

**DRAFT**  
**REVISED NORTHERN CHEYENNE LAW &**  
**ORDER CODE**

**TITLE 7**  
**CRIMINAL OFFENSE CODE**

**DRAFT**

TITLE 7

CRIMINAL OFFENSE CODE

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## TITLE 7

### CRIMINAL OFFENSE CODE

#### Chapter 1: GENERAL PROVISIONS

##### 7-1-1. Scope, Purpose and Construction

A. Scope. This chapter is not exhaustive of the offenses which are punishable and will not be construed as inconsistent with or as limiting authority to arrest, try, convict, sentence or carry out sentences for violations of any other Section of this Code or of any Ordinance or Resolution of the Northern Cheyenne Tribal Council.

B. Purpose. The purposes of this Chapter and of any other provisions of this Code are:

1. To proscribe conduct that is clearly dangerous to the lives, safety, welfare and good order of the Northern Cheyenne Reservation;
2. To provide a series of reasonable punishments; and
3. To redress wrongs for violations of the laws governing the Northern Cheyenne Reservation.

C. Construction.

1. Each provision of this Chapter of the code and of any other penal provision of this Code shall be construed to give maximum effect to the purposes expressed in Subsection (B) of this Section.
2. The punishments authorized by this Code are not intended to be solely retributive or vindictive, but are intended to promote the purposes expressed in Subsection (B) of this Section.
3. Wherever possible, the Court shall impose that sentence most conducive to redressing any damage or loss sustained as a result of the violation or offense committed.

D. Enforcement.

The Northern Cheyenne Tribal Council authorizes the Bureau of Indian Affairs, United States Department of Justice and any other law enforcement officer duly trained and deputized the authority to enforce this Code and the offenses in this Code.

##### 7-1-2. Multiple Prosecutions and Double Jeopardy.

A. Prosecution of Multiple Offenses. When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted and sentenced for each such offense.

B. Limitation. Except as provided below, a defendant may not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal offense.

C. Separate Trials. Upon application of any party and if justice so requires, the Court may order that separate trials be held for two or more offenses based on the same conduct or arising from the same criminal offense.

D. Double Jeopardy. If a defendant has been prosecuted in the Northern Cheyenne Courts for one or more offense arising out of the same conduct as the original prosecution, a subsequent prosecution in the Northern Cheyenne Courts for the same or a different offense arising out of the same conduct is barred.

7-1-3. Burden of Proof.

A. Burden of Presumption of Innocence.

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

2. By “Element of the offense” is meant:

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

b. The culpable mental state required.

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

7-1-4. Principals and Accessories.

A. This code makes no distinction between principals and accessories in criminal prosecutions.

B. Any person who causes another to commit or who otherwise advises or assists another to commit any offense under the laws of the Northern Cheyenne Reservation is guilty as if he had actually committed the offense.

7-1-5. Entrapment.

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

1. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

2. Employing 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. The defense afforded by this Section will be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

C. Except as provided in Subsection (B) of this Section, a person prosecuted for an offense will be acquitted if he proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment will be tried to and decided by the Court and not by the jury. Evidence of past offenses will be admissible only if the defendant takes the stand in his own defense.

#### 7-1-6. Liability.

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

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

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

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

##### C. Corporations and Unincorporated Associations:

1. A person is legally accountable for any conduct he performs or causes to be performed in the name of a corporation or unincorporated association or on its behalf to the same extent as if it were performed in his own name or on his own behalf.

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

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

#### 7-1-7. Classification of Offenses and Sentences

A. Offenses are designated as Class A offenses, Class B offenses and Class C offenses with maximum fines and imprisonment as follows:

Class A:	Fine not to exceed \$5,000.00 and a term of imprisonment not to exceed one (1) year.
Class B:	Fine not to exceed \$1,000.00 and a term of imprisonment not to exceed six (6) months.
Class C:	Fine not to exceed \$200.00

B. As provided in Chapter 11, the sentence of banishment may be considered.

C. Any offense for which no penalty or sentence is specified or which is not specifically designated a class of offenses will be treated, for the purpose of imposing punishment, as a Class C offense.

D. Enhanced Punishment.

a. If the Tribal Prosecutor intends to seek an enhanced punishment greater than 1 year, the Tribal Prosecutor must file notice of this intention not less than 30 days before the pretrial conference. If the notice is untimely, the trial judge shall grant the defendant, on motion, a reasonable continuance of the trial. The notice must specify that the Tribes intend to seek the enhanced sentence and must specify the aggravating circumstances the Tribes intend to rely on at the sentence hearing. The Tribe may specify by referring to the statutory citation of the aggravating circumstance.

b. If the Tribal Prosecutor files notice that the Tribal Prosecutor intends to seek an enhanced punishment greater than 1 year, the Tribal Court must notify the defendant that the defendant is entitled to have counsel appointed for him/her at the expense of the Tribal Court.

c. The Northern Cheyenne Tribal Court cannot impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

i. Impose on a person in a criminal proceeding a total penalty or punishment greater than a term of 9 years.

d. A defense attorney/counsel provided by the Northern Cheyenne Tribe for a defendant when the Tribe is seeking an enhanced sentence must be someone who has passed the Northern Cheyenne Tribal Bar Exam and has practiced within the Northern Cheyenne Tribal Court for a minimum of one year.

e. A judge presiding over a case when the Tribe is seeking an enhanced sentence must be someone who has passed the Northern Cheyenne Tribal Bar Exam and completed a minimum of 40 hours of legal education from the National Judicial College or an equivalent course of study from another institution.

7-1-8. Definitions

A. Mental States:

1. Purposely — A person act purposely with respect to a result or to conduct described in this Code defining an offense if it is his conscious objective or desire to engage in the conduct or to cause that result.

2. Knowingly — A person acts knowingly with respect to a circumstance or to conduct described in this Code defining an offense if he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described in this Code defining an offense if he is aware or believes that it is highly probable that such result will be caused by his conduct.

3. Recklessly — A person acts recklessly with respect to a circumstance or to conduct described in this Code defining an offense if he is aware of a risk created by the circumstance or by the conduct and disregards the risk. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

4. Negligently — A person acts negligently with respect to a result or to a circumstance described in this Code defining an offense when he consciously disregards a risk if of which he should be aware that the result will occur or that the circumstance exists. This risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

B. Voluntary and Involuntary Acts:

1. Involuntary Act — An “involuntary act” means any act which is:

2. Voluntary Act — A “voluntary act” includes any bodily movement, and form of communication, and where relevant, any failure or omission to take action, that is not involuntary.

C. Harm — means a disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

D. Property — means anything of value. Property includes but is not limited to:

1. Real estate;

2. Money;

3. Commercial instruments;

4. Admission or transportation tickets;

5. Written instruments which represent or embody rights concerning anything of value, including labor services, or which are otherwise of value to the owner;

6. Things growing on, affixed to, or found on land and things which are part of or affixed to any building;

7. Electricity, gas and water;

8. Birds, animals and fish which ordinarily are kept in a state of confinement;

9. Food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps and whole or partial copies, descriptions, photographs, prototypes, or models thereof; and

10. Any other articles, materials, devices, substance and whole or partial copies, descriptions, photographs, prototypes or models thereof which constitute, represent, evidence, reflect or record secret scientific, technical, merchandising, production or management information or a secret designed process, procedure, formula, invention or improvement.

E. Sexual Contact — means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

F. Sexual Intercourse — means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or the anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

G. Weapon — means any instrument, article, or substance which regardless of its primary function, is readily capable of being used to produce death or bodily injury.

## Chapter 2: DEFENSES AND JUSTIFICATIONS

7-2-1. Justification. Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justified and is an affirmative defense provided that the harm or evil sought to be avoided by such conduct is no greater than that sought to be prevented by the law defining the offense charged and the actor did not recklessly or negligently bring about the situation requiring his conduct. The fact that conduct is justifiable as specified in this Code does not abolish or impair any civil right or remedy which might arise from such conduct.

7-2-2. 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 a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist and the action did not recklessly or negligently place himself in a situation in which it was probable he would be subjected to duress.

7-2-3. Ignorance or Mistake. Ignorance or mistake as to a matter of fact or law is a defense if:

A. The ignorance or mistake negate the intent, knowledge, belief, recklessness, or negligence required to establish a material element of the offense; or

B. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

7-2-4. Public Duty. Conduct is justified and an affirmative defense when it is required or authorized by law.

