15-1-2. (Reserved.)
- Section 15-1-3. Purpose and construction.
- Section 15-1-4. Enforcement of Code.
- Section 15-1-5. Territorial jurisdiction.
- Section 15-1-6. Time limitations.
- Section 15-1-7. Burden of proof.
- Section 15-1-8. Double jeopardy.
- Section 15-1-9. General definitions.

Chapter 2. Criminal Liability, Justification and Responsibility

- Section 15-2-1. Acts or omissions to act.
- Section 15-2-2. Culpability—General requirements.
- Section 15-2-3. Ignorance or mistake.
- Section 15-2-4. Accomplice liability.
- Section 15-2-5. Intoxication.
- Section 15-2-6. Entrapment.
- Section 15-2-7. Affirmative defenses.
- Section 15-2-8. Mental disease or defect excluding responsibility.

Chapter 3. Sentencing

- Section 15-3-1. Sentencing.
- Section 15-3-2. Fines.
- Section 15-3-3. Probation.
- Section 15-3-4. Imprisonment.
- Section 15-3-5. Registration of sex offenders.
- Section 15-3-6. Banishment.

Chapter 4. Capital Offenses and Sentencing Procedures

- Section 15-4-1. Capital offenses and sentencing procedures generally.
- Section 15-4-2. Determination of sentence.
- Section 15-4-3. Imposing sentence of banishment.
- Section 15-4-4. Banishment proceeding.
- Section 15-4-5. Review of judgment and sentence of banishment.
- Section 15-4-6. Aggravating circumstances.
- Section 15-4-7. Mitigating circumstances.

Chapter 5. Offenses: Inchoate Offenses

- Section 15-5-1. Criminal attempt.
- Section 15-5-2. Criminal conspiracy.

PUEBLO OF LAGUNA CODE

Section 15-5-3. Solicitation.

Chapter 6. Offenses Against the Person

- Section 15-6-1. Definitions.
- Section 15-6-2. Criminal homicide.
- Section 15-6-3. Murder.
- Section 15-6-4. Manslaughter.
- Section 15-6-5. Negligent homicide.
- Section 15-6-6. Assault.
- Section 15-6-7. Aggravated assault.
- Section 15-6-8. Battery.
- Section 15-6-9. Contributing to the delinquency of a minor.
- Section 15-6-10. Kidnapping.
- Section 15-6-11. Harassment.
- Section 15-6-12. Stalking.
- Section 15-6-13. False imprisonment.
- Section 15-6-14. Custodial interference.

Chapter 7. Sexual Abuse

- Section 15-7-1. Definitions.
- Section 15-7-2. Aggravated sexual abuse.
- Section 15-7-3. Sexual abuse.
- Section 15-7-4. Sexual abuse of a minor or ward.
- Section 15-7-5. Duty to report child abuse.
- Section 15-7-6. Interference with the duty to report child abuse.
- Section 15-7-7. Indecent exposure.

Chapter 8. Sexual Exploitation and Other Abuse of Children

- Section 15-8-1. Definitions.
- Section 15-8-2. Sexual exploitation of children.
- Section 15-8-3. Selling or buying of children.

Chapter 9. Offenses Against the Family

- Section 15-9-1. Bigamy.
- Section 15-9-2. Incest.
- Section 15-9-3. Abandonment of a child.
- Section 15-9-4. Abuse of a child.
- Section 15-9-5. Child neglect.
- Section 15-9-6. Failure to send children to school.
- Section 15-9-7. Nonsupport of dependent.
- Section 15-9-8. Illicit cohabitation.

Chapter 10. Weapons

- Section 15-10-1. Definitions.
- Section 15-10-2. Unlawful carrying of a deadly weapon.

CRIMINAL CODE

- Section 15-10-3. Negligent use of a deadly weapon.
- Section 15-10-4. Unlawful carrying of a deadly weapon on school premises.
- Section 15-10-5. Forfeiture of weapons.

Chapter 11. Offenses Against Property

- Section 15-11-1. Arson.
- Section 15-11-2. Reckless burning.
- Section 15-11-3. Criminal mischief.
- Section 15-11-4. Unauthorized graffiti.
- Section 15-11-5. Removal or destruction of protected places, burial sites and sacred objects.

Chapter 12. Theft and Related Offenses

- Section 15-12-1. Theft.
- Section 15-12-2. Robbery.
- Section 15-12-3. Burglary.
- Section 15-12-4. Aggravated burglary.
- Section 15-12-5. Theft by bad checks.
- Section 15-12-6. Credits cards.
- Section 15-12-7. Deceptive business practices.
- Section 15-12-8. Embezzlement.
- Section 15-12-9. Extortion.
- Section 15-12-10. Forgery.
- Section 15-12-11. Shoplifting.

Chapter 13. Falsification Offenses

- Section 15-13-1. Perjury.
- Section 15-13-2. Tampering with witnesses.
- Section 15-13-3. Tampering with evidence.
- Section 15-13-4. Tampering with public records.
- Section 15-13-5. Libel and slander.

Chapter 14. Offense Against the Public Order

- Section 15-14-1. Disobedience to lawful orders of the court.
- Section 15-14-2. Disorderly conduct.
- Section 15-14-3. Escape.
- Section 15-14-4. Maintaining or creating a public nuisance.
- Section 15-14-5. Misuse of entrusted property and government property.
- Section 15-14-6. Refusing to aid an officer.
- Section 15-14-7. Obedience to police officers.
- Section 15-14-8. Unlawful flight from pursuing law enforcement vehicle.
- Section 15-14-9. Homicide by vehicle.
- Section 15-14-10. Public officers and employees to obey chapter; exceptions.
- Section 15-14-11. Racing on roadways.
- Section 15-14-12. Throwing or dropping objects at moving vehicles.
- Section 15-14-13. Resisting lawful arrest.
- Section 15-14-14. Intoxication—Public or private.

PUEBLO OF LAGUNA CODE

- Section 15-14-15. Intoxication by inhaling toxic vapors.
- Section 15-14-16. Driving under the influence of intoxicating liquor.
- Section 15-14-17. Implied consent.
- Section 15-14-18. Use of tests in criminal or civil actions.
- Section 15-14-19. Reckless driving.
- Section 15-14-20. Providing alcohol to minors.

Chapter 15. Narcotics and Dangerous Drugs

- Section 15-15-1. Applicability.
- Section 15-15-2. Definitions.
- Section 15-15-3. Schedule of controlled substances.
- Section 15-15-4. Prohibited acts.
- Section 15-15-5. Attempt and conspiracy.

Chapter 16. Animals and Livestock

- Section 15-16-1. Making false reports of livestock owned.
- Section 15-16-2. Misbranding.
- Section 15-16-3. Obstructing or interfering with livestock round-ups.
- Section 15-16-4. Refusing to brand or mark livestock.

CHAPTER 1. GENERAL PROVISIONS**Section 15-1-1. Title and effective date.**

A. This title shall be known as the "Pueblo of Laguna Law and Order Code" and shall be cited as POL, title XV.

B. The provisions of this title shall become effective upon approval by the Pueblo Council. Prosecutions of offenses committed prior to the effective date shall be governed by, prosecuted and punished under laws existing at the time of their commission.

C. If any section or application of the Law and Order Code is held invalid, the remainder, or its application to other persons or situations, shall not be affected.

Section 15-1-2. (Reserved.)**Section 15-1-3. Purpose and construction.**

The provisions of this title shall be construed in accordance with these general principles and purposes:

- A. To prohibit and prevent the commission of offenses and give fair warning to all persons entering the territorial jurisdiction of the Pueblo Courts about conduct which is proscribed;
- B. To define adequately the conduct and mental state which constitute each offense and safeguard from condemnation conduct that is without fault;
- C. To prescribe penalties which are proportionate to the seriousness of the offense and which permit recognition of differing rehabilitative needs of individual offenders, while simultaneously recognizing the Pueblo's need to provide for the safety and welfare of the public;
- D. To prevent arbitrary and oppressive treatment of persons accused and convicted of offenses and to promote the correction and rehabilitation of such persons; and
- E. To apply the provisions of this title equally to all persons subject to the criminal jurisdiction of the Pueblo Courts.

Section 15-1-4. Enforcement of Code.

The overall responsibility for enforcement of the Law and Order Code lies with the Pueblo Council. However, the police department and the Pueblo Prosecutor's Office shall have the primary responsibility of enforcing the Law and Order Code. The Pueblo Council may also authorize other police officers, peace officers, Pueblo officials, or other persons to enforce the provisions of the Law and Order Code, but only upon the sanctioning of any specific person or group of persons by the Pueblo Council, and only upon the commissioning of such person(s) in accordance with the procedures set out for the "commissioning" of such person(s).

Section 15-1-5. Territorial jurisdiction.

A. The Pueblo Courts shall have jurisdiction over any person who commits an offense if that conduct constitutes any element of an offense or the resulting conduct occurs within the territorial jurisdiction of the Pueblo Courts as defined in this section, unless such jurisdiction is inconsistent with federal law.

B. The territorial jurisdiction of the Pueblo Courts shall extend to and include:

- (1) All land within the exterior boundaries of the Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation;
- (2) All dependent Indian communities determined to be under the jurisdiction of the Pueblo and the Pueblo Courts;
- (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Section 15-1-6. Time limitations.

A. A prosecution for the capital offense of murder may be commenced at any time.

B. Prosecutions for other offenses are subject to the following periods of limitation:

- (1) A prosecution for the following capital offenses must be commenced within six (6) years after they are committed: Aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, sexual exploitation of children, and selling or buying of children. However, the periods of limitation are tolled for enumerated offenses against children, pursuant to subsection (2) below.
- (2) The applicable time period for commencing prosecution for an alleged violation of sections 15-6-3, 15-7-2, 15-7-3, 15-7-4, 15-8-2, 15-8-3 and 15-8-4 shall not begin running until the victim attains the age of eighteen (18) or the violation is reported to a law enforcement agency, whichever occurs first.
- (3) A prosecution for any other offense must be commenced within two (2) years after the offense is committed.

Section 15-1-7. Burden of proof.

A. No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed.

B. Subsection A. of this section does not:

- (1) Require the disproof of an affirmative defense unless and until there is evidence supporting such defense; or
- (2) Apply to any defense which the Code or another statute plainly requires the defendant to prove by a preponderance of the evidence.

C. Jurisdiction is not an element of the offense, nor is the statute of limitations or any other matter similarly unconnected with the harm or evil, incident or conduct, sought to be prevented by the offense.

D. Neither justification, nor excuse as defenses to the offense are elements of the offense, and such defenses, like any other defense, may be established by a preponderance of the evidence.

Section 15-1-8. Double jeopardy.

A. If the defendant has been prosecuted for one (1) or more offenses arising out of a single criminal episode or the same facts as the original prosecution, a subsequent prosecution for the same or a different offense arising out of such episode or facts is barred if:

- (1) The subsequent prosecution was or should have been tried under this title in the former prosecution, unless such subsequent trial has been ordered as a separate trial by the judge; and
- (2) The former prosecution:
 - (a) Resulted in acquittal;
 - (b) Resulted in conviction;
 - (c) Was improperly terminated; or
 - (d) Was terminated by a final order of judgment for the defendant that has not been reversed, set aside or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

B. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside or vacated.

C. There is a conviction if:

- (1) The prosecution resulted in a judgment of guilty that has not been set aside or vacated;
- (2) There is a verdict of guilty that has not been reversed, set aside, or vacated and is capable of supporting a judgment; or
- (3) A plea of guilty was accepted by the court.

D. There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn in; or, if the matter was to be tried without a jury, after the first witness is sworn. However, termination of prosecution is not improper if:

- (1) The defendant consents to the termination;
- (2) The defendant waives his right to object to the termination; or

- (3) The court finds and states for the record that the termination is necessary because:
 - (a) It is physically impossible to proceed with the trial in conformity to the law; or
 - (b) There is a legal defect in the proceeding not attributable to the prosecution that would make any judgment entered upon a verdict reversible as a matter of law; or
 - (c) Prejudicial conduct in or out of the courtroom not attributable to the prosecution makes it impossible to proceed with the trial without injustice to the defendant or to the prosecution; or
 - (d) The jury is unable to agree on a verdict; or
 - (e) A false statement of a juror on voir dire prevents a fair trial.

E. A subsequent prosecution of an offense is not barred if the former prosecution resulted in a judgment of guilt held invalid in a subsequent proceeding on a writ of habeas corpus, coram nobis, or similar collateral attack.

F. Prosecution of an offense is not barred by virtue of the fact that the defendant could be or has been charged under 18 U.S.C. Sec. 1153 (the Major Crimes Act), even if such charge has resulted in a guilty plea; or conviction or acquittal of the defendant in a federal court following trial, nor is it barred by other proceedings in any court other than the Pueblo Court.

Section 15-1-9. General definitions.

In this title, unless a different meaning plainly is required, the following definitions shall apply:

Act or action means a bodily movement whether voluntary or involuntary.

Acted includes, where relevant, "omitted to act".

Actor includes, where relevant, a person guilty of an omission.

Child means an individual who is not married, and who has not attained the age of eighteen (18).

Child abuse as it applies to any use before the court may include:

- (1) A child is dead or exhibits evidence of skin producing bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and such condition is not justifiably explained or may not be the product of an accidental occurrence; or
- (2) Any case in which a child is subjected to sexual abuse, sexual exploitation, sexual contact or prostitution.

Conduct means an action or omission and its accompanying state of mind, or where relevant, a series of acts and omissions.

Element of an offense means such conduct, such attendant circumstances, or such a result of conduct as:

- (1) Is included in the description of the forbidden conduct in the definition of the offense;
or
- (2) Establishes the required kind of culpability; or
- (3) Negates an excuse or justification for such conduct; or
- (4) Negates a defense under the statute of limitations; or
- (5) Establishes jurisdiction or venue.

