

TRIBAL CODE
CHAPTER 71:
CRIMINAL OFFENSES

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HISTORY NOTE:

Current Ordinance

Originally enacted as Chapter 4 of the Law and Order Code, Resolution 11-28-79E, adopted November 11, 1979, effective immediately.

Reenacted in Tribal Code format as part of the Tribal Code on July 5, 1995, Resolution No. 95-89, effective immediately.

Tribal Resolution 97-10, adopted February 4, 1997 enacts Chapter 71: Criminal Offenses and rescinds the current Chapter 71.

Amendments:

Tribal Resolution 2018-141, adopted June 12, 2018 amending §§71.1601, and 71.1603, Michigan Medical Marijuana Act, MCL 333.24621 et seq.

Tribal Resolution 2018-30, adopted February 6, 2018 amends §71.1505 and §17.1506, Nicotine Products.

Tribal Resolution 2016-248, adopted October 18, 2016 amends §71.201, §71.202, §71.704, §71.707, §71.1404. Adds new sections §71.711, §71.712, §71.713, §71.714, §71.1406, §71.1605, §71.1809, §71.1810, §71.1811.

Tribal Resolution 2016-185, adopted July 26, 2016, amends Chapter 71, by adding §71.1602(3), possession and administration of Naloxone (Narcan).

Tribal Resolution 2013-225, adopted October 22, 2013, repealed current §71.1504 and enacted new §71.1504.

Tribal Resolution 2012-181, adopted September 4, 2012, adds §§71.1202(1)(m). Disorderly conduct in alcohol free zone.

Tribal Resolution 2008-133, adopted June 17, 2008, adds §§71.1504-1506, Under Age Possession of Liquor, Tobacco and Delivery of Tobacco to Minor.

Tribal Resolution 2008-79, adopted April 15, 2008, deletes §71.1202 and replaces with a revised §71.1202.

Tribal Resolution 2008-61, adopted March 18, 2008, deletes §71.202-71.221 and replaces with §71.202, adds §71.604 and §71.110, deletes §71.1202 and replaces with new §71.1202 and deletes §71.1801 and replaces with §17.1801-1804. Replaces §71.1202 with a new §71.1202 and deletes §71.1801 and replaces it with §71.1801-1804.

Tribal Resolution 2007-54, adopted March 20, 2007, amends §71.502.

Tribal Resolution 2005-89, adopted June 14, 2005, adds new section 71.710 misuse of identity.

Tribal Resolution 2005-90, adopted June 14, 2005, repealed current 71.706 and enacted new 71.706.

Tribal Resolution 2003-58, adopted April 29, 2003, amended '71.1102, improper influence Tribal Official.

Tribal Resolution 2003-41, adopted March 25, 2003, amended '71.303, violation of Chapter 43.

Tribal Resolution 7-25-87, adopted July 25, 1987, added '71.159, offenses concerning dogs.

Tribal Resolution 10-18-88, adopted October 18, 1988, amended '71.151(2) to increase the penalty.

Tribal Resolution 6-05-89A, adopted June 5, 1989, added '71.160, offenses concerning animals.

Tribal Resolution 11-20-90, adopted November 20, 1990, added '71.161, obstruction of justice.

Tribal Resolution 96-07, adopted January 15, 1996, added '71.161, election fraud

TRIBAL CODE
CHAPTER 71:
CRIMINAL OFFENSES

SUBCHAPTER I: INTRODUCTORY MATTERS

71.101 Purposes.

(1) The general purposes of the provisions governing the definition of offenses are:

(a) to forbid and deter conduct which unjustifiably and inexcusably inflicts or threatens substantial harm to individual or tribal interests; and

(b) to give fair warning of the nature of conduct declared to constitute criminal offenses.

(2) The general purposes of the provisions governing the sentencing and treatment of offenders are:

(a) to punish the offender for crimes against the Tribe;

(b) to remove offenders from the tribal community when required in the interests of public protection;

(c) to promote the correction and rehabilitation of offenders;

(d) to deter the commission of offenses;

(e) to pay restitution to the injured party.

71.102 Repealer.

(1) Except as provided in sub. (3), the following are repealed in their entirety:

(a) Chapter 4 of the Law and Order Code, adopted by Resolution No. 11-28-79E;

(b) any later amendments to Chapter 4;

(c) the recodification of Chapter 4 as Tribal Code Chapter 71: Criminal

Offenses enacted as part of the Tribal Code by Resolution 95-89; and

(d) any later amendments to Chapter 71.

71.103 Effective Date.

This Chapter shall take immediate effect. The provisions of this Chapter shall apply to any offense committed on or after the date of enactment.

SUBCHAPTER II: DEFINITIONS

71.201 General Provisions.

(1) For the purpose of this Chapter, certain terms are defined in this subchapter.

(2) The definitions provided in Tribal Code '71.202 apply unless subchapters include specific and contrary definitions. Any specific definitions within a subchapter are superior to the general definitions listed in Tribal Code '71.202 and shall govern the definition of the word for that subchapter.

(3) When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, words in the plural number include the singular number, and words in the masculine gender include the feminine gender.

(4) The word "shall" is always mandatory and not merely directory.

(5) The definitions set forth in Tribal Code '70.102 shall apply to this Chapter as well.

71.202 Definitions.

(1) "Child" or "minor child" means a person 17 years of age or younger.

(2) "Course of Conduct" means a pattern of conduct composed of a series of two or more separate non continuous acts evidencing a continuity of purpose.

(3) "Credible threat" means a threat, verbal or nonverbal, that would cause a reasonable person to fear for his safety or the safety of a household member, including a spouse, former spouse, family member, present or former household member or co-parent of a child.

(4) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets all of the following criteria:

- (a) It originated before the person became 18 years of age.
- (b) It has continued since its origination or can be expected to continue indefinitely.
- (c) It constitutes a substantial burden to the impaired person's ability to perform in society.
- (d) It is attributable to 1 or more of the following:
 - (i) Mental retardation, cerebral palsy, epilepsy, or autism.
 - (ii) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.

(5) "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

(6) "Emergency situation" means a situation in which both of the following apply:

(a) Human health, life or safety is in jeopardy and the prompt summoning of aid is essential.

(b) It is reasonable to believe that a domestic abuse offense pursuant to section 71.1404 is being, has been or is about to be committed.

(7) "Emotional Distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(8) "Family member" means a spouse, a parent, a child or a person related by consanguinity to another person.

(9) "Firearm" means any gun, revolver, pistol, shotgun, or other weapon which discharges a projectile by explosive force.

(10) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose. Harassing behavior can include but is not limited to vandalism, annoying or threatening telephone calls, following or other violations of protection orders, sending unwanted letters, electronic mail, electronic forms of communication, sending messages through third parties, showing up at victim's home or workplace, attempting to

obtain private information about the victim through others, leaving gifts for the victim, disabling or otherwise tampering with the victim's vehicle, taking mail from the victim's mailbox, entering the victim's home or place of residence, parking near or driving by the victim's residence or workplace for no legitimate reason.

(11) "Household member" means a person currently or formerly residing in a place of abode with another person.

(12) "Indian" means any person who is:

(a) a member of the Tribe; or

(b) any other person who would be subject to the jurisdiction of the United States as an Indian under 18 U.S.C. '1153 if that person were to commit an offense listed in that section in Indian country to which that section applies.

(13) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.

(14) "Knife" means any dagger, dirk, knife, sword, spear, or stiletto with a blade over three and one-half (3 1/2) inches in length, or any other instrument capable of inflicting cutting, stabbing or tearing wounds, but it does not include a hunting or fishing knife carried for sport or other lawful use.

(15) "Knowingly" means

(a) if the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that the conduct is of that nature or that such circumstances exist; and

(b) if the element involves a result of the conduct, the person is aware that it is practically certain that the conduct will cause such a result.

(16) "Litter" means all rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris or other foreign substance of every kind and description.

(17) "Mental health professional" means that term as defined in section 100b of the mental health code of the State of Michigan, 1974 PA 258, MCL 330.1100b.

(18) "Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(19) "Mentally disabled" means that a person has a mental illness, is mentally retarded, or has a developmental disability.

(20) "Mentally incapable" means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

(21) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

(22) "Mentally retarded" means significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior.

(23) "Negligently" means a manner in which when the person should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the person's failure to perceive it, considering the nature and purpose of the person's conduct and the circumstances known to the person, involves a gross deviation from the standard of care that a reasonably prudent person would observe in the actor's situation.

(24) "Overt act" means an open, manifest act from which criminality may be implied.

(25) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.

(26) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.

(27) "Purposely or intentionally" means:

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

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

(28) "Prescription medication" means a drug, chemical, compound, or treatment that must be dispensed by a licensed pharmacist and is not otherwise available over-the-counter within the United States.

(29) "Recklessly" means the person consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the person's conduct and the circumstances known to the person, its disregard involves a gross deviation of the standard of conduct that a law-abiding person would observe in the actor's situation.

(30) "Riot" means a public disturbance involving an assemblage of three (3) or more persons which by tumultuous and violent conduct creates substantial danger of damage or injury to property or persons or substantially obstructs the performance of any lawful governmental function.

(31) "Sell" includes any form of remuneration, trade, or compensation.

(32) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

- (a) revenge; or
- (b) to inflict humiliation; or
- (c) out of anger.

(33) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(34) "Substantial step" means any conduct, whether act, omission or possession which is corroborative of the actor's intent to commit the other offense.

(35) "Telecommunications" and "telecommunications service" mean any service lawfully provided for a charge or compensation to facilitate the origination, transmission, retransmission, emission, or reception of signs, data, images, signals, writings, sounds, or other intelligence or equivalence of intelligence of any nature over any telecommunications system by any method, including, but not limited to, electronic, electromagnetic, magnetic, optical, photo-optical, digital, or analog technologies.

(36) "Telecommunication device" means any of the following:

- (a) Any instrument, device, card, plate, code, telephone number, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device as defined in MCL 750.157m that alone or with another device can

acquire, transmit, intercept, provide, receive, use, or otherwise facilitate the use, acquisition, interception, provision, reception, and transmission of any telecommunications service.