7-2-5. Protection of Self, Property, or Other Person. The use of reasonable force upon or towards another person is justified and an affirmative defense when the actor reasonably 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 or to prevent or terminate an unlawful entry or other trespass upon land or the unlawful carrying away of tangible movable property.

7-2-6. Mental Disease. A person is not responsible for criminal conduct, and it is an affirmative defense, if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

7-2-7. Use of Force.

A. Force in Defense of Persons.

1. A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such force is necessary to defend himself or a third person against such other's imminent use of unlawful force; however, a person is justified in using force which is necessary to prevent bodily injury only if he reasonably believes that such force is necessary to prevent death or serious bodily injury to himself or a third person.

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

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

B. Force in Arrest. A police officer is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

C. Force in Defense of Habitation. A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attach upon his place of habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:

1. The entry is attempted or made in a violent and tumultuous manner and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling or person therein and that the force is necessary to prevent the assault or offer of personal violence; or
2. He reasonably believes that the entry is made or attempted for the purpose of committing a Class A offense or other offense involving threat of bodily injury therein and that such force is necessary to prevent the commission of such offense.

D. Force in Defense of Property. A person is not justified in using force in defense of property unless force is necessary to prevent or terminate immediate irreparable harm. The amount of force that may be used is only that which is reasonably necessary to prevent the harm and can never be force likely to cause death or serious bodily injury.

7-2-8. Intoxication Not a Defense.

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, and 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 and does not constitute a defense.

C. Intoxication does not, in itself, constitute a mental disease as that term is used in this Code.

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

### Chapter 3: INCHOATE OFFENSE

7-3-1. Solicitation. A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

7-3-2. Conspiracy.

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

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

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

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

7-3-3. Criminal Attempt.

A. Any person who purposely, knowingly, negligently or recklessly engages in any conduct which would reasonably result in the commission of any offense, if not for some unforeseen or intervening circumstance that prevents the actual commission of the offense, will be guilty of an attempt to commit that offense.

B. Criminal attempt to commit any offense will be an offense of the same class as the substantive offense attempted.

C. A person will not be liable under this Section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.

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

#### Chapter 4: OFFENSES AGAINST THE PERSON

##### 7-4-1. Criminal Homicide.

A. A person commits the offense of criminal homicide if he purposely, knowingly, or negligently causes the death of another human being.

B. Criminal Homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide.

1. Criminal homicide constitutes Deliberate Homicide if:

a. It is committed purposely or knowingly; or

b. It is committed while the offender is engaged in or is an accomplice in the commission of an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use of or threat of physical force or violence against any individual.

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

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

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

##### 7-4-2. Assault and Related Offenses.

A. Assault:

1. A person commits the offense of assault if he:

a. Purposely or knowingly causes bodily injury to another;

b. Negligently causes bodily injury to another with a weapon;

c. Purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

d. Purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or knowledge that reasonable apprehension would be caused shall be present in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

2. Assault is a Class B offense.

B. Aggravated Assault:

1. A person commits the offense of aggravated assault if he purposely or knowingly causes:

- a. Serious bodily injury to another;
- b. Bodily injury to another with a weapon; or
- c. Reasonable apprehension of serious bodily injury in another by use of a weapon.

2. Aggravated assault is a Class A offense.

7-4-3. Intimidation.

A. A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

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

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

C. Intimidation is a Class B offense.

7-4-4. Mistreating Prisoners.

A. A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

1. Assaults or otherwise injures a prisoner;

2. Intimidates, threatens, endangers, or withholds reasonable necessities from a prisoner with the purpose to obtain a confession from him or for any other purpose; or
  3. Violated any civil right of a prisoner.
- B. A person convicted of mistreating a prisoner(s) must be removed from office or employment.
- C. Mistreating prisoners is a Class C offense.

7-4-5. Kidnapping.

- A. A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.
- B. Unlawful Restraint. A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains or causes to be restrained another so as to interfere substantially with his liberty.
- C. Kidnapping is a Class A offense.

7-4-6. Custodial Interference.

- A. A person, whether a parent or other person, is guilty of custodial interference if:
1. Without good cause, he takes, entices, conceals, or detains a child under the age of sixteen (16) from his parent, guardian or other lawful custodian:
    - a. Knowing he has no legal right to do so; and
    - b. With intent to hold the child for a period substantially longer than any visitation or custody period previously awarded by a court of competent jurisdiction.
  2. Having actual physical custody of a child under the age of sixteen (16) years pursuant to a judicial award of a court of competent jurisdiction which had given another person visitation or custody rights, and without good cause, he detains or conceals the child with intent to deprive the other person of his lawful visitation or custody rights; or
  3. Without good cause he takes, entices or detains an incompetent or other person who has been committed by authority of law to the custody of another person or institution from the other person or institution, knowing he has no legal right to do so.
- B. Custodial Interference is a Class A offense.

7-4-7. Sexual Offenses.

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

- a. He compels her to submit by force or by the threat of death, serious bodily injury, extreme pain, or kidnapping to be inflicted on her or anyone else;
  - b. He compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution;
  - c. He has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance;
  - d. He knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct;
  - e. The female is unconscious or he knows that she is unaware that a sexual act is being committed upon her or that she submits because she falsely supposes that he is her husband; or
  - f. The female is under the age of sixteen (16) years.
2. Sexual Intercourse includes intercourse as defined in 7-1-8 (F) with penetration, however slight; emission is not required.
  3. Rape is a Class A offense.

B. Deviate Sexual Intercourse:

1. A person is guilty of deviate sexual intercourse if he engages in deviate sexual intercourse or causes another to engage in deviate sexual intercourse and if:
  - a. He compels the other person to participate by force or by the threat of death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone;
  - b. He compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution;
  - c. He has substantially impaired the other person's power to appraise or control his conduct by administering or employing without his knowledge drugs, intoxicants or other means for the purpose of preventing resistance;
  - d. He knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct or he knows that the other person is unconscious or submits because he is unaware that a sexual act is being committed on him; or
  - e. The other person is under the age of sixteen (16) years of age.
2. Deviate sexual intercourse is a Class A offense.

C. Indecent Exposure:

1. A person is guilty of indecent exposure if, for the purpose of arousing or gratifying sexual desire of himself or of any other person other than his spouse, he exposes his genitals.

2. Indecent exposure is a Class C offense.

D. Sexual Assault:

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

2. Sexual assault is a Class B offense.

E. Aggravated Sexual Assault:

1. A person commits the offense of Aggravated Sexual Assault if he knowingly subjects another person to any sexual contact without consent; and

- a. The victim is sixteen (16) years of age or younger and the offender is three (3) or more years older than the victim; or

- b. The offender inflicts bodily injury upon anyone in the course of committing the sexual assault. "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

2. Aggravated Sexual Assault is a Class A offense.

3. An offender convicted of Aggravated sexual assault will be required to serve a mandatory minimum jail sentence of at least ninety (90) days and must be fined not less than \$500.00. An offender convicted of Aggravated Sexual Assault, second offense, will be required to serve a mandatory minimum jail sentence of at least six (6) months and be fined not less than \$1,000.00. An offender convicted of any subsequent offenses of Aggravated Sexual Assault will be required to serve a mandatory minimum jail sentence of one (1) year and will be fined \$5,000.00. The mandatory minimum sentences under this provision may not be suspended or deferred. This provision will not limit the authority of a sentencing judge to impose a more severe sentence for the first or second offenders, up to the maximum allowed by law.

F. Provisions Applicable to Sexual Offenses:

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

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

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

4. Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim. Force, fear, or threat alone is sufficient to show lack of consent; resistance by the victim is not required.

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

6. Any person convicted of a Class A Sexual Offense in Tribal Court and/or any person residing on the Reservation who is convicted of a Felony Sexual Offense in any other jurisdiction, will be required to register in writing with the local Reservation law enforcement agency as a convicted sexual offender, consistent with the Sex Offender Registration Notification Act. Public notice of a person's conviction of a Class A Sexual Offense in Tribal Court, or a Felony Sexual Offense in any other jurisdiction must be published in a weekly newspaper of general circulation for two (2) consecutive weeks; and posted at the Tribal Office, Tribal Court, Police Department and in all post offices on or near the Reservation.

7. Any person convicted of a Class A Sexual Offense in Tribal Court will be required to obtain both a chemical dependency evaluation and a sexual offender evaluation, and comply with the recommendations thereof. Copies of such evaluations shall be filed with the Court within ninety (90) days of the date of conviction.