Knowingly or *with knowledge* has the meaning specified in section 15-2-2 and equivalent terms such as "recklessness" or "with recklessness" have the same meaning.

Local child protective services agency means that agency of the federal government or of the Pueblo which has the responsibility for child protection on the Pueblo.

Local law enforcement agency means that agency of the federal government or the Pueblo law enforcement agency that has the responsibility for the investigation of an instance of alleged child abuse within the Reservation.

Negligently has the same meaning specified in section 15-2-2 and equivalent terms such as "negligence" or "with negligence" have the same meaning.

Persons, he, actor means and includes any natural person, either female or male, and, where relevant, a corporation or unincorporated association.

Police officer or *peace officer* means any person who is duly commissioned by the Pueblo Council to act in the capacity of an officer or peace officer for the Pueblo, and who is vested by law with a duty to maintain public order or make arrests, whether that duty extends to all offenses or is limited to specific classes of offenses or offenders.

Possess means to have physical possession or otherwise to exercise dominion or control over property.

Property means anything of value, tangible or intangible, public or private, real or personal, including documents evidencing value or ownership.

Pueblo official or *officer* means any person who is an officer or employee of the Pueblo, including a peace officer, whether elected, appointed or otherwise employed and any person performing a Pueblo governmental function; the term does not include jurors or witnesses.

Purposely has the meaning specified in section 15-2-2 and equivalent terms such as willfully, intentionally, or with intent have the same meaning.

Reasonably believes or *reasonable belief* designates a belief which the actor is not reckless or negligent in holding.

Recklessly has the same meaning specified in section 15-2-2 and equivalent terms such as "recklessness" or "with recklessness" have the same meaning.

Statute includes the Constitution of the Pueblo of Laguna and a local law or ordinance enacted by the Pueblo Council.

Unlawful means contrary to law or, where the context so requires, not permitted by law; it does not necessarily mean immoral.

Voluntary means that something is done, given or made in accordance with one's own free will, is not accidental, and may imply full awareness of the nature and probable consequences of one's actions.

CHAPTER 2. CRIMINAL LIABILITY, JUSTIFICATION AND RESPONSIBILITY

Section 15-2-1. Acts or omissions to act.

A. A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

B. The following are not voluntary acts within the meaning of this chapter:

- (1) A reflex or convulsion;
- (2) A bodily movement during unconsciousness or sleep;
- (3) Conduct during hypnosis; or
- (4) A bodily movement that otherwise is not a product of the effort.

C. Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

- (1) The commission is expressly made sufficient by the law defining the offense; or
- (2) A duty to perform the omitted act is otherwise imposed by law.

D. Possession is an act, within the meaning of this chapter, if the possessor knowingly procured or received the thing possessed or was aware of his or her control thereof for a sufficient period to have been able to terminate his possession.

Section 15-2-2. Culpability—General requirements.

A. A person is not guilty of an offense unless he acted purposely, knowingly, recklessly, or negligently, as the law may require, with respect to each element of the offense; unless his acts constitute an offense involving strict liability.

B. *Culpable mental states.* The following definitions apply with respect to the offenses set forth in this title:

- (1) "Purposely" means a person acts purposely with respect to an element of an offense:
 - (a) If the element involves the nature of his or her conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

- (b) If the element involves the attendant circumstances, he is aware of the existence of such circumstances; or he believes or hopes that they exist.
- (2) "Knowingly". A person acts knowingly with respect to an element of an offense:
 - (a) If the element involves the nature of his or her conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
 - (b) If the element involves a result of his or her conduct, he is aware that it is practically certain that his conduct will cause such a result.
 - (3) "Recklessly". A person acts recklessly with respect to an element of an offense when he consciously disregards a substantial and unjustifiable risk that the element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.
 - (4) "Negligently". A person acts negligently with respect to an element of an offense when he should be aware of a substantial and unjustifiable risk that the element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his or her conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.
 - (5) "Strict liability". An element of an offense shall involve strict liability only when the definition of the offense or element clearly indicated a legislative purpose to impose strict liability by use of the phrase "strict liability" or other terms of similar import. When so used, no proof of a culpable mental state is required to establish the commission of the element or offense.

C. When the culpability sufficient to establish an element of an offense is not specifically prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect to that element.

D. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

E. When the law provides that negligence suffices to establish an element of an offense, such element is also established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element is also established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element is also established if a person acts purposely.

F. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is or should be aware of a high probability of its existence, unless he actually believes that it does not exist.

G. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

Section 15-2-3. Ignorance or mistake.

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

- (1) The requirement or mistake negates a specific mental state required to establish an element of the offense; or
- (2) The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

B. A belief that conduct does not legally constitute an offense is a defense to prosecution for that offense based on that conduct only when:

- (1) The statute or other enactment defining the offense is not known to the actor and has not been published or reasonably made available prior to the conduct alleged; or
- (2) He acts in reasonable reliance upon an official statement of law, afterward determined to be invalid or erroneous, contained in:
 - (a) A statute or other enactment;
 - (b) A judicial decision, opinion or judgment;
 - (c) An administrative order or grant of permission; or
 - (d) An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.

Section 15-2-4. Accomplice liability.

A person is an accomplice of another person in the commission of an offense if that person:

- A. With the purpose of promoting or facilitating the commission of an offense:
 - (1) Solicits such other person to commit it; or
 - (2) Aids or agrees or attempts to aid such other person in planning or committing it; or
 - (3) Having a legal duty to prevent the commission of the offense, fails to make proper effort to do so.
- B. His conduct is expressly declared by law to establish his complicity.

Section 15-2-5. Intoxication.

A. Except as provided in subsection D. of this section, intoxication of the actor is not a defense unless it negates an element of the offense.

B. When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

C. Intoxication does not, in itself, constitute mental disease within the meaning of section 15-2-8.

D. Intoxication which; (i) is not self-induced; or (ii) is pathological, is an affirmative defense if by reason of such intoxication the actor, at the time of his or her conduct, lacks substantial capacity either to appreciate its criminality (wrongfulness) or to conform his conduct to the requirements of the law.

E. Except as otherwise provided in this title, intoxication can be proven by any external indications, which may be supported by proof of specific consumption or specific blood alcohol content.

F. Definitions. In this chapter, unless a different meaning plainly is required:

- (1) "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.
- (2) "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible.
- (3) "Self-induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which is to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of a crime.

Section 15-2-6. Entrapment.

A. A public law enforcement official or person acting in cooperation with such an official perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of an offense:

- (1) He induces or encourages another person to engage in conduct constituting such offense;
- (2) Makes knowingly false representations designed to induce the belief that such conduct is not prohibited; or
- (3) Employs methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

B. Except as provided in subsection C. of this section, a person prosecuted for an offense acquitted if he proves by a preponderance of the evidence that his conduct occurred in; to an entrapment. The issue of entrapment shall be tried by the court in the absence of a jury.

C. The defense afforded by this section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person perpetrating the entrapment.

Section 15-2-7. Affirmative defenses.

A. *Duress.* It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his position would have been unable to resist.

- (1) The defense provided by this chapter is unavailable if the actor recklessly or negligently placed himself in a situation in which it was probable that he would be subjected to duress.
- (2) The fact that the conduct of the actor would otherwise be justifiable under subsection C. of this section, does not preclude the defense of duress.

B. *Consent.* The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

- (1) When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if:
 - (a) The bodily harm consented to or threatened by the conduct consented to is not serious; or
 - (b) The conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport or other lawful activity; or
 - (c) The consent establishes a justification for the conduct under subsection C. of this section.
- (2) Unless otherwise provided by the Code or by the law defining the offense, assent does not constitute consent if:
 - (a) It is given by a person who by reason of youth, mental disease or defect, or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
 - (b) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or
 - (c) It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

- (d) It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

C. *Justification.* In any prosecution based on conduct which is justifiable under this chapter, justification is an affirmative defense. However, the fact that conduct is justifiable under this chapter does not abolish or impair any civil remedy for such conduct.

- (1) Conduct which the actor believes to be necessary to avoid harm or evil to himself or another is justifiable, provided that:
 - (a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged;
 - (b) Neither the Code, nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
 - (c) A legislative purpose to exclude the justification claimed does not otherwise plainly appear.
- (2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils in appraising the necessity for his conduct, the justification afforded by this subsection is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

D. *Public duty.* Conduct is justifiable when it is required or authorized by:

- (1) The law defining the duties or functions of a tribal official or the assistance rendered to such official in the performance of his or her duties; or
- (2) The law governing execution of legal process; or
- (3) The judgment or order of a competent court or tribunal; or
- (4) Any other provision of law imposing a public duty.

E. *Use of force in self-protection or protection of third person.* The use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself or a third person against the use of unlawful force by another person.

- (1) The use of deadly force is not justifiable under this subsection unless the actor believes that such force is necessary to protect himself or a third person against death, serious bodily harm, kidnapping or sexual intercourse compelled by force or threat.
- (2) The use of deadly force is not justifiable if:
 - (a) The actor, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter; or
 - (b) The actor is attempting to commit, is committing, or is fleeing after the commission of an offense; or

- (c) The actor was the aggressor or was engaged in combat by agreement unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and the other person, notwithstanding, continues to threaten the use of unlawful force.

F. *Use of force in protection of property.* Use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible movable property, provided that such land or movable property is, or is believed by the actor to be, in his possession or in the possession of another person for whose protection he acts.

- (1) The use of deadly force is not justifiable under this subsection unless the actor believes that:
 - (a) The person against whom the force is used is attempting to dispossess him of his or her dwelling otherwise than under a claim of right to its possession; or
 - (b) The person against whom the force is used is attempting to commit or consummate arson, burglary, robbery, or other felonious theft or property destruction and either has:
 - (i) Employed or threatened deadly force against or in the presence of the actor; or
 - (ii) The use of force other than deadly force to prevent the commission or the consummation of the crime would expose the actor or another in his presence to substantial danger or serious bodily harm.

G. *Use of force in law enforcement.* A peace officer, or any person acting by his command in the peace officer's aid and assistance, is justified in using deadly force when:

- (1) In effecting the arrest or preventing an escape from custody following an arrest, the officer reasonably believes both that:
 - (a) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and
 - (b) The person to be arrested is attempting to escape by use of a deadly weapon.
- (2) The officer is in the performance of his or her legal duty or the execution of legal process and reasonably believes that the use of force is necessary to protect himself or others from imminent danger of life.

H. *Use of force by persons with special responsibility for care, discipline or safety of others.* The use of force upon or toward the person of another is justifiable if:

- (1) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian or other responsible person; and
 - (a) The force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his or her misconduct; and

- (b) The force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme pain, mental distress or gross degradation.
- (2) The actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor; and
 - (a) The actor believes the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school class or other group, and that the use of such force is consistent with the welfare of the minor; and
 - (b) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under subsection H.(1)(b) of this section.
- (3) The actor is the guardian or other person similarly responsible for the general care and supervision of the incompetent person; and
 - (a) The force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his or her misconduct, or when such incompetent person is in a hospital or other institution for his care and custody, for the maintenance of reasonable discipline in such institution; and
 - (b) The force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme or unnecessary pain, mental distress or humiliation.
- (4) The actor is a doctor, therapist, paraprofessional, or a person assisting the doctor at his discretion; and
 - (a) The force used is for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and
 - (b) The treatment is administered with the consent of the patient, or if the person is a minor or an incompetent person, with the consent of his or her parent or guardian or other person legally competent to consent in his behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.
- (5) The actor is a warden or other authorized official of a correctional institution; and
 - (a) He believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution, unless his belief in the lawfulness of the rule or procedure sought to be enforced is erroneous and his error is due to ignorance or mistake as to the provisions of this title, any other provision of the criminal law or the law governing the administration of the institution; and
 - (b) If deadly force is used, its use is otherwise justifiable under this title.

Section 15-2-8. Mental disease or defect excluding responsibility.

A. A person is not responsible for criminal conduct if, at the time of such conduct as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his or her conduct or to conform his conduct to the requirement of the law.

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

C. Mental disease or defect excluding responsibility is an affirmative defense.

D. Evidence of mental disease or defect excluding responsibility is admissible and can be used as an affirmative defense.

E. When the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and judgment shall so state.

F. No persons who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him or assist in his own defense, shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

G. Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, the court shall appoint at least one (1) qualified psychiatrist to examine and report upon the mental condition of the defendant. The court may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

- (1) In such examination, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.
- (2) The report of the examination shall include the following:
 - (a) A description of the nature of the examination;
 - (b) A diagnosis of the mental condition of the defendant;
 - (c) If the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense; and
 - (d) When a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged with, shall be filed with the court.
- (3) If the examination of the defendant cannot be conducted by reason of the unwillingness of the defendant to participate, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect.

- (4) The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the tribal prosecutor and to counsel for the defendant.

CHAPTER 3. SENTENCING

Section 15-3-1. Sentencing.

A. No person convicted of an offense shall be sentenced otherwise than in accordance with this chapter.

B. The court may suspend the imposition of sentence on a person who has been convicted of a crime, may order him to be committed in lieu of sentence, or may sentence him as follows:

- (1) To pay a fine.
- (2) To be placed on probation.
- (3) To imprisonment for a definite period of time within the term authorized.
- (4) To fine and probation or fine and imprisonment, or to a term of imprisonment and probation.
- (5) To banishment for the following enumerated crimes:
 - (a) Murder, as defined in section 15-6-3;
 - (b) Aggravated sexual abuse, as defined in section 15-7-2;
 - (c) Sexual abuse, as defined in section 15-7-3;
 - (d) Sexual abuse of a minor or ward, as defined in section 15-7-4;
 - (e) Sexual exploitation of children, as defined in section 15-8-2; and
 - (f) Selling or buying of children, as defined in section 15-8-3.

C. This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty. Such a judgment or order may be included in the sentence.

Section 15-3-2. Fines.