(b) Any type of instrument, device, machine, equipment, technology, or software that facilitates telecommunications or which is capable of transmitting, acquiring, intercepting, decrypting, or receiving any telephonic, electronic, data, internet access, audio, video, microwave, or radio transmissions, signals, telecommunications, or services, including the receipt, acquisition, interception, transmission, retransmission, or decryption of all telecommunications, transmissions, signals, or services provided by or through any cable television, fiber optic, telephone, satellite, microwave, data transmission, radio, internet based or wireless distribution network, system, or facility, or any part, accessory, or component, including any computer circuit, security module, smart card, software, computer chip, pager, cellular telephone, personal communications device, transponder, receiver, modem, electronic mechanism or other component, accessory, or part of any other device that is capable of facilitating the interception, transmission, retransmission, decryption, acquisition, or reception of any telecommunications, transmissions, signals, or services.

(37) "Tribe" (or "tribal") means (or refers to) the Sault Ste. Marie Tribe of Chippewa Indians.

(38) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following: i) Following or appearing within the sight of that individual. ii) Approaching or confronting that individual in a public place or on private property. iii) Appearing at that individual's workplace or residence. iv) Entering onto or remaining on property owned, leased, or occupied by that individual. v) Contacting that individual by telephone. vi) Sending mail or electronic communications to that individual. vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

(39) "Weapon" means a firearm, knife, or any of the following: any dart, blow-gun, air or pellet gun, non-safety razor, blackjack, billy club, sand club, sand bag, any handoperated striking weapon consisting at the striking end of an encased heavy substance or at the handle end a strap or springy shaft which increases the force of the impact, any device designed for propelling by release of gas or a spring pressure, any device designed to discharge chemicals as an offensive or defensive weapon, a bomb or any other explosive or incendiary device or Molotov cocktail, brass knuckles or other device intended to be worn on the hand or other part of the body for infliction of injury to another person, stun gun, shocking device or any other device used to inflict bodily injury.

SUBCHAPTER III: JURISDICTION

71.301 Generally.

The offenses specified in this Chapter, or those provided for in other chapters of the Tribal Code, constitute forbidden criminal conduct against the Tribe. Persons committing such offenses may be tried and punished by the Tribal Court as provided for by this Chapter and Chapter 70; provided, however, that such jurisdiction, whether or not exercised, shall not affect the power or authority of any other courts, including those of the United States, or the State of Michigan, which may have jurisdiction.

71.302 Persons Under the Tribe's Criminal Jurisdiction.

(1) The criminal jurisdiction of the Tribe shall extend to all Indians, and all other persons over whom the exercise of criminal jurisdiction by the Tribe is authorized or permitted by federal law.

(2) The criminal jurisdiction of the Tribe shall extend to all persons, whether or not Indians, who violate '71.501 (contempt), '71.502 (disobedience of a court order) or '71.503 (perjury). [*see Canby (2d ed.) p. 139*]

71.303 Territorial Extend.

(1) Except as provided in sub. (2), the criminal jurisdiction of the Tribe shall extend to:

(a) all land within the limits of the Tribe's reservation, including trust land, fee patented land and rights of way running through the reservation; and

(b) all land outside the boundaries of the Tribe's reservation held in trust by the United States for individual members of the Tribe or for the Tribe; and

(c) all other land considered "Indian Country" as defined by 18 U.S.C. '1151 that is associated with the Tribe.

(2) The criminal jurisdiction of the Tribe shall extend to the following offenses wherever committed:

(a) Embezzlement and theft from a tribal organization, ' 71.808;

(b) Abuse of office, '71.1101, if the office involved is a tribal office;

(c) Improper influence of a tribal official, '71.1102;

(d) Election fraud, '71.1103, if the election involved is a tribal election;

(e) Malicious criminal prosecution, '71.1104, if the prosecution involves the Tribal Court;

(f) Obstruction of justice, '71.1105, if the investigation involves a violation of tribal law or the case involved is in Tribal Court;

(g) Public bribery, '71.1006, if the public servant involved is an official, appointee, judge or employee of the Tribe; [*see Settler v. Lameer*]

(h) Refusing, omitting and delaying to arrest, '71.1107; and

(i) Filing fictitious report, '71.1109.

(j) Any violation of '43.1017 of Tribal Code Chapter 43: Tribal Tax Code.

SUBCHAPTER IV: GENERAL PROVISIONS

71.401 Affirmative Defenses.

(1) Unless the prosecution's evidence raises an issue of affirmative defense to an alleged offense, the defendant, to raise the issue, must present some credible evidence on that issue. If the issue involved in an affirmative defense is raised, the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

(2) Affirmative defenses include but are not necessarily limited to the following:

(a) Alibi. The evidence must indicate that the defendant's whereabouts at the time of the crime make it impossible or impracticable to place the defendant at the scene of the crime.

(b) Claim of right. The evidence must indicate that the person thought the property to be legally his, and that he was operating under an honest conviction that he was acting under claim of right.

(c) Duress. The evidence must indicate that the person engaged in the conduct charged because he was coerced against his will by the use, or the threatened use of, unlawful force against his person or the person of another. The coercion must be such that a reasonable person would be unable to resist.

(d) Protection of self, property or other person. The use of reasonable force towards another person is justified when:

(i) the force is directed toward one who is using unlawful force; and

(ii) the person using such force reasonably believes that use of force is necessary for the person's protection or that of a third person.

The use of reasonable force toward another person is justified if used to prevent the unlawful entry into the dwelling of the person asserting the defense or to prevent the unlawful carrying away of personal property.

(e) Those affirmative defenses specified elsewhere in this Chapter or another chapter of the Tribal Code.

71.402 Double Jeopardy.

(1) If a criminal prosecution is for a violation of the same provision of law and is based upon the same facts as a former prosecution in Tribal Court, it is barred by the former prosecution, when:

(a) the former prosecution resulted in an acquittal; or

(b) the former prosecution proceeded on the basis of a plea of guilty or no contest; or

(c) the former prosecution resulted in a conviction which has not been reversed or vacated.

71.403 Intoxication.

Intoxication of the defendant is not a defense to the charge of a criminal offense, but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negate the existence of a specific intent, if such intent is an element of the crime charged.

71.404 Multiple Counts.

(1) When the conduct of a defendant establishes the commission of more than one offense, the defendant may be prosecuted for each such offense, unless:

(a) inconsistent findings of facts are required to establish the commission of the offense; or

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

(c) the offense is defined as a continuing course of conduct and the defendant's course was uninterrupted unless the law provides that specific periods or instances of such conduct constitute separate offenses.

(2) If the same conduct is defined as an offense in different chapters of the Tribal Code or in different sections of this chapter, the offender may be prosecuted under any one or all of such sections or chapters subject to the limitations provided by this section. It shall be immaterial to such prosecution that one of the enactments or sections provides a lesser penalty than another, or was enacted at a later date than another unless the later section or enactment specifically repeals the earlier.

71.405 Presumption of Innocence.

(1) Every person is presumed innocent of any offense with which he is charged until proven guilty.

(2) No person shall be convicted of any offense unless his guilt, as to each material element, is proven beyond a reasonable doubt.

SUBCHAPTER V: CONTEMPT OF COURT

71.501 Contempt.

(1) Offense. A person commits the offense of contempt of court, if:

(a) he intentionally fails to maintain the respect due the Tribal Court; or

(b) he intentionally engages in any offensive conduct in the Tribal Court courtroom.

(2) Sentence. A person deemed guilty of contempt of court shall be subject to immediate sentencing by the Tribal Court judge and may be sentenced to a jail term not to exceed ninety days, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

71.502 Disobedience of a Court Order.

(1) Offense. A person commits the offense of disobedience of a court order, if he intentionally disobeys any outstanding order, warrant or command duly issued by the Tribal Court, or any subpoena duly issued by the Tribal Court or an attorney of record.

(2) Sentence. A person convicted of disobedience of a court order may be sentenced to a jail term not to exceed three (3) months, or a fine not to exceed One Thousand Dollars

(\$1,000.00), or both.

71.503 Perjury.

(1) Offense. A person commits the offense of perjury, if he makes any sworn statement, either in writing or orally, or a sworn affidavit, before the Tribal Court, knowing or having reasonable cause to know the same to be false, or if he induces another person to do so.

(2) Sentence.

(a) Except as provided in sub. (b), a person convicted of perjury may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine of not to exceed One Thousand Dollars (\$1,000.00), or both.

(b) If any other person is unjustly deprived of liberty or property, or the use or benefit thereof, as a result of such perjury, the sentence may be imprisonment for a period not to exceed six (6) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

SUBCHAPTER VI: SCHEMING AND PLANNING OFFENSES

71.601 Aiding and Abetting.

(1) Offense. A person commits the offense of aiding and abetting, if:

(a) with the intent to promote or facilitate the act or conduct constituting the commission of the offense, he aids, abets or advises such other person in planning or committing the offense.

(2) Sentence. A person convicted of the offense of aiding and abetting shall be subject to the same sentence as provided for the underlying crime.

(3) Comment. A person shall not be convicted of aiding and abetting if the principle offender is not found guilty of the underlying crime.

71.602 Conspiracy.

(1) Offense. A person commits the offense of criminal conspiracy, if with the intent to promote or facilitate the commission of another offense,

(a) he agrees with another person or persons that they, or one or more of them, will engage in conduct which constitutes such other offense or an attempt to commit such other offense; or

(b) he agrees to aid such other person or persons in planning and commission or such other offense or of an attempt to commit such other offense.

(2) Sentence. A person convicted of criminal conspiracy shall be subject to the same punishment s that specified for the offense which was the subject of the conspiracy. However, the penalty shall not exceed the maximum specified for the offense which was the subject of the conspiracy, whether or not such other offense was committed.

(3) Comment.

(a) Factual or legal impossibility of committing the other offense is not a defense to a charge of criminal attempt, if the other offense would have been committed had the attendant circumstances been as the actor believed them to be.