8. In the interest of protecting the community, the Court may order a convicted offender to comply with any reasonable condition of sentence, including but not limited to any of the following:

- a. Restrictions against types of employment involving access to children, elderly or other classes of vulnerable potential victims;
- b. Restrictions from being physically present on or near schools, playgrounds, day care centers, elderly, residential facilities and other specific locations.
- c. Prohibition against the use of alcoholic beverages, illegal drugs and other chemical substances; and being present in business establishments where alcoholic beverages are the chief item of sale.
- d. Payment of the cost of any counseling and/or treatment that the victim may require.

7-4-8. Prostitution.

A. A person is guilty of prostitution if that person practices prostitution or knowingly keeps, maintains, rents, leases any house, room, tent, or other place for the purpose of prostitution.

B. Prostitution is engaging in or agreeing or offering to engage in sexual intercourse with another person for compensation.

C. Prostitution is a Class B offense.

7-4-9. Venereal Disease.

A. A person is guilty of the offense of transmitting a venereal disease if he knowingly infects another with venereal disease.

B. The Tribal Court will have the authority to order and compel the medical examination and treatment of any person charged with the violation of this Section or found afflicted with any communicable disease.

C. Transmitting a venereal disease is a Class C offense.

## Chapter 5: OFFENSES AGAINST THE FAMILY

### 7-5-1. Bigamy.

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

B. It is a defense for the defendant to prove by a preponderance of the evidence that he reasonably believed that he and the other person were eligible to marry.

C. Bigamy is a Class B offense.

### 7-5-2. Incest.

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

B. Incest is a Class A offense.

### 7-5-3. Nonsupport and Related Offenses.

#### A. Criminal Nonsupport:

1. A person is guilty of criminal nonsupport if, without just cause, he fails to provide for support for his spouse, child under the age of 18 years, or other dependent when such persons or any of them are in circumstances of need.

2. "Child" includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.

3. In a prosecution under this section, it is no defense that the person be supported received necessary support from a source other than the defendant.

4. Criminal nonsupport is a Class B offense.

#### B. Endangering the Welfare of a Child:

1. A person is guilty of endangering the welfare of a child if he is a parent, guardian, or other person supervising the welfare of a child under 18 years of age and he knowingly

endangers the child's welfare by violating a duty of care, protection or support or by intentionally leaving or abandoning a child without care or by neglecting to care for a child in any manner which threatens serious harm to the physical, emotional or mental well-being of the child.

2. Endangering the welfare of a child is a Class B offense.

7-5-4. Failure to Send Children to School. Any person who, without good cause, neglect or refuse to send a child under his care, between the ages of six (6) and eighteen (18) years to school, unless that child has graduated from high school, will be guilty of this offense. Failure to send children to school is a Class C offense.

7-5-5. Truancy. Any person between the ages of six (6) and eighteen (18) years of age who, without cause, neglect or refuse to attend school will be deemed guilty of an offense. The Judge may, in his discretion, hear and determine the case in private and in an informal manner and, if the accused is found to be guilty, may in lieu of sentence, place such truant for a designated period under the supervision of a responsible person selected by him or may take such other action as he may deem advisable in the circumstances. Truancy is a Class C offense.

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

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

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

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

7-5-7. Elderly Protection.

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

B. Elderly Protection is a Class B offense.

C. Definitions:

1. "Exploits" means to use the money or property of an elderly person for one's own advantage by means of duress, menace, fraud, or undue behavior.
2. "Abuses" means to inflict physical or mental injury or to deprive an elderly person of food, shelter, clothing or services necessary to maintain the health of the elderly person.

3. "Neglect" means the failure of a guardian, employee of any public facility, or any other person legally responsible for an elderly person's welfare, by failing to provide food, shelter, clothing, or services necessary to maintain the health of the elderly person.
4. "Elderly person" is a person who is at least sixty (60) years of age.

#### 7-5-8. Special Domestic Violence Criminal Offense.

A. Jurisdiction. The Tribal Court is vested with jurisdiction to enforce this section against any person who has committed an act of Dating Violence, Domestic Violence or Violation of a Protection Order against an Indian victim within the Indian country of the Northern Cheyenne Tribe provided the defendant has sufficient ties to the Northern Cheyenne Tribe. A defendant has sufficient ties if the defendant resides or is employed in the Indian country of the Northern Cheyenne Tribe; or if the defendant is a spouse, intimate partner, or dating partner of any Indian who resides in the Indian country of the Northern Cheyenne Tribe.

#### B. Definitions.

1. Dating Violence. The term dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
2. Domestic Violence. The term domestic violence means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim.
3. Indian Country. The term Indian country has the meaning given the term in section 1151 of title 18, United States Code.
4. Protection Order. The term protection order means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.
5. Spouse or Intimate Partner. The terms spouse or intimate partner has the meaning given the term in section 2266 of title 18, United States Code.

C. Offenses; Domestic and Dating Violence, Violations of Protection Orders. Every person who commits an act of domestic violence, dating violence or violation of a protective order is guilty of an offense punishable as a Class A Offense as per Section 7-1-7(A), and subject to the requirements of Section 7-5-10(4), except that an act that constitutes domestic abuse under Section 7-5-11, is punishable as a Class B Offense, as per Section 7-1-7(A) and subject to the requirements of Section 7-5-11(1). Domestic and dating violence include the offenses as stated in Sections 7-5-10 and 7-5-11. Violation of a Protection Order includes any act where the protection order was issued against the defendant, the protection order is consistent with 18 U.S.C. 2265(b), and the violation relates to that portion of the protection order that provides protection against violent or threatening

acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

D. Rights of Defendants. In any criminal proceeding under this section, the defendant shall be entitled to:

1. All applicable rights under the Indian Civil Rights Act, 25 U.S.C. 1301-1304;
2. If a term of imprisonment of any length may be imposed, the Tribal Court must:
  - a. Provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
  - b. At the expense of the Northern Cheyenne tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
  - c. Require that the judge presiding over the criminal proceeding has sufficient legal training to preside over criminal proceedings; and is licensed to practice law by any jurisdiction in the United States;
  - d. Prior to charging the defendant, make publicly available the criminal laws, rules of evidence, and rules of criminal procedure (including rules of governing the recusal of judges in appropriate circumstances) of the Northern Cheyenne Tribe; and
  - e. Maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.
3. The right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the Northern Cheyenne Reservation community; and do not systematically exclude any distinctive group in the community;
4. Timely notification of the right to petition for a writ of habeas corpus in a court of the United States under section 25 U.S.C. 1303, and the right to petition that court to stay further detention pursuant to 25 U.S.C. 1304(e);
5. All other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the Northern Cheyenne Tribe to exercise special domestic violence criminal jurisdiction over the defendant.

E. Any person arrested under this Section will not be released from custody except at arraignment as described in Rule 12 of Title 5.

7-5-9. Spousal privileges inapplicable in criminal proceedings involving domestic abuse.

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

1. The privilege of confidential communication between spouses.
2. The testimonial privilege of spouses.

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

7-5-10. Severe Physical Domestic Abuse. Any person who intentionally causes bodily injury of any kind to a family member or household member commits the offense of severe physical domestic abuse, punishable as a Class A Offense, Section 7-1-7 (A) and 7-1-7(D). By evidence admissible to the Northern Cheyenne Tribal Court, the impact on the victim of domestic abuse of any cuts, bruises, or scrapes, any broken bones, internal hemorrhaging of any kind, or evidence of head and/or brain trauma, will be considered clear evidence of severe physical domestic abuse. For purposes of this Section, "family member or household member" means a person, any person, residing with the accused, and 'residing' means residence in that domicile of a 24 hour period or more.

A. The law enforcement officer(s) first arriving to a domestic abuse situation who finds probable cause and/or clear evidence of severe physical domestic abuse must make an arrest. Whenever possible, two or more law enforcement officers must respond to a domestic abuse call, and if only one officer responds, an explanation in the written report of the incident must explain why two officers were not present. Those arrested and charged with domestic abuse shall not be released from custody except at arraignment as described in Rule 12 of Title 5.

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

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

D. There will be no monetary penalty for a conviction of severe physical domestic abuse, and there will be no jail sentences of less than four months and the defendant may be sentenced up to 3 years. Any jail sentence less than a full year must be accompanied by probation for a duration to be determined by the Court. Each incident and each victim for which a defendant is found culpable must be counted as a separate violation of this Section.