A. The court shall not sentence a defendant only to pay a fine, when any other disposition is authorized by law, unless having regard to the nature and circumstances of the crime and to the history and character of the defendant, it is of the opinion that the fine alone suffices for protection of the public.

B. The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation unless:

- (1) The defendant has derived a pecuniary gain from the crime; or

- (2) The court is of the opinion that a fine is specifically adapted to deterrence of the crime involved or to the correction of the offender.

C. In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

D. A person who has been convicted of an offense may be sentenced to pay a fine not exceeding the amount provided for by the particular offense. In any case, the fine shall not exceed five thousand dollars (\$5,000.00), or the maximum amount allowed under federal law.

Section 15-3-3. Probation.

When a person who has been convicted of a crime is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, or assistance or direction that the probation service can provide.

Section 15-3-4. Imprisonment.

A. The court shall deal with a person who has been convicted of a crime without imposing a sentence of imprisonment unless, having regard of the nature and the circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is necessary for the protection of the public.

B. A person who is convicted may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed the term provided for by the particular offense. In any case, the term shall not exceed one (1) year, or the maximum term allowed under federal law.

Section 15-3-5. Registration of sex offenders.

A. A person who has been convicted in any state or another Tribe of offenses known as rape, carnal knowledge of pupil by teacher, prostitution, incest, child molestation, indecent exposure, or any other offense involving lewd or lascivious conduct, shall, within thirty (30) days after entering the Reservation for the purpose of residing or setting up temporary domicile, register with the Pueblo Police Department. At the time of registering, such person shall sign a statement in writing giving information of said convictions. The police shall fingerprint and photograph such person and record his address.

B. A person who is subject to registration under this chapter and fails to register, is guilty of a violation of this chapter and shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

Section 15-3-6. Banishment.

A. The court shall impose the sanction of banishment only for the following enumerated crimes: Murder, aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, sexual exploitation of children, and selling or buying of children. Such offense shall be denominated as a "capital offense" and only capital offenses are eligible for the penalty of banishment. These crimes are deemed to be particularly heinous offenses and therefore deserving of the sanction of banishment.

B. The penalty of banishment shall be imposed only in conformance with the bifurcated sentencing procedure outlined in section 15-4-1.

C. Banishment from the Reservation may constitute the loss of membership and associated rights in the Pueblo, under certain circumstances that may be considered at the time of sentencing, as provided for under sections 15-4-1 through 15-4-6.

CHAPTER 4. CAPITAL OFFENSES AND SENTENCING PROCEDURES**Section 15-4-1. Capital offenses and sentencing procedures generally.**

A. At the conclusion of all capital offense cases heard by the jury, and after proper charge from the court and argument of counsel, the jury shall retire to consider a verdict of guilty or not guilty without considering punishment. In nonjury capital offense cases, the judge shall first consider a finding of guilty or not guilty without considering punishment.

B. Upon a verdict by the jury or judge that the defendant is guilty of a capital offense, or upon a plea of guilty to a capital offense, the court shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to banishment, a jail term, or a fine; or both a jail term and a fine, as authorized herein.

- (1) In a jury trial, the sentencing proceeding shall be considered within fifteen (15) days by the original trial judge before the original trial jury.
- (2) In a nonjury trial, the sentencing proceeding shall be conducted within ten (10) days by the original trial judge.
- (3) In the case of a plea of guilty to a capital offense, the sentencing proceeding shall be conducted within thirty (30) days by the original trial judge or by a jury upon the demand of the defendant who has been adjudicated guilty of a capital offense.

C. In the sentencing proceeding, all evidence admitted at the trial shall be considered and additional evidence may be presented as to the circumstances of the crime and as to any aggravating or mitigating circumstances pursuant to sections 15-4-6 and 15-4-7.

D. In a jury sentencing proceeding, the judge shall give appropriate instructions and allow arguments and the jury shall retire to determine the punishment to be imposed. In a nonjury sentencing proceeding, or upon a voluntary plea of guilty by a defendant, where no jury has been demanded, the judge shall allow argument and determine the punishment to be imposed.

Section 15-4-2. Determination of sentence.

A. Capital sentencing deliberations shall be guided by the following considerations:

- (1) Whether aggravating circumstances exist as enumerated in section 15-4-6.
- (2) Whether mitigating circumstances exist as enumerated in section 15-4-7.
- (3) Whether other mitigating circumstances exist.

B. After weighing the aggravating circumstances and the mitigating circumstances, and weighing them against each other, and considering both the defendant and the crime, the jury or judge shall determine whether the defendant should be sentenced to banishment, or jail term, or a fine, or any combination thereof.

Section 15-4-3. Imposing sentence of banishment.

A. In a jury sentencing proceeding in which the jury unanimously finds beyond a reasonable doubt and specifies at least one (1) of the aggravating circumstances enumerated in section 15-4-6 and unanimously specifies the sentence of banishment, the court shall order that the defendant proceed to the next step in the judicial process, which would be the banishment proceeding as set out in section 15-4-4.

B. Where a sentence of banishment is not unanimously specified, or the jury does not make the required finding, or the jury is unable to reach a unanimous verdict, the court shall sentence the defendant to a jail term, or a fine, or both, as outlined in the specific capital offense.

C. In a nonjury sentencing proceeding and in cases involving a voluntary plea of guilty, where no jury has been demanded, the judge shall determine and impose the sentence, but he shall not impose the sentence of banishment except upon the finding beyond a reasonable doubt and specification of at least one (1) of the aggravating circumstances enumerated in section 15-4-6. The judge shall then order that the matter be set up for a banishment hearing in accordance with section 15-4-4 below.

Section 15-4-4. Banishment proceeding.

A. This section of the Code shall apply to any enrolled Tribal member of the Pueblo who has committed a "capital offense" as specified under section 15-3-6 above.

B. A Tribal member may be subject to exclusion and removal from all or any portion of the Reservation when that person was convicted of any one (1) of the "capital offenses" by the court or by a jury, or upon the voluntary entry of a guilty plea by the defendant, or when the court makes a finding beyond a reasonable doubt and also specifies at least one (1) of the aggravating circumstances in section 15-4-6 applies.

C. A banishment proceeding will take place in the time specified under subsection 15-4-1B.(3) above.

D. The Tribal member may be represented by counsel at such hearing and present evidence in his own defense, as well as present character witnesses in his defense.

E. The court may also entertain the testimony of the Governor, or any other Pueblo Council representative, and the testimony of the village officials from the village where the convicted offender resides, as to the Pueblo's and the affected village's position as to the issue of banishment.

F. Upon the completion of the hearing, the presiding judge shall enter his findings based upon the evidence and testimony presented at the hearing and, if the evidence and testimony will support a finding for banishment, the judge shall enter judgment accordingly. The judgment of banishment will be appealed automatically in accordance with section 15-4-5 below.

G. The Pueblo Court of Appeals shall have exclusive authority to hear appeals from orders of banishment after a hearing has been held thereon before the Pueblo Court.

- (1) The Pueblo Court of Appeals shall have the authority to stay an order of banishment upon such conditions of security as it deems just only if all prior hearing remedies have been exhausted, and only if no substantial interest of the Pueblo, its members, or other residents of the Reservation will be harmed.

H. A banishment order may be for a definite period or may, under appropriate circumstances, be permanent. Any Pueblo member who has been banished from the Pueblo, and such order has been upheld by the Pueblo Court of Appeals, may petition the Pueblo Council for a modification of the banishment order. A petition to the Pueblo Council for modification of a banishment order will need to be filed within thirty (30) days of a final determination by either the Pueblo Court or the Pueblo Court of Appeals. If the petition is denied by the Pueblo Council, no new petition may be filed for a period of one (1) year following the date of the denial.

- (1) The court or a jury panel will make a determination, based upon the evidence and testimony given at the banishment hearing, as to whether a Tribal member will lose all rights as a Tribal member, or whether a limited banishment will be ordered.

I. Notwithstanding this section, the removal or exclusion of any nonmembers can still be effected by use of title XII, chapter 4, "Exclusion or removal".

Section 15-4-5. Review of judgment and sentence of banishment.

A. The judgment of conviction and sentence of banishment shall be automatically reviewed by the Pueblo Court of Appeals.

B. In addition to the other matters on appeal, the Pueblo Court of Appeals shall rule on the validity of the banishment sentence.

C. Banishment shall not be imposed if:

- (1) The evidence does not support the finding of a statutory aggravating circumstance;

- (2) The evidence supports a finding that the mitigating circumstances outweigh the aggravating circumstances;
- (3) The sentence of banishment was imposed under the influence of passion, prejudice or any other arbitrary factor; or
- (4) The penalty of banishment is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

D. No error in the sentencing proceeding shall result in the reversal of the conviction of a capital offense. If the trial court is reversed on appeal because of error only in the sentencing proceeding, the Pueblo Court of Appeals shall remand solely for a new sentencing proceeding. The new sentencing proceeding ordered and mandated shall apply only to the issue of punishment.

E. In cases of remand for a new sentencing proceeding, all exhibits and a transcript of all testimony and other evidence admitted in the prior trial and sentencing proceeding shall be admissible in the new sentencing proceeding; and

- (1) If the sentencing proceeding was before a jury, a new jury shall be impaneled for the new sentencing proceeding;
- (2) If the sentencing proceeding was before the judge, the original trial judge shall conduct the new sentencing proceeding; or
- (3) If the sentencing proceeding was before a judge and the original trial judge is unable or unavailable to conduct a new sentencing proceeding, then another judge shall be designated to conduct the new sentencing proceeding.

Section 15-4-6. Aggravating circumstances.

The aggravating circumstances to be considered by the sentencing court or jury pursuant to the provisions of section 15-4-2 are limited to the following:

- A. The victim was a peace officer who was acting in the lawful discharge of an official duty when the crime occurred;
- B. The crime was committed with intent to kill, in the commission of or attempt to commit kidnaping, aggravated sexual abuse or sexual exploitation of a child;
- C. The capital offense was committed for hire;
- D. The capital offense was murder of a witness to a crime or any person likely to become a witness to a crime, for the purpose of preventing the reporting of the crime or the testimony in any criminal proceeding, or for retaliation for the victim having testified in any criminal proceeding;
- E. The victim was a child under the age of eighteen (18) years.

Section 15-4-7. Mitigating circumstances.

The mitigating circumstances to be considered by the sentencing court or the jury pursuant to the provisions of section 15-4-2 shall include, but not be limited to the following:

- A. The defendant has no significant history of prior violent criminal activity;
- B. The defendant acted under duress or under the domination of another person;
- C. The defendant's capacity to appreciate the criminality of his or her conduct or to conform his conduct to the requirements of the law was impaired;
- D. The defendant was under the influence of mental or emotional disturbance;
- E. The defendant is likely to be rehabilitated;
- F. The defendant cooperated with authorities; and
- G. The defendant's age.

CHAPTER 5. OFFENSES: INCHOATE OFFENSES**Section 15-5-1. Criminal attempt.**

A. *Offense.* A person is guilty of an attempt to commit an offense if, acting with the kind of culpability required for the commission of the offense, that person engages in conduct constituting a substantial step towards the commission of the offense. Conduct does not constitute a substantial step towards the commission of an offense unless it is strongly corroborative of the actor's intent to commit the offense.

B. *Sentence.* Any person found guilty of an attempt shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed three hundred dollars (\$300.00), or both, but in no case shall the penalty be greater than the maximum penalty that could have been imposed for the crime which was the object of the attempt.

Section 15-5-2. Criminal conspiracy.

A. *Offense.* A person commits criminal conspiracy when that person, intending that conduct constituting a crime be performed, agrees with one (1) or more persons to engage in or cause the performance of such conduct and any one of them commits an overt act in pursuance of the conspiracy.

B. *Sentence.* Any person found guilty of criminal conspiracy shall be sentenced to a jail term, ordered to pay a fine, or both, not to exceed the maximum fine and term prescribed for the crime the person conspired to commit.

Section 15-5-3. Solicitation.

A. *Offense.* A person commits solicitation when that person, intending that another person commit an offense, entices, advises, incites, orders, or otherwise encourages such other person to commit an offense.

B. *Sentence.* Any person found guilty of solicitation shall be sentenced to a jail term not to exceed ninety (90) days, or be ordered to pay a fine not to exceed two hundred dollars (\$200.00), or both.

CHAPTER 6. OFFENSES AGAINST THE PERSON

Section 15-6-1. Definitions.

Bodily injury means:

- (1) A cut, abrasion, bruise, burn or disfigurement;
- (2) Physical pain;
- (3) Illness;
- (4) Impairment of the function of a bodily member, organ, mental faculty; or
- (5) Any other injury to the body, no matter how temporary.

Deadly weapon means any firearm, including a pistol or revolver, or other weapon or device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury. Examples of such weapons include, but are not limited to, any type of dagger, switchblade, brass knuckles, knives, bowie knives, poniards, butcher knives, dirk knives and bludgeons.

Human being means a person who has been born and is alive, or who has not yet been delivered outside of, but is alive in, the mother's womb.

Serious bodily injury means bodily injury which involves:

- (1) A substantial risk of death;
- (2) Extreme physical pain;
- (3) Protracted and obvious disfigurement; or
- (4) Protracted loss or impairment of the function of a bodily member, organ or mental faculty.

Section 15-6-2. Criminal homicide.

A. A person is guilty of criminal homicide if he knowingly, negligently or recklessly causes the death of another human being.

B. Criminal homicide is murder, manslaughter or negligent homicide.

Section 15-6-3. Murder.

A. *Offense.* Except as provided in subsection 15-6-3A.(2) below, criminal homicide constitutes murder when:

- (1) It is committed purposely or knowingly; or
- (2) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, aggravated sexual abuse, arson, burglary or kidnapping.

B. *Sentence.* A person found guilty of murder shall be subject to banishment from the Reservation. In the event that banishment cannot be imposed pursuant to chapter 4, a person adjudicated guilty of murder shall be sentenced to a jail term of one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine of five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

Section 15-6-4. Manslaughter.