(b) A person who engages in conduct intending to aid another to commit any offense commits criminal attempt if the conduct would establish his complicity under '71.601 were the offense to be committed by the other person, even if the other person is not guilty of committing or attempting the offense.

71.603 Solicitation.

(1) Offense. Except for authorized acts of persons authorized by law to investigate the commission of offenses by others, a person commits the offense of criminal solicitation, if he commands, induces, entreats or otherwise attempts to persuade another person to commit an offense, whether as principal or accomplice, with he intent to promote or facilitate the commission of that crime.

(2) Sentence. A person convicted of criminal solicitation shall be subject to the same punishment as that for the completed offense. However, the penalty for solicitation shall not exceed the maximum specified for the offense which was the subject of the solicitation whether or not the offense was committed.

(3) Comment. It is no defense to a prosecution under this section that the person solicited could not commit or could not be guilty of the offense because of lack of responsibility, culpability or other incapacity.

71.604 Criminal Attempt.

(1) Offense. A person commits the offense of criminal attempt, if, acting with the kind of culpability otherwise required for the commission of the crime, he:

(a) purposely engages in conduct that would constitute the crime if the attendant circumstances were as he believes them to be; or

(b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or

(c) purposely does or omits to do anything that, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(2) Sentence. A person convicted of criminal attempt shall be subject up to one-half the maximum period of imprisonment or up to one-half the maximum fine specified for the intended offense, or both.

SUBCHAPTER VII: OFFENSES AGAINST THE PERSON

71.701 Assault.

(1) Offense. A person commits the offense of assault, if:

(a) he attempts to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery; and

(b) he intended either to injure the person or intended to put the person in reasonable fear or apprehension of an immediate battery.

(2) Sentence. A person convicted of assault may be sentenced to imprisonment for a period not to exceed four (4) months or a fine not to exceed Two Thousand Dollars (\$2,000.00) or both.

71.702 Battery.

(1) Offense. A person commits the offense of battery, if:

(a) he forcefully or violently strikes or touches another person or something closely connected with the person; and

(b) he intended either to injure the person or intended to make the person reasonably fear immediate injury.

(2) Sentence. A person convicted of battery may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Three Thousand Dollars (\$3,000.00), or both.

71.703 Assault with a Weapon.

(1) Offense. A person commits the offense of assault with a weapon if:

(a) he committed an assault as defined in '71.701(1); and

(b) he had the ability to commit a battery, or appeared to have the ability, or thought he had the ability; and

(c) he committed the assault with a weapon.

(2) Sentence. A person convicted of assault with a weapon may be sentenced to imprisonment for a period not to exceed nine (9) months, or a fine not to exceed Four Thousand Dollars (\$4,000.00), or both.

71.704 Aggravated Assault or Battery.

(1) Offense. A person commits the crime of Aggravated Assault or Battery if the person:

(a) Commits an assault or battery and causes "serious injury." Serious injury includes any injury for which medical attention is or should be sought.

(b) Commits an assault or battery which causes physical injury, however slight, and the assault or battery is committed in the immediate presence of, or is seen by, or directly perceived by, a minor child who is a family member or household member of either the victim or the assailant.

(c) Causing physical injury, however slight, and commits the assault or battery knowing that the victim is pregnant.

(d) Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants.

(e) Being at least 17 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger.

(3) Sentence. A person convicted of Aggravated Assault or Battery may be sentenced to imprisonment for a period up to nine (9) months or a fine not to exceed Four Thousand Dollars (\$4,000.00), or both

71.705 Battery on a Law Enforcement Officer.

(1) Offense. A person commits the offense of battery on a law enforcement officer, if:

- (a) he uses force to intentionally injure a law enforcement officer; and
- (b) the injury required medical care; and

(c) he injured the law enforcement officer, while the officer was making a lawful arrest; and

- (d) he knew the officer was a law enforcement officer.

(2) Sentence. A person convicted of battery on a law enforcement officer may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.706 Harassment.

(1) A person commits the offense of harassment if that person, by words or conduct, and, with the intent to annoy, harass, intimidate, threaten or alarm:

- (a) causes physical injury or severe emotional distress to another person;
- (b) subjects another person to offensive physical contact;
- (c) causes physical damage to or destruction of the property of another person;
- (d) places another person in reasonable fear of harm to his or her person or property or to the person or property of a third person;
- (e) interferes with another person's free exercise or enjoyment of any right or privilege secured to him or her by any applicable law or otherwise violates the rights of another.

(2) Sentence.

- (a) A person convicted of harassment may be sentenced to imprisonment for a period not to exceed two (2) months, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.
- (b) A person convicted of harassment may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both, if such harassment was by reason of, or in away that was reasonably related to, associated with, or directed towards that person's actual or perceived race, color, religion, national origin, ancestry, gender, marital status, sexual orientation, or mental,

physical or sensory disability of another individual or group.

(c) Prosecution of a person under this Subsection does not preclude prosecution and imposition of penalties for another crime in addition to the penalties imposed under this Subsection.

71.707 Stalking.

(1) Presumption. In a prosecution for a violation of this section evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(2) Offense. A person commits the crime of Stalking if the person engages in a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(3) Sentence. A person convicted of Stalking may be sentenced to imprisonment for a period of up to six (6) months, or a Twenty-Five Hundred Dollars (\$2,500.00) fine, or both.

71.708 Homicide.

(1) Offense. A person commits the offense of criminal homicide, if:

(a) he intentionally causes the death of another person; or

(b) with the intent to cause bodily injury to a person, or to assault, threaten, menace, intimidate or endanger any person, he causes the death of that person or any other person; or

(c) acting alone or with one or more persons, he voluntarily commits or participates in the commission or attempt to commit arson, theft, burglary, kidnapping, assault or unlawful sexual behavior, and in the course of or in furtherance of the crime that is being committed or attempted, or in the immediate flight therefrom by anyone, the death of a person is caused; or

(d) he recklessly or by gross negligence causes the death of another person;
or

(e) under circumstances manifesting indifference to the value of human life, he intentionally engages in conduct which creates significant risk of injury or death to a person, and thereby causes the death of another person; or

(f) he operates a motor vehicle in a reckless or grossly negligent manner, or while intoxicated, or while under the influence of alcohol, drugs or other intoxicant, and such conduct causes the death of another person.

(2) A person convicted of criminal homicide may be sentenced to imprisonment for a period of up to one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000., or both.

71.709 Kidnapping.

(1) Offense. A person commits the offense of kidnapping, if:

(a) he forcibly or otherwise seizes and carries any person from one place to another without his consent and without legal justification or lawful authority; or

(b) he entices, takes or decoys away any child under the age of eighteen (18) years not his own, with the intent to keep or conceal the child from the child's parent, guardian or lawful custodian; or

(c) he intentionally confines, restrains or detains another without the other's consent; or

(d) he is a natural, adoptive or foster parent of a child under the age of eighteen (18) years, but knowing or having reasonable cause to know that he has no privilege to do so, he takes or entices such child from the custody of another parent, guardian or lawful custodian.

(2) Sentence. A person convicted of kidnapping may be sentenced to imprisonment for a period of up to one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.710 Misuse of Identity.

(1) Offense. A person commits the offense of misuse of identity by:

(a) using or attempting to use the name, address, telephone number, place of employment, employee identification number or other Personal Information of another person with intent to defraud or violate the law to obtain credit, goods, services, money, property, Vital Records, Personal Records, or employment, or to commit another unlawful act.

(b) using or attempting to use the name, address, telephone number, place of

employment, employee identification number or other Personal Information of another person by concealing, withholding, or misrepresenting the person's identity to obtain credit, goods, services, money, property, Vital Records, Personal Records, or employment, or to commit another unlawful act.

(c) obtaining, possessing, or attempting to obtain or possess, Personal Information of another person with the intent to use that information to commit an unlawful act.

(d) selling, transferring, or attempting to sell or transfer, Personal Information of another person if the person knows or has reason to know that the specific intended recipient will use, attempt to use, or further transfer the information to another person for the purpose of committing an unlawful act.

(e) the unauthorized communication, disclosure or transmitted, electronically or otherwise, of Personal Information of another person.

(2) Defenses. A person may assert as an affirmative defense to misuse of identity that:

(a) the person acted in otherwise lawful pursuit or enforcement of a person's legal rights, including an investigation of a crime or an audit, collection, investigation, or transfer of a debt, child or spousal support obligation, tax liability, claim, receivable, account, or interest in a receivable or account.

(b) the action taken was authorized or required by federal, state or tribal law, rule, regulation, code, or court order or rule, or pursuant to legal discovery or process.

(c) the person acted with the consent of the person whose Personal Information was used, unless the person giving consent knows that the information will be used to commit an unlawful act.

(d) the Personal Information is disclosed to or used by a law enforcement agency, court, or prosecutor as part of a criminal investigation or prosecution, or is disclosed to or used by a health care provider for purposes of medical treatment and care.

(e) the Personal Information is used to verify an individual's identity, identify an individual, or do another similar administrative purpose related to an account, transaction, product, service, or employment or proposed account, transaction, product, service or employment.

(f) The Personal Information is used to provide or administer employee or health insurance or membership benefits, claims, or retirement programs or

to administer the ownership of shares of stock or their investments, or for other official governmental, employment, or medical investigatory or administrative purposes.

(3) Sentence. A person convicted of misuse of identity may be sentenced to imprisonment for a period of one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.), or both.

(4) Definitions.

(a) “Personal Information” means a number or other information that is used for the purpose of identifying a specific person or providing access to a person’s financial accounts, including, but not limited to:

- (i) A person’s driver license or other state issued personal identification card of license number;
- (ii) All or more than four sequential digits of a social security number;
- (iii) Employer or taxpayer identification number;
- (iv) Government passport number;
- (v) Health insurance identification number;
- (vi) Demand deposit, savings account or other financial account number or the person’s account password;
- (vii) Stock or other security certificate or account number;
- (viii) Credit card number;
- (ix) Vital Records or other Personal Records.

(b) “Vital Records” include, without limitation, a certificate or registration of birth, death, marriage or divorce, an acknowledgment of parentage, tribal enrollment, or related data.

(c) “Personal Records” include any item, collection or grouping of information encompassing any information about a person including, without limitation, medical and mental health records, financial transaction records, education records, employment records or history or criminal history that contain the person’s names, or the identifying number, symbol or other identifying particular assigned to the person, such as finger or voice print or a photograph, or are otherwise linked to that person through an identifying particular.

71.711 Assault with Intent to Do Great Bodily Harm.

(1) Offense. A person commits the crime of assault with intent to do great bodily harm if the person:

(a) Assaults another person with intent to do great bodily harm, less than the crime of Homicide .

(b) Assaults another person by strangulation or suffocation. Strangulation or suffocation means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

(2) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same conduct as the violation of this section.

(3) Proof of actual injury is not necessary but may be taken into consideration in deciding whether someone intended to cause great bodily harm.

(4) Sentence. A person convicted of Assault with Intent to do Great Bodily Harm may be sentenced to imprisonment for a period not to exceed one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.712 Assault with Intent to Commit Criminal Sexual Conduct.

(1) Offense. A person is guilty of Assault with Intent to Commit Criminal Sexual Conduct if they commit an assault with the intent to commit any criminal offenses contained in Subchapter18: Sex Crimes.

(2) Sentence: A person convicted of Assault with Intent to Commit Criminal Sexual Conduct may be sentenced to imprisonment for a period of up to one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both. The offender shall be registered as a sex offender.

71.713 Malicious Use of Telecommunications.

(1) Offense. A person commits the crime of malicious use of telecommunications if he or she uses any telecommunications service or device to, or with intent to, terrorize, frighten, intimidate, threaten, harass, molest, or annoy another person, or to disturb the peace and quiet of another person by any of the following:

(a) Threatening physical harm or damage to any person or property in the course of a conversation or message through the use of a telecommunications service or device.

(b) Falsely and deliberately reporting by message through the use of a telecommunications service or device that a person has been injured, has suddenly taken ill, has suffered death, or has been the victim of a crime or an accident.

(c) Deliberately refusing or failing to disengage a connection between a telecommunications device and another telecommunications device or between a telecommunications device and other equipment provided for the transmission of messages through the use of a telecommunications service or device.

(d) Using vulgar, indecent, obscene, or offensive language or suggesting any lewd or lascivious act in the course of a conversation or message through the use of a telecommunications service or device.

(e) Repeatedly initiating a telephone call and, without speaking, deliberately hanging up or breaking the telephone connection as or after the telephone call is answered.

(f) Deliberately engaging or causing to engage the use of a telecommunications service or device of another person in a repetitive manner that causes interruption in telecommunications service or prevents the person from utilizing his or her telecommunications service or device.

(2) Sentence. A person convicted of Malicious Use of Telecommunications may be sentenced to imprisonment for a period of up to six (6) months, or a Five Hundred Dollar (\$500.00) fine, or both. violation of Malicious Use of Telecommunications is a misdemeanor offense punishable by up to 6 months in custody and up to a \$500.00 fine.

71.714 Aggravated Stalking.

(1) Presumption. In a prosecution for a violation of this section evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(2) Offense. A person commits an Aggravated Stalking if the person engages in stalking behavior and any of the following circumstances exist:

(a) At least one of the actions constituting the offense is in violation of a personal protection order and the individual has received actual notice of that order.

(b) At least one of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.

(c) The course of conduct includes the making of one or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.

(d) The individual has been previously convicted of a violation of Stalking or Aggravated Stalking.

(3) Sentence. A person convicted of Stalking may be sentenced to imprisonment for a period of up to one (1) year, or a Five Thousand Dollars (\$5,000.00) fine, or both.

SUBCHAPTER VIII: PROPERTY RELATED OFFENSES

71.801 Arson.

(1) Offense. A person commits the offense of arson, if without legal justification or lawful authority to do so, he intentionally sets fire to, burns, causes to be burned, or by the use of any explosive damages or destroys, or causes to be damaged or destroyed, any property of another, including public property or any unit of government, or in which another has any legally recognized interest.

(2) Sentence. A person convicted of arson may be sentenced to imprisonment for a period of up to one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.802 Burglary.

(1) Offense. A person commits the offense of burglary, if:

(a) he knowingly enters, breaks into or remains unlawfully in a building, other structure or motor vehicle belonging to another with the intent to commit therein a crime against person or property, other than criminal trespass as defined in '71.902; or

(b) he enters or breaks into any vault, safe, cash register, coin vending machine, product dispenser, money depository, safety deposit box, telephone coin box, vehicle, or other apparatus or equipment whether or not coin operated with the intent to take, use, or steal such object or facility or anything therein.

(2) A person convicted of burglary may be sentenced to imprisonment for a period of up to one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.803 Illegally Receiving Property.

(1) Offense. A person commits the offense of illegally receiving stolen property, if he buys, receives, conceals, or arranges the sale, transfer, disposal or receipt of any property that he knows or has reasonable cause to know was obtained by robbery, theft, fraud or deceit, or other unlawful means.

(2) Sentence. A person convicted of illegally receiving property may be sentenced to imprisonment for a period of up to six (6) months, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.804 Joyriding.

(1) Offense. A person commits the offense of joyriding, if he drives or takes away any motor vehicle without the consent of the owner or lawful possessor, or participates with any other person in such conduct, with the intent of temporarily depriving the owner or rightful possessor of the use of the same, or of temporarily making use of the motor vehicle.

(2) Sentence.

(a) Except as provided in sub. (b), a person convicted of joyriding may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

(b) If the vehicle is damaged while the owner or lawful possessor is deprived of its use, the offender may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

(3) Comment. For the purpose of this section, "temporarily depriving" and "temporarily making use" shall refer to a period of time of not more than twenty-four (24) hours. If the offender intends to use or deprive the owner or rightful possessor of the use of the motor vehicle, and in fact the owner or rightful possessor is deprived of the use of the vehicle, for a period in excess of twenty-four (24) hours, it shall be conclusively presumed that the person driving or taking away the motor vehicle without the consent of the owner or lawful possessor intended to permanently deprive the owner or lawful possessor of its use and benefit.

71.805 Robbery.

(1) Offense. A person commits the offense of robbery, if he takes anything of value from the person or presence of another by the use of force, threats, coercion or intimidation.

(2) Sentence.

(a) A person convicted of robbery may be sentenced to imprisonment for a period of up to one (1) year, or a fine not to exceed Five Thousand Dollars

(\$5,000.00), or both.

(b) The Tribal Court may require the offender to compensate the victim for the value or the stole property in addition to, or in lieu of, the sentence provided in sub. (a).

71.806 Theft.

(1) Offense. A person commits the offense of theft, if he knowingly obtains or exercises control over anything of value of another without authorization, or by threat or deception, or knowing said thing of value to have been stolen; and he

(a) intends to deprive such other person permanently of the use or benefit of the thing of value; or

(b) knowingly uses, conceals or abandons the thing of value in such a manner to deprive such other person permanently of its use or benefit; or

(c) uses, conceals or abandons the thing of value intending that such use, concealment or abandonment will deprive such other person permanently of its use and benefit; or

(d) demands any consideration to which he is not legally entitled as a condition of restoring the thing of value to such other person; or

(e) having lawfully obtained possession for temporary use of the personal property of another, deliberately fails to reveal the whereabouts of or to retain said property to the owner or his representative or the person from whom he has received it, with the intent to permanently deprive such other person of its use and benefit.

(2) Sentence.

(a) A person convicted of theft may be sentenced to imprisonment for a period of up to one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

(b) The Tribal Court may require the offense to compensate the victim for the value of the stolen in addition to, or in lieu of, the sentence provided in sub. (a).

71.807 Theft of Services.

(1) Offense. A person commits theft of services, if without lawful authority, that person obtains services which are available only for compensation with the intent of avoiding payment for such services.

(2) Sentence.

(a) A person convicted of theft of services may be sentenced to imprisonment for a period not to exceed six (6) months or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

(b) The Tribal Court may require the offender to compensate the victim for the services wrongfully obtained in addition to, or in lieu of, the sentence provided in sub. (a).

71.808 Embezzlement and Theft from a Tribal Organization.

(1) Offense. A person commits the offense of embezzlement and theft from a tribal organization, if:

(a) he embezzles, steals, knowingly converts to his use or to the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any tribal organization or entrusted to the custody or care of any officer, employee, or agent of a tribal organization; or

(b) knowing any such money, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another.

(2) Sentence. A person convicted of embezzlement and theft from a tribal organization may be sentenced to imprisonment not to exceed more than one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both; but if the value of such property does not exceed the sum of One Hundred Dollars (\$100.00), he may not be sentenced to imprisonment in excess of six (6) months, or a fine in excess of One Thousand Dollars (\$1,000.00) or both.

(3) Comment. For the purposes of this section, "tribal organization" means the Tribe, or any entity created or owned by the Tribe for economic or governmental purposes, or any entity which is controlled by the Tribe's Board of Directors. An entity is controlled by the Tribe's Board of Directors if a majority of the persons serving on the body which governs the entity are chosen by or required to be members of the Board of Directors.

SUBCHAPTER IX: DAMAGE TO PROPERTY

71.901 Abusing Property.

(1) Offense. A person commits the offense of abusing property, if he intentionally, knowingly or recklessly uses or damages any property not exclusively his own.

(2) Sentence.

(a) A person convicted of abusing property may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

(b) The Tribal Court may require the offender to compensate the victim for the repair or replacement costs of the damaged property in addition to, or in lieu of, the sentence provided in sub. (a).

71.902 Trespass.

(1) Offense. A person commits the offense of trespass if knowingly or having reasonable cause to know that he is not licensed or privileged to do so, he willfully enters or remains upon or within any building, structure, or land, or portion thereof after being ordered or notified not to enter or remain there. Such notice or order may be given by:

(a) written or verbal communication actually given to the intruder; or

(b) written notice posted on or about the property in a manner reasonably likely to come to the attention of potential intruders; or

(c) by fences, barricades, or other devices manifestly designed to enclose the property and to exclude potential intruders.

(2) Sentence. A person convicted of criminal trespass may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

71.903 Desecration.

(1) Offense. A person commits the offense of desecration if he intentionally defaces, damages, pollutes, or otherwise physically mistreats or destroys in any way any public monument, public structure or facility, or place of worship or burial, or desecrates in a public place any other object of veneration or respect by the public or a significant segment of the public.

(2) Sentence. A person convicted of desecration may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

71.904 Littering.

(1) Offense. A person commits the offense of littering, if he deposits, throws, dumps, discards, abandons, or leaves any litter on any public or private property or waters commits the offense of littering, unless:

(a) such property is an area designated by law for the disposal of such litter and such person is authorized by the proper public authority to so use such property; or

(b) the litter is placed in a receptacle or container installed on such property for such use by the public or such person placing litter in it; or

(c) such person is the owner or tenant in lawful possession of such property, or has first obtained written consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of said owner or tenant.

(2) Sentence. A person convicted of littering may be sentenced to imprisonment for a period not to exceed one (1) month, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

SUBCHAPTER X: FORGERY AND RELATED OFFENSES

71.1001 Forgery.

(1) Offense. A person commits the offense of forgery, if with intent to defraud he falsely makes, completes, alters, issues, utters, delivers, files, or submits a written instrument or any portion thereof, for the purpose of obtaining money or other consideration or thing of value, for himself or any other person.

(2) Sentence. A person convicted of forgery may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1002 Fraud.

(1) Offense. A person commits the offense of fraud, if he obtains money, property, gain, advantage, credit, interest or assets from another by intentionally misrepresentation or deceit.

(2) Sentence. A person convicted of fraud may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00),

or both.

71.1003 Passing Bad Checks.

(1) Offense. A person commits the offense of passing bad checks, if he makes, utters, issues, delivers or passes a written order to pay a sum of money, drawn on a bank, payable on demand or at a time certain, and signed by the drawer, when the person so acting knows or has reasonable cause to know at that time the order will not be paid or honored by the drawee because of insufficient funds or lack of an account of the drawer deposited or on account with the drawee.

(2) Sentence. A person convicted of passing bad checks may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1004 Bribery in Sports.

(1) Offense. A person commits the offense of bribery in sports, if:

(a) he offers, confers, bestows or agrees to confer or bestow any benefit upon or threatens any detriment to a participant or official in a sports contest or event, directed either to that person or such other person as may be designated or agreed to by that person, with the intent to influence that person not to give his best efforts as a participant or with intent to influence him to perform his duties as an official improperly; or

(b) being a sports participant or official in a sports contest he accepts, agrees to accept, or solicits any benefit, directed to himself or such other person as may be designated or agreed to by him, from another person upon an understanding that he will thereby be influenced not to give his best and honest efforts as a participant or official in a sports contest.

(2) Sentence. A person convicted of bribery in sports may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1005 Private Bribery.

(1) Offense. A person commits the offense of public bribery, if:

(a) he offers, confers, bestows, or agrees to confer or bestow any personal or pecuniary benefit, gain privilege or advantage upon any other person, or upon any third person designated or agreed to by that other person, as consideration for that other person violating or agreeing to violate a duty to which he is subject as:

- (i) agent or employee; or
- (ii) trustee, guardian or other fiduciary; or
- (iii) lawyer, physician, accountant, appraiser or other professional advisor; or
- (iv) officer, director, partner, manager, or other participant in the affairs of an incorporated or unincorporated firm, enterprise, company or association; or
- (v) duly elected or appointed representative or trustee of a labor organization or trust fund; or
- (vi) arbitrator or other purportedly disinterested adjudicator or referee.

(b) he is a person owing a duty in a capacity set forth in sub. (a) and while in that status he solicits, accepts, or agrees to accept any personal or pecuniary benefit, gain, privilege or advantage directed to himself or another person designated or agreed to by him, upon an agreement or understanding that he will violate or agree to violate his said duty.

(2) Sentence. A person convicted of private bribery may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1006 Public Bribery.

(1) Offense. A person commits the offense of public bribery, if:

(a) he offers, confers, bestows or agrees to confer or bestow any personal or pecuniary benefit, gain, privilege or advantage upon a public servant, or another person designated or agreed to be the public servant, with the intent to improperly influence the public servant's vote, opinion, judgment, exercise of discretion, or other action or inaction in his official capacity; or

(b) while serving as a public servant, he solicits, accepts, or agrees to accept any personal or pecuniary benefit, gain, privilege or advantage directed at himself or another person designated or agreed to by the public servant, upon an agreement or understanding that the vote, opinion, judgment, exercise of discretion, or other action or inaction by him as a public servant will be influenced thereby.

(2) Sentence. A person convicted of public bribery may be sentenced to

imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

SUBCHAPTER XI: OBSTRUCTION OF TRIBAL ADMINISTRATION AND RELATED OFFENSES

71.1101 Abuse of Office.

(1) Offense. A person commits the offense of abuse of office, if he intentionally acts or purports to act in an official capacity, including willful failure to act, so as to obtain any personal or pecuniary benefit, gain, advantage, or privilege to which he is not entitled in or by the performance of his official duties.

(2) Sentence. A person convicted of abuse of office may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1102 Improper Influence of a Tribal Official.

(1) Offense. A person commits the offense of improper influence of a tribal official, if he threatens harm or injury to any tribal official with the intent of influencing such person's official actions.

(2) Sentence. A person convicted of improper influence of a tribal official may be sentenced to imprisonment not to exceed three (3) months, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

(3) Comment. As used in this section, "tribal official" means an elected official of the Tribe or a tribal judge, appointee or employee, or a hearing officer or member of a hearing board established under Article VI, Section 4 of the Tribal Constitution.

71.1103 Election Fraud.

(1) Offense. A person commits the offense of election fraud, if the person:

(a) gives or offers to give anything of value to another person to induce that person to vote, or to refrain from voting, for any candidate, signing a nominating petition, or registering to vote; or

(b) acts to compromise the integrity of the election, or attempts to do so by falsifying any document, including documents filed with the Tribal Election Committee or Board of Directors; or

(c) compromises the security of the ballots and other election documents; or

(d) discharges or threatens to discharge a tribal employee for the purpose of influencing the employees vote or signature on a nominating petition; or

(e) votes, or attempts to vote, more than once in the same election; or

(f) opens, marks, alters, or destroys any ballot sent to another person; or

(g) interfered with the mailing or election materials; or

(h) he alters, defaces or destroys any election documents, including candidate signs or literature; or

(i) files a false report required by Tribal Code '10.112.

(2) Sentence. A person convicted of election fraud may be sentenced to imprisonment not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1104 Malicious Criminal Prosecution.

(1) Offense. A person commits the offense of malicious criminal prosecution, if he maliciously causes or attempts to cause a criminal charge to be prosecuted against an innocent person, knowing such person to be innocent.

(2) Sentence. A person convicted of malicious criminal prosecution may be sentenced to imprisonment not to exceed three (3) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

71.1105 Obstruction of Justice.

(1) A person commits the offense of obstruction of justice, if he knowingly uses intimidation or physical force, threatens, corruptly persuades or attempts to do so, or engages in misleading conduct toward another person, with intent to:

(a) influence the testimony of any person in an official proceedings; or

(b) cause or induce any person to:

(i) withhold testimony, or withhold a record, document or other object, from an official proceeding; or

(ii) alter, destroy, mutilate, or conceal an object with intent to impair

the object's integrity or availability for use in an official proceeding; or

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which such person has been summoned by legal process; or

(c) hinder, delay or prevent the communication to a law enforcement officer or judge of information relating to the commission or possible commission of a tribal or federal offense or a violation of conditions of probation, parole or release pending judicial proceedings.

(2) A tribal law enforcement officer commits the offense of obstruction of justice if he or she:

(a) commits any of the acts set forth in sub. (10); or

(b) without official reason for doing so, obstructs, impedes, hinders, or interferes with any investigation or other official activity of the tribal public safety department, or of another law enforcement agency acting lawfully with respect to a matter arising within the Tribe's jurisdiction as provided in Subchapter III.

(3) Sentence. A person convicted of obstruction of justice may be sentenced to imprisonment for a period of up to one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1106 Obstructing Performance of Police Duties.

(1) Offense. A person commits the offense of obstructing the performance of police duties, if he willfully prevents or attempts to prevent a police officer or other duly authorized law enforcement officer from affecting an arrest or otherwise discharging the duties of his office by any of the following:

(a) creating or appearing to create a risk of bodily harm to the officer or any other person; or

(b) employing means or threatening to employ means which would justify or require force on the part of the officer to overcome them; or

(c) escaping, attempting to escape, or assisting or attempting to assist another to escape from custody of the officer.

(2) Sentence. A person convicted of obstructing police duties may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1107 Refusing, Omitting and Delaying to Arrest.

(1) Offense. Tribal law enforcement officers commit the offense of refusing, omitting and delaying to arrest, if any officer authorized to serve process, who shall willfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person convicted or charged with an offense, or who shall willfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large.

(2) Sentence. A person convicted of refusing, omitting and delaying to arrest may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1108 Concealing or Harboring One Who has Escaped.

(1) Offense. A person commits the offense of concealing or harboring one who has escaped, if he knowingly or willfully conceals or harbors for purpose of concealment, any person mentioned in this Chapter, who has escaped or is escaping from lawful custody.

(2) Sentence. A person convicted of concealing or harboring one who has escaped may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1109 Filing Fictitious Reports.

(1) Offense. A person commits the offense of filing fictitious report, if he willfully and knowingly makes to any tribal law enforcement officer a fictitious report of the commission of any crime knowing the same to be false

(2) Sentence. A person convicted of filing fictitious report may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1110 Preventing the Use of a Telephone in an Emergency.

(1) Offense. A person commits the offense of Preventing the Use of a Telephone in an Emergency if he engages in any of the following conduct:

(a) knowingly refuses to yield or surrender the use of a telephone line to another person to report a fire or summon police or medical or other aid in case of emergency; or

(b) intentionally prevents or interferes with the use of a telephone by another person in an emergency situation.

(2) Sentence. A person convicted of Preventing the Use of a Telephone in an Emergency may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

SUBCHAPTER XII: RIOT AND RELATED OFFENSES

71.1201 Causing or Maintaining a Public Nuisance.

(1) Offense. A person commits the offense of causing or maintaining a public nuisance, if he uses, permits to be used or allows to be in such condition any real or personal property under his control so as to damage, injure or endanger the health, safety or property of another person or the public.

(2) Sentence.

(a) A person convicted of causing or maintaining a public nuisance may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

(b) In addition to, or in lieu of, the sentence provided in sub. (a), the court may order the person to abate or eliminate the nuisance. Such an order to abate or eliminate the nuisance shall include the identification of the nuisance and the period of time in which it must be abated or eliminated.

71.1202 Disorderly Conduct.

(1) Offense. A person commits the offense of disorderly conduct, if the person intentionally, knowingly or recklessly:

(a) uses abusive, indecent, profane, or vulgar language in a public or private place which by its very utterance tends to incite violence, unlawful conduct, or a breach of the peace by others; or

(b) makes an offensive gesture or display in a public or private place which by its very nature tends to incite violence, unlawful conduct, or a breach of the peace by others; or

(c) abuses or threatens a person in a public or private place in a manner

calculated to place the threatened person in fear of bodily harm; or

(d) makes unreasonable noise in a public place, or on or near private property that he has no right to occupy; or

(e) fights with another in a public or private place; or

(f) displays a deadly weapon in a public or private place in a manner calculated to alarm; or

(g) discharges a firearm in a public or private place; or

(h) disrupts any lawful public or religious meeting or assembly; or

(i) lies or sleeps on any public street, alley or private property that he has no right to occupy; or

(j) urinates or defecates in any public place, except where an approved sanitary facility is provided, or in public view; **or**

(k) obstructs any highway or other public passage, whether alone or with others; or

(l) refuses to obey a reasonable request issued by a person the actor knows to be or is informed is a law enforcement officer, a fireman, or a person with authority to control the use of the premises in order to prevent obstruction of a highway or other public passage or in order to maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard; or

(m) possesses any alcohol or illegal drug while inside an area posted as a drug and alcohol free area.

(2) Sentence. A person convicted of disorderly conduct may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

(3) Comment.

(a) As used in subsections 1(k) and 1(l), “obstructs” means render impassable without unreasonable inconvenience or hazard.

(b) No person shall be deemed guilty of an offense under subsection 1(k) solely because of a gathering of persons to hear him speak or otherwise communicate, or solely because of being a member of such a gathering.

(c) For purposes of subsection 1(1), an order to move, addressed to a person whose speech or other lawful behavior attracts an obstructing audience, shall not be deemed reasonable if the obstruction can be readily remedied by police control of the size or location of the gathering.

71.1203 Riot.

- (1) Offense. A person commits the offense of rioting, if he engages in a riot.
- (2) Sentence. A person convicted of riot may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1204 Inciting a Riot.

- (1) Offense. A person commits the offense of inciting a riot, if the person:
 - (a) incites or urges a person to participate or engage in a current or potential riot; or
 - (b) gives commands, instructions, or signals to other persons in furtherance of a riot; or
 - (c) knowingly supplies a weapon or destructive device for use in a riot; or
 - (d) teaches another to prepare or use a weapon or destructive device with intent that it be used in a riot.

(2) Sentence. A person convicted of inciting a riot may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1205 Disobedience of Public Safety Orders Under Riot Conditions.

(1) Offense. A person commits the offense of disobedience of a public safety order under riot conditions, if during a riot, or when one is impending, he intentionally disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot.

(2) Sentence. A person convicted of disobedience of a public safety order during riot conditions may be sentenced to imprisonment for a period not to exceed one (1) month,

or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

71.1206 Obstructing Highway or Other Passageway.

(1) Offense. A person commits the offense of obstructing a highway or other passageway, if he intentionally, knowingly or recklessly:

(a) obstructs a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway or hallway to which the public or a substantial group of the public has access; or any other place used for the passage of persons, vehicles, or conveyances, whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(b) disobeys a reasonable request or order to move issued by a police officer, fireman, or a person with authority to control the use of the premises, to prevent obstruction of a highway or passageway, or to maintain public safety by disturbing those gathered in dangerous proximity to a fire, riot or other hazard.

(2) Sentence. A person convicted of obstructing a highway or other passageway may be sentenced to imprisonment for a period not to exceed one (1) month, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

71.1207 Transmitting False Alarms.

(1) Offense. A person commits the offense of transmitting false alarms, if he knowingly transmits or causes to be transmitted a false message, report or signal of fire or other emergency to or within any organization dealing with emergencies involving danger to life or property.

(2) Sentence.

(a) Except as provided in sub. (b), a person convicted of transmitting a false alarm may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

(b) If the false alarm results directly or indirectly in injury to person or property, the person guilty of the offense may be sentenced to imprisonment for a person not to exceed six (6) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

71.1208 Trespass or Interference in Public Buildings.

(1) Offense.

(a) A person commits the offense of trespass or interference in public buildings, if he so conducts himself at or in any public building or facility owned or

controlled by the Tribe or any other governmental entity, so as to willfully deny to any public official, public employee, or member of the public the lawful rights of such person to enter, to use the facilities of, or to leave any such public building or facility.

(b) It shall also be an offense under this section for any person:

(i) at or in any such public building or facility to willfully impede any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, intimidation, or by force and violence or threat thereof; or

(ii) to willfully refuse or fail to leave any such public building or facility upon being requested to do so by the chief administrative officer, or his designee, charged with maintaining order in such public building or facility, of such person has committed, is committing, threatens to commit, or incites others to commit any act which does, or would if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions being carried on in such building or facility; or

(iii) at any meeting or session conducted by any judicial, legislative, or administrative body or official at, or in, any public building or facility, to willfully impede, disrupt, or hinder the normal proceedings of such meeting or session by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting such meeting or session, or to commit any act designated to intimidate, coerce, or hinder any member of such body or official engaged in the performance of duties at such meeting or session.

(2) Sentence. A person convicted of trespass or interference in public buildings may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

71.1209 Soliciting Without a License.

(1) Offense. A person commits the offense of soliciting without a license, if he begs or solicits gifts or donations of money or property door to door or by telephone, or on the streets, sidewalks or other public places, without a license issued by the Tribal Board of Directors, or its duly authorized agency or representative.

(2) Sentence. A person convicted of soliciting without a license may be sentenced to imprisonment for a period not to exceed one (1) month, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

SUBCHAPTER XIII: WEAPONS AND RELATED OFFENSES

71.1301 Carrying a Concealed Weapon.

(1) Offense. A person commits the offense of carrying a concealed weapon, if he knowingly carries concealed on or about his person a dangerous weapon unless he is lawfully authorized to carry such weapon.

(2) Sentence. A person convicted of carrying a concealed weapon may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

(3) Comment. It shall be an affirmative defense that the accused was in his own dwelling, or place of business, owned or operated by him, or on property owned or under his control at the time of the act of carrying.

71.1302 Unlawful Use of a Weapon.

(1) Offense. A person commits the offense of unlawful use of a weapon, if:

(a) he discharges a firearm in the proximity of a building or vehicle so as to knowingly or recklessly endanger a person or property; or

(b) he carries a firearm while intoxicated; or

(c) he handles or uses a firearm or other weapon so as to knowingly or recklessly endanger the safety of another; or

(d) carries a firearm or other weapon with unlawful intent.

(2) Sentence. A person convicted of unlawful use of a weapon may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1303 Dangerous Use of Explosives.

(1) Offense. A person commits the offense of dangerous use of explosives, if with the intent to injure, intimidate or terrify another, or to damage another's property, he maliciously explodes, attempts to explode or places any explosive anywhere within the territorial jurisdiction of the Tribe.

(2) Sentence.

(a) A person convicted of dangerous use of explosives may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

(b) In addition to, or in lieu of, the punishment provided in sub. (a), the Tribal Court may order the offender to pay to the injured party the costs of any property damaged by his actions.

71.1304 Negligent Use of Explosives.

(1) Offense. A person commits the offense of negligent use of explosives, if he negligently explodes, attempts to explode or places any explosive in such a manner as to result in injury to another or to the property of another, or by such action that increases the probability to such injury.

(2) Sentence.

(a) A person convicted of negligent use of explosives may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

(b) In addition to, in lieu of, the punishment provided in sub. (a), the Court may order the offender to pay to the injured party the costs of any property damaged by his actions.

SUBCHAPTER XIV: OFFENSES AGAINST THE FAMILY

71.1401 Bigamy.

(1) Offense. A person commits the offense of bigamy, if knowing or having reasonable cause to know that he is then married, he marries another person, or he marries another person knowing or having reasonable cause to know that such person is then married to a third person.

(2) Sentence. A person convicted of bigamy may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

71.1402 Child Abuse.

(1) Offense. A person commits the offense of child abuse, if he knowingly, intentionally, or negligently, and without justification, causes or permits a person under the age of eighteen (18) years to be:

- (a) placed in a situation that may endanger its life or health; or
- (b) exposed to the inclemency of the weather; or
- (c) abandoned, tortured, cruelly confined or cruelly punished; or
- (d) deprived of necessary food, clothing or shelter.

(2) Sentence. A person convicted of child abuse may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1403 Incest.

(1) Offense. A person commits the offense of incest, if he knowingly marries or has sexual intercourse with an ancestor or descendant, a brother or sister or the whole or half blood, or an uncle, aunt, nephew, or niece of the whole blood.

(2) Sentence. A person convicted of incest may be sentenced to imprisonment for a period of not to exceed six (6) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

71.1404 Domestic Abuse.

(1) Definitions. Family or Household Member includes:

(a) The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or have resided in the same household.

(b) The victim and the defendant have a child in common.

(c) The victim is pregnant by the other party.

(d) The victim is related to the defendant or the defendant's spouse by blood, marriage or court order as a parent, grandparent, child, grandchild, brother or sister.

(e) The victim is a child who resides or has resided in the same household as defendant and is related by blood to a former spouse of the defendant or to a person who resides in the same household as the defendant.

(f) The relationship between the victim and the defendant is currently or was previously an intimate relationship.

(g) The victim and defendant are in or have been in a dating relationship.

(h) Persons who are part of the extended family of the victim or abuser and who commonly interact with the victim or abuser.

(i) Persons who have a biological, legal, or step parent-child relationship.

(j) Minor children either biological, legal, or step of a person in a relationship that is described in (a)-(i) above.

(2) Offense. Domestic Abuse is one or more of the following acts by a family or household member:

(a) Attempting to cause or causing physical, substantial emotional, or mental harm to another family or household member.

(b) Placing a family or household member in fear of physical harm to him or herself or another family or household member. This fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets.

(c) Causing a family or household member to engage involuntarily in sexual activity, which includes, but not limited to, through coercion, intoxication, force, however slight (which includes the element of surprise or overcoming victim by size), threat of force, or duress.

(3) Sentence. A person convicted of Domestic Abuse may be sentenced to imprisonment for a period of up to one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1405 Contribute to Delinquency of a Minor.

A person commits the offense of contributing to the delinquency of a minor if he knowingly causes, encourages or assists a person under the age of eighteen (18) years to be a child offender, as defined in Tribal Code Chapter 36: Juvenile Code, and particularly '36.324.

71.1406 Custodial Interference.

(1) Offense. A person commits the crime of Custodial Interference if, knowing or having reason to know that he has no legal right to do so, he takes, entices, or keeps a person from his lawful custodian with intent to hold him permanently or for a protracted period or in violation of a lawful custody or visitation order.

(1) It is a complete defense under this section if a parent proves that his or her actions were taken for the purpose of protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect.

(3) Sentence. A person convicted of Custodial Interference may be sentenced to a period of imprisonment of up to one (1) year or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

SUBCHAPTER XV: ALCOHOL RELATED OFFENSES

71.1501 Delivery of Liquor to a Minor.

(1) Offense. A person commits the offense of delivery of liquor to a minor, if he sells, furnishes, procures for, or knowingly assists in the furnishing of any beer, wine, or intoxicating liquor to any person under the age of twenty-one (21) years.

(2) Sentence. A person convicted of delivery of liquor to a minor may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

(3) For the purposes of this section, the terms "beer," and "wine," and "intoxicating liquor" shall have the meaning as defined in Tribal Code Chapter 41: Liquor Control Ordinance, and particularly '41.202(1), (13) and (7), respectively.

71.1502 Illegal Consumption of Liquor.

(1) Offense. A person commits the offense of illegal consumption of liquor, if he consumes any beer, wine or intoxicating liquor in any public place except on premises upon which there is lawful authority to sell such liquor by the drink for consumption on the premises.

(2) Sentence. A person convicted of illegal consumption of liquor may be sentenced to imprisonment for a period not to exceed one (1) month, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

(3) Comment.

(a) Possession of a container of beer, wine or intoxicating liquor on which the United States excise tax seal has been broken or removed, on from which the cap, cork or seal placed upon it by the manufacturer has been removed shall constitute a rebuttable presumption of consumption.

(b) For the purposes of this section, the terms "beer," and "wine," and "intoxicating liquor" shall have the meaning as defined in Tribal Code Chapter 41: Liquor Control Ordinance, and particularly '41.202(1), (13) and (7), respectively.

71.1503 Public Intoxication.

(1) Offense. A person commits the offense of public intoxication, if he appears in any public place manifestly under the influence of alcohol, narcotics or other drugs to the degree that he may endanger himself or another person or property.

(2) Sentence. A person convicted of public intoxication may be sentenced to imprisonment for a period not to exceed one (1) month, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

71.1504 Under Age Possession of Liquor by a Minor.

(1) Offense. A person under the age of twenty-one years old commits the offense of Underage Possession of Liquor by a Minor if he or she:

- (a) buys, receives, possesses, consumes any beer, wine or intoxicating liquor;
- (b) attempts to buy, receive, possess or consume any beer, wine or intoxicating liquor; or
- (c) has any bodily alcohol content.

(2) It is not a violation of this section for a person to possess beer, wine or intoxicating liquor during the course of his or her employment.

(3) Affirmative Defense. It shall be an affirmative defense to the charge of Underage Possession of Liquor by a Minor that the alcohol was consumed in a jurisdiction where it was legal for a person of the person's age to consume alcohol.

(4) Upon conviction for a first violation of underage possession of liquor by a minor, a person may be confined in an appropriate facility for a period not to exceed one month, or to pay a fine in an amount not to exceed One-Hundred Dollars; or both.

(a) Upon conviction for a first violation of underage possession of liquor by a minor, the defendant must complete a substance abuse assessment. The defendant is responsible for ensuring that the results of the substance abuse assessment are delivered to the Court before sentencing.

(5) Upon conviction for a second violation of underage possession of liquor by a minor, a person may be confined in an appropriate facility for a period not to exceed three months, or to pay a fine in an amount not to exceed Two-Hundred Dollars, or both

(6) Upon conviction for a third violation of underage possession of liquor by a minor, a person may be confined in an appropriate facility for a period not to exceed six months, or to pay a fine in an amount not to exceed Three-Hundred Dollars, or both.

(7) Deferral or Delay of Sentence. If a person has no prior convictions, or juvenile adjudications, for possession of alcohol by a minor, or any law of another jurisdiction which is similar in scope and penalty, and the person either pleads guilty to a criminal complaint or admits the allegations of a juvenile petition, the Court may, without entering a judgment, place the person on probation. If the person violates any of the terms or conditions of probation, the Court may enter an order of conviction. If the person completes all the terms of his or her probation the Court shall release him or her and dismiss the proceedings; however,

(a) A non-public record of the plea will be kept at the Court.

(b) The record of the plea shall be made available to the Court, Sault Tribe Law Enforcement, and the Sault Tribe Prosecutor upon request.

(c) If a person violates 71.1504 subsequent to entering a plea under a deferral or a delay of sentence, the plea that was deferred or delayed may be considered as a prior conviction for the purposes of sentencing.

(d) Only one deferral may be granted under this section.

(8) For the purposes of this section, the terms “beer”, and “wine”, and “intoxicating liquor” shall have the meaning as defined in Tribal Code Chapter 41: Liquor Control Ordinance, and particularly 41.202(1), (13) and (7), respectively.

(9) “Any bodily alcohol content” means either of the following:

(a) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person’s body resulting from the consumption of alcoholic liquor, other than the consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

71.1505 Under Age Possession of Nicotine Products by a Minor.

(1) Offense. A person under the age of Eighteen (18) years commits the offense of underage possession of nicotine products by a minor, if he buys, receives, possesses or consumes, or attempts to buy, receive or possess any nicotine delivery systems.

(2) A person convicted of underage possession of nicotine products by a minor be sentenced to the following:

(a) upon a first offense, one session of education, to include traditional use and commercial abuse education, two educational tobacco related assignments, and two hours volunteer work in the community; and

(b) upon a second offense, three weekly educational sessions of one hour each with a local youth education staff member; and

(c) upon a third offense, a minimum of eight hours volunteer work, not to exceed 24 hours; and

(d) upon a fourth and subsequent offense, confinement in an appropriate facility for a period not to exceed one (1) month, or to pay a fine in an amount not to exceed Two Hundred Fifty Dollars (\$250.00), or both.

(3) For the purposes of this section, the term “nicotine delivery systems” includes any item or substance used for the consumption, ingestion, use, or absorption of nicotine into the human body. Nicotine delivery systems shall include, but not be limited to: cigars, cigarettes, snuff, chewing tobacco, vapors, oils, liquids, e-cigarettes, edible products, dissolvable products, and any raw materials containing nicotine.

(4) Affirmative Defense. Any person charged with under age possession of nicotine products by a minor shall be relieved of all liability for the offense if:

(a) he or she can demonstrate that the tobacco was possessed for religious or ceremonial purposes.

(b) he or she can demonstrate that the nicotine product was prescribed by a doctor to overcome nicotine dependence or addiction.

71.1506 Delivery of Nicotine Products to a Minor.

(1) Offense. A person commits the offense of delivery of nicotine products to a minor, if he sells, furnishes, procures for, or knowingly assists in the furnishing of any nicotine delivery system to any person under the age of eighteen (18) years.

(2) Sentence. A person convicted of delivery of nicotine products to a minor may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

(3) For the purposes of this section, the term “nicotine delivery systems” includes, any item or substance used for the consumption, ingestion, use, or absorption of nicotine into the human body. Nicotine delivery systems shall include, but not be limited to: cigars, cigarettes, snuff, chewing tobacco, vapors, oils, e-cigarettes, edible products containing nicotine, and any raw materials containing nicotine.

(4) Affirmative Defense. Any person charged with delivery of nicotine products to a minor shall be relieved of all liability for the offense if he or she can demonstrate that:

(a) the tobacco was delivered to a minor for religious or ceremonial purposes.

(b) the nicotine product was prescribed by a doctor to overcome nicotine dependence or addiction and it was being delivered to the prescribed minor for that purpose.

SUBCHAPTER XVI: CONTROLLED SUBSTANCE AND RELATED OFFENSES

71.1601 Furnishing of Marijuana.

(1) Offense. A person commits the offense of furnishing of marijuana, if he knowingly furnishes, sells, or trades in any way marijuana or any portion of the plant cannabis sativa L. or any substance containing it, or hashish, unless such act occurs pursuant to and is fully compliant with the provisions of the Michigan Medical Marijuana Act, MCL 333.26421 et seq.

(2) Sentence. A person convicted of the offense of furnishing marijuana may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

71.1602 Possession or Furnishing of Narcotics.

(1) Offense. A person commits the offense of possession or furnishing of narcotics, if he knowingly possesses, manufactures, transports, sells, consumes, uses, cultivates or trades in any drug or other substances identified or defined as a "controlled substance" under the provisions of P.A. 1978, No. 368, of the State of Michigan, as amended to the date of the offense, except marijuana.

(2) Sentence. A person convicted of the offense of possession or furnishing of narcotics may be sentenced to imprisonment for a period not to exceed one (1) year , or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

(3) It shall not be an offense under this section, or any other section of this Chapter, to possess, use, or administer an Opioid Antagonist. In this Section, "Opioid Antagonist" means naloxone hydrochloride or any other similarly acting and equally safe drug approved by the federal food and drug administration for the treatment of drug overdose.

71.1603 Possession of Marijuana.

(1) Offense. A person commits the offense of possession of marijuana, if he knowingly possesses, manufactures, transports, consumes, uses, or cultivates marijuana or any portion of the plant cannabis sativa L. or any substance containing it; or hashish, unless such act occurs pursuant to and is fully compliant with the provisions of the Michigan Medical Marijuana Act, MCL 333.26421 et seq.

(2) Sentence. A person convicted of the offense of possession of marijuana may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

71.1604 Inhaling Toxic Vapors.

(1) Offense. A person commits the offense of inhaling toxic vapors, if he, for the purpose of becoming intoxicated or subjecting himself to the influence of them, willfully inhales the vapors or fumes of paint, gasoline, glue or any other substance producing intoxicating fumes or vapors.

(2) A person convicted of inhaling toxic vapors may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

71.1605 Misuse of Prescription Medication.

(1) Offense. A person commits the offense of misuse of prescription medication if he or she knowingly or intentionally:

- (a) Sells, offers to sell, or possesses with the intent to sell, a prescription medication, unless acting under the direct supervision of a licensed pharmacist;
- (b) Dispenses or gives away to a minor child a prescription medication unless acting under the direct supervision of a licensed pharmacist; or
- (c) Obtains prescription medication through any means utilizing fraud, deception, deceit, or theft.

(2) Sentence. A person convicted of Misuse of Prescription Medication may be sentenced to imprisonment for a period of up to one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

SUBCHAPTER XVII: ANIMAL CONTROL

71.1701 Cruelty to Animals.

(1) Offense. A person commits the offense of cruelty to animals, if except as otherwise authorized by law, he intentionally or recklessly:

- (a) subjects any animal to mistreatment; or
- (b) subjects any animal in his custody to neglect; or
- (c) abandons any animal; or
- (d) kills or injures any animal belonging to another.

(2) A person convicted of cruelty to animals may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

71.1702 Offense Concerning Dogs.

(1) Offense. A person commits an offense concerning dogs, if that person:

(a) fails to restrain his dog at all times within a fenced area on a leash not less than twenty (20) feet in length; or

(b) maintains a pit bull; or

(c) maintains a dog which is known to be dangerous or has bitten or attacked a person.

(2) Sentence.

(a) A person convicted of an offense concerning dogs may be sentenced to imprisonment for a period not to exceed three (3) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

(b) In addition to the other penalties provided, the Tribal Court may order any dog involved in a violation hereof to be impounded, destroyed, subjected to testing or otherwise disposed of. In addition, tribal officers or other representatives are authorized to seize any dog involved in any violation of this section and to hold the dog pending hearing or release to its owner upon reasonable conditions.

SUBCHAPTER XVIII: SEX CRIMES

71.1801 Criminal Sexual Conduct – First Degree.

(1) Offense. A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related to the victim by blood or affinity to the fourth degree.

(iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.

(c) Sexual penetration occurs under circumstances involving the commission of any other crime which would be a felony if committed in the state of Michigan.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (vi).

(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

(g) The actor causes personal injury to the victim, and the actor knows or

has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Sentence. A person convicted of Criminal Sexual Conduct in the First Degree may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both

71.1802 Criminal Sexual Conduct – Second Degree.

(1) Offense. A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related by blood or affinity to the fourth degree to the victim.

(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

(iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.

(c) Sexual contact occurs under circumstances involving the commission of any other crime which would be a felony if committed in the state of Michigan.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section (1)(a)(vi) above.

(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section (1)(a)(vi) above.

(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Sentence. A person convicted of Criminal Sexual Conduct in the Second Degree may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1803 Criminal Sexual Conduct – Third Degree.

(1) Offense. A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age and under 16 years of age.

(b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section (1)(a)(vi) above.

(c) The actor knows or has reason to know that the victim is mentally

incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) That other person is at least 16 years of age but less than 18 years of age and a student at a public or nonpublic school, and the actor is a teacher, substitute teacher, or administrator of that public or nonpublic school. This subdivision does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(2) Sentence. A person convicted of Criminal Sexual Conduct in the Third Degree may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1804 Criminal Sexual Conduct – Fourth Degree.

(1) Offense. A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.

(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor achieves the sexual contact through concealment or by the element of surprise.

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. A prosecution under this subsection shall not be used as evidence that the victim is mentally incompetent.

(f) That other person is at least 16 years of age but less than 18 years of age and a student at a public or nonpublic school, and the actor is a teacher, substitute teacher, or administrator of that public or nonpublic school. This subdivision does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(2) Sentence. A person convicted of Criminal Sexual Conduct in the Fourth Degree may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

71.1805 Indecent Exposure.

(1) Offense. A person commits the offense of indecent exposure, or he deliberately exposes the genital organs of a person to the view of another person or persons or exposes them under circumstances that the exposing person has reasonable cause to know that such exposure may be viewed by another person or persons, if in either event the exposing person knows or has reasonable cause to know the conduct may offend some person or persons viewing the same.

(2) Sentence. A person convicted of indecent exposure may be sentence to imprisonment for a period not to exceed three (3) months, or a fine not to exceed Two Thousand Dollars (\$2,000.00), or both.

71.1806 Prostitution.

(1) Offense. A person commits the offense of prostitution, if he performs, offers, or agrees to perform any act of sexual intercourse, or of deviate sexual contact (as defined in '71.1801) with any person not the spouse of the offended in exchange for money or any other thing of consideration or value.

(2) A person convicted of prostitution may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Three Thousand (\$3,000.00), or both.

71.1807 Solicitation for Prostitution.

(1) Offense. A person commits the offense of solicitation for prostitution if that person:

(a) solicits another for the purpose of prostitution; or

(b) arranges or offers to arrange a meeting; or

(c) knowingly grants or permits the use of a place over which the person has or exercises control for the purpose of prostitution; or

(d) knowingly lives on or is supported or maintained in whole or in part by money or other consideration or thing of value earned, received, procured, or realized by any person through prostitution; or

(e) by word, gesture or action, endeavors to further the practice of prostitution in any public place or within public view; or

(f) furnishes or makes available to another person any facility, knowing that the same is to be used for or in aid of prostitution, or who shall advertise in any manner that he furnishes or is willing to furnish or make available any such facility for such purpose.

(2) Sentence. A person convicted of soliciting for prostitution may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Three Thousand Dollars (\$3,000.00), or both.

71.1808 Patronizing a Prostitute.

(1) Offense. A person commits the offense of patronizing a prostitute, if he engages in any act of sexual intercourse or of deviate sexual contact (as defined in '71.1801) with a prostitute.

(2) Sentence. A person convicted of patronizing a prostitute may be sentenced to imprisonment for a period not to exceed six (6) months, or a fine not to exceed Three Thousand Dollars (\$3,000.00), or both.

71.1809 Sexual Exploitation.

(1) A person commits the crime of sexual exploitation if s/he causes another to be exposed to explicit sexual acts, photographs, movies, or any other media, or takes sexually explicit photographs or videos or uses any other media to document same of another and the victim

(a) is 17 years old or younger;

(b) is unaware of the photograph or videos (other medium used) being taken;

or

(c) suffers from a mental disease or defect, which renders him or her incapable of appraising the nature of his or her conduct.

(2) Sentence. A person convicted of Sexual Exploitation may be sentenced to imprisonment for a period of up to one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both. The offender must be registered as a sex offender.

71.1810 Accosting, Enticing or Soliciting a Child for Immoral Purpose.

(1) A person commits the crime of accosting, enticing or soliciting a child for immoral purpose if s/he accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual contact or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts.

(2) Sentence. A person convicted of Accosting, Enticing or Soliciting a Child for Immoral Purpose may be sentenced to imprisonment for a period of up to one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both. is a misdemeanor offense punishable by up to 1 year in custody and up to a \$5000.00 fine. The offender must be registered as a sex offender..

71.1811 Child Sexually Abusive Material Or Activity.

(1) Definitions:

(a) "Child sexually abusive activity" means a child engaging in a listed sexual act.

(b) "Child sexually abusive material" means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic fondling does not include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(d) "Erotic nudity" means the lascivious exhibition of the genital, pubic, or rectal area of any person and, if female, any part of the breast. As used in this subdivision, "lascivious" means wanton, lewd, and lustful and tending to produce voluptuous or lewd emotions.

(e) "Listed sexual act" means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

(f) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) "Passive sexual involvement" means an act, real or simulated, that exposes another person to or draws another person's attention to an act of sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity because of viewing any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(h) "Sadomasochistic abuse" means either of the following:

(i) Flagellation or torture, real or simulated, for the purpose of real or simulated sexual stimulation or gratification, by or upon a person.

(ii) The condition, real or simulated, of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(iii) "Sexual excitement" means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.

(i) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(2) A person commits the offense of Child Sexually Abusive Material of Activity if:

(a) he persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or arranges for, produces, makes, copies, reproduces, or finances, or attempts or prepares or conspires to arrange for, produce, make, copy, reproduce, or finance any child sexually abusive activity or child sexually abusive material for personal, distributional, or other purposes, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child;

(b) he distributes or promotes, or finances the distribution or promotion of, or receives for the purpose of distributing or promoting, or conspires, attempts, or prepares to distribute, receive, finance, or promote any child sexually abusive material or child sexually abusive activity, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken

reasonable precautions to determine the age of the child; or

(c) he knowingly possesses or knowingly seeks and accesses any child sexually abusive material if that person knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

(3) This subsection does not apply to attorneys, law enforcement, probation, health care providers, counselors, social workers, judicial officers acting in the scope of their employment or a party or a witness in a criminal or civil proceeding acting within the scope of that proceeding.

(4) Sentence. A person convicted of Child Sexual Abusive Activity or Material may be sentenced to imprisonment for a period of up to one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both. The offender must be registered as a sex offender.