1. Conviction under this Section for abuse of a pregnant woman, or committing the offense while minor children are in the dwelling must result in a jail term up to 3 years.
2. For a defendant with no prior convictions of any form of domestic abuse, the Judge is recommended to require mandatory counseling in any of the following types of programs. The defendant may be ordered to pay a portion of the costs of such treatment utilizing a means based sliding scale. The assistive programs may include but are not limited to:

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

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

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

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

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

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

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

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

7-5-11. Domestic abuse. A person who attempts by physical menace to put a family member or household member in fear of serious bodily harm, or by physical menace causes another to harm himself/herself, is guilty of domestic abuse. For the purposes of this Section, "family member or household member" means a person residing with the accused, and 'residing' means a residence in that domicile of one 24 hour period or more.

A. Conviction for domestic abuse shall be punishable as a Class B Offense 7-1-7(A) and specifically to this Section, there will not be a monetary penalty. Any jail sentence less than three months must be accompanied by a temporary restraining order that fills the balance of a full three months. Each incident and each victim for which a defendant is found culpable must be counted as a separate violation of this Section.

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

C. The provisions of Section 7-5-10(D)(1) through (3) will apply with equal weight for a conviction of domestic abuse.

7-5-12. Added punishment for Offenses in Conjunction with Domestic Abuse and Severe Physical Domestic Abuse.

A. If someone convicted under Section 7-5-10 or 7-5-11, is also convicted of any of the following acts and the acts are done at or very near to the same time as the incident of abuse for which the defendant was convicted, then the defendant must be considered to have committed a felony. Very near to the same time is defined as within 24 hours of the severe physical domestic abuse or domestic abuse. The acts are:

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

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

7-5-13. Duties of Law Enforcement Officer to Victim of Domestic or Family Violence; Notice to Victim upon Law Enforcement's Arrival to Domestic Violence Situation. Whenever a law enforcement officer reports to the scene of an incidence of domestic abuse, if the victim is present, the officer must advise the victim of the availability of a battered persons/at risk shelter and the other child and family services in the community. Domestic abuse is defined in the first paragraphs of both Sections 7-5-10 and 7-5-11 of this Title. The law enforcement officer must give the victim a copy of the following statement:

“If you are a victim of domestic abuse or feel unsafe in this house, you are strongly encouraged to remove yourself and any people dependent on you from the source of danger, or else be persistent in making sure the danger is removed from your house. You must not allow yourself to continue to be harmed. You may ask the police person who gave this to you to take you and your dependents to a domestic violence safe house, to the fort peck crisis center, or the police station. Allowing yourself and any children in your home to continue being near a source of physical and emotional damage is negligence on your part, and is basis for legal action to be brought against you by tribal and state child and family protective services.”

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

following civil orders for relief, but you must go to the Northern Cheyenne Tribal Court building to make them happen. Under Rule 35(B), Title 4 of the Northern Cheyenne Law and Order Code (NCLOC) you can ask for:

A. A temporary restraining order's (TRO) purpose is to force your abuser from being in your presence, but is only for a maximum of fifteen days, and can only be enforced if you inform the police when the abuser violates the restraining order, and sign an affidavit which you must ensure the police deliver to the Tribal Court so that your abuser can be arrested. Violation of a temporary restraining order is punishable by jail of up to three months and a \$500 fine, following Title 1, Sections 1-8-7; and Title 7, Sections 7-8-5 and 7-8-6. While the TRO is in effect, you should keep a copy of its Order with you at all times.

B. After you have received a temporary restraining order against your abuser, the way to continue the restraint against your abuser after the expiration of the TRO is with a preliminary injunction, as per Title 4, Rule 35(A). A preliminary injunction can order the abuser to avoid contact with you and your family from the time the TRO expires until the abuser goes to trial, and the punishment for violation of the injunction is a jail sentence of up to three months and a \$500 fine, as per Title 1, Sections 1-8-7; and Title 7, Sections 7-8-5 and 7-8-6. This is what must happen to create an injunction:

1. At the hearing for creating the TRO, or while the TRO is in force, inform the judge or court clerk you will want an injunction hearing.
2. The Court Clerk for the Tribal Court will mail to you the date for the injunction hearing.
3. You must attend the injunction hearing and present to the Court the reasons why the injunction should be placed against your abuser. Your abuser may appear at this hearing and attempt to avoid having an injunction ordered, or to modify it.

C. If you have asked the prosecutor to bring charges, the Court Clerk will set a date for the criminal lawsuit against your abuser. You may attend the criminal proceedings against your abuser. The criminal public prosecutor should inform you of pretrial hearing and hearing time and dates, the status of litigation progress, and should accept your input as to whether your abuser could be trusted or deserve a probation, parole, or a reduced, mitigated jail sentence. Elective Civil Actions. You may file a complaint with the Tribal Court against your abuser for the tortious battery, if you were physically injured; or assault, if you were threatened and had the impression you were going to be hurt; and for the intentional infliction of emotional distress.

D. For the temporary or permanent custody of your children, you may file a Petition in the Lama Deer, Northern Cheyenne Tribal Court Under Section 8-3-1. Section 8-3-3, 8-2-8 also provides that the Court may order child support payments to be made by the non-custodial parent. Contacts: BIA Social Services, Building 41, N. Cheyenne Ave., Lama Deer, MT 59043 (406) 477-8321; BIA Law Enforcement Services (406) 477-6288, Highway 39, Lama Deer, MT 59043.

E. Law enforcement officer with jurisdiction in the Northern Cheyenne Reservation are expected to keep updated copies of this notice in their patrol vehicles, and to ensure the phone numbers and addresses are current and up to date.

F. Law enforcement officers responding to calls alleging domestic or family violence must use all reasonable means to protect the victim and prevent further violence, including but not limited to:

1. Confiscating any weapons involved in the alleged violence;
2. Transporting or arranging transport for the victim and dependents of the victim to a safehouse/shelter, hospital, police station, or a friend or relative's residence.
3. Assisting the victim and dependents in removing essential personal effects, Section 8-2-3.

7-5-14. Determination by Law Enforcement Officer of Primary Aggressor and the power to arrest.

A. If a law enforcement officer has probable cause to believe a person has committed an offense of severe physical domestic abuse, as per Section 7-5-10 of this Title, whether the offense was committed in or outside the presence of the officer, the law enforcement officer shall presume that arresting and charging the person is the appropriate response.

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

1. Prior complaints of family and domestic abuse from that residence: who made them, what was alleged;
2. The relative severity of injuries inflicted to the people present;
3. The likelihood of future injury to each person; and
4. Whether one of the persons acted in self-defense.

C. The law enforcement officer must use professional methods at all times, and must not threaten a person in order to shirk an obligation to make an arrest or to compel an arrest, Section 7-2-4, 7-7-7. An officer must not base an arrest decision on purely the request of a victim to do so, or on the officer's perception of the willingness of a victim or witness to testify or otherwise participate in a judicial proceeding.

Chapter 7. OFFENSES AGAINST PROPERTY

7-6-1. Trespass to Trust Land

A. A person is guilty of trespass to trust land if, between the hours of 11 p.m. and 5 a.m., that person enters into and remains in any public park, recreation area, powwow ground, rodeo ground, or any other unoccupied property or building held in trust for the Tribe within the exterior boundaries of the Northern Cheyenne Reservation.

B. This shall not apply to person engaged in lawful business or responding to any emergency.

C. Trespass to trust land is a Class C offense.

7-6-2. Arson

A. A person is guilty of arson if he starts a fire or causes an explosion with the purpose of:

1. Destroying a building or occupied structure of another; or
2. Destroying or damaging any property whether his own or that of another to collect insurance for such loss.

B. Definitions:

1. The term "Occupied Structure" includes a trailer, sleeping car, airplane or vehicle, structure or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present.
2. Property is that of another, for the purpose of this Section, if anyone other than the actor has a possessory or proprietary interest therein. If a building or structure is divided into separate occupied units, any unit not occupied by the actor is an occupied structure of another.

C. Arson is a Class A offense.

7-6-3. Reckless Burning.

A. It is a criminal offense for any person who kindles a fire in or near any forest, timber, rangeland or other inflammable material upon land within the exterior boundaries of the Northern Cheyenne Reservation and then leaves the fire without totally extinguishing the same, or permits or suffers said fire to spread beyond his control, or leaves or suffers said fire to burn unattended, such person must be made to make complete restitution including resource loss, suppression and rehabilitation costs. Agricultural burning (weeds, stubble field, irrigation ditches, etc.) in excess of one (1) acre will require a burning permit. Recreational fires (i.e. camp fires) and residential fires (burn barrels, trash piles, etc.) will be excluded from this Section if conducted under sage burning conditions. Traditional fires (seat lodges, sundances, etc.) will be excluded from this Section at all times.

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

C. A burning permit will be valid for a maximum of one (1) year, expiring December 31, and be issued by the Bureau of Indian Affairs and/or Tribal Forestry and constitutes authority to burn as described in this Section.

D. Reckless burning is a Class B offense.

7-6-4. Criminal Mischief

A. A person is guilty of criminal mischief if he:

1. Purposely or knowingly damages or destroys the livestock, domestic animals, or other property of another; or
2. Purposely or knowingly tampers with the property of another and thereby recklessly endangers human life, or recklessly causes substantial interruption or impairment of any public service.

B. Criminal mischief is a Class B offense.

7-6-5. Burglary.

A. A person is guilty of burglary if he enters or remains unlawfully in a building or occupied structure, or separately secured or occupied portion thereof, with the purpose to commit an offense, 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 a prosecution for burglary that the building or structure was abandoned.

B. Definitions:

1. An “occupied structure” is any structure, vehicle, or place adapted overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.
2. “Enter” means an intrusion of any part of the body, or intrusion of any physical object under control of the actor.

C. Burglary is a Class A offense

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

7-6-6. Burglary of a Vehicle.

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

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

7-6-7. Aggravated Trespass.

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

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

B. Aggravated Trespass is a Class B offense.

7-6-8. Simple Trespass.

A. A person is guilty of simple trespass if, knowing his entry or presence is unlawful, he enters or remains on property, trust or non-trust, as to which notice against entry is given by:

1. Personal communication to the actor by the owner or someone with authority to act for the owner;
2. Fencing or other enclosure obviously designed to exclude intruders; or
3. Posting of signs reasonably likely to come to the attention of intruders.

B. It is an affirmative defense to simple trespass that:

1. The property was open to the public when the actor entered or remained and he had not been informed that he should leave or not enter; or
2. The actor's conduct did not substantially interfere with the owner's use of the property and the actor left the property when asked to do so.

C. Simple trespass is a Class C offense.

7-6-9 Robbery.

A. A person is guilty of robbery if, in the course of committing a theft, he:

1. Inflicts serious bodily injury upon another;
2. Threatens another with, or purposely puts him in fear of immediate serious bodily injury; or
3. Commits or threatens to commit a Class A or Class B offense.

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

C. Robbery is a Class A offense.

7-6-10. Theft and Related Offenses.

A. Consolidation of Theft Offenses; General Provisions:

1. Conduct denominated in this part of the Code constitutes a single offense embracing the separate offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property and the like. An accusation of theft may be supported by evidence that it was committed in a manner that would be theft under this part of the Code, notwithstanding that a different manner is charged in the complaint, subject only to the power of the Court to ensure a fair trial by granting a continuance or the appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

2. It is an affirmative defense to prosecution for theft that the actor:

- a. Acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or
  - b. Obtained or exercised control over the property or service honestly and reasonably believing that the owner if present would have consented.
3. It is no defense that:
  - a. The theft was from the actor's spouse, except that misappropriation of household and person effects or other property normally accessible to both spouses, is theft only if it occurs after the parties have stopped living together; or
  - b. The actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe upon.
4. Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.

**B. Punishment of Theft Offenses:**

1. Theft of property or service as provided in this part shall be punishable as follows:
  - a. If the value of the property or services involved is more than \$500.00, the offense is a Class A offense;
  - b. If the value of the property or services involved is \$100.00 or more but less than \$500.00, the offense a Class B offense; or
  - c. If the value of the property or services involved is less than \$100.00, the offense is a Class C offense.
2. If no evidence as to the value of the property or services involved is presented and the value of such is not obvious without presentation of such evidence, and if it otherwise is proven that a theft offense has been committed, the offense is a Class C offense.

**C Theft of Property:**

A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

**D. Theft by Deception:**

1. A person is guilty of theft if he obtains or exercises unauthorized control over the property of another by deception and with a purpose to deprive him.
2. Deception occurs when a person:
  - a. Creates or reinforces a false impression, including false impression as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise will not be inferred from the fact alone that he did not subsequently perform the promise;

b. Prevents another from acquiring information which would affect his judgment of a transaction;

c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

d. Fails to disclose a lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid or is or is not a matter of official record.

3. The term “deceive” does not, however, include matters having no pecuniary significance, or mere puffing or statements unlikely to deceive ordinary persons in the group addressed.

E. Theft by Extortion:

1. A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.

2. Extortion occurs when a person threatens to:

a. Inflict bodily injury on anyone or commit any other criminal offense;

b. Accuse anyone of a criminal offense;

c. Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation;

d. Take or withhold action as an official, or cause an official to take or withhold action;

e. Bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act;

f. Testify or provide information or withhold testimony or information with respect to another’s legal claim or defense;

g. Inflict any other harm which would not benefit the actor but which would substantially harm any other person with respect to the person’s health, safety, business, calling, career, financial condition, reputation, or personal relationships.

3. It is an affirmative defense to prosecution based on Subsection (2) that the property obtained by threat of action, exposure, lawsuit or other official action is compensation for property or lawful services.

F. Theft of Property Lost, Mislaid or Delivered by Mistake:

1. A person is guilty of theft if he comes into control or possession of property of another that he knows or reasonably suspects has been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with the purpose to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it.

G. Receiving Stolen Property:

1. A person is guilty of theft if he receives, retains or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, or who conceals, sells, withholds or aids in concealing, selling or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.

2. The requisite knowledge or belief is presumed in the case of a person who:

- a. Is found in possession or control of other property stolen on a separate occasion;
- b. Has received stolen property in another transaction within the year preceding the transaction charge; or
- c. Being a dealer in property of the sort received, acquires it for a consideration which he knows or should know is far below its reasonable value.

3. As used in this Section, "receives" means acquiring possession, control or title, or lending on the security of the property; "dealer" means a person in the business of buying or selling goods.

H. Theft of Services:

1. A person is guilty of theft if:

- a. He obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefor; or
- b. Having control over the disposition of services of others to which he is not entitled, he diverts such services to his own benefit or to the benefit of another not entitled thereto.

2. Where compensation for service is ordinarily paid immediately upon the rendering of such service, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deceptions as to the intent to pay.

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

I. Theft by Failure to Make Required Disposition of Funds Received:

1. A person is guilty of theft if he obtains property from anyone, or personal services from an employee, upon agreement, or subject to a known legal obligation to make a specified payment or other disposition to a third person, whether from the property or its proceeds or from his own property in an equivalent amount, and if he deals with the property as his own and fails to make the required payment or disposition.
2. It is no defense that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.
3. An officer or employee of the Tribe, another government, or of a financial institution is presumed:
  - a. To know of any legal obligation relevant to his liability under this Section; and
  - b. To have dealt with the property as his own if he fails to pay or discount upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

7-6-11. Forgery.

- A. A person is guilty of forgery if he, with intent to defraud, falsely signs, executes or alters any written instrument.
- B. Forgery is a Class B offense.

7-6-12. Unauthorized Use of Vehicle.

- A. A person is guilty of unauthorized use of vehicle if he operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner.
- B. Unauthorized Use of Vehicle is a Class B offense.

Chapter 7. OFFENSES AGAINST PUBLIC ORDER

7-7-1. Violence to a Policeman or Judge.

- A. A person is guilty of violence to a policeman or Judge if he willfully or knowingly, by force or violence, render physical abuse to a tribal policeman or a Judge of the Northern Cheyenne Court or to the property of such policeman, Judge or Tribal property under the control of the policeman or Judge.
- B. Violence to a policeman or Judge is a Class A offense.
- C. It is a defense to this offense that the defendant did not know the person was a police officer or a Judge or did not know that the property named belonged to a police officer or Judge. Such defense does not prevent prosecution for assault or malicious mischief.

7-7-2. Resisting Arrest.

- A. A person is guilty of resisting arrest if he uses force or violence for the purpose of preventing a law enforcement officer from effecting an arrest or detention of himself or of any other person.

B. Resisting lawful arrest is a Class B offense.

7-7-3. Carrying a Concealed Weapon.

A. A person is guilty of carrying a concealed weapon if he goes about in a public place armed with a dangerous weapon concealed upon his person, unless he has a signed permit by a Judge of the Northern Cheyenne Tribal Court. The weapon so carried may be confiscated by the Court.

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

7-7-4. Firing of a Firearms Offense.

A. A person is guilty of firing of a firearm offense if he:

1. Knowingly or willfully shoots or fires off a gun, pistol or any firearm within the limits of any town, community, village or any private enclosure which contains a dwelling house, or shoots from any vehicle, or shoots across any roadway on the Northern Cheyenne Reservation.