A. *Offense.* Criminal homicide constitutes manslaughter when:

- (1) It is committed recklessly; or
- (2) A homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.

B. *Sentence.* Any person found guilty of manslaughter shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00), or the maximum fine allowed under federal law, or both.

Section 15-6-5. Negligent homicide.

A. *Offense.* Criminal homicide constitutes negligent homicide when it is committed negligently.

B. *Sentence.* Any person found guilty of negligent homicide shall be sentenced to a jail term not to exceed eight (8) months, or be ordered to pay a fine not to exceed three thousand dollars (\$3,000.00), or both.

Section 15-6-6. Assault.

A. *Offense.* A person commits an assault when that person:

- (1) Attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another; or

- (2) Negligently causes bodily injury to another with a deadly weapon; or
- (3) Attempts by a show of force or violence to put another in fear of imminent bodily injury; or
- (4) Recklessly endangers another by an act or omission to act, which threatens to cause serious bodily injury to another, whether or not such injury actually occurs.

B. *Sentence.* Any person found guilty of assault shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

Section 15-6-7. Aggravated assault.

A. *Offense.* A person commits aggravated assault if that person:

- (1) Attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life; or
- (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
- (3) Intentionally or knowingly uses a deadly weapon to put another in fear of imminent serious bodily injury.

B. *Sentence.* Any person found guilty of aggravated assault shall be sentenced to a jail term not to exceed nine (9) months, or be ordered to pay a fine not to exceed one thousand five hundred dollars (\$1,500.00), or both.

Section 15-6-8. Battery.

A. *Offense.* A person commits battery if that person willfully strikes another person or otherwise inflicts bodily injury, or who shall, by offering violence, cause another to harm himself.

B. *Sentence.* Any person found guilty of battery shall be sentenced to a jail term not to exceed one (1) year, or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500.00), or both.

Section 15-6-9. Contributing to the delinquency of a minor.

A. *Offense.* A person commits the offense of contributing to the delinquency of a minor when that person commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourages the delinquency of any person under the age of eighteen (18) years.

B. *Sentence.* Any person found guilty of contributing to the delinquency of a minor shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed eight hundred fifty dollars (\$850.00), or both.

Section 15-6-10. Kidnapping.

A. *Offense.* A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:

- (1) To hold for ransom or reward, or as a shield or hostage; or
- (2) To facilitate the commission of any crime or flight thereafter; or
- (3) To inflict bodily injury on or to terrorize the victim or another; or
- (4) To interfere with the performance of any governmental or political function.

B. A removal or confinement is unlawful within the meaning of this chapter if it is accomplished by force, threat, or deception or, in the case of a person who is under the age of fourteen (14) or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for the general supervision of his or her welfare.

C. *Sentence.* Any person found guilty of kidnapping shall be sentenced to a jail term not to exceed one (1) year, or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00), or the maximum fine allowed under federal law, or both.

Section 15-6-11. Harassment.

A. *Offense.* A person commits the offense of harassment if he does one (1) of the following acts, with the purpose to annoy or alarm another by making:

- (1) Telephone calls without purpose of legitimate communication; or
- (2) Insults, taunts or challenges another in a manner likely to provoke a violent or disorderly response; or
- (3) Makes repeated communications anonymously or at extremely inconvenient hours or in offensively coarse language; or
- (4) Engages in any other course of alarming conduct serving no legitimate purpose of the actor.

B. *Sentence.* Any person found guilty of harassment shall be sentenced to a jail term not to exceed ninety (90) days, or be ordered to pay a fine not to exceed three hundred fifty dollars (\$350.00), or both.

Section 15-6-12. Stalking.

A. *Offense.* A person commits the offense of stalking if that person knowingly pursues a pattern of conduct that poses a credible threat to another person and that is intended to place that person in reasonable apprehension of death, bodily injury, sexual abuse, confinement or restraint; provided that, in furtherance of the threat, the stalker must commit one (1) or more of the following acts on more than one (1) occasion:

- (1) Following a person, other than in the residence of the stalker; or

- (2) Placing a person under surveillance by remaining present outside that person's school, residence, work place or vehicle, or any other place frequented by the person other than in the residence of the stalker.

B. "Credible threat", as used in this chapter, means a threat, verbal or nonverbal, made with the intent and the apparent ability to carry out the threat, that would cause a reasonable person to fear for his safety or the safety of a household member, including a spouse, former spouse, family member, present or former household member or co-parent of a child.

C. *Sentence.* Any person found guilty of stalking shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed seven hundred fifty dollars (\$750.00), or both.

Section 15-6-13. False imprisonment.

A. *Offense.* A person commits false imprisonment if that person knowingly restrains another unlawfully so as to interfere substantially with his liberty.

B. *Sentence.* Any person found guilty of false imprisonment shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

Section 15-6-14. Custodial interference.

A. *Offense: Custody of children.* A person commits an offense if he knowingly or recklessly takes or entices any child under the age of eighteen (18) from the custody of the child's parent, guardian or other lawful custodian, when he has no privilege to do so. It is an affirmative defense that:

- (1) The actor believed that his action was necessary to preserve the child from danger to his welfare; or
- (2) The child, being at the time not less than fourteen (14) years old, was taken away at his own instigation without enticement and without purpose to commit a criminal offense with or against the child.

B. *Custody of committed persons.* A person is guilty of an offense if he knowingly or recklessly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social services agency or otherwise by authority of law.

C. *Sentence.* Any person found guilty of custodial interference shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed seven hundred fifty dollars (\$750.00), or both.

CHAPTER 7. SEXUAL ABUSE**Section 15-7-1. Definitions.**

A. The term "sexual act" means:

- (1) Contact between the penis and the vulva or the penis and the anus, contact involving the penis occurs upon penetration, however, slight;
- (2) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- (3) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with the intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person; or
- (4) The intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of sixteen (16) years with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.

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

Section 15-7-2. Aggravated sexual abuse.

A. *Offenses.* A person is guilty of aggravated sexual abuse by force or threat if he knowingly causes another person to engage in a sexual act or attempts to do so:

- (1) By using force against that other person; or
- (2) By threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping.

B. A person is guilty of aggravated sexual abuse by other means if he attempts to or knowingly:

- (1) Renders another person unconscious and thereby engages in a sexual act with that other person; or
- (2) Administers to another person by force or threat of force, or without the knowledge of permission of that person, a drug, intoxicant, or other similar substance and thereby:
 - (a) Substantially impairs the ability of that person to appraise or control the conduct; and
 - (b) Engages in a sexual act with that person.

C. *Sentence.* Any person found guilty of aggravated sexual abuse shall be subject to banishment from the Reservation. In the event that banishment cannot be imposed pursuant to chapter 4, a person adjudicated guilty of aggravated sexual abuse shall be sentenced to a jail

term not to exceed one (1) year, or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

Section 15-7-3. Sexual abuse.

A. *Offense.* Whoever knowingly:

- (1) Causes another person to engage in a sexual act by threatening or placing that other person in fear; or
- (2) Engages in a sexual act with another person if that other person is:
 - (a) Incapable of appraising the nature of the conduct; or
 - (b) Physically unable to decline participation in, or communicating unwillingness to engage in, that sexual act; or
 - (c) Attempts to do so; is guilty of sexual abuse.

B. *Sentence.* Any person found guilty of sexual abuse shall be subject to banishment from the Reservation. In the event that banishment cannot be imposed pursuant to chapter 4, a person adjudicated guilty of sexual abuse shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

Section 15-7-4. Sexual abuse of a minor or ward.

A. *Offense: Sexual abuse of a minor.* Whoever knowingly engages in a sexual act with a person who has not attained the age of twelve (12) years; or who:

- (1) Has attained the age of twelve (12) years but has not attained the age of sixteen (16) years; and
- (2) Is at least four (4) years younger than the person so engaging; or attempts to do so, is guilty of the offense of sexual abuse of a minor.

B. *Sentence.* Any person found guilty of sexual abuse of a minor shall be subject to banishment from the Reservation. In the event that banishment cannot be imposed pursuant to chapter 4, a person adjudicated guilty of sexual abuse of a minor shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

C. *Offense: Sexual abuse of a ward.* Whoever knowingly engages in a sexual act with another person who is:

- (1) In official detention; and
- (2) Under the custodial, supervisory or disciplinary authority of the person so engaging, or attempts to do so, will be found guilty of sexual abuse of a ward.

D. *Sentence.* Any person found guilty of sexual abuse of a ward shall be subject to banishment from the Reservation. In the event that banishment cannot be imposed pursuant to chapter 4, a person adjudicated guilty of sexual abuse of a ward shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

E. *Defenses.*

- (1) In a prosecution under subsection A. of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of sixteen (16) years.
- (2) In a prosecution under this chapter, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

F. *State of mind requirement.* In a prosecution under subsection A. of this section, the prosecutor need not prove the defendant knew:

- (1) The age of the other person engaging in the sexual act; or that the requisite age difference existed between the persons so engaging.

Section 15-7-5. Duty to report child abuse.

A. *Offenses.* A person commits the offense of a failure to fulfill duty to report child abuse if:

- (1) That person is:
 - (a) A physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, community health representative or health care provider; or
 - (b) Teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any Tribal, federal, private or public school; or
 - (c) Administrative officer, supervisor of child welfare and attendance, or truancy officer of any Tribal, federal, public or private school, child day care worker, Head Start teacher, public assistance worker, worker in a group home or residential or day care facility or social worker; or
 - (d) Psychiatrist, psychologist or psychological assistant; or
 - (e) Licensed or unlicensed marriage, family or child counselor; or
 - (f) Person employed in the mental health profession; or
 - (g) Law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders.
- (2) That person knows, or has reasonable suspicion, that:
 - (a) A child was abused; or

(b) Actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child.

(3) That person fails to immediately report such abuse or actions described above to the local child protective services agency or local law enforcement agency.

B. *Sentence.* Any person found guilty of the offense of failure to report child abuse shall be sentenced to a jail term not to exceed six (6) months, or be ordered to pay a fine not to exceed two thousand dollars (\$2,000.00), or both.

Section 15-7-6. Interference with the duty to report child abuse.

A. *Offense.* A person commits the offense of interference with the duty to report child abuse if that person supervises, or has the authority over, a person described in subsection 15-7-2A.(1), or inhibits or prevents that person from making the report.

B. *Sentence.* Any person found guilty of an offense under this subsection shall be sentenced to a jail term not to exceed six (6) months, or be ordered to pay a fine not to exceed two thousand dollars (\$2,000.00), or both.

C. Any person making a report described in subsection A., which is based upon his reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.

Section 15-7-7. Indecent exposure.

A. *Offense.* A person is guilty of indecent exposure if, for the purpose of arousing or gratifying his own sexual desire, or that of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to be offensive or cause alarm.

B. *Sentence.* Any person found guilty of indecent exposure shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

CHAPTER 8. SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

Section 15-8-1. Definitions.

For purposes of this chapter, the following terms have the following meanings:

Child pornography means any visual depiction, including any photograph, film, video, picture or computer or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(1) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

- (2) Such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;
- (3) Such visual depiction has been created, adapted or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or
- (4) Such visual depiction is advertised, promoted, presented, described or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.

Computer means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

Custody or control means and includes temporary supervision over or responsibility for a minor whether legally or illegally obtained.

Identifiable minor means a person:

- (1) Who is a minor at the time the visual depiction was created, adapted or modified; or
- (2) Whose image as a minor was used in creating, adapting or modifying the visual depiction; or
- (3) Who is recognized as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and
- (4) Shall not be construed to require proof of the actual identity of the identifiable minor.

Minor means a person under the age of eighteen (18) years.

Organization means a person other than the individual.

Producing means producing, directing, manufacturing, issuing, publishing or advertising.

Sexually explicit conduct means actual or simulated:

- (1) Sexual intercourse, including genital-genital, oral-genital, or oral-oral, whether between persons of the same or opposite sex;
- (2) Bestiality;
- (3) Masturbation;
- (4) Sadistic or masochistic abuse; or
- (5) Lascivious exhibition of the genitals or pubic area of any person.

Visual depiction means and includes undeveloped film and videotape and data stored on computer disk or by electronic means which is capable of conversion into a visual image.

Section 15-8-2. Sexual exploitation of children.

A. *Offense.* Any person who employs, uses, persuades, induces, entices or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor within the exterior boundaries of the Reservation, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection E. of this section.

B. Any parent, legal guardian or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection E. of this section.

C. Any person who, in circumstances described in subsection C.(2) below, knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering:

- (1) To receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct;
- (2) Participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;
- (3) Shall be punished as provided under subsection E. of this section.

D. The circumstances referred to in subsection C. above, are that:

- (1) Such person knows or has reason to know that such notice or advertisement will be transported within the exterior boundaries of the Reservation by any means including by computer or mail; or
- (2) Such notice or advertisement is transported within the exterior boundaries by any means including by computer or mail.

E. *Sentence.* Any person found guilty of sexual exploitation of a child(ren), or attempting to or conspiring to sexually exploit a child(ren), shall be subject to banishment from the Reservation. In the event that banishment cannot be imposed pursuant to chapter 4, a person adjudicated guilty of sexual exploitation shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

F. Whoever, in the course of an offense under this chapter, engages in conduct that results in the death of a person, shall be subject to banishment from the Reservation. In the event that banishment cannot be imposed pursuant to chapter 4, a person adjudicated guilty of sexual exploitation shall be sentenced to the same terms as are set out under subsection E. above.

Section 15-8-3. Selling or buying of children.

A. *Offense.* Any parent, legal guardian or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either:

- (1) With knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or
- (2) With intent to promote either:
 - (a) The engaging in sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
 - (b) The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.
- (3) Shall be guilty of selling children.

B. *Sentence.* Any person found guilty of selling children shall be subject to banishment from the Reservation. In the event that banishment cannot be imposed pursuant to chapter 4, a person adjudicated guilty of selling children shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

C. *Offense.* Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either:

- (1) With knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or
- (2) With intent to promote either:
 - (a) The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
 - (b) The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.
- (3) Shall be guilty of the offense of buying children.

D. *Sentence.* Any person found guilty of buying children shall be subject to banishment from the Reservation. In the event that banishment cannot be imposed pursuant to chapter 4, a person adjudicated guilty of buying children shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

CHAPTER 9. OFFENSES AGAINST THE FAMILY**Section 15-9-1. Bigamy.**

A. *Offense.* A person commits bigamy if that person knowingly enters into a marriage by or with a person who has previously contracted one (1) or more marriages which have not been dissolved by death, divorce or annulment. Both parties may be principals.

B. *Sentence.* Any person found guilty of bigamy shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed one thousand five hundred dollars (\$1,500.00), or both.

Section 15-9-2. Incest.

A. *Offense.* A person commits incest if he knowingly intermarries or has sexual intercourse with persons within the following degrees of relationship:

- (1) Parents and children;
- (2) Grandparents and grandchildren of every degree;
- (3) Brothers and sisters of the half as well as whole blood;
- (4) Uncles and nieces;
- (5) Aunts and nephews; or
- (6) Step parents and step children.

B. *Sentence.* Any person found guilty of incest shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed one thousand five hundred dollars (\$1,500.00), or both.

Section 15-9-3. Abandonment of a child.

A. *Offense.* Abandonment of a child occurs when the parent, guardian or custodian of a child who purposely leaves or abandons the child under circumstances whereby the child may or does suffer neglect.

B. For purposes of this chapter, the term "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care, or control necessary for his well-being because of the faults or habits of his or her parents, guardian or custodian; or their neglect or refusal, when able to so provide.

C. *Sentence.* Any person found guilty of abandonment of a child shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed one thousand five hundred dollars (\$1,500.00), or both.

Section 15-9-4. Abuse of a child.

A. *Offense.* Abuse of a child occurs when a parent, legal guardian or person who has custodial care and purposely, knowingly or recklessly:

- (1) Causes or permits a child to suffer, or makes it likely that the child will suffer, physical injury by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function; or
- (2) Deprives a child of adequate food, clothing, shelter, medical care, education or supervision necessary for his safety, health and well-being.

B. *Sentence.* Any person found guilty of abusing a child shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500.00), or both.

Section 15-9-5. Child neglect.

A. *Offense.* Child neglect occurs when a parent, legal guardian, a person who has the custodial care of a child, or any other person responsible for the child's health or welfare, harms a child's health or welfare:

- (1) Through negligent treatment, including the failure to provide adequate food, clothing, shelter or medical care; or
- (2) By failing to intervene to eliminate an unreasonable risk to the child's health or welfare when able to do so, and when that person has knowledge, or should have knowledge of the risk.

B. *Sentence.* Any person found guilty of child neglect shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed one thousand five hundred dollars (\$1,500.00), or both.

Section 15-9-6. Failure to send children to school.

A. *Offense.* Failure to send children to school consists of a person who shall, without good cause, refuse or neglect to send his children, or any children under his care, to school; said child(ren) not having reached his eighteenth (18) birthday. It is not a violation of this offense if the parent sees his children get on the school bus or actually drives his child(ren) to school, and at some point afterwards, the child does not attend classes.

B. *Sentence.* Any person found guilty of failure to send children to school shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

Section 15-9-7. Nonsupport of dependent.

A. *Offense.* A person is guilty of this offense if he persistently fails to provide support which he can provide and which he knows he is legally obligated to provide to a spouse, child or other dependent.

B. *Sentence.* Any person found guilty of nonsupport of dependent(s) shall be sentenced to a jail term not to exceed six (6) months, or be ordered to pay a fine not to exceed one thousand dollars (\$1,000.00), or both.

Section 15-9-8. Illicit cohabitation.

A. *Offense.* A person commits the offense of illicit cohabitation if that person resides with or takes up residence with another person not his spouse. For purposes of this offense, it will not matter what the length of time is for the individuals to have resided together, as long as it can be proven that such individual did reside with another not his spouse.

B. *Sentence.* A person found guilty of this offense shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

C. *Offense.* It shall be unlawful for any parent to allow any child under the age of eighteen (18), to take up residence with his girlfriend or her boyfriend, if the two (2) are not married.

D. *Sentence.* A parent found guilty of this offense shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

CHAPTER 10. WEAPONS

Section 15-10-1. Definitions.

As used in this chapter, the following definitions shall apply:

Carrying of a deadly weapon means being armed with a deadly weapon by having it on the person, or in close proximity thereto, so that the weapon is readily accessible for use.

Deadly weapon means any firearm including a pistol or revolver, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury. Examples of such weapons include, but are not limited to, any type of dagger, brass knuckles, switchblades knives, bowie knives, poniards, butcher knives, dirk knives and bludgeons.

Section 15-10-2. Unlawful carrying of a deadly weapon.

A. *Offense.* A person commits the offense of unlawful carrying of a deadly weapon by carrying a concealed loaded firearm or any other type of deadly weapon, as that term is defined herein, anywhere, except in the following cases:

- (1) In the person's residence or on real property belonging to him as owner, lessee, tenant or licensee;
- (2) By a peace officer in accordance with the policies of his or her law enforcement agency;

- (3) By a person engaged in hunting of game or predatory animals; or
- (4) By a person whose carrying and discharging of a firearm is integral to any traditional Pueblo religious ceremony, practice or service.

B. *Sentence.* Any person found guilty of carrying a deadly weapon shall be sentenced to a jail term not to exceed six (6) months, or be ordered to pay a fine not to exceed one thousand five hundred dollars (\$1,500.00), or both.

C. Nothing in this chapter shall be construed to prevent the carrying of an exposed and unloaded weapon.

Section 15-10-3. Negligent use of a deadly weapon.

A. *Offense.* A person commits the offense of negligent use of a deadly weapon when that person:

- (1) Discharges a firearm into any building or vehicle so as to endanger any person or property;
- (2) Carries a firearm while under the influence of an intoxicant or narcotic;
- (3) Endangers the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or
- (4) Discharges a firearm within one hundred fifty (150) yards of a dwelling or building, not including abandoned or vacated buildings on public lands during hunting seasons, without the permission of the owner or lessees.

B. *Sentence.* Any person found guilty of negligently using a deadly weapon shall be sentenced to a jail term not to exceed six (6) months, or be ordered to pay a fine not to exceed one thousand five hundred dollars (\$1,500.00), or both.

Section 15-10-4. Unlawful carrying of a deadly weapon on school premises.

A. *Offense.* It shall be unlawful for any person to carry a deadly weapon on school premises, except by:

- (1) A peace officer; or
- (2) A student, instructor or other school-authorized personnel engaged in Army, Navy, Marine Corps or Air Force Reserve Officer Training Corps Programs or Tribally-authorized hunter safety training instruction.

B. *Definitions.* As used in this chapter, "school premises" means:

- (1) The buildings and grounds, including playgrounds, playing fields and parking areas and any school bus of any Tribal, federal, or state head start, elementary, secondary, junior or senior high school or school-related activities that are being operated under the supervision of a local school board; or

- (2) Any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and sanctioned activities are being performed.

C. *Sentence.* Any person found guilty of carrying a deadly weapon on school premises shall be sentenced to a jail term not to exceed (6) months, or be ordered to pay a fine not to exceed one thousand five hundred dollars (\$1,500.00), or both.

Section 15-10-5. Forfeiture of weapons.

Upon the conviction of any person for the violation of any law of the Pueblo in which a deadly weapon was used, displayed or unlawfully possessed by such person, the court may order the weapon forfeited to the Pueblo Police Department for destruction or disposal.

CHAPTER 11. OFFENSES AGAINST PROPERTY

Section 15-11-1. Arson.

A. *Offense.* A person commits the offense of arson if he starts a fire or causes an explosion for the purpose of:

- (1) Destroying a building or occupied structure of another; or
- (2) Destroying or damaging any property, whether his own or another's, to collect insurance for such loss.

B. *Sentence.* Any person found guilty of arson shall be sentenced to a jail term of one (1) year or the maximum term allowed by federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed by federal law, or both.

C. In addition to, or in lieu of the sentence, the court may require the offender to pay actual damages for the benefit of the victim whose property was damaged or destroyed.

Section 15-11-2. Reckless burning.

A. *Offense.* A person commits reckless burning when he:

- (1) Recklessly starts a fire or causes an explosion which endangers human life; or
- (2) Damages property of another by reckless use of fire or recklessly causing an explosion; or
- (3) Having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put it out or control the fire, or give a prompt fire alarm.

B. *Sentence.* Any person found guilty of reckless burning shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed one thousand dollars (\$1,000.00), or both.

Section 15-11-3. Criminal mischief.

A. *Offense.* A person commits the offense of criminal mischief if he:

- (1) Intentionally, recklessly or negligently tampers with the property of another and destroys such property or does substantial damage to such property; or
- (2) Intentionally or recklessly causes or threatens a substantial interruption or impairment of any public utility service; or
- (3) Intentionally or recklessly damages, defaces or destroys the livestock, domestic animal or other property of another; or
- (4) Intentionally or recklessly shoots or propels any object at a motor vehicle, bus, airplane, or train, whether moving or standing motionless.

B. *Sentence.* Any person found guilty of criminal mischief shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed one thousand dollars (\$1,000.00), or both.

Section 15-11-4. Unauthorized graffiti.

A. *Offense.* A person commits the offense of unauthorized graffiti if he intentionally and maliciously defaces any real or personal property of another with graffiti or other inscribed material and the inscription is done in ink, paint, spray paint, crayon, charcoal or the use of any object without the consent or reasonable basis to believe that the property owner has consented.

B. *Sentence.* Any person found guilty of unauthorized graffiti shall be required to perform mandatory community service for:

- (1) Two hundred (200) hours if the damage to property is one thousand dollars (\$1,000.00) or less;
 - (a) The service shall be performed within a continuous six-month period immediately following conviction;
 - (b) Restitution to the property owner for the cost of damages and restoration shall be required.
- (2) Three hundred (300) hours if the damage to property is greater than one thousand dollars (\$1,000.00);
 - (a) The service shall be performed within a continuous eight-month period immediately following conviction;
 - (b) Restitution to the property owner for the cost of damages and restoration shall be required.

C. In the event that the guilty person fails to complete the community service, he shall be subject to a jail term not to exceed one hundred twenty (120) days and a fine not to exceed five hundred dollars (\$500.00), or both, in addition to the cost of damages and restoration.

Section 15-11-5. Removal or destruction of protected places, burial sites and sacred objects.**A. Definitions.** In this chapter:

Associated funerary objects means those funerary objects that were made exclusively for burial purposes or to contain human remains.

Burial site means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as part of the death rite or ceremony, individual human remains were deposited.

Funerary objects means items that, as part of the death rite or ceremony are reasonably believed to have been placed intentionally at the time of death or later with or near individual remains.

Human remains means the physical remains of the body of a person. The term does not include remains or portions of remains that reasonably may be determined to have been given freely or naturally shed by the individual from whose body they were obtained, such as hair made into rope.

Objects of cultural patrimony means items having on-going historical, traditional, or cultural importance central to the Tribe; the objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual Tribal member.

Protected places means sacred springs, shrines and other sites having past or present religious significance; hideaway places for relics or sacred objects, whether ancient or recent; and geological formations or natural resources of sacred, historical or scientific interest.

Sacred objects means items that are specific ceremonial objects needed by traditional religious leaders for the practice of ceremonies or rituals which have religious significance, or function in the continued observance or renewal of such ceremony.

Traditional religious leader means a person who is recognized by members of the Tribe as:

- (a) Being responsible for performing duties relating to ceremonial or religious traditions of the Tribe; or
- (b) Exercising a leadership role in the Tribe, based on the Tribe's cultural, ceremonial or religious practices.

B. Offenses.

- (1) A person is guilty of an offense if he purposely or knowingly excavates upon, or moves, removes, destroys, injures, defaces or desecrates any protected place, sacred object, burial site, associated funerary objects, or objects of cultural patrimony.
- (2) A person is guilty of an offense if he purposely or knowingly offers for sale any sacred object or object of cultural patrimony removed from the Reservation without the written permission of the Tribe.

- (3) A person is guilty of an offense if he purposely or knowingly trades with or otherwise does business with a person who is offering for sale a sacred object or object of cultural patrimony removed from the Reservation, without the permission of the Tribe.

C. *Exemptions.*

- (1) The provisions of subsection B., shall not apply to traditional religious leaders at the Pueblo who are acting without their religious role.
- (2) The provisions of subsection B., shall not apply to any person or group of people or institutional activity which is specifically authorized by both the Pueblo and the federal government to carry on historical or scientific exploration, excavation or other similar activity in conformance with the Native American Graves Protection and Repatriation Act. 25 U.S.C. Sec. 3001 et. seq.

D. *Sentence.* Any person found guilty of an offense under this chapter shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

E. In addition to any other penalty imposed, the Pueblo Court shall order that any sacred objects or objects of cultural patrimony, obtained in violation of this chapter, shall be forfeited to the Pueblo.

CHAPTER 12. THEFT AND RELATED OFFENSES

Section 15-12-1. Theft.

A. *Offense.* A person commits theft if he steals anything of value which belongs to another.

B. *Sentence.* Any person found guilty of the offense of theft shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both. The court may also order full restitution to the victim for the value of the property taken.

Section 15-12-2. Robbery.

A. *Offense.* A person commits robbery if, in the course of committing a theft, he:

- (1) Inflicts serious bodily injury upon another; or
- (2) Threatens another with or purposely puts him in fear of immediate serious bodily injury.

B. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft or in flight after the commission or the attempt.

C. *Sentence.* Any person found guilty of the offense of robbery shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

Section 15-12-3. Burglary.

A. *Definitions.* In this chapter, and in section 15-12-2, unless a different meaning plainly is required:

- (1) "Night" means the period between thirty (30) minutes past sunset and thirty (30) minutes before sunrise.
- (2) "Occupied structure" means any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

B. *Offense.* A person commits burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with the purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

C. *Sentence.* Any person found guilty of burglary shall be sentenced to a jail term not to exceed six (6) months, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500.00), or both.

Section 15-12-4. Aggravated burglary.

A. *Offense.* A person commits aggravated burglary if the burglary is perpetrated in the dwelling of another or if, in the course of committing the offense, the actor:

- (1) Purposely, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone; or
- (2) Is armed with explosives or a deadly weapon.

B. An act shall be deemed "in the course of committing" an offense if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

C. *Sentence.* Any person found guilty of aggravated burglary shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed by federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed by federal law, or both.

Section 15-12-5. Theft by bad checks.

A. *Offense.* A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, is guilty of theft by means of a bad check.

B. *Presumption.* An issuer is presumed to know that the check or order (other than a postdated check or order) would not be paid if:

- (1) The issuer has no account with the drawee at the time the check or order was issued;
or
- (2) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the issuer failed to make good within ten (10) days after receiving the notice of that refusal.

C. *Sentence.* Any person found guilty of theft by bad check shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed by federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

Section 15-12-6. Credits cards.

A. *Definition.* In this chapter, "credit card" means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

B. *Offense.* A person commits an offense if he uses a credit card for the purpose of obtaining property or services with knowledge that:

- (1) The card is stolen or forged; or
- (2) The card has been revoked or canceled; or
- (3) For any other reason his use of the card is unauthorized by the issuer.

C. *Affirmative defense.* It is an affirmative defense to prosecution under subsection B.(3) above, if the actor proves by a preponderance of the evidence that he had the purpose and the ability to meet all obligations to the issuer arising out of his or her use of the card.

D. *Sentence.* Any person found guilty of an offense under this chapter shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed by federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed by federal law, or both.

Section 15-12-7. Deceptive business practices.

A. *Offense.* A person is guilty of deceptive business practice(s) if, in the course of business, he:

- (1) Makes a false or misleading statement to the effect that he has a business license or permit issued by the Pueblo Council authorizing the sale or delivery of a service or commodity on the Reservation;
- (2) Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

- (3) Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;
- (4) Makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or
- (5) Makes a false or misleading written statement for the purpose of obtaining property or credit.

B. *Affirmative defense.* It is an affirmative defense to prosecution under this chapter if the defendant proves by a preponderance of the evidence that his conduct was not purposely, knowingly or recklessly deceptive.

C. *Sentence.* Any person found guilty of deceptive business practices shall be sentenced to a jail term not to exceed six (6) months, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both. The court may also order that the license or permit issued to the perpetrator be revoked or suspended. A referral to the Pueblo Council will be made and the Pueblo Council will make a determination as to whether that person's license will be temporarily suspended or revoked permanently.

Section 15-12-8. Embezzlement.

A. *Offense.* A person is guilty of embezzlement, if without lawful authority, he purposely or knowingly converts to an unauthorized use services or property of another, including Pueblo or village property, entrusted to the defendant for a limited, authorized use.

B. *Sentence.* A person found guilty of embezzlement shall be sentenced in accordance with the following:

- (1) If the embezzlement involves an amount under five hundred dollars (\$500.00), a jail term not to exceed one hundred twenty (120) days, or a fine not to exceed one thousand dollars (\$1,000.00), or both.
- (2) If the embezzlement involves an amount from five hundred dollars (\$500.00) to ten thousand dollars (\$10,000.00), a jail term not to exceed one hundred eighty (180) days, or a fine not to exceed two thousand five hundred dollars (\$2,500.00), or both.
- (3) If the embezzlement involves an amount over ten thousand dollars (\$10,000.00), a jail term not to exceed one (1) year or the maximum term allowed under federal law, or a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

C. In addition, the court may also order full restitution to the victim of the value of the property taken, whether real or personal, tangible or intangible.

Section 15-12-9. Extortion.

A. *Offense.* A person is guilty of extortion if he obtains property of another by threatening to:

- (1) Inflict bodily injury on anyone or commit any other criminal offense; or
- (2) Accuse anyone of a criminal offense; or
- (3) Expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or
- (4) Take or withhold action as an official, or cause an official to take or withhold action; or
- (5) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

B. *Affirmative defense.* It is an affirmative defense to prosecution based on subsections A.(2), (3), or (4) above, that the property obtained by threat of accusations, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

C. *Sentence.* Any person found guilty of extortion shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed under federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed under federal law, or both.

Section 15-12-10. Forgery.

A. *Offense.* A person is guilty of forgery if, with the purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

- (1) Alters any writing of another without his authority; or
- (2) Makes, completes, executes, authenticates, issues, or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
- (3) Utters any writing which he knows to be forged in a manner specified in subsections (1) or (2) above.
- (4) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, trademarks, and other symbols of value, right, privilege or identification.

B. *Sentence.* Any person found guilty of forgery shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed seven hundred fifty dollars (\$750.00), or both.

Section 15-12-11. Shoplifting.

A. *Offense.* A person commits the offense of shoplifting if he willfully takes possession of, conceals or attempts to conceal, any goods or merchandise offered for sale by a store, without the consent of the owner or his agent, with the intent to convert such goods to his own use without paying for them.

- (1) A police officer, merchant, or merchant's employee who has reasonable cause to believe that a person has purposely taken possession of goods with the intent to convert them without paying for them may detain and question the person in a reasonable manner and for a reasonable time.
- (2) If a police officer, merchant or merchant's employee detains and questions a person pursuant to subsection (1) above, and the person thereafter brings a civil or criminal action against the police officer, merchant or merchant's employee, based upon the detention and questioning, then this reasonableness as to cause, manner and time shall be a defense to the action.

B. *Sentence.* Any person found guilty of shoplifting shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed four hundred fifty dollars (\$450.00), or both.

CHAPTER 13. FALSIFICATION OFFENSES

Section 15-13-1. Perjury.

A. *Offense.* A person commits the offense of perjury if, in any official proceeding, he willingly or knowingly makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material.

B. *Sentence.* Any person found guilty of perjury shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed three hundred fifty dollars (\$350.00), or both.

Section 15-13-2. Tampering with witnesses.

A. *Offense.* A person commits the offense of tampering with witnesses if, believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise causes a person to:

- (1) Testify or inform falsely;
- (2) Withhold any information, document or thing;
- (3) Elude legal process summoning him to testify or supply evidence;
- (4) Be harmed by unlawful force or the threat of retaliation for testifying as a witness; or
- (5) Be solicited, or accept a gift or benefit in consideration for doing any of the above-mentioned things.

B. *Sentence.* Any person found guilty of tampering with witnesses shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed seven hundred fifty dollars (\$750.00), or both.

Section 15-13-3. Tampering with evidence.

A. *Offense.* A person commits the offense of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

- (1) Alters, destroys, conceals or removes any record, document, or thing with the purpose to impair its availability; or
- (2) Makes, presents or uses any record, document, or thing knowing it to be false and with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

B. *Sentence.* Any person found guilty of tampering with evidence shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed seven hundred fifty dollars (\$750.00), or both.

Section 15-13-4. Tampering with public records.

A. *Offense.* A person commits the offense of tampering with public records if he knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to or received or kept by the Pueblo or its entities for information or record, or required by law to be kept.

B. *Sentence.* Any person found guilty of tampering with public records shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed seven hundred fifty dollars (\$750.00), or both.

Section 15-13-5. Libel and slander.

A. *Offense.* A person commits the offense of libel and slander if such person makes a false statement, or spreads malicious gossip, about another person, knowingly or intentionally, with the purpose of harming the good name or reputation of that person.

B. *Sentence.* A person found guilty of libel and slander shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed one thousand five hundred dollars (\$1,500.00), or both.

CHAPTER 14. OFFENSE AGAINST THE PUBLIC ORDER

Section 15-14-1. Disobedience to lawful orders of the court.

A. *Offense.* A person commits disobedience to the lawful orders of the court when he willfully disobeys any order, subpoena, or warrant given by the Pueblo Court or the Pueblo Court of Appeals, or any officer thereof.

B. *Sentence.* Any person found guilty of disobedience to the lawful orders of the court shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

Section 15-14-2. Disorderly conduct.

A. *Offense.* A person commits disorderly conduct if he causes some public inconvenience, annoyance or alarm, disturbance of the peace or recklessly creates a risk thereof, and he:

- (1) Engages in fighting, threatens or provokes a fight in a public or a private place; or
- (2) In a public place uses abusive, indecent, profane, or offensive language, or makes indecent gestures or utterances, or addresses abusive language to any person present in a manner likely to provoke immediate retaliation by such person; or
- (3) Makes any lengthy disturbance, utterance or display with the intent of preventing the transaction of the business of a lawful meeting, gathering or proceeding; or
- (4) Unlawfully interferes with or disturbs any traditional ceremonies held at the Pueblo.

B. *Sentence.* Any person found guilty of disorderly conduct shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed four hundred fifty dollars (\$450.00), or both.

Section 15-14-3. Escape.

A. *Offense.* A person commits the offense of escape when he or she unlawfully removes himself from official detention (arrest or incarceration) or fails to return to official detention following temporary leave granted for a specific purpose or limited period.

B. *Sentence.* Any person found guilty of escape shall be sentenced to a jail term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed three hundred fifty dollars (\$350.00), or both.

Section 15-14-4. Maintaining or creating a public nuisance.

A. *Offense.* A person commits the offense of maintaining a public nuisance if, without lawful authority to do so, he does any act or fails to perform any duty, which act or omission either:

- (1) Unreasonably annoys or disturbs the peaceful enjoyment of another, in a public or private place, injures, or endangers the comfort, health or safety of another; or
- (2) Offends public decency; or
- (3) Unlawfully interferes with, obstructs, or tends to obstruct, any street, highway or public road; or
- (4) Makes unreasonable, disturbing or annoying noise between the hours of 7:00 p.m. and 6:00 a.m. in either a public or private place. As referred to in this chapter, public place shall have the same meaning as defined in subsection 15-14-14B. below.

B. *Sentence.* Any person found guilty of maintaining a public nuisance shall be sentenced to a jail term not to exceed thirty (30) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

Section 15-14-5. Misuse of entrusted property and government property.

A. *Definitions.* For purposes of this chapter, the following definitions will apply:

- (1) "Fiduciary" includes a trustee, guardian, executor, administrator, receiver, and any person carrying on fiduciary functions on behalf of a person, a corporation or other organization which is a fiduciary.
- (2) "Government" or "local governing body" means the Pueblo's Governing Body and/or each of the village's local governing body, as well as any department, agency, or subdivision of the foregoing, or the United States, or any corporation or other association carrying out the functions of government.

B. *Offense.* A person commits an offense under this chapter if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.

C. *Sentence.* Any person found guilty of the offense of misuse of entrusted property or government property shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

Section 15-14-6. Refusing to aid an officer.

A. *Offense.* A person commits the offense of refusing to aid an officer if that person purposely or knowingly obstructs any officer in the lawful performance of his or her duties.

B. *Sentence.* Any person found guilty of committing the offense of refusing to aid an officer shall be sentenced to a jail term not to exceed sixty (60) days, or be ordered to pay a fine not to exceed three hundred fifty dollars (\$350.00), or both.

Section 15-14-7. Obedience to police officers.

A. *Offense.* No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or other law enforcement official vested by law with authority to direct, control or regulate traffic.

B. *Sentence.* Any person convicted of failing to obey a police officer shall be subject to a jail term of not more than thirty (30) days, or a fine of not more than one hundred dollars (\$100.00), or both.

Section 15-14-8. Unlawful flight from pursuing law enforcement vehicle.

A. *Offense.* No person shall willfully flee or attempt to elude a pursuing official law enforcement vehicle.

B. *Sentence.* Any person convicted of unlawful flight from a pursuing law enforcement vehicle shall be subject to a jail term of not more than one hundred twenty (120) days, or a fine of not more than one thousand dollars (\$1,000.00), or both.

Section 15-14-9. Homicide by vehicle.

A. *Offense.* Homicide by vehicle is the killing of a human by the unlawful operation of a motor vehicle.

B. *Sentence.* Any person who is convicted of homicide by vehicle shall be subject to the maximum jail term and fine allowed under federal law.

Section 15-14-10. Public officers and employees to obey chapter; exceptions.

The provisions of this chapter are applicable to drivers of vehicles upon the roadways under the jurisdiction of the Pueblo and shall apply to the drivers of all vehicles owned or operated by the Pueblo or any other political subdivision of the Pueblo, except as otherwise specifically provided in this chapter as applicable to specified vehicles and to specified circumstances or conditions.

Section 15-14-11. Racing on roadways.

A. *Offense.* No person shall drive a vehicle on a roadway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, whether or not the speed is in excess of the maximum speed prescribed by law. No person shall in any manner participate in any such race, drag race, competition, contest, test or exhibition.

B. *Sentence.* Any person found guilty of violating any provision of this chapter shall be subject to imprisonment for a term not to exceed one hundred twenty (120) days, or a fine not to exceed one thousand dollars (\$1,000.00), or both, and must attend a traffic safety education course approved by the Pueblo Court.

C. Upon a second or subsequent conviction committed within a period of twenty-four (24) months, such person shall be punished by imprisonment for a term of not less than ninety (90) days, nor more than one hundred eighty (180) days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500.00), or both.

Section 15-14-12. Throwing or dropping objects at moving vehicles.

A. *Offense.* No person shall intentionally or negligently throw, shoot or otherwise propel or drop any object at a motor vehicle which is being operated on a roadway.

B. *Sentence.* Any person found guilty of throwing or dropping an object at a moving vehicle shall be subject to a jail term not to exceed one hundred twenty (120) days, or a fine not to exceed one thousand dollars (\$1,000.00), or both.

Section 15-14-13. Resisting lawful arrest.

A. *Offense.* A person commits the offense of resisting lawful arrest if that person purposely or knowingly by force or violence or any other means, resists or assists someone to resist, a lawful arrest.

B. *Sentence.* Any person found guilty of the offense of resisting law arrest shall be sentenced to a jail term not to exceed ninety (90) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

Section 15-14-14. Intoxication—Public or private.

A. *Offense.* A person commits the offense of public intoxication if he appears in a public or a private place while under the influence of alcohol, marijuana or a controlled substance, the use of, or the possession of which is prohibited by the Pueblo, and which is not therapeutically administered, and if any of the following circumstances are present:

- (1) The person is found unconscious in a public place or on the property of another without permission; or
- (2) The person bothers, disrupts or otherwise intrudes upon another person or group of persons; or
- (3) The person is found wandering about, unable to give a reasonable account of his or her destination, and appears unable to care for his own safety; or
- (4) The person appears or is found in an area set aside for religious or ceremonial activities which have been traditionally, or by order of the Pueblo Council or other authorities, set aside for use free from alcohol, marijuana or controlled substance usage, or the presence of intoxicated persons during the period of such religious or ceremonial activity.

B. *Definition.* For purposes of this chapter a "public place" is defined as a place to which the general public has a right to resort to; a place normally visited by many persons and is usually accessible to the neighboring public. A public place could include, but is not limited to, such places as streets, public dances, ceremonies, feasts, public throws, the common areas of schools, hospitals, churches, apartment complexes, office buildings, transport facilities, businesses open to the public, and public streets, roads, and will include the assignment areas given to Tribal members for residential purposes.

C. *Sentence.* Any person found guilty of public intoxication shall:

- (1) Be sentenced to a jail term not to exceed one hundred sixty (160) days, or be ordered to pay a fine not to exceed three hundred fifty dollars (\$350.00), or both; or
- (2) The court may, in its discretion, defer incarceration and order the guilty person to undergo a professional evaluation that addresses his substance abuse. Such person may be sentenced to one (1) year supervised probation to facilitate the therapeutic treatment that may be recommended after the evaluation is completed; or

- (3) The court may, in its discretion, defer incarceration and/or fines and may order the guilty person to perform community service. The number of hours and such service and the manner in which such service is supervised will be determined by the court.

Section 15-14-15. Intoxication by inhaling toxic vapors.

A. *Offense.* A person commits the offense of intoxication by inhaling chemically produced toxic vapors if he intentionally inhales any gasoline, lighter fluid, glue, spray paint, paint thinner, or any similar product for the purpose of becoming intoxicated.

B. *Sentence.* A person found guilty of the offense of intoxication by inhaling toxic vapors shall be sentenced to a jail term not to exceed sixty (60) days, or be ordered to pay a fine not to exceed two hundred fifty dollars (\$250.00), or both.

C. Upon conviction under this chapter, an offender shall be required to participate in and complete, within the time specified by the court, a drug abuse screening program and, if necessary, a treatment program approved by the court. The court may order the offender to pay the costs of any court-ordered screening and treatment programs.

Section 15-14-16. Driving under the influence of intoxicating liquor.

A. *Offenses.*

- (1) It shall be unlawful for any person who:
 - (a) Is under the influence of intoxicating liquor to drive any vehicle within the exterior boundaries of the Reservation;
 - (b) Has an alcohol concentration of eight one-hundredths (.08) or more in his blood or breath to drive any vehicle within the exterior boundaries of the Reservation.
- (2) Aggravated driving while under the influence of intoxicating liquor is committed when a person:
 - (a) Has an alcohol concentration of sixteen one-hundredths (.16) or more in his blood or breath while driving any vehicle within the Reservation;
 - (b) Has caused bodily injury to a human being, both terms as defined in section 15-6-1, as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor; or
 - (c) Refused to submit to testing, as provided for in section 15-14-17 below (Implied consent), and in the judgment of the court, based upon evidence of intoxication presented to the court, the person was under the influence of intoxicating liquor.

B. *Sentence.* Any person convicted under this chapter shall be sentenced as follows:

- (1) *First offense.*
 - (a) A jail term not to exceed ninety (90) days, or a fine not to exceed five hundred dollars (\$500.00), or both; provided that if the sentence is suspended in whole or in part or is deferred, the period of probation may extend beyond ninety (90) days but shall not exceed one (1) year;

- (b) May be required to perform not less than fifty (50) hours of community service;
 - (c) Court-ordered to attend a driver rehabilitation program for alcohol, also known as "DIA or DWI school"; and
 - (d) Participation in other rehabilitative services as the court shall determine to be necessary.
- (2) *Aggravated driving while under the influence.*
- (a) Not less than forty-eight (48) consecutive hours in jail and up to ninety (90) days, jail or probation or a fine not to exceed five hundred dollars (\$500.00), or both; or suspended sentence as described in subsection B.(1)(a) above;
 - (b) Not less than one hundred (100) hours of community service or a fine of five hundred dollars (\$500.00);
 - (c) Court-ordered to attend DWI school and must pay the DWI class fee; and
 - (d) Participation in other rehabilitative services as the court shall determine to be necessary.
- (3) *Second offense.* Upon a second conviction, the offender shall be sentenced to a jail term of not less than seventy-two (72) consecutive hours and not more than six (6) months, or be ordered to pay a fine not to exceed one thousand dollars (\$1,000.00), or both; provided that if the sentence is suspended in whole or in part, the period of probation may not extend beyond one (1) year. In addition to these penalties, the offender shall perform one hundred fifty (150) hours of community service; and shall participate in other rehabilitative services as the court shall determine necessary.
- (a) If an offender fails to complete, within a time specified by the court, any community service, screening program, or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven (7) consecutive days in jail. Such penalty shall not be suspended or deferred or be taken under advisement.
- (4) *Second aggravated offense.* Upon a second conviction for aggravated driving while under the influence of liquor, the offender shall be sentenced to a jail term of not less than ninety-six (96) consecutive hours and not more than six (6) months, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500.00), or both; provided that if the sentence is suspended in whole or in part, the period of probation may not extend beyond one (1) year. In addition to these penalties, the offender shall perform two hundred fifty (250) hours of community service, and shall participate in other rehabilitative services as the court shall determine necessary.
- (a) If an offender fails to complete, within a time specified by the court, any community service, screening program, or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven (7) consecutive days in jail. Such penalty shall not be suspended or deferred or be taken under advisement.

(5) *Sentence for third convictions.* Upon a third or subsequent conviction under this chapter, the offender shall be sentenced to a jail term of not less than six (6) months, which shall not be suspended or deferred or taken under advisement.

C. If any offender fails to complete, within a time specified by the court, any community service, screening program, treatment program, or DUI school, ordered by the court, the offender shall be sentenced to not less than an additional forty-eight (48) consecutive hours in jail. Any jail sentence imposed under this subsection for failure to complete court-ordered community service, screening or treatment or DUI school shall not be suspended, deferred or taken under advisement.

D. On a first conviction under this chapter, any time spent in jail for the first offense prior to the conviction for that offense shall be credited to any jail sentence fixed by the court. A deferred sentence under this chapter shall be considered a first conviction for purposes of subsequent convictions.

E. A conviction under Tribal or state law or county ordinance prescribing penalties for driving while under the influence of intoxicating liquor shall be deemed to be a conviction under this chapter for purposes of determining whether a conviction is a second or subsequent conviction.

F. Any fines or fees which may be imposed pursuant to the conviction or other disposition of the offense under this chapter may be withheld from the offender's per capita distribution.

G. "Conviction" means an adjudication or plea of guilty, and does not include imposition of a sentence.

H. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor, the trial judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter.

I. Upon conviction under this chapter, an offender shall be required to participate in and complete, within the time specified by the court, an alcohol or drug abuse screening program and, if necessary, a treatment program approved by the court. The court may order the offender to pay the costs of any court-ordered screening and treatment programs.

Section 15-14-17. Implied consent.

A. Any person who operates a motor vehicle within the exterior boundaries of the Reservation shall be deemed to have consented to chemical tests of his or her breath or blood or both, as determined by the law enforcement officer, or for the purposes of determining the alcohol content of his or her blood if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of intoxicating liquor.

B. A test of breath or blood or both shall be administered at the discretion of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle within the exterior boundaries of the Reservation while under the influence of intoxicating liquor.

C. Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by this chapter, and the test or tests designated by the law enforcement officer may be administered.

Section 15-14-18. Use of tests in criminal or civil actions.

A. The results of a test performed pursuant to the implied consent section may be introduced into evidence in any civil or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor.

B. When the breath or blood of the person tested contains:

- (1) An alcohol concentration of five one-hundredths (.05) or less, it shall be presumed that the person was not under the influence of intoxicating liquor, however, this presumption does not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor; or
- (2) An alcohol concentration of more than five one-hundredths (.05) but less than eight one-hundredths (.08), no presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's blood may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

C. When the breath or blood of the person tested contains an alcohol concentration of eight one-hundredths (.08) or more, the arresting officer shall charge him with a violation of section 15-14-16.

D. The determination of alcohol concentration shall be based on the grams of alcohol in two hundred ten (210) liters of breath or the grams of alcohol in one hundred (100) milliliters of blood.

Section 15-14-19. Reckless driving.

A. *Offense.* Any person who drives any vehicle carelessly and with willful or wanton disregard of the rights or safety of others and without due caution, at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving.

B. *Sentence.* The following sentences shall apply:

- (1) *First conviction.* Upon a first conviction for reckless driving, a person shall be sentenced to a jail term not to exceed one hundred twenty (120) days, or be ordered to pay a fine not to exceed one thousand dollars (\$1,000.00), or both.

- (2) *Second or subsequent conviction.* Upon a second or subsequent conviction, a person shall be sentenced to a jail term not to exceed six (6) months, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500.00), or both.

Section 15-14-20. Providing alcohol to minors.

A. *Definitions.* In this chapter, unless another meaning plainly is required:

- (1) "Deliver" means the actual, constructive, or attempted transfer of distilled spirits, wine or malt beverages.
- (2) "Minor" means a person who is less than twenty-one (21) years old.

B. *Offense.* It shall be unlawful for any person to sell to, trade, buy for, deliver or transport any distilled spirits, wine or malt beverages to a minor.

C. *Sentence.* Any person found guilty of providing alcohol to a minor shall be sentenced to a jail term not to exceed six (6) months, or be ordered to pay a fine not to exceed one thousand dollars (\$1,000.00), or both.

CHAPTER 15. NARCOTICS AND DANGEROUS DRUGS

Section 15-15-1. Applicability.

This chapter shall not apply to:

- A. Persons who possess, have under their control, use, transport, or carry narcotics pursuant to a prescription by a licensed physician, dentist, veterinarian, pharmacy, hospital, or other person licensed, registered, or otherwise permitted by the United States to distribute or dispense a controlled substance in the course of professional practice.
- B. Persons who possess, have under their control, use, transport, or carry a controlled substance for use in bona fide religious ceremonies by a bona fide religious organization and is practicing on the Reservation with the approval of the Pueblo Council.
- C. Practitioners who have under their control, dispense, deliver, or administer any drug regulated by this chapter so long as such acts conform to 21 U.S.C. § 829 (1998) and 21 U.S.C. § 301 et. seq. (1998), and other applicable federal laws.

Section 15-15-2. Definitions.

In this chapter, unless another meaning plainly is required, the following definitions shall apply:

Administer refers to the direct application of a controlled substance to the body of a patient by:

- (1) A practitioner (or, in his presence, by his authorized agent); or

- (2) The patient at the direction of and in the presence of the practitioner whether such application be by injection, inhalation, ingestion or any other means.

Anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins and corticosteroids) that promotes muscle growth.

- (1) Such steroids include the following:

- (a) Boldenone;
- (b) Chlorotestosterone;
- (c) Clostebol;
- (d) Dehydrochlormthyltestosterone;
- (e) Dihydratestosterone;
- (f) Drostanolone;
- (g) Ethylestrenol;
- (h) Fluoxymesterone;
- (i) Formebolone;
- (j) Mesterolone;
- (k) Methandienone;
- (l) Methandranone;
- (m) Methandriol;
- (n) Methandrostenolone;
- (o) Methenolone;
- (p) Methyltestosterone;
- (q) Mibolerone;
- (r) Nandrolone;
- (s) Norethandrolone;
- (t) Oxandrolone;
- (u) Oxymesterone;
- (v) Oxymetholone;
- (w) Stanolone;
- (x) Stanozolol;
- (y) Testolactone;
- (z) Testosterone;
- (aa) Trenbolone;

(bb) Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt ester, or isomer promotes the muscle growth.

- (2) Such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration.

Controlled substance means a drug or other substance, or immediate precursor, included in Schedules I, II, III or IV of section 15-15-3.

Deliver or *delivery* means the actual, constructive, or attempted transfer of a controlled substance, whether or not there exists an agency relationship.

Depressant or stimulant substance means:

- (1) A drug which contains any quantity of; (1) barbituric acid or any of the salts of barbituric acid; or (2) any derivative of barbituric acid which has been designated as habit forming under 21 U.S.C. § 352 (d); or
- (2) A drug which contains any quantity of; (1) amphetamine or any of its optical isomers; (2) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (3) any substance which the United States Attorney General, after investigation, has designated by regulation as habit forming because of its stimulant effect on the central nervous system; or
- (3) Lysergic acid diethylamide; or
- (4) Any drug which contains any quantity of a substance which the United States Attorney General, after investigation, has designated by regulation as having a potential of abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

Dispense means to deliver a controlled substance to an ultimate user, or pursuant to the lawful order of practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery.

Distribute means to deliver (other than by administering or dispensing) a controlled substance.

Manufacture means the production, preparation, propagation, compounding or processing of a drug or other substance either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling of its container, except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable state or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his or her professional practice.

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. Such term does not include the mature stalks or 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.

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:

- (1) Opium, coca leaves and opiates;
- (2) A compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates; or
- (3) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances in subsections (1) or (2) above.

Opiate means any drug or other substance having an addiction-forming addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

Opium poppy means the plant of the species *Papaver Somniferum* L., except the seed thereof.

Poppy straw means all parts of the opium poppy, except the seeds, after mowing.

Practitioner means a physician, dentist, veterinarian, pharmacist, hospital, or other person licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he practices, to distribute, dispense, administer a controlled substance in the course of professional practice.

Production or produce includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

Section 15-15-3. Schedule of controlled substances.

A. *Schedule I.* These drugs or other substances have a high potential for abuse and have no currently accepted medical use in treatment in the United States:

- (1) Opiates, opium derivatives and hallucinogenic substances. This chapter regulates all opiates, opium derivatives and hallucinogenic substances, as specified in 21 U.S.C. § 812 (1998), and as may be subsequently amended.
- (2) These Schedule I drugs or substances include, but are not limited to, heroin, marijuana, mescaline, peyote, psilocybin and lysergic acid diethylamide (LSD).

B. *Schedule II.* These drugs or other substances have a high potential for abuse, although the drugs or substances have a currently accepted medical use in treatment in the United States or a currently medical use with severe restrictions.

- (1) Opium, opiates and methamphetamine. This chapter regulates all opiates, opium, and methamphetamine, as specified in 21 U.S.C. § 812 (1998), and as may be subsequently amended.
- (2) These Schedule II drugs or substances include, but are not limited to, opium poppy and poppy straw, coca leaves, methadone and any injectable liquid which contains any quantity of methamphetamine.

C. *Schedule III.* These drugs or other substances have a lesser potential for abuse than drugs in Schedules I or II. These drugs or other substances currently have accepted medical uses in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence.

- (1) Stimulants, depressants, limited quantities of narcotic drugs. This chapter regulates substances having a stimulant or depressant effect on the central nervous system, as well as materials, compounds, mixtures or preparations containing limited quantities of narcotic drugs, as specified in 21 U.S.C. § 812 (1998), and as may be subsequently amended.
- (2) These Schedule III drugs or substances include, but are not limited to, amphetamine, derivatives of barbituric acid, morphine, codeine and anabolic steroids.

D. *Schedule IV.* These drugs or substances have a low potential for abuse relative to the drugs or other substances in Schedule III. These drugs or other substances currently have accepted medical uses in treatment in the United States, and abuse may lead to limited physical dependence relative to the drugs or other substances in Schedule III.

- (1) Schedule IV drugs include the following:
 - (a) Barbital;
 - (b) Chloral betaine;
 - (c) Chloral hydrate;
 - (d) Ethchlorvynol;
 - (e) Ethinamate;
 - (f) Methohexital;
 - (g) Meprobamate;
 - (h) Methylphenobarbital;
 - (i) Paraldehyde;
 - (j) Petfichloral;
 - (k) Phenobarbital.

Section 15-15-4. Prohibited acts.

A. *Offenses.* Except as authorized by this chapter, it shall be unlawful for any person purposely or knowingly:

- (1) To manufacture, produce, distribute, or possess with the intent to manufacture, produce, distribute, or dispense a controlled substance; or
- (2) To possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner who acted in the course of his or her professional practice.

B. *Sentence.*

- (1) Any person found guilty of manufacturing, producing, distributing, or dispensing, or possessing with intent to manufacture, produce, distribute, or dispense, a controlled substance shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed by federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed by federal law, or both.
- (2) Any person found guilty of possessing a controlled substance shall be sentenced to a jail term not to exceed one (1) year or the maximum term allowed by federal law, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or the maximum fine allowed by federal law, or both.

Section 15-15-5. Attempt and conspiracy.

Any person who attempts or conspires to commit any offense defined in this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

CHAPTER 16. ANIMALS AND LIVESTOCK**Section 15-16-1. Making false reports of livestock owned.**

A. *Offense.* A person commits this offense if such person willfully makes a false report as to the total of stock owned to lawfully constituted authority, or refuses to make a true report of stock ownership.

B. *Sentence.* Any person found guilty of making false reports of livestock owned shall be sentenced to a jail term not to exceed ninety (90) days, or be ordered to pay a fine not to exceed two hundred fifty dollars (\$250.00), or both.

Section 15-16-2. Misbranding.

A. *Offense.* A person commits the offense of misbranding if he knowingly and willfully misbrands or alters any brand or mark on any livestock of another person.

B. *Sentence.* Any person found guilty of misbranding shall be sentenced to a jail term not to exceed ninety (90) days, or be ordered to pay a fine not to exceed three hundred fifty dollars (\$350.00), or both.

Section 15-16-3. Obstructing or interfering with livestock round-ups.

A. *Offense.* A person commits this offense if he shall interfere with or obstruct any authorized round-ups which have for their purpose the removal of unowned horses or other livestock, or for the purpose of determining ownership or for other purposes designed to protect Tribal Land from destruction.

B. *Sentence.* Any person found guilty of obstructing or interfering with livestock round-ups shall be sentenced to a jail term not to exceed ninety (90) days, or be ordered to pay a fine not to exceed three hundred fifty dollars (\$350.00), or both.

Section 15-16-4. Refusing to brand or mark livestock.

A. *Offense.* A person commits the offense of refusing to brand or mark livestock if he shall willfully refuse to brand or mark his livestock where such branding or marking is required in the interests of ownership, identification, or for other purposes, or who alters, obliterates, or removes such brands or markings.

B. *Sentence.* Any person found guilty of refusing to brand or mark livestock shall be sentenced to a jail term not to exceed ninety (90) days, or be ordered to pay a fine not to exceed three hundred fifty dollars (\$350.00), or both.

CRIMINAL CODE

TITLE XV HISTORY

Title XV, Criminal Code, was enacted by Ordinance on May 1, 1968. It was replaced by Ordinance No. 100-99, enacted on May 4, 1999. Resolution 26-99 adopted the Criminal Code on May 18, 1999.

Ordinance No. 100-99 reads as follows: [TEXT OF ORDINANCE]

Resolution No. 26-99 reads as follows:

WHEREAS, Article IV, Section 2 (e) of the Constitution of the Pueblo of Laguna adopted June 6, 1984, authorizes the Pueblo of Laguna Tribal Council to establish and enforce certain laws for the maintenance of law and order and the administration of justice within the Lands of the Pueblo; and

WHEREAS, the Pueblo of Laguna Tribal Council, by majority vote, has adopted the Criminal Code to provide for the protection and welfare of the general membership as well as any and all persons that enter upon the Lands of the Pueblo of Laguna; and

WHEREAS, the criminal provisions in the current Law and Order Code that has been used by the Pueblo of Laguna have not been revised since its inception and which are in need of replacement since those provisions do not sufficiently address the current needs of the Pueblo.

NOW, THEREFORE, BE IT RESOLVED that the Pueblo of Laguna Tribal Council hereby adopts a new Criminal Code for the Pueblo of Laguna.

Title XV, Chapter 3-5, Registration of Sex Offender, enacted by Resolution No. 25-07, adopted on April 17, 2007.

Resolution No. 25-07 reads as follows:

WHEREAS, the President of the United States signed into law the Adam Walsh Child Protection and Safety Act of 2006 (the Act) (P.L. 109-248) and Title I of that Act entitled "the Sex Offender Registration and Notification Act" comprehensively revised the national standards for sex offender registration and notification that include tracking sex offenders following their release, sharing of information about sex offenders among jurisdictions in which they live, work, or attend school, and notification of the community concerning the presence of registered sex offenders; and

WHEREAS, Section 127 of the Act gives Tribes a choice to function as registration jurisdictions, or in the alternative delegate sex offender registration and notification functions and responsibilities to the state in which they are located; and

WHEREAS, the Pueblo of Laguna may elect to function as a registration jurisdiction, so the Pueblo will have essentially the same sex offender registration and notification functions and responsibilities as a state, but be free to make cooperative agreements with states or Tribes (by mutual agreement) for pooling or sharing of these functions in areas of overlapping responsibility; and

PUEBLO OF LAGUNA CODE

WHEREAS, the Act gives the Pueblo of Laguna one year from the reauthorization of this legislation (July 26, 2006) to elect to create or maintain its own sex offender and registration notification office and this Resolution will serve to notify all parties of the Pueblo's intent and is well within that timeframe; and

WHEREAS, the Pueblo of Laguna Criminal Code Chapter 2 Section 2.22 (1999) titled, Registration of Sex Offenders, enforces all offenders convicted of any state, federal or Tribal Sex Laws (including the Pueblo of Laguna) to register with the Laguna Police Department within thirty (30) days after reentering the Pueblo if they committed the following crimes: rape, carnal knowledge of a pupil by teacher, prostitution, incest, child molestation, indecent exposure, or any other offense involving lewd or lascivious conduct; and

WHEREAS, the Pueblo of Laguna will review all of its sex offender registration and notification laws and procedures to incorporate the new language of the Act so as to maintain its sovereign authority over all of its convicted offenders living within its exterior borders.

NOW, THEREFORE, BE IT RESOLVED that the Pueblo of Laguna, by and through its sovereign authority, establishes a Sex Offender Registry and Notification Office and directs the Tribal Prosecutor to revise Section 2.22 of the Laguna Criminal Code to incorporate the national standards, to compose the notification and registration regulations and enforcement protocols, and to develop cooperative agreements with the state of New Mexico, and other Tribes to help facilitate this office; and

BE IT FURTHER RESOLVED, that the Tribal Prosecutor work closely with the Office of the Governor to identify the programs that will be affected by these protocols and to partner with the program directors to compose and present the revised law, regulations, and protocols for Tribal Council to approve by February 2008 and to identify any federal resources that will help facilitate this office and its responsibilities by May 2008;

AND BE IT FURTHER RESOLVED THAT, the Laguna Sex Offender Registry and Notification Office is hereby established by the Laguna Tribal Council.

Title XV, Chapter 14-2, Disorderly Conduct, and Chapter 14-14, Public Intoxication, were enacted by Ordinance No. 01-76 on September 7, 1993.

Resolution No. 42-93 reads as follows:

WHEREAS, the Pueblo of Laguna is an Indian Tribe recognized by the United States with a traditional form of government exercising all inherent governmental powers and Tribal sovereignty; and

WHEREAS, the Laguna Tribal Council has the recognized authority and responsibility, via the Tribal Constitution, to establish laws, rules and regulations for the orderly resolution of disputes and the punishment of certain offenses; and

WHEREAS, the Laguna Tribal Council has the authority and responsibility to enact certain laws regulating the conduct of members and nonmembers alike; and

CRIMINAL CODE

WHEREAS, there currently exists no laws regulating the conduct of persons who are acting in a disorderly manner or who are found to be under the influence of intoxicating liquor or drugs, the use of, or possession of which is prohibited by the Pueblo of Laguna, as delineated in Ordinance No. 01-76; and

WHEREAS, there are no internal laws of the Pueblo of Laguna requiring Secretarial approval of Ordinances of the Pueblo; and

WHEREAS, an exercise of such inherent governmental power and Tribal sovereignty, would be for the Pueblo of Laguna to promulgate and implement a disorderly conduct offense and a public intoxication offense; and

WHEREAS, there is a great need to have these offenses implemented in light of the upcoming festivities associated with the September 19th, Laguna Feast, where a great number of outsiders enter the Reservation boundaries to partake in such activities, and where there has normally been an increase in the use of intoxicants, resulting in people behaving in a disorderly manner.

NOW, THEREFORE BE IT RESOLVED by the Laguna Tribal Council that the Pueblo of Laguna Disorderly Conduct and Public Intoxication Amendments to chapter 3, the Criminal Offenses section of the Pueblo of Laguna Law and Order Code are hereby adopted with the same being incorporated herein and made a part of this Resolution.

BE IT FURTHER RESOLVED, that the effective date of the Pueblo of Laguna Disorderly Conduct and Public Intoxication amendments to Chapter 3 of the Pueblo of Laguna Law and Order Code is September 7, 1993.

BE IT FURTHER RESOLVED, that the current disorderly conduct amendment to the Code will replace the old disorderly conduct offense that was found to be unconstitutional by the Pueblo of Laguna Court of Appeals, and such offense will be added to the current Code as Section 20 (12) - Disorderly Conduct, and the Public Intoxication amendment will be added to the current Code as Section 20 (50) - Public Intoxication. These amendments, which accompany this Resolution as attachments A and B, are hereby incorporated and made a part of this Resolution by reference. [TEXT OF RESOLUTION]

Title XV, Chapter 15, Narcotics and Dangerous Drugs, was enacted by Ordinance No. 01-76 on March 30, 1976.

Ordinance No. 01-76 reads as follows:

WHEREAS, Article IV, Section 1(e) of the Amended Constitution of the Pueblo of Laguna, approved November 10, 1958, authorizes the Council to provide for the maintenance of law and order within the Pueblo of Laguna; and

WHEREAS, a serious problem has arisen on the Laguna Reservation regarding the sale and possession of dangerous drugs, and the present Law and Order Code of the Pueblo does not set forth offenses for the sale and possession of dangerous drugs; and

PUEBLO OF LAGUNA CODE

WHEREAS, the Council deems it necessary to prescribe offenses for the sale and possession of dangerous drugs unless exempted by law;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE PUEBLO OF LAGUNA AS FOLLOWS: [TEXT OF ORDINANCE]