

TITLE 5 CRIMINAL CODE

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CHAPTER 1: GENERAL PRINCIPLES

Section

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107	Burden of Proof
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109	Severability
110	No Common Law Offenses

Section 101. Short Title

This law shall be cited as the Criminal Code.

Section 102. Purpose and Interpretation

- A. The provisions of this Code shall be construed to achieve the following general principles and purposes:
1. To forbid and deter the commission of offenses and give fair warning of conduct which is declared to be an offense;
 2. To adequately define the conduct and mental state which constitute a criminal offense and to safeguard permitted conduct;
 3. To prescribe penalties which are proportionate to the seriousness of the offense and which permit recognition of differing rehabilitative needs of individual offenders while at the same time recognizing the need of the entire Reservation Community to protect itself from offenders;
 4. To prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons; and
 5. To protect any Tribal member or other person residing on the Reservation whose health or welfare may be adversely affected or threatened due to abuse, neglect or exploitation by family, household members, or other persons in a legal or contractual position of providing physical, mental, or medical assistance and support to the affected person.
- B. Interpretations. The judiciary should interpret this Criminal Code to ensure just and lawful adjudications of all criminal offenses. All procedural provisions of this Code shall be interpreted in harmony with the Nation's Rules of Criminal Procedure. In the event that any provisions of this Code are in conflict with the Rules of Criminal Procedure, then this Code shall govern unless the conflicting provision relates to criminal procedure, then the Rules shall control.

C. Zero Tolerance for Drugs. The Tribal Council by enactment of the criminal offenses enumerated in Chapter 9 of this Title “Drug Offenses” hereby declares all lands within the exterior boundaries of the Yavapai-Apache Nation as drug free zones.

Section 103. General Provisions

General Notice of Civil Liability: Any person, including persons not subject to the criminal jurisdiction of the Yavapai-Apache Nation, found responsible for a violation of this Code shall be subject to other provisions of the Yavapai-Apache Nation including but not limited to:

1. Exclusion or expulsion from the Yavapai-Apache Nation lands, or;
2. Civil forfeiture as defined in Chapter 16, or;
3. Any other civil remedy available to the Yavapai-Apache Nation or Yavapai-Apache Nation members.

Section 104. Civil Actions not Barred

This Title does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered. Civil injury is not merged into the criminal offense.

Section 105. Exclusiveness of Offenses

No conduct constitutes an offense unless so declared by this Criminal Code, by any Tribal code or ordinance, or by specific Arizona law incorporated by reference into this Criminal Code. The elements of any offense as contained in this Code are the sole elements required for conviction in Tribal Court.

Section 106. Prosecution for Multiple Offenses

- A. When the conduct of an offender establishes the commission of more than one offense, the offender may be prosecuted separately for each offense. All offenses may be given to the jury for consideration. The Court, however, may not enter judgment for more than one offense, even if the jury finds guilt beyond a reasonable doubt, if:
1. One offense is included in the other; or
 2. Inconsistent findings of fact are required to establish the commission of the offenses.
- B. If a jury finds guilt beyond a reasonable doubt as to two offenses, one of which is included in the other, the Court shall only enter judgment as to the more serious offense.

Section 107. Burden of Proof

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

Section 108. Time Limitations – Commencement of prosecution - Tolling

- A. Prosecution for any Infraction or Petty Offense must be commenced within one year after the alleged offense is committed;
- B. Prosecution for any Class 4 or Class 3 offense must be commenced within two years after the alleged offense is committed or diligent discovery would have revealed the offense;
- C. Prosecution for any Class 2 offense must be commenced within three years after the alleged offense is committed or diligent discovery would have revealed the offense;
- D. Prosecution of any Class 1 offense other than Murder or Rape must be commenced within 5 years after the alleged offense is committed or diligent discovery would have revealed the offense. There is no time limitation for prosecuting Murder or Rape;
- E. Prosecution for a Class 1 offense where the victim is a minor must be commenced within 5 years of the victim’s eighteenth birthday;
- F. Exceptions. The time limitations for commencement of prosecution do not run and shall be tolled under the following conditions:
 - 1. During any period in which the offender is not usually and publicly residing within the Reservation or is beyond the jurisdiction of the Tribal Court;
 - 2. During prosecution pending against the offender for the same conduct by another jurisdiction even if the prosecution is dismissed.
- G. An offense is committed either when every element occurs or, if the offense is based upon a continuing course of conduct, when the course of conduct is terminated. Consistent with Section 108 A-F, the time limitations period starts to run on the day after the offense is committed.
- H. If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be complete occurred.
- I. The date of “diligent discovery” is the date at which, in the exercise of reasonable diligence, some person other than the defendant and his co-conspirator(s) know or should have known that an offense had been committed.
- H. A prosecution is commenced when a complaint is filed.

Section 109. Severability

If any part, or parts, or the application of any part of this Code is held invalid, such holding shall not affect the validity of the remaining parts of this Code. The Yavapai-Apache Nation Tribal Council hereby declares that it would have passed the remainder of this Code even if it had known that such part or parts or application of any part thereof would be declared invalid.

Section 110. No Common Law Offenses

No act or failure to act shall be subject to criminal prosecution unless made an offense by this Code or some other code of the Nation.

Section 111. Supersede and Replace

This Criminal Code shall supersede and replace all prior criminal codes and any other enactments inconsistent with this Criminal Code and the same are hereby repealed, including all prior enactments of Title 5 and Title 23 – Domestic Violence Code.

CHAPTER 2: DEFINITIONS AND CULPABLE MENTAL STATES

Section

- 201 Definitions
- 202 Culpable Mental States
- 203 Effect of Ignorance or Mistake of Law or Fact

Section 201. Definitions

In this Criminal Code, unless context requires otherwise or is explicitly defined in other sections, the following terms have the following meaning:

1. Accomplice means a person, other than a law enforcement officer acting within an official capacity, who with the intent to promote or facilitate the commission of an offense solicits or commands another person to commit the offense, or aids, counsels, agrees to aid or attempts to aid another person in planning or committing the offense or who provides the means or opportunity to another person to commit the offense.
2. Act means a bodily movement, or some overt step in a process.
3. Benefit means anything of value or advantage, present or prospective.
4. Conduct means an act or omission and its accompanying culpable mental state, if any.
5. Course of conduct means a pattern of conduct composed of two or more acts over a period of time, however short, evincing a continuity of purpose.
6. Court Costs mean all costs associated with the hearing and adjudication of a case including the standard filing or docket fees, jail and other incarceration costs, or probation costs, electronic monitoring costs, probation fees, appellate fees, discovery fees and expenses, a public defender fee, attorney fees if assessed by the Court, and any other fees that the Court determines are related to the prosecution, conviction, and all post-conviction remedies.
7. Crime means any offense identified in this Criminal Code.
8. Dangerous instrument means anything that under the circumstances in which it is used, attempted to be used, or threatened to be used is readily capable of causing death or serious physical injury.
9. Deadly physical force means force which is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.
10. Deadly weapon means anything designed or intended for lethal use. The term includes, but is not limited to, a firearm.
11. Economic loss means any loss incurred by a person as a result of the commission of an

offense. Economic loss includes lost interest, lost earnings and other losses which would not have been incurred but for the offenses. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages.

12. Firearm means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, air rifle, or other weapon which is designed to, or may readily be converted to, expel a projectile by the action of an explosive or rapidly expanding gas, except that it does not include a firearm in a permanently inoperable condition.
13. Force means the infliction, attempted infliction, or threatened infliction of physical injury by a person, or the commission or threat of any other crime by a person against the complainant or another which causes the complainant to reasonably believe that the person has the present ability to execute the threat, thereby coercing the complainant to submit.
14. Impairment means person's faculties are reduced, to include a reduction in the ability to see, hear, talk, walk, stand, calculate, function, judge distances, or otherwise function normally.
15. Law Enforcement Officer means a Tribal Police Officer as certified by the Yavapai-Apache Nation, or anyone who is designated as such by any Tribal Police Department or certified as a law enforcement officer under the laws of the State of Arizona or certified as such by any agency of the United States Government, or any other law enforcement officer certified by another jurisdiction who is present on the Yavapai-Apache reservation, with permission from the Nation, and who is working in an official capacity.
16. Nation means the Yavapai-Apache Nation.
17. Offense, public offense, criminal offense, or crime means conduct for which a sentence to a term of imprisonment or payment of a fine is provided by law.
18. Omission means the failure to perform an act as to which a duty of performance is imposed by law.
19. Person means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government, a governmental authority or an individual or entity capable of holding a legal or beneficial interest in property.
20. Physical force means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force.
21. Physical injury means substantial pain or impairment of physical condition, however slight.