B. Firing of a firearms offense is a Class B offense.

7-7-5. Breach of the Peace or Disorderly Conduct.

A. A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

1. Quarreling, challenging to fight, or fighting;
2. Making loud or unusual noises;
3. Using threatening, profane or abusive language;
4. Discharging firearms;
5. Rendering vehicular or pedestrian traffic impassible;
6. Rendering the free ingress or egress to public or private place impassible;
7. Disturbing or disrupting any lawful assembly or public meeting;
8. Transmitting a false report or warning of a fire, impending explosion, or other catastrophe in such a place that its occurrence would endanger human life; or
9. Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.

B. Disorderly conduct is a Class C offense.

7-7-6. Maintaining a Public Nuisance.

A. A person is guilty of maintaining a public nuisance if he acts in such a manner or creates a situation which may be adjudicated a general nuisance, or permits his property to fall into a condition as to injure or endanger the safety, health, comfort or property of his neighbors.

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

7-7-7. Refusing to Aid an Officer.

A. A person is guilty of refusing to aid an officer if he neglects or refuses, without good cause, when called upon by a tribal police officer or an officer of the Bureau of Indian Affairs, to assist in the arrest of any person charged with or convicted of any offense, or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement.

B. Refusing to aid an officer is a Class C offense.

7-7-8. Escape.

A. A person is guilty of escape if that person, being lawfully arrested and in custody for any offense, escapes, or if he permits or assists or attempts to permit or assist another person to escape from lawful custody.

B. Escape is a Class C offense.

7-7-9. Curfew.

A. Every unmarried person under the age of eighteen (18) years will be subject to curfew regulations throughout the Northern Cheyenne Reservation. From June 1 to September 1, the curfew will be at 11:00 p.m. and from September 2 to May 31, the curfew will be at 10:00 p.m. Parents or guardians of children under the age of eighteen (18) years are responsible for curfew regulations. Exceptions are permitted if the child is under the immediate supervision of an adult, parent or guardian during meetings and public gatherings or is attending authorized school functions or other supervised functions without such supervision.

B. This is a Class C offense for any person whose children fail to obey curfew regulations.

7-7-10. Sanitation and Public Health.

A. A person is guilty of a sanitation and public health offense if he violates any rules or regulations enforced by the Department of Public Health, or United States Public Health Service Division of Indian Health, as adopted by Tribal Council ordinances, or any Indian group, organization, or committee for tribal celebrations or gatherings, or fails to properly dispose of all body wastes, garbage, trash and other waste materials or litter.

B. The sanitation and public health offense is a Class B offense.

C. The Judge of the Tribal Court may, in his discretion, take any action deemed necessary under the circumstances to safeguard the health or well-being of any community, family or person.

7-7-11. Cruelty to Animals.

A. A person is guilty of cruelty to animals if he tortures or cruelly mistreats any animal.

B. Cruelty to animals is a Class C offense.

7-7-12. Desecration of Flags.

A. Definitions. In this Section, “flag” means anything which is or purports to be the official flag of the United States, the United States Shield, the United States Coat of Arms and the Northern Cheyenne Reservation Flag.

B. A person is guilty of desecration of flags if he purposely or knowingly publicly mutilates, defiles, or casts contempt upon the flag as defined in this Section.

C. Desecration of a flag is a Class C offense.

7-7-13. Itinerant Vendors Offense.

A. A person is guilty of an itinerant vendors offense if he fails to pay \$25.00 for a license to do business within the boundaries of the Northern Cheyenne Reservation. An offender will be fined \$25.00 a day for each day he does business within the boundaries of the Northern Cheyenne Reservation without a license.

B. The fee will be deposited in the civil fees account so designated.

C. The license will state the following:

\_\_\_\_\_ is an itinerant vendor and has paid the sum of: \$\_\_\_\_\_ for \_\_\_\_\_ days to do business within the boundaries of the Northern Cheyenne Reservation. This license is valid until \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ o'clock \_\_\_\_m.

D. The license must be accompanied with a receipt and signed by a bonded person of the Northern Cheyenne Police Department or Court.

E. Itinerant vendors offense is a Class B offense.

7-7-14. Littering.

A. A person is guilty of littering if he:

1. Throws, dumps, or places upon any roadway, upon the land or property of another, or upon Tribal land or property, garbage, junk, trash, debris, refuse, or any substance of any nature whatsoever which mars the appearance or detracts from the cleanliness of an area; or

2. Stores or keeps any unserviceable vehicle, appliance or implement within any town or village, unless he has a permit from the Northern Cheyenne Land Committee to maintain a junkyard; or

3. Allows any abandoned building to remain on land he owns or controls within any town or village, unless he has a permit from the Northern Cheyenne Land Committee allowing him to maintain an abandoned building.

B. Littering is a Class B offense.

7-7-15. Putting Refuse on Highway.

- A. It is unlawful for a person to throw or deposit upon any highway any glass bottles, glass, nails, tacks, wire, cans, paper or any other substance likely to injure any person, animal or vehicle upon such a highway.
- B. Any person removing a wrecked or damaged vehicle from a highway on the Reservation must also remove any glass or injurious substance dropped upon the highway from such vehicle.
- C. Conviction under this Section is a Class C offense.

7-7-16. Failure to Heed Police Emergency Lights and Attempting to Elude.

- A. A person commits the offense of failure to heed police emergency lights if the operator does not stop for police officers in the performance of their duties.
- B. A person commits the offense of attempting to elude police officers if the operator of a vehicle operates any vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a police officer who is lawfully in pursuit.
- C. Conviction under this Section is a Class C offense.

Chapter 8. OFFENSE AGAINST THE ADMINISTRATION OF GOVERNMENT

7-8-1. Bribery in Official Matters.

- A. A person is guilty of bribery in official matters if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
  - 1. Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal or governmental officer of employee, or as an official of a party or faction or as a voter;
  - 2. Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or
  - 3. Any benefit as consideration for a violation of a known duty as a Tribal or governmental officer or employee or party official.
- B. It is not a defense to prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.
- C. Bribery in official matters is a Class B offense.

7-8-2. Retaliation for Past Official Action.

- A. A person is guilty of retaliation for past official action if he harms any person by any unlawful act in retaliation for anything done lawfully by another person in his capacity as a public servant.

B. Retaliation for past official action is a Class B offense.

7-8-3. Official Misconduct.

A. A person is guilty of official misconduct if:

1. Being a public servant, and with intent to benefit himself or another person or harm another person, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a nondiscretionary duty imposed on him by law or clearly inherent in the nature of his office; or
2. Being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:
  - a. Acquires or divests himself of a valuable interest in any property, transaction or enterprise which may be affected by such action or information; or
  - b. Speculates or wagers on the basis of such action or information; or knowingly aids another to do any of the foregoing.

B. Official misconduct is a Class B offense.

7-8-4. Falsification in Official Matters.

A. Perjury:

1. A person is guilty of perjury if, in judicial proceedings in any Court of the Northern Cheyenne Reservation, he falsely swears or interprets, or makes a sworn statement or affidavit, knowing the same to be untrue.
2. Perjury is a Class A offense.

B. Tampering with Witnesses:

1. A person is guilty of tampering with witnesses if:
  - a. Believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:
    1. Testify or inform falsely;
    2. Withhold any testimony, information, document or thing;
    3. Avoid legal process summoning him to testify or supply evidence; or
    4. Absent himself from any proceeding or investigation to which he has been legally summoned.

b. He harms another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant.

c. He solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in this Section.

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

C. Tampering with Evidence:

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

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

b. 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.

2. Tampering with evidence is a Class B offense.

D. Welfare Offense:

1. A person is guilty of a welfare offense if he:

a. Gives false information to another for the purpose of obtaining or retaining welfare benefits;

b. Knowingly fails to correct misinformation which enables him to obtain or retain welfare benefits;

c. Continues to accept and use for his own benefit or the benefit of another, welfare benefits to which he knows he is not entitled to;

d. Uses or expends money or commodities granted him as a welfare benefit in an improper or in a manner which does not proportionately benefit each of those persons intended to benefit by the grant; or

e. He knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto.

2. Welfare offense is a Class B offense.

7-8-5. Criminal Contempt. All courts of the Northern Cheyenne Tribe have the power to punish for contempt of their authority the following offenses:

A. Misbehavior of any person in its presence or so near that as to obstruct the administration of justice; or

B. Disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

C. Criminal Contempt is a Class B Offense.

7-8-6. Violation of a Temporary Restraining Order, Temporary Order of Protection, Order of Protection.

A. An individual who violates the orders of a Temporary Restraining Order, Temporary Order of Protection commits a Class B Offense. An individual who violates an Order of Protection commits a Class A Offense.

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

7-8-7. Impersonating a Tribal Official. It is unlawful for a person to:

A. Impersonate or hold oneself out as a Tribal Official or Tribal Judge without authority, assume any characteristic, such as a uniform, insignia, or any identification by which an officer or employee of a Tribal Official is distinguished, known or identified; and

B. Use the impersonation or the assumed characteristic or identity to commit or attempt to commit any unlawful act or any act in which the person purports to represent the Tribe, Tribal Court or an officer or employee of the Tribe.

C. A person who violates any provision of this section is guilty of:

1. A Class B offense; or

2. A Class A offense if the person acted with the intent to:

a. Commit, cause, aid, further or conceal, or attempt to commit, cause, aid, further or conceal, any unlawful act to undermine, contradict, portray, or cause embarrassment the authority of Tribal Government, Tribal Court or the Official Position; or

b. Assist, solicit or conspire with another person to commit, cause, aid, further or conceal any unlawful act to undermine, contradict, portray, cause embarrassment to the authority of Tribal Government, Tribal Court or the Official Position.

Chapter 9. DRUG AND ALCOHOL RELATED OFFENSES

7-9-1. Definitions:

A. Drugs:

1. Narcotic drug, or any amphetamine-like drugs referred to or known as, crack, crystal meth, meth or a methamphetamine which contains any quantity of a substance classified as belonging in Schedule I, II, or III of the Federal Controlled Substances Act, unless such substance was obtained pursuant to a valid prescriptions or order from a licensed medical or health practitioner as defined by Title 21 United States Code §802(21), while acting in the course of his professional practice; except peyote in the Native American Church.

2. "Marijuana" includes all parts of the plan cannabis sativa L., whether growing or not; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plants, fiber produced from such stalks, oil or cake made from the seeds of such plant, or any other compound, manufacture, salt, derivative, mixture or preparation of such mixture stalks, fiber, oil or cake except the resin extracted.

a. Any person who violates this subsection regarding possession in excess of one-half ounce (28.35 grams) of marijuana is guilty of a Class A offense.

b. Any person who violates this subsection regarding possession of one-half ounce (14.175 grams) to one ounce (28.35 grams) of marijuana is guilty of a Class B offense.

c. Any person, who violates this subsection regarding possession of less than one-half ounce (14.175 grams) of marijuana is guilty of a Class C offense.

3. "Psychotoxic chemical solvents" include any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, ether, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement of listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

7-9-2. Drug Offense.

A. Possession: A person is guilty of possession if he possesses, actual or constructive, any of the prohibited substances found in 7-9-1(A). Unless otherwise provided in this chapter;

a. Any person who violates this subsection regarding possession in excess of one-quarter ounce (7.087 grams) is guilty of a Class A offense.

b. Any person who violates this subsection regarding possession of more than one-quarter ounce (7.087 grams) but less than one-half ounce (14.175 grams) is guilty of a Class B offense.

c. Any person, who violates this subsection regarding possession of less than one-quarter ounce (7.087 grams) is guilty of a Class C offense.

B. Distribution: A person is guilty of distribution if he sells, trades, transports, gives away any of the prohibited substances found in 7-9-1(A) is guilty of a Class A offense.

C. Manufacture: A person is guilty of manufactures, which means plants, cultivates, produces, in whole or in part any of the prohibited substances and compounds, ingredients, elements to make or otherwise produce any of the substances found in 7-9-1(A) is guilty of a Class A offense.

D. Use. A person is guilty of use if he purposely inhales, ingests, injects, consumes otherwise causing any of the prohibited substances found in 7-9-1(A) to enter their human system for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or for dulling of his brain or nervous system. Any person, who violates this subsection regarding use is guilty of a Class C offense.

7-9-3. Possession of Liquor.

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly possesses, or transports any beer, ale, wine, whiskey or any other beverage which produces alcoholic intoxication, and such alcoholic beverage is intended for his or her personal use.

B. Rehabilitation. At the discretion of the Court, any person found guilty of violating this Section, and found to be addicted to alcohol, may be ordered to receive rehabilitative treatment.

C. Possession of liquor is a Class C offense.

7-9-4. Manufacture or Delivery of Liquor.

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly manufactures, delivers, or possesses, with intent to deliver any beer, ale, wine, whiskey or any other beverage which produces alcoholic intoxication.

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

C. Presumption. The possession of twelve (12) or more bottles of beverages with an alcohol content of ten percent (10%) or greater, or the possession of twenty-four (24) or more bottles or cans of beverages with an alcohol content of less than ten percent (10%) shall give rise to the rebuttable presumption that the person possessing such quantity of alcoholic beverages is intending to deliver the same.

D. Manufacture or delivery of liquor is a Class A offense.

7-9-5. Exceptions. Sections 7-9-3 and 7-9-4 do not apply to intoxicating liquor being transported through the Northern Cheyenne Jurisdiction.

7-9-6. Intoxication.

A. A person who is found under the influence of intoxicating liquor within the exterior boundaries of the Northern Cheyenne Reservation shall be charged with a violation of this Section.

B. Intoxication is a Class C offense, but the maximum fine for any intoxication conviction is \$20.00. The bond shall also be set at \$20.00.

7-9-7. Drug Paraphernalia.

A. It is unlawful for any person to possess, sell, trade, bargain or offer for sale drug paraphernalia. The term “drug paraphernalia” means any equipment, product or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this Title. It includes items primarily or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine or amphetamines into the human body, including but not limited to pipes, carburetion tubes, devices, cocaine freebase kits and syringes of any kind, with or without a needle attached.

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

C. This section will not apply to any person authorized by applicable law to possess or disturbed such items; or any item that is traditionally intended for use with tobacco products.

Chapter 10. LIVESTOCK OFFENSES

7-10-1. Livestock Offenses.

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

1. Knowingly or negligently permits his livestock to graze or trespass on the property, or permit of another or of the Tribe itself, without the permission to do so;
2. Knowingly or negligently refuses to sell, dispose of, or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock;
3. Knowingly or negligently fails to treat or dispose of a sick animal where there is a substantial danger of infecting other livestock;
4. Fails to dip, inoculate, or otherwise treat livestock in the manner which the Northern Cheyenne Tribal Council or its designated representative shall direct;
5. Makes a false report of livestock owned; or
6. Purposely obstructs or interferes with a livestock roundup.

B. Livestock found to be in violation of this Section may be impounded at the time an arrest is made, and may be impounded without prior notice to the owner if a Court so orders, upon receipt of evidence that such animals are grazing upon the property or permit of another on the Reservation and that immediate action is necessary to protect such interests from harm. Impounded animals for trespass shall be assessed at \$1.00 per head for damages per day and at \$1.00 per head per day for forage consumed by said impounded animals, the charges being payable to the entity whose forage

was consumed. Where animals are impounded without ownership known and are not claimed or the owner refuses to pay the impoundment and trespass assessments within ten (10) days of the impoundment, the Northern Cheyenne Court shall arrange for transportation to and sale of the animals at a public livestock market. The costs of the roundup, impoundment and sale will be immediately deducted and paid from the receipts of the sale of the animals. The owners of the animals who has refused to pay the charges against the animals will be delivered the balance remaining from the sale of the impounded animals, less costs and charges. All unbranded animals that are sold and the money taken in will be returned to the Tribal Council treasurer.

C. Livestock offenses are a Class C offense.

7-10-2. Barrier Offense.

A. It shall be unlawful for any person to cut, move, alter or destroy a barrier, fence, boundary marker, gate or other divisional marker without prior consent of the owner. Any person violating this Section will be required to pay and make restitution for all damages done the owner by way of the fence or barrier or marker being destroyed and may be fined and/or jailed as is herein provided.

B. Barrier offenses are Class B offenses.

7-10-3. Gate Offense.

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

B. Gate offense is a Class C offense.

7-10-4. Misbranding.

A. A person is to be charged with misbranding if he purposely, knowingly or negligently brands or alters any brand mark on any livestock belonging to another person.

B. Misbranding is a Class A offense.

7-10-5. Buffalo and Elk Herd Offense.

A. A person is guilty of a Buffalo or Elk Herd offense if he unlawfully kills, harasses, disturbs, or chases buffalo or elk owned by the Northern Cheyenne Tribe for any purpose or for any reason not connected with official and proper Tribal Council sanctioned management and control.

B. Buffalo or Elk Herd offense is a Class A offense.

7-10-6. Hunting or Fishing by Using Artificial Light.

A. A person is guilty of hunting or fishing by using artificial light if he hunts, takes, pursues, shoots, kills or harasses any game animal or animals or game bird or birds or fish by the aid or use of artificial lights such as automobile lights, spotlights or any other type of lighting apparatus or device.

B. Hunting or fishing by using artificial light is a Class B offense.

## Chapter 11. BANISHMENT

### 7-11-1. Purpose of Article.

- A. Banishment is a traditional non-criminal remedy which the Tribe, acting through its Court, imposes against members who take actions which cause substantial detriment to the Tribe or its members. This chapter codifies and clarifies the grounds for banishment.
- B. There is no tribal common law establishing procedures applicable to banishment proceedings. This chapter provides those subject to banishment with procedural protections.
- C. This chapter does not and is not intended to impose criminal sanctions against any person.

7-11-2. Preservation of Authority to Banish. Tribal customary law permitted the Tribe, clan or a family to banish one of its own members. This chapter reduces the historical and customary authority to banish a member to Tribal statutory authority. It provides the grounds upon which banishments may be based, and provides procedures applicable to banishments.

7-11-3. Persons Subject to Banishment. Any member over the age of 21 may be banished by the Tribe, provided that a banishment decree is not effective against a Tribal Council member, Tribal President, Tribal Officer, Gaming Commissioner, Tribal Court Judge, or any person elected to tribal office, until the person has been lawfully removed from office.

7-11-4. Grounds for Banishment; Automatic Banishment. A person will be automatically banished, and the Tribal Court must issue a banishment decree, upon conviction for knowingly or intentionally killing, or attempting to kill, a member of the Tribe, employee of the Tribe, or any person on Northern Cheyenne lands.

Any person may be banished by the Tribe for:

- A. Upon conviction for recklessly killing or attempting to kill a member of the Tribe, employee of the Tribe, or any person on Northern Cheyenne lands;
- B. Upon conviction of raping or attempting to rape a member of the Tribe, employee of the Tribe, or any person on the Northern Cheyenne lands;
- C. Upon conviction of having sexual contact with, or attempting to have sexual contact with, a member of the Tribe or person on the Northern Cheyenne lands who is less than 16 years old;
- D. Stealing or unlawfully retaining possession of tribal records or destroying tribal records without authorization;
- E. Upon conviction for manufacturing or distributing illegal drugs;
- F. Desecration of tribal cultural or religious sites or artifacts;
- G. Repeatedly engaging in assault intended to inflict serious bodily harm, or which does inflict serious bodily harm to a member of the Tribe, employee of the Tribe, or any person on the Northern Cheyenne lands, or repeatedly engaging in aggravated assault of a member of the Tribe, employee of the Tribe, or any person on the Northern Cheyenne lands; or

H. Conspiring with others to commit any of the acts stated above.

7-11-5. Length of Banishment.

A. Unless the banishment decree expressly states that the banishment is for a specified term, the banishment by the Tribe will be in effect until the Tribal Court, in its unfettered discretion, lifts the banishment decree.

B. After one year of banishment, a person banished may request, by letter written to the Tribal President and the Tribal Council to lift the banishment decree, but the Court will have discretion regarding whether or how it reviews that request, and the Tribal President, Tribal Council and Supreme Court will have no duty to respond to such a request.

7-11-6. Effect of Banishment.

A. Unless the banishment decree expressly states otherwise, a person who is banished by the Tribe must:

1. Be immediately expelled from the jurisdiction of the Tribe and not be allowed to return for any reason during the period of banishment except when required to attend court or for a period of four (4) days for the funeral of an immediate family member, defined as mother, father, spouse, siblings, children, grandparents and grandchildren;
2. Beginning seventy-two hours after the banishment, have no contact with members of the Tribe living on Northern Cheyenne Lands; except that the banished person may write the Tribal President and Tribal Council solely for the purpose described in section 7-11-5(B);
3. Beginning immediately, have no contact with an agent of the Tribe while the agent is performing or seeking to perform any service for the Tribe; except as required for Court proceedings or as permitted by section 13-7203;
4. Immediately forfeit all positions or offices of honor or profit with the Tribe, subject to the limitation stated in section 7-11-3;
5. Immediately be ineligible for any service, monies, or benefits provided by the Tribe, or due as a result of citizenship in the Tribe, and further provided that if the banishment is subsequently lifted, there will be no back pay of monies or benefits;
6. Immediately be ineligible to vote in any election conducted by or hold any office in the Tribe;
7. If the banished person becomes deceased during the period of banishment, burial of their remains on the Northern Cheyenne lands will be permitted without any action required by the Tribal Council or Tribe.

B. Unless the banishment decree issued by the Tribe expressly states that the banishment is for a specified term, the person who is banished will be considered for all tribal law purposes to be a nonentity seventy-two hours after the banishment decree is issued; including that any housing assignment held by the person must be reassigned by the Tribe, and any personal property remaining on the Northern Cheyenne lands will be subject to distribution by the Tribe; except that the Tribe may bring civil or criminal causes of action, and may continue to prosecute any civil

or criminal action pending, against the banished person, and the person banished will have the rights of a defendant in such action.

7-11-7. Procedures Generally.

A. A preliminary hearing regarding banishment must be conducted by the Tribal Court adjudicatory procedures defined Title 1 and 2 of this Code. After the hearing, the court will either:

1. recommend that the person be banished by the Tribe and set the matter for a hearing to determine the duration of banishment; or
2. determine that the person should not be banished by the Tribe and may remain within the Northern Cheyenne lands, and conclude the banishment proceeding.

B. If the Tribal Court recommends that the person should be banished by the Tribe, the hearing to determine duration must be held no later than thirty (30) days after the Court issues its recommendation.

C. Banishment Duration. The Court will determine the duration of banishment based on grounds for banishment found in section 7-11-4. Banishment on grounds based on section 7-11-4 (A), (B) or (C) may last from at a minimum of one (1) year and may be indefinite. Banishment on grounds based on sections 7-11-4 (D) –(H) may last from at a minimum of one (1) year and may last at a maximum up to ten (10) years.

D. Banishment Decree. The Tribal Court must issue a tribal banishment decree providing the name of the person to be banished, grounds for banishment and duration of the banishment.

7-11-8. Dissemination of Banishment Decrees. A copy of a tribal banishment decree issued under this Chapter excluding a person from the Northern Cheyenne Reservation must be:

- A. Sent to Tribal, local, and state law enforcement officials, as determined by the President.
- B. Sent to the appropriate official of the Bureau of Indian Affairs and the United States Attorney for the Montana District;
- C. Published in a newspaper of general circulation for one week;
- D. Posted permanently at the governmental offices of the Tribe and Tribal Court in a conspicuous manner; and
- E. Maintained collectively and separately in a manner which allows for subsequent examination of such orders by any member of the Tribe or other resident of the Northern Cheyenne Reservation.

7-11-9. Emergency Exclusion.

A. Tribal Council may, by majority vote of a quorum, issue an emergency exclusion order against any member who, based on the grounds established in 7-11-4, poses an immediate danger or the threat of immediate danger to the life, health, safety, or property of the Tribe or any of its members, employees, or residents, or where delay would result in irreparable damage or harm.

B. In the case of any emergency exclusion under this section, a preliminary hearing regarding banishment must be held by the Tribal Court, as provided by section 7-11-7(A), as soon as reasonably possible and no longer than twenty days after the emergency exclusion order is entered.

C. An emergency exclusion order issued under this section will remain in force until revoked by the Tribal Council or until the hearing provided for in this Section.

7-11-10. Enforcement of Banishment Decrees Issued by the Tribal Council.

A. A Tribal Council banishment decree must be enforced by all tribal officers to the fullest extent permitted by the Tribe's police powers.

B. In addition to any other action permitted by Tribal law, the Tribe may bring suit in Tribal Court to enforce any order issued by the Tribal Council under this Chapter.

C. In hearing a petition for enforcement under this section, the Tribal Court will have the authority:

1. To convert any order of the Tribal Council issued under this Chapter into an order of the Court;
2. To find the person who violates an order of the Tribal Council issued under this Chapter in contempt of court; and
3. To issue any other orders appropriate or necessary to enforce the order of the Tribal Council.

D. In hearing a petition for enforcement, the Court will have limited authority and jurisdiction to hear procedural arguments of any order issued by the Tribal Council pursuant to this Chapter and will consider and deem all matters subject of the Tribal Council's order final.