22. Possess or Possession means knowingly having substantial physical possession or otherwise to substantially exercise dominion or control over property.
23. Probation means releasing the defendant from the serving of a jail term and suspending the sentence provided the defendant abides by specific terms for a specified time as authorized by this Code at Section 304.
24. Property means anything of value, tangible or intangible.
25. Property of another means property in which any person other than the defendant has an interest, including community property and other property in which the defendant also has an interest, but which the defendant is not privileged to infringe upon.
26. Relative means a parent or stepparent, ancestor, descendant, sibling, uncle or aunt, including an adoptive relative of the same degree through marriage or adoption or a spouse.
27. Restitution means the monetary amount a judge determines the defendant must pay to the victim for economic harm caused by the defendant to the victim and/or the victim's property. This amount is independent of any fine imposed.
28. Restraint means to restrict a person's movement without consent, without legal authority, and in a manner which interferes substantially with such person's liberty, by either moving such person from one place to another or by confining such person. Restraint is without consent if it is accomplished by physical force, intimidation or deception; or any means including acquiescence of the victim if the victim is a child less than eighteen years old or an incompetent person and the victim's lawful custodian has not acquiesced in the movement or confinement.
29. Serious physical injury includes physical injury which creates a substantial risk of death, or which causes serious and permanent or protracted disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily member, organ, or mental faculty. A broken bone is a serious physical injury.
30. Spouse means a person who is married as defined by the laws and customs of the Yavapai-Apache Nation or the state of Arizona.
31. Threat means a verbal or physical menace of imminent physical injury to a person.
32. Unlawful means contrary to law or, where the context so requires, not permitted by law.
33. Vehicle means a device in, upon, or by which, any person or property is or may be transported or drawn upon a highway, water way or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.
34. Victim means a person directly and proximately harmed as a result of the commission of

a criminal offense. Victims are entitled to exercise the Rights enumerated in Rule 37 of the Yavapai-Apache Nation Rules of Criminal Procedure. For purposes of this Chapter, children who witness domestic violence by or against one of their parents are considered victims and entitled to full rights and services, as provided by a Victim Advocate or Yavapai-Apache Nation Department of Social Services.

35. Voluntary act means a bodily movement performed consciously and as a result of effort and determination. A voluntary act is not one performed by force, threat of force or duress.

36. Voluntary Intoxication means intoxication caused by the knowing use of drugs, toxic vapors or intoxicating liquors by a person, the tendency of which is to cause intoxication, unless the person introduces them pursuant to medical advice or under such duress as would afford a defense to an offense. Voluntary intoxication does not constitute insanity and is not a defense for any criminal act or requisite state of mind.

Section 202. Culpable Mental States

Culpable mental state means intentional, knowingly, recklessly or with criminal negligence as defined below.

- A. Intentionally or with intent to when used with respect to a result or to conduct described by a statute defining an offense, means that a person acts with a conscious objective to cause that result or to engage in that conduct.
- B. Knowingly when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person is aware or believes that his or her conduct is of that nature described in the statute, or that the circumstances described in the statute exist. It does not require any knowledge of the unlawfulness of the act or omission.
- C. Recklessly when used with respect to a result or to circumstances described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstances exist. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.
- D. Criminal Negligence when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
- E. If the offense does not specify any culpable mental state, no culpable mental state is required for the commission of the offense.

- F. If a provision of this Criminal Code provides that criminal negligence suffices to establish an element of the offense, that element also is established if a person acts intentionally, knowingly, or recklessly. If acting recklessly suffices to establish an element of the offense, that element is also established if a person acts intentionally or knowingly. If acting knowingly suffices to establish an element, that element is also established if a person acts intentionally.

Section 203. Effect of Ignorance or Mistake of Law or Fact

- A. Ignorance or mistake of law does not relieve a person from criminal liability.
- B. Ignorance or a mistaken belief as to a matter of fact does not relieve a person of criminal liability unless:
 - 1. It negates the specific culpable mental state required for the commission of the offense;
or
 - 2. It supports a justification defense as defined in Chapter 5 of this Criminal Code.

CHAPTER 3: CLASSIFICATION OF OFFENSES, PUNISHMENT, AND LIMITATIONS

Section

- 301 Classification of Offenses
- 302 Maximum Punishment Allowed
- 303 Fines and Restitution
- 304 Sentence of Probation
- 305 General Sentencing Provisions
- 306 Deferred Prosecution or Deferred Adjudication
- 307 Banishment
- 308 Enhancement for Repeat Offenders

Section 301. Classification of Offenses

Five (5) categories of offenses are created as identified below:

- A. Class 1 Offense
- B. Class 2 Offense
- C. Class 3 Offense
- D. Class 4 Offense
- E. Petty Offense

Section 302. Maximum Punishment Allowed

A. The following are the maximum punishments allowed for each category of offenses:

1. For a Class 1 Offense: up to 1 year imprisonment, 3 years' probation, and \$5,000 fine, or the maximum allowed under federal law.
2. For a Class 2 Offense: up to 9 months imprisonment, 2 years' probation, and \$2,500 fine.
3. For a Class 3 Offense: up to 6 months imprisonment, 1 year probation, and \$1000 fine.
4. For a Class 4 Offense: up to 3 months imprisonment; 6 months' probation, and \$750 fine.
5. For a Petty Offense: up to a \$500 fine.

B. The Court may impose any combination of imprisonment, probation, and fine not to exceed the maximum authorized for the offense category. The court may also sentence defendants to consecutive jail sentences for multiple offenses.

C. The Court may also sentence the defendant to other appropriate conditions, including but not limited to: community service, restitution, rehabilitation, or treatment.

Section 303. Fines and Restitution

- A. If a person has been convicted of an offense, the Court may impose a fine in addition to any incarceration or term of probation. The maximum fine shall not exceed the amount authorized under Section 302 of this Criminal Code.
- B. If the commission of the offense caused any economic loss to the victim, the Court shall order a payment of restitution to the victim. In determining the economic loss to the victim, the Court may consider any credible evidence, including hearsay, to calculate the loss. If the Court determines that restitution is appropriate, the Court shall also order the manner of restitution payments. Payments shall be made to the Court, and the Court shall forward the payments to the victim.
- C. Consistent with such other of the Nation's laws and policies as may be applicable, all fines, restitution and Court costs owed by a defendant shall be subject to payment from any funds payable by the Nation to the defendant, including but not limited to per capita gaming payments, holiday bonuses, contract payments, wages, or other funds of the Nation subject to payment to the defendant. In order for payment of said funds to be issued by the Nation to the Court to satisfy the fines, restitution and Court Costs owed by a defendant, the Court shall issue an order detailing the amount owed by a defendant and shall serve said order as follows:
1. The Court shall serve a copy of the order on the Nation's Department of Finance. Upon receipt of the order, the Nation's Department of Finance shall pay the total of the funds actually due that defendant from the Nation into the Court, up to the amount detailed in the Court's order.
 2. The Court shall apply the funds to the fines, restitution, and Court Costs owed within five (5) days after the funds are paid to the Court, and shall thereafter notify the Department of Finance of the balance still owing. This procedure may be accomplished by the Department of Finance and the Court exchanging accounting information and without the transfer of actual funds as long as the Court file reflects the balance owed and the Department of Finance does not pay the funds to the defendant.
 3. Until the Finance Department is notified by the Court that the total sum of the fines, restitution and Court costs have been satisfied, the Finance Department shall continue to withhold any and all funds payable by the Nation to the defendant.
 4. The defendant may only contest the application of such funds by filing a motion in the case under which the funds are being seized. This shall be the defendant's sole remedy.
- D. Time Payment Fee: A one-time fee of twenty dollars shall be assessed on each person who pays any fines, costs and/or restitution on a time payment basis. A time payment basis shall be any financial obligation not paid in full on the date the court imposed and specified the amount owed. A judge may waive or suspend a time payment fee.

Section 304. Sentence of Probation

- A. If a person is convicted of an offense, the sentencing judge may suspend the imposition of sentence and grant such person a period of probation unless probation is explicitly prohibited by law.
- B. **Mandatory Terms of Probation.** The Court shall impose the following terms when placing a person on probation:
1. Be a law-abiding citizen at all times. Defendant shall be advised that any conviction for violation of the Nation's Criminal Code, Federal laws, State laws, municipal or county laws while on probation may result in a revocation of probation.
 2. Maintain full-time employment or full-time student status. If not employed, the probationer will seek full-time employment or perform community service.
 3. Pay restitution and fines in full or at a minimum monthly rate as ordered by the Court. These fines may include Tribal Court orders in other cases, such as child support.
 4. Refrain from the use of alcohol.
 5. Not possess any firearms.
 6. Not use or possess any illicit drugs or any prescribed medication without a valid prescription.
 7. The probationer is subject to search and seizure by the Department of Probation at any and all times.
- C. **Discretionary Terms of Probation.** The Court may impose any one or more of the following terms if the Court determines that the following terms are necessary to protect the public or to rehabilitate the defendant.
1. Participate in counseling and treatment for substance abuse.
 2. Participate in mental health counseling.
 3. Participate in anger management counseling.
 4. Participate in a domestic violence offender program.
 5. Other terms as determined by the Court necessary to protect the public or to rehabilitate the defendant.
- D. **Incarceration or Imprisonment**
1. The Court may also impose a term of imprisonment as a condition of probation.

2. The length of imprisonment may not exceed the maximum term of imprisonment authorized under Section 302 of this Chapter.
3. The maximum term of imprisonment combined for violation of probation and an initial term of probation may not exceed the maximum term of imprisonment authorized under Section 302 of this Chapter.

E. Restrictions on Movement.

1. The Court may limit the areas and places where the defendant may be present during his probation.
2. The Court may impose a curfew on the defendant.
3. The Court may require the defendant to be under electronic surveillance.

Section 305. General Sentencing Provisions

In effectuating Tribal sentencing policy, if the defendant recognizes the wrong he has committed, demonstrates remorse and earnestly repents of such wrong, the Court, paying particular attention to prior offenses, in its discretion may:

- A. Allow such offender to exchange actual work performed for the Nation in lieu of a fine or imprisonment, at the rate of ten dollars (\$10.00) per hour of work performed; or
- B. In the discretion of the Court, allow the offender to pay a fine in goods or commodities at the fair market value of the goods or commodities to be surrendered, provided that the Nation shall not reimburse the offender for any excess.

Section 306. Deferred Prosecution or Deferred Adjudication

- A. Deferred Prosecution - Unless otherwise prohibited by law, the prosecutor, with the consent of the defendant and Court, may defer prosecution of an offense for up to two years. If a prosecution is deferred under this section, the statute of limitations shall be tolled while the prosecution is deferred, but in no event shall the statute of limitations be tolled for greater than two years.
- B. Deferred Adjudication - Unless otherwise prohibited by law, the prosecutor with the consent of the defendant and the Court, may agree to proceed with a change of plea proceeding, with sentencing stayed by the Court for a period not to exceed two years, to allow the defendant to comply with agreed-upon conditions. If all such conditions are met within the agreed upon timeframe, the plea shall be vacated by the Court. If the conditions are not met within the agreed upon timeframe, the guilty plea shall be entered, and the Court shall proceed with sentencing.

Section 307. Banishment

Banishment is the traditional and customary sentence imposed by the Nation against offenders who have been convicted of offenses which violate the basic rights to life, liberty and property of the community and whose violation is a gross violation of the peace and safety of the Nation requiring the person to be totally expelled from the territorial jurisdiction of the Nation for the protection of the community. During the term of banishment, a person who is banished from the territory and association of the Nation shall:

- A. Be physically expelled from the territorial jurisdiction of the Nation and shall not be allowed to return for any reason during the period of banishment except when required to attend court.
- B. Forfeit all positions or offices of honor or profit with the Nation.
- C. Be absolutely ineligible for any service, monies, or benefits provided by the Nation, or due as a result of citizenship in the Nation, and all such funds during a period of banishment shall be applied to the payment of the defendant's fine, and restitution before being forfeit to the Nation's General Fund.
- D. Be absolutely ineligible to vote in any election conducted by or hold any office in the Nation.
- E. Be grounds for any debtor of the banished person to apply for an order attaching the banished person's personal property within this jurisdiction and bringing execution thereon to satisfy any debt owed to that debtor.

Violation of Banishment.

- A. If the person banished is found within the jurisdiction of the Nation not going directly to, attending, or returning from a Court hearing required in their case, such act shall be considered criminal contempt in violation of a lawful order of the court and may be charged and punished accordingly.
- B. A person under decree or judgment of banishment found unlawfully within the jurisdiction of the Nation shall, upon conviction, and in addition to any other punishment imposed for disobedience of a lawful order of the court, forfeit to the Nation all personal property brought by him into the jurisdiction of the Nation or in his immediate control therein, whether ownership of said property is in the banished person or another Native American, as civil damages for breach of the peace and safety of the Nation.
- C. A person under a decree of judgment of banishment found unlawfully within the jurisdiction of the Nation, shall be arrested for criminal trespass and jailed without bond until trial.

Expiration of Banishment Term.

Upon expiration of the term of banishment and satisfaction of any other terms imposed by the sentence, the banished person shall be restored to all rights forfeit during the banishment and shall thereafter be treated as if banishment had never been imposed.

Permanent Banishment.

In the event that the court issues an order of permanent banishment, then defendant shall be considered as a deceased person and removed from the Tribal Enrollment Rolls and cease to have any rights as a Tribal member.

Section 308. Enhancement for Repeat Offenders

- A. If the criminal section states that a person is subject to enhanced penalties based on prior violations of that section, those prior violations shall be set forth in the charging document, or by supplemental disclosure no later than thirty (30) days after the first pre-trial conference, as elements of the current enhanced charge, and must be proven beyond a reasonable doubt by the Nation.
- B. Furthermore, prior violations shall be decided by the finder of fact, as any other element of the crime charged.

CHAPTER 4: CRIMINAL LIABILITY, FORFEITURE AND PREPARATORY OFFENSES

Section

401	Requirements for Criminal Liability; Accomplice Liability
402	Causal Relationship between Conduct and Result
403	Transfer from Juvenile to Tribal Court
404	Conspiracy
405	Attempt
406	Solicitation
407	Facilitation

Section 401. Requirements for Criminal Liability; Accomplice Liability

The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or omission to perform a duty imposed by law which the person is physically capable of performing. A person may be criminally liable for conduct based upon conduct of another if the person is accountable for such conduct by law or the person is an “accomplice” of such other person in the commission of the offense.

Section 402. Causal Relationship between Conduct and Result

A. Conduct is the cause of a result when both of the following exist:

1. But for the conduct, the result in question would not have occurred; and
2. The relationship between the conduct and result satisfies any additional causal requirement imposed by the offense.

B. If “intentionally” or “knowingly” causing a particular result is an element of the offense, and the actual result is not within the intention or contemplation of the person, that element is nevertheless established if:

1. The actual result differs from the intended or contemplated result only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or extensive than that caused; or
2. The actual result involves similar injury or harm as that intended or contemplated and occurs in a manner which the person knows or should know is rendered substantially more probable by such person’s conduct.

C. If “recklessly” or “negligently” causing a particular result is an element of an offense, and the actual result is not within the risk of which the person is aware or in the case of criminal negligence, of which the person should be aware, that element is nevertheless established if:

1. The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or extensive than that caused; or

2. The actual result involves similar injury or harm as the probable result and occurs in a manner which the person knows or should know is rendered substantially more probable by such person's conduct.

Section 403. Transfer from Juvenile to Tribal Court

- A. Transfer Petition. The Nation may file a petition requesting that the Juvenile Court transfer a child to the jurisdiction of the Tribal Court if the child is alleged to have committed an act which would have been considered a Class 1 Offense if committed by an adult. Presumptively, a child must be at least 16 years or older to be eligible for transfer, however, discretion lies with the Court.
- B. Transfer Hearing. The Juvenile Court shall conduct a hearing to determine whether jurisdiction of the child should be transferred to Tribal Court. The transfer hearing shall be held within ten days of receipt of the Transfer Petition by the Court. Written notice of the time, place and purpose of hearing shall be given to the child and the child's parents, guardian or custodian at least three days before the hearing. At the commencement of the hearing, the Court shall notify the child and the child's parents, guardian or custodian of the rights enumerated in the Juvenile Code.
- C. Deciding Factors in Transfer Hearing. The following factors shall be considered when determining whether to transfer jurisdiction of the child to Tribal Court:
 1. The nature and seriousness of the offense with which the child is charged.
 2. The nature and condition of the child, as evidenced by his age, mental and physical condition.
 3. The child's past record of offenses.
- D. Standard of Proof. The Juvenile Court may transfer jurisdiction of the child to Tribal Court if the Court finds clear and convincing evidence that either of the following circumstances exist:
 1. The offense(s) allegedly committed by the child in conjunction with any prior offense(s) evidence conduct which constitutes a substantial danger to the public; or
 2. The alleged offense would be a Class 1 offense if committed by an adult.

Section 404. Conspiracy

- A. A person commits *Conspiracy* when, with the purpose that an offense be committed, the person agrees with another to the commission of the offense.
- B. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by the person or by a co-conspirator.
- C. For purposes of this section:

1. Act in furtherance is any course of conduct which makes it more probable than not that an act towards the commission of an offense will occur and the person's present conduct is not terminated.
 2. Proof of an "act in furtherance" may be inferred from the circumstances surrounding the involved parties' actions and does not require direct proof of an agreement.
- D. It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:
1. Has not been prosecuted or convicted;
 2. Has been convicted of a different offense;
 3. Is not amenable to justice;
 4. Has been acquitted; or
 5. Lacked the capacity to commit the offense.
- E. The punishment for conspiracy shall be the same as the punishment for the most serious offense which is the object of or result of that conspiracy.

Section 405. Attempt

- A. A person commits *Attempt* if, acting with the kind of culpability otherwise required for commission of an offense, such person:
1. Intentionally engages in conduct which would constitute an offense if the attendant circumstances were as such person believes them to be; or
 2. Intentionally does or omits to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense; or
 3. Engages in conduct intended to aid another to commit an offense, although the offense is not committed or attempted by the other person, provided his conduct would constitute Facilitation if the offense were committed or attempted by the other person.
- B. It is no defense that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission, if such crime could have been committed had the attendant circumstances been as such person believed them to be.
- C. The punishment for Attempt shall be one offense category less severe than the offense intended, except that attempt of a Class 4 offense shall also be a Class 4 offense.

Section 406. Solicitation

- A. A person commits the *Solicitation* when, with the purpose that an offense be committed, he commands, encourages, requests or solicits the commission of that offense.
- B. This section does not apply to law enforcement officers acting within the scope of their official duty.
- C. It shall not be a defense to solicitation that the person or persons that the accused solicited:
 - 1. Has not been prosecuted or convicted;
 - 2. Has been convicted of a different offense;
 - 3. Is not amenable to justice;
 - 4. Has been acquitted; or
 - 5. Lacked the capacity to commit the offense.
- D. The punishment for Solicitation shall be two offense categories less severe than the offense intended, except that solicitation of a Class 3 or 4 offense shall also be a Class 4 offense.

Section 407. Facilitation

- A. A person commits *Facilitation* if, such person:
 - 1. Engages in conduct intended to aid another to commit an offense or aiding in the commission of any act, in furtherance of said offense, or:
 - 2. Acts with knowledge that another person is committing or intends to commit an offense, knowingly provides such other person with means or opportunity for the commission of the offense, or:
 - 3. Aids another person to escape or attempt to escape from lawful custody
- B. This section does not apply to law enforcement officers acting within the scope of their official capacity.
- C. It shall not be a defense to facilitation that the person or persons whom the accused facilitated:
 - 1. Has not been prosecuted or convicted of the offense;
 - 2. Has been convicted of a different offense;
 - 3. Is not amenable to justice;

4. Has been acquitted; or
 5. Lacked the capacity to commit the offense.
- D. The punishment for facilitation shall be three offense categories less severe than the offense facilitated, except that facilitation of a Class 3 or 4 offense shall also be a Class 4 offense.

CHAPTER 5: DEFENSES TO PROSECUTION

Section

501	Self-Defense – Use of Physical Force
502	Self Defense – Use of Deadly Force
503	Entrapment
504	Duress and Necessity
505	Insanity
506	Competency
507	Voluntary Intoxication

Section 501. Self Defense—Use of Physical Force

- A. The use of physical force upon another which would otherwise constitute an offense is justifiable and not criminal if the person used only the amount of force he reasonably believed necessary under the any of the following circumstances:
1. A reasonable person under similar circumstances believed the use or threatened use of physical force was immediately necessary to protect oneself or an innocent third-party from an unlawful use or attempted unlawful use of physical force; or
 2. A reasonable person who is in lawful possession of a premises believed the use or threatened use of physical force was necessary to prevent or terminate the commission of criminal trespass by another person upon the premises; or
 3. A reasonable person who is in lawful possession of movable property believed the use or threatened use of physical force was necessary to prevent criminal damage or theft of the property by another person.
- B. The use or threatened use of physical force against another is not justified:
1. In response to verbal provocation alone; or
 2. To resist an arrest that the person knows or should know is being made by a law enforcement officer or a person acting in the law enforcement officer's presence and at the law enforcement officer's direction whether the arrest is lawful or unlawful unless the use of physical force used by the law enforcement officer exceeds that allowed by law; or
 3. If a person initiates or provokes another person's use or attempted use of unlawful physical force and the provoker clearly withdraws from the encounter or clearly communicates the intent to withdraw from the encounter and the other person nevertheless continues or attempts to use unlawful force.
- C. A law enforcement officer is justified in using physical force or threatening to use physical force against another if, in making or assisting in making an arrest or detention or in preventing or assisting in preventing the escape after arrest or detention of another person, such officer uses or threatens to use physical force and all of the following exist:
1. A reasonable person would believe that such force is immediately necessary to make the arrest or detention or prevent escape;

2. The law enforcement officer makes known the purpose of the arrest or detention or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested or detained; and
 3. A reasonable person would believe the arrest or detention to be lawful.
- D. Even if a person is justified in using physical force or deadly physical force against another, the person may not claim justification to prosecution for recklessly injuring or killing an innocent third person.
- E. A defendant has the burden of proving by a preponderance of the evidence that his actions were justified.

Section 502. Self Defense—Use of Deadly Force

- A. A person is justified in threatening or using deadly physical force against another if such person would be justified in using force under section 501 of this Chapter and when and to the degree a reasonable person would believe that the deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force.
- B. A law enforcement officer is justified in using deadly physical force against another person under section 501(c) of this Chapter when the law enforcement officer reasonably believes that it is necessary:
1. To defend themselves or a third party from what the law enforcement officer reasonably believes to be the use or imminent use of deadly force;
 2. To make an arrest or prevent the escape from custody of a person whom the law enforcement officer reasonably believes:
 - a. has committed, or attempted to commit an offense using a deadly weapon; or
 - b. is attempting to escape using a deadly weapon; or
 - c. has in the past threatened or endangered other human life with the use of a deadly weapon; or
 - d. is necessary to suppress a riot if the person participating in the riot is armed with deadly force.

Section 503. Entrapment

- A. To claim entrapment, the person must admit to substantial elements of the offense charged.
- B. A defendant asserting the defense of entrapment must prove, by clear and convincing evidence, each of the following:

1. The idea of committing the offense started with law enforcement or their agents rather than with the defendant; and
 2. The law enforcement officers or their agents urged and induced the person to commit the offense; and
 3. The person was not predisposed to commit the type of offense charged before the law enforcement officers or their agents urged and induced the person to commit the offense.
- C. A person cannot establish entrapment if the person was predisposed to committing the offense, and the law enforcement officer or their agents merely provided the person with an opportunity to commit the offense.
- D. It is not entrapment for law enforcement officers or their agents to use a ruse or to conceal their identity.

Section 504. Duress and Necessity

- A. Duress is defined as conduct which otherwise constitutes an offense is justified if a reasonable person would believe that he was compelled to engage in the proscribed conduct by the threat or use of immediate physical force against his/her person or the person of another which resulted or could result in serious physical injury which a reasonable person would not have resisted.
- B. Necessity is defined as conduct which would otherwise constitute an offense is justified if a reasonable person would believe that he was compelled to engage in the proscribed conduct and the person had no reasonable alternative to avoid imminent public or private injury greater than the injury that might reasonably result from the person's own conduct.
- C. A defendant may not claim the defenses of duress or necessity if the defendant had intentionally, knowingly, or recklessly placed themselves in a situation in which was probable that they would be subject to duress.
- D. A defendant must prove by a preponderance of the evidence that he or she acted out of duress or necessity.

Section 505. Insanity

- A. A person may be found guilty except insane if, at the time of the commission of the offense, the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense and must be noticed pursuant to Rule 15.2(B) of Yavapai-Apache Nation Rules of Criminal Procedure, and proven by the defendant by clear and convincing evidence.
- B. If a defendant intends to raise the defense of insanity, the Court shall order the defendant to provide a mental health expert's written report that includes that the defendant suffered from a mental disease, defect or disability at the time of the offense and the relationship of the alleged mental disease or defect to the alleged offense. Defendant shall provide the written

report to the Nation no later than 40 days after arraignment or within 10 days after the Nation provides disclosure, whichever happens first.

- C. Upon the Nation's receipt of the defendant's written report, described in Section 506(b), the Court shall order the defendant to submit to an examination by a psychiatrist or licensed psychologist, if the Nation so requests. The defendant has the right to have counsel present at the Nation's examination. The Nation may also have counsel present. The role of each counsel at such examination is that of an observer, and neither counsel shall be permitted to take an active role at the examination. The psychiatrist or licensed psychologist utilized by the Nation shall submit a written report to the Nation and to counsel for the defendant. If the Court finds that the defendant has willfully refused to cooperate fully in the examination, it may preclude the defendant from asserting insanity as an affirmative defense, or introducing any evidence of such at trial.
- D. The period of time from the date the defendant provided the Nation with a written mental health report to the date the Nation's psychiatrist or licensed psychologist submits a report to both parties is excluded time for speedy trial purposes.

Section 506. Competency

- A. At any time after the filing of the complaint, any party or the Court on its own motion may request that the defendant be examined by a psychiatrist or licensed psychologist to determine the defendant's competency to stand trial, to enter a plea, or to assist in his/her own defense. The request made by a party shall be in writing and shall state the specific facts on which the mental examination is sought. The psychologist or psychiatrist shall submit a written report to the court and provide copies to defense counsel and prosecutor for the Nation.
- B. Unless the parties stipulate to a disposition based on the results of the examination, the Court shall hold a hearing to determine whether the defendant is presently suffering from a mental illness, mental or psychiatric disorder, disease or disability rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature and consequences of the proceedings against him or her or to assist in his or her own defense.
 - 1. If the Court finds by a preponderance of the evidence that the defendant is, in fact, competent, this shall not prejudice the defendant in raising the issue of insanity as a defense to the offense charged, and shall not be admissible as evidence in trial for the offense charged. The time from the defendant's assertion of incompetency to the Court's determination of competency shall be excluded time for Speedy Trial purposes.
 - 2. If the Court finds by a preponderance of the evidence that the defendant is currently incompetent, the Court shall order appropriate mental health services, including residential treatment, if necessary. Such service providers shall report to the Court bi-monthly as to whether the defendant has recovered to such an extent that he or she has regained competency as well as the likelihood that the defendant will become competent within the foreseeable future.

- C. If the defendant remains incompetent and there is no substantial probability that the defendant will regain competency within 18 months after the date of the original finding of incompetency, the court shall dismiss the charges without prejudice and report the defendant to the Yavapai-Apache Nation Department of Social Services for possible guardianship proceedings.
- D. If the defendant does regain competency and the case proceeds to trial, no part of the competency proceeding, including reports, findings or testimony, may be admitted at trial.

Section 507. Voluntary Intoxication

Temporary intoxication resulting from the voluntary ingestion, consumption, inhalation or injection of alcohol, or illegal substances under Chapter 9 of this Code, or abuse of prescribed medications does not constitute insanity and is not a defense for any criminal act or requisite state of mind.

CHAPTER SIX: CRIMES AGAINST PERSONS

Section

601	Definitions
602	Murder
603	Manslaughter
604	Giving Sexually Transmitted Infection to Another
605	Assault
606	Aggravated Assault
607	Kidnapping
608	Unlawful Imprisonment
609	Robbery
610	Criminal Endangerment
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612	Stalking
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614	Harassment
615	Harassment of Public Official
616	Menacing
617	Aggravated Menacing
618	Mutilation or Disinterment of Dead Body
619	Strangulation or Suffocation

Section 601. Definitions

In this Chapter, unless the context requires otherwise:

1. Abduction means to restrain a person with intent to prevent his liberation by either (a) secreting or holding him in a place where he is not likely to be found or (b) using or threatening physical force.
2. Electronic Communication means any form of expression or exchange of information by speech, photographs or written form using electronic means. Electronic communications includes, but is not limited to: communication via telephone, facsimile, electronic mail, social media and other electronic forms.
3. Public Official means an officer, employee or appointed position of the Tribal government including but not limited to elected members of Tribal Council.
4. Serious physical injury includes physical injury which creates a substantial risk of death, or which causes serious and permanent or protracted disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily member, organ, or mental faculty. A broken bone is a serious physical injury.
5. Strangulation means intentionally impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of such person. Strangulation does not require loss of consciousness or any other impairment, visible mark or physical injury.
6. Suffocation means intentionally impeding the normal breathing or circulation of the blood of another person by blocking the nose or mouth of such person. Suffocation does not require loss of consciousness or any other impairment, visible mark or physical injury.

7. Words or Conduct: includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

Section 602. Murder

A. A person commits *Murder* if such person:

1. Intentionally causes the death of another person; or
2. Acting as a principal or an accomplice causes the death of another in the perpetration of, or in an attempt to perpetrate, any arson, escape, kidnapping, child abuse, child molestation, sexual conduct with a minor, sexual assault, burglary, or robbery; or
3. Knowing that his conduct will cause death or serious physical injury, such person causes the death of another person; or
4. Under circumstances manifesting extreme indifference to human life, such person recklessly engages in conduct which creates a grave risk of death and thereby causes the death of another person, including an unborn child or, as a result of recklessly causing the death of another person, causes the death of an unborn child; or
5. Engages in a course of conduct against a child, intimate partner or family member, of violence or torture that results in the death of that person.

B. Violation of this section is a Class 1 offense. Any person convicted under this section shall be sentenced to the maximum term of imprisonment. A person convicted under this section shall not be eligible for a suspended sentence as a term of probation.

C. Violation of this section applies to an unborn child in the womb at any stage of its development. A person may not be prosecuted under this section if any of the following applies:

1. The person was performing an abortion for which the consent of the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, has been obtained or for which the consent was implied or authorized by law; or
2. The person was performing medical treatment on the pregnant woman or the pregnant woman's unborn child; or
3. The person was the unborn child's mother.

Section 603. Manslaughter

A. A person commits *Manslaughter* if the person acts recklessly or with criminal negligence and the person's actions result in the death of another person.

1. It is a Class 1 offense if the person acts recklessly.

2. It is a Class 2 offense if the person acts with criminal negligence.
- B. Any person convicted of a Class 1 offense under section (A) shall be sentenced to a mandatory term of imprisonment not less than six months and fined not less than \$3,000.00.

Section 604. Giving Sexually transmitted Infection to Another

- A. A person commits *Giving Sexually Transmitted Infection to Another* by knowingly exposing another person to the risk of contracting a sexually transmitted infection (STI).
1. If the STI is curable, violation of this section is a Class 3 offense.
 2. If the STI is not curable, violation of this section is a Class 1 offense.
- B. In addition to any sentence imposed by the Court for a violation of this section, any person so convicted shall be ordered and compelled to have a medical examination and treatment for such disease until cured or under control.
- C. Furthermore, such person shall be compelled to pay restitution to the victim for any medical costs arising from diagnosis and ongoing treatment.

Section 60. Assault

- A. A person commits *Assault* by:
1. Intentionally, knowingly or recklessly striking or causing physical injury to another person; or
 2. Intentionally placing another person in reasonable apprehension of imminent physical injury; or
 3. Knowingly touching another person with the intent to injure, insult or provoke such person.
- B. Violation of this section is a Class 3 offense.

Section 606. Aggravated Assault

- A. A person commits *Aggravated Assault* if such person commits Assault as defined in Section 605 under any of the following circumstances:
1. If such person causes serious physical injury to another person or to a third person; or
 2. If such person commits assault as defined in 605(A)(1) and causes physical injury by means of a deadly weapon or dangerous instrument; or
 3. If such person commits the assault knowing, or having reason to know, the victim is pregnant; or
 4. If such person commits the assault to a victim he has previously assaulted; or

5. If such person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired; or
6. If such person intentionally strangles or suffocates the victim; or
7. If such person commits the assault in the course of, and in furtherance of, the commission of, or attempted commission of, a Class 1 or Class 2 offense, or in immediate flight therefrom and such person causes physical injury to another person other than one of the participants.
8. If such person is 18 years of age or older and intentionally strikes a person under 12 years of age, or a person over 55 years of age; or
9. If such person uses a dangerous instrument or deadly weapon; or
10. If such person projects an unknown chemical or caustic substance onto another person; or
11. If such person projects any bodily fluid onto another person, including a law enforcement officer. For the purposes of this section, "bodily fluid" means saliva, blood, seminal fluid, urine or feces. In addition to any sentence imposed by the Court for a violation of this section, any person alleged to have committed this offense shall be ordered and compelled to submit a specimen to a laboratory for testing and to release the results of the testing according to the procedure outlined in Section 1209 of this Criminal Code. The person accused is responsible for the cost associated with testing, and shall be compelled to pay restitution to the victim for any medical costs arising from resulting medical treatment.
12. If the person commits the assault knowing or having reason to know that the victim is any of the following:
 - a. A peace officer, a first responder, or a person summoned and directed by the officer while engaged in the execution of any official duties or, if the assault results from the execution of the peace officer's official duties.
 - b. A firefighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person summoned and directed by such individual while engaged in the execution of any official duties or if the assault results from the execution of the official duties of the firefighter, fire investigator, fire inspector, emergency medical technician or paramedic.
 - c. A teacher or other person employed by any school and the teacher or other employee is on the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes.
 - d. A health care practitioner or a person summoned and directed by the health care practitioner while engaged in the person's professional duties.
 - e. A prosecutor while engaged in the execution of any official duties or if the assault results from the execution of the prosecutor's official duties.

- f. A code enforcement officer while engaged in the execution of any official duties or if the assault results from the execution of the code enforcement officer's official duties.
 - g. A public defender while engaged in the execution of any official duties or if the assault results from the execution of the public defender's official duties.
 - h. A judicial officer while engaged in the execution of any official duties or if the assault results from the execution of the judicial officer's official duties.
 - i. A Public Official while engaged in the execution of any official duties or if the assault results from the execution of the public official's official duties.
- B. Violation of subsection (A)(1) or (A)(7) is a Class 1 offense.
- C. Violation of all other subsections is a Class 2 offense if the assault resulted in physical injury; violation is a Class 1 offense if the assault resulted in serious physical injury

Section 607. Kidnapping

A person commits *Kidnapping* when he abducts another person.

- A. Except as provided in section (B), Kidnapping is a Class 2 offense.
- B. Kidnapping is a Class 1 offense if the offender:
- 1. Intends to use the victim as a shield or hostage, or to compel a third person to pay or deliver money or property as ransom;
 - 2. Transports the victim off of the Yavapai Apache Nation, or across state lines; or
 - 3. Restrains the abducted person with intent to:
 - a. Violate or abuse the victim sexually or inflict physical injury upon the victim; or
 - b. Accomplish or advance the commission of a Class 1 or Class 2 offense.
- C. A defendant convicted under subsection (B) shall serve a mandatory sentence of imprisonment of at least 9 months and pay a fine of at least \$3,000.00 The Court may grant probation only after the term of mandatory incarceration of at least nine months is served.

Section 608. Unlawful Imprisonment

- A. A person commits the offense of *Unlawful Restraint* by knowingly or purposefully, and without lawful authority, restraining another so as to interfere substantially with another's liberty.
- B. Unlawful Restraint is a Class 3 offense, except as provided in Section (C).
- C. The offense shall be a Class 2 offense if the unlawful restraint exposes the victim to a risk of serious physical injury.

D. In any prosecution for unlawful restraint, it is an affirmative defense if all four of the following conditions are met:

1. The person restrained was a child less than sixteen years old; and
2. The defendant was a relative of such child; and
3. The defendant's sole purpose was to assume control of such child; and
4. The child was not physically injured by the restraint.

Section 609. Robbery

A. A person commits *Robbery* if, in the course of taking any property of another, either from his person or within his immediate presence, and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to the taking or retaining said property. As used in this section, the phrase "in the course of taking" includes any of the defendant's acts beginning with the initiation and extending through the flight from a robbery.

B. Except as provided in sections (C) below, a violation of this section is a Class 2 offense.

C. Robbery is a class 1 offense committed under any of the following circumstances:

1. If such person is aided by one or more "accomplices" actually present; or
2. If such person, or an accomplice, uses or threatens us of a deadly weapon, dangerous instrument, or simulated deadly weapon or dangerous instrument.

Section 610. Criminal Endangerment

A. A person commits *Criminal Endangerment* if the person knowingly engages in conduct that creates a substantial risk

1. Of death or serious physical injury to a person; or
2. Of death, serious physical injury, or developmental disability to an unborn child.

B. Violation of this section is a Class 2 offense.

Section 611. Negligent Endangerment

A. A person commits *Negligent Endangerment* if the person negligently or recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person.

B. Violation of this section is a Class 3 offense.

Section 612. Stalking

- A. A person commits *Stalking* when he or she intentionally and for no legitimate purpose engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:
1. Is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
 2. Causes material harm to the mental or emotional health of such person, and where the person was previously clearly informed to cease that conduct; or
 3. Is likely to cause such victim to reasonably fear that his or her employment, business or career is threatened, and the person was previously clearly informed to cease that conduct.
- B. A violation of this section is a Class 3 offense.

Section 613. Aggravated Stalking

- A. A person commits *Aggravated Stalking* if such person commits Stalking as defined in Section 613 under any of the following circumstances:
1. The person has previously been convicted of Stalking; or
 2. The person is eighteen years of age or older and engages in a course of conduct which intentionally places or attempts to place a person under the age of fifteen in reasonable fear of physical injury, serious bodily harm or death.
 3. Displays a dangerous instrument or deadly weapon during the course of the offense; or
 4. Intentionally or recklessly causes physical injury to the victim during the course of the offense.
- B. Violation of this section is a Class 2.

Section 614. Harassment

- A. A person commits *Harassment* if, with intent to harass, annoy, threaten or alarm another person, the person engages in a course of conduct which:
1. Communicates with a person, anonymously or otherwise, by telephone, by mail, or electronically or any other form of communication in a manner that is likely to cause annoyance or alarm; or
 2. Causes a communication to be initiated by mechanical or electronic means or otherwise with a person, anonymously or otherwise, in a manner likely to cause annoyance or alarm; or

3. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication.

B. Violation of this section is a Class 3 offense.

Section 615. Harassment of Public Official

A. A person commits *Harassment of Public Official* by intentionally:

1. Harming or threatening harm to any “public official” in an attempt to influence the official’s decision, opinion, recommendation, vote or other exercise of discretion as an elected, tribal public official acting in their official capacity; or
2. Preventing or attempting to prevent any public official from performing their official duties.

B. It is not a defense that the official whom the offender sought to influence was not qualified to act in the desired way.

C. Violation of this section is a Class 2 offense.

Section 616. Menacing

A. A person commits *Menacing* by knowingly and without lawful authority using “words or conduct” to place or attempt to place another person in fear of imminent physical confinement, physical injury, or death.

B. Violation of this section is a Class 4 offense.

Section 617. Aggravated Menacing

A. A person commits *Aggravated Menacing* by knowingly and without lawful authority using “words or conduct” to place or attempt to place another person in fear of imminent physical confinement, physical injury or death by displaying a dangerous instrument, deadly weapon, or what appears to be a deadly weapon or dangerous instrument.

B. Violation of the section is a Class 2 offense.

Section 618. Mutilation or Disinterment of Dead Body

A. A person commits *Mutilation or Disinterment of a Dead Body* by mutilating, manipulating, disinterring, removing, or intentionally damaging a dead body or ashes of a human being without lawful authority.

B. Violation of this section is a Class 4 offense.

Section 619. Strangulation or Suffocation

A. A person commits *Strangulation or Suffocation* by intentionally, knowingly or recklessly impeding the normal breathing or circulation of the blood of another person by either:

1. Applying pressure on the throat or neck of the other person, regardless of whether that conduct results in loss of consciousness, visible injury or whether there is any intent to kill or protractedly injure the victim; or
2. Blocking the nose or mouth, or both of the other person, or applying weight to the other person's chest, regardless of whether that conduct results in loss of consciousness, visible injury or whether there is any intent to kill or protractedly injure the victim.

B. A violation of this section is a Class 1 offense.

CHAPTER 7: CRIMES AGAINST PROPERTY

Section

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702	Arson
703	Reckless or Negligent Arson
704	Burglary
705	Criminal Trespass
706	Criminal Trespass to Public Property or Lands of the Nation
707	Criminal Damage
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709	Removal, Damaging, or Destruction of Antiquities
710	Theft
711	Possession or Concealment of Stolen Property
712	Shoplifting
713	Vandalizing or Damaging Special Use Property

Section 701. Definitions

In this Chapter, unless the context requires otherwise:

1. Damage means any physical or visual impairment of any surface.
2. Deprive means to withhold the property interest of another, without entitlement, either permanently or for so long a time period that a substantial portion of its economic value or usefulness or enjoyment is lost, or to uphold it with the intent to restore it only upon payment of a reward or other compensation or to transfer or dispose of it so that it is unlikely to be recovered.
3. Entry means the intrusion of any part of any instrument or any part of a person's body inside the external boundaries of a structure or unit of real property.
4. Fenced commercial yard means a unit of real property surrounded completely by fences, walls, buildings, or similar barriers or any combination thereof, and used primarily for business operations or where livestock, produce or other commercial items are located.
5. Fenced residential yard means a unit of real property immediately surrounding or adjacent to a residential structure and enclosed by a fence, wall, building or similar barrier, or any combination thereof.
6. Nonresidential structure means any structure other than a residential structure.
7. Material misrepresentation means pretense, promise, representation or statement of present, past or future fact which is fraudulent and which, when used or communicated, is instrumental in causing the wrongful control or transfer of property or services. The pretense may be verbal, written or it may be a physical act.
8. Occupied structure means any structure in which one or more human beings either is or is likely to be present or so near as to be in equivalent danger at the time a fire or explosion or

discharge of a firearm occurs. The term includes any dwelling house, whether occupied, unoccupied or vacant.

9. Property means anything other than a structure which has value, tangible or intangible, public or private, real or personal, including documents evidencing value or ownership.
10. Public Property means any property used for governmental or community purposes.
11. Residential Structure means any structure, movable or immovable, permanent or temporary, adopted for both human residence and lodging whether occupied or not. Residential Structure includes the curtilage, or the land immediately surrounding the dwelling.
12. Services includes labor, professional services, transportation, cable television, telephone, gas, or electricity services, accommodation in hotels, restaurants, leased premises or elsewhere, admission to exhibitions and use of vehicles or other movable property.
13. Structure means any building, object, vehicle, watercraft or place with sides and a floor, separately securable from any other structure attached to it and used for lodging, business, transportation, recreation or storage.
14. Tamper means any act of interference.
15. Utility means any enterprise, public or private, which provides gas, electric, steam, water, sewer or communications services, as well as any common carrier on land, rail, sea or air.
16. Value means the fair market value of the property or services at the time of the theft. Written instruments which do not have a readily ascertained market value have as their value either the face amount of indebtedness less the portion satisfied or the amount of economic loss involved in deprivation of the instrument, whichever is greater. When property has undeterminable value its value shall be determined by the trier of fact and, in reaching its decision, all relevant evidence, including hearsay, may be considered including evidence of such property's value to its owner.
17. Vandalize means any unnecessary act of substantially marring any surface or place, by any means, or any act of putting up, affixing, fastening, printing, or painting any notice upon any structure, without permission from the owner.
18. Wildland means any brush covered land, cutover land, forest, grassland or woods.

Section 702. Arson

- A. A person commits *Arson* by intentionally damaging a structure or property by knowingly causing a fire or explosion.
 1. If the damage was done to an occupied structure, or to any residential structure, a violation of this section is a Class 1 offense.

2. If the damage was done to an unoccupied structure, a non-residential structure, or wildland, a violation of this section is a Class 2 offense.
3. If the damage was done to property not included in subsections (1) or (2) above, a violation of this section is a Class 3 offense.

Section 703. Reckless or Negligent Arson

- A. A person commits *Reckless or Negligent Arson* by recklessly or knowingly starting a fire or causing an explosion, whether on his own property or property of another, and thereby negligently:
1. Placing another person in danger of death or bodily injury, including a firefighter responding to or at the scene; or
 2. Placing an occupied structure, a structure, wildland or property of another in danger of damage or destruction.
- B. Violation of this section is a Class 3 offense. If the person has been previously convicted of Arson, it is a Class 2 offense.

Section 704. Burglary

- A. A person commits *Burglary* by entering or remaining unlawfully in or on any of the following with the intent to commit a criminal offense therein:
1. If the person enters or remains unlawfully in or on a nonresidential structure, a fenced commercial or residential yard, or a motor vehicle, violation of this section is a Class 3 offense; or
 2. If the person enters or remains unlawfully in or on a residential structure, violation of this section is a Class 2 offense.
- B. If a person, or an accomplice, commits a violation of subsection (A) while knowingly possessing explosives, flammable materials, a dangerous instrument, deadly weapon, or what appears to be a deadly weapon, violation is a Class 1 offense.

Section 70. Criminal Trespass

- A. A person commits the offense of *Criminal Trespass* under any of the following circumstances:
1. Knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by the owner or any other person having lawful control over such property has been issued; or

2. Knowingly entering or remaining unlawfully on any real property where reasonable notice prohibiting entry is posted; or
3. Entering any residential yard and without lawful authority, looking into the residential structure thereon in reckless disregard of infringing on the inhabitant's right of privacy; or
4. Knowingly entering or remaining unlawfully in or on any nonresidential structure, fenced commercial yard, residential structure or fenced residential yard; or
5. Knowingly entering or remaining on a non-residential premises after having received prior notice of prohibition of entry or having been requested to leave by the owner or any other person having lawful control over such non-residential premises.

B. Violation of this section is a Class 3 offense.

C. If within a 24 month period, a person has been convicted of Criminal Trespass involving the same victim, the person shall be sentenced to no less than three months imprisonment.

D. A third or subsequent Criminal Trespass conviction within 36 months, involving the same victim, is a Class 1 offense, and the person shall be sentenced to not less than six months imprisonment.

Section 706. Criminal Trespass to Public Property or Lands of the Nation

A. A person commits *Criminal Trespass to Public Property* by knowingly or purposely and without express or implied privilege, entering onto the Yavapai-Apache Nation Reservation after having been excluded from the Reservation.

1. A privilege to enter may be extended by explicit invitation, license, or permission from the Nation or the Tribal Court.
2. Access to Tribal lands, waters, and natural resources by persons who are not Tribal members is restricted as provided by Tribal and Federal law.

B. Criminal Trespass to Public Property is a Class 2 offense.

Section 707. Criminal Damage

A. A person commits *Criminal Damage* when, without lawful authority, nor any reasonable ground to believe that person has lawful authority, a person:

1. Recklessly damages or vandalizes property of another person; or

2. Recklessly tampers with property of another so as to endanger or interfere with the use of the property, or substantially impair the value of the property.

B. A violation of this section is a Class 3 Offense unless the damage to the property is greater than \$500. In that case, Criminal Damage is a Class 2 offense.

Section 708. Criminal Damage to Public Property

A. A person commits the offense of *Criminal Damage to Public Property* when, without lawful authority, nor any reasonable ground to believe that person has lawful authority, a person:

1. Recklessly vandalizes, damages, or tampers with any public, tribal or U.S. government property; or
2. Recklessly tampers with the property of a utility.

B. A violation of this section is a Class 2 Offense.

Section 709. Removal, Damaging, or Destruction of Antiquities

A. A person commits the offense of *Removing, Damaging or Destroying Antiquities* by damaging petroglyphs, pictographs, caves or caverns or any historic or prehistoric ruin or monument or any object of antiquity, if such person knowingly, without prior written permission of the owner does any of the following:

1. Breaks, breaks off, cracks, carves upon, writes or otherwise marks upon or in any manner destroys, mutilates, vandalizes, defaces, removes, displaces, mars or harms petroglyphs, pictographs or any natural material found in any cave or cavern; or
2. Kills, harms or disturbs plant or animal life found in any cave or cavern containing antiquities, except for safety reasons; or
3. Breaks, forces, tampers with, removes or otherwise disturbs a lock, gate, door or other structure or obstruction designed to prevent entrance to a cave or cavern containing antiquities whether or not entrance is gained.

B. A violation of this section is a Class 2 offense.

Section 710. Theft

A. A person commits the offense of *Theft* if, without lawful authority, such person knowingly does any of the following:

1. Controls property of another with the intent to deprive him of such property; or
2. Converts for an unauthorized term or use, the services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use; or

3. Obtains property or services of another person by means of any material misrepresentation with intent to deprive the other person of such property or services; or
 4. Comes into control of lost, mislaid or misdelivered property of another, under circumstances providing means of inquiry as to the true owner, and appropriates such property to his own or another's use without reasonable efforts to notify the true owner; or
 5. Obtains services known to the defendant to be available only for compensation without paying or an agreement to pay such compensation, or diverts another's services to his own or another's benefit without authority to do so.
- B. A violation of this section is a Class 2 offense if the property is a firearm, motor vehicle, or explosive regardless of the value of the property.
- C. A violation of this section is a Class 2 offense if the value of the property or services involved exceeds \$1,000.00.
- D. Any violation not covered under subsections (B) and (C) is a Class 3 offense.

Section 711. Possession or Concealment of Stolen Property

- A. A person commits the offense of *Possession or Concealment of Stolen Property* by knowingly controlling, possessing, receiving, concealing or aiding in concealing or receiving any property, knowing the property to be stolen, embezzled, or obtained by fraud or false pretenses, robbery or burglary.
- B. Violation of this section is a Class 3 offense.
- C. Violation of this section is a Class 2 offense if either of the following apply:
1. The stolen property is a firearm, explosives, or a motor vehicle; or
 2. The violation is part of a "course of conduct."

Section 712. Shoplifting

- A. A person commits the offense of *Shoplifting* if, while in an establishment in which merchandise is displayed for sale, such person knowingly obtains such goods of another with the intent to deprive him of such goods by or under any of the following circumstances:
1. Removing from the establishment any of the goods from the immediate display or from any other place within the establishment without paying the purchase price; or

2. Charging the purchase price of the goods to a fictitious person or any person without that person's authority; or
 3. Paying less than the purchase price of the goods by some trick or artifice such as altering, removing, substituting or otherwise disfiguring any label, price tag or marking; or
 4. Transferring the goods from one container to another; or
 5. Concealment. A presumption exists that the person intends to commit the offense of shoplifting if the person knowingly conceals or attempts to conceal any un-purchased goods on his person or among his belongings, or on the person of another. Such person is presumed to have taken possession of such goods with the intent to convert them to his own use without paying for them.
- B. A law enforcement officer, merchant, or merchant's employee who has reasonable cause to believe that a person has willfully taken possession of goods with the intent to convert them without paying for them may detain and interrogate the person in regard thereto in a reasonable manner and for a reasonable time. Reasonable cause is a defense to a civil or criminal action against a law enforcement officer, merchant or an agent or employee of such merchant for false arrest, false or unlawful imprisonment or wrongful detention.
- C. If the value of the merchandise does not exceed \$50, a violation of this section is a Class 4 offense. If the value of the merchandise exceeds \$50, violation of this section is a Class 3 offense.
- D. A second or subsequent violation of this section within a period of 24 months is a Class 2 offense.

Section 713. Vandalizing or Damaging Special Use Property

- A. A person commits the offense of *Vandalizing or Damaging Special Use Property* by knowingly vandalizing, damaging or in any way changing the appearance of any building, structure, personal property or place if committed without lawful authority or permission of the owner.
- B. Special use property is defined as any property or structure:
1. Used for worship or any religious purpose;
 2. Used as a school or educational facility; or
 3. Used for the purpose of burial or memorializing the dead.
- C. Violation of this section is a Class 2 offense.

CHAPTER 8: PUBLIC ORDER OFFENSES

Section

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804	Hindering Prosecution/Arrest
805	Tampering with Physical Evidence
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Section 801. Definitions

In this Chapter, unless the context requires otherwise:

1. Animal means a mammal, bird, reptile or amphibian.
2. Correctional Facility means any place used for the confinement or control of a person who has been charged with or convicted of an offense, held for extradition, or pursuant to a court order.
3. Cruel mistreatment means to torture or otherwise inflict unnecessary serious physical injury on an animal or to kill an animal in a manner that causes protracted suffering to the animal.
4. Cruel neglect means to fail to provide an animal with necessary food, water or shelter or healthcare.
5. Custody means the imposition of actual or constructive restraint pursuant to an arrest or Court order.
6. Hindering Prosecution/Arrest/Rendering Assistance to another person means:
 - a. Knowingly harboring or concealing the other person; or warning the other person of impending discovery, apprehension, prosecution or conviction. This does not apply to a warning given in connection with an effort to bring another into compliance with the law; or
 - b. Providing the other person with money, transportation, a weapon, a disguise or other similar means of avoiding discovery, apprehension, prosecution or conviction; or

- c. Preventing or obstructing by means of force, deception or intimidation anyone from performing an act that might aid in the discovery, apprehension, or prosecution or conviction of the other person; or
 - d. Suppressing by an act of concealment, alteration or destruction any physical evidence that might aid in the discovery, apprehension, prosecution or conviction of the other person; or
 - e. Concealing the identity of the other person.
7. Material means that which could have affected the course or outcome of any proceeding or transaction. Whether a statement is material in any given factual situation is a question of law.
8. Operate and maintain means to organize, design, perpetuate or control. Operate and maintain includes providing financial support by paying utilities, rent, maintenance costs or advertising costs, supervising activities or work schedule, and directing or furthering the aims of the enterprise.
9. Public means affecting or likely to affect a substantial group of persons.
10. Statement means any representation of fact and includes a representation of opinion, belief or other state of mind where the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.
11. Sworn statement means any statement knowingly given under oath or affirmation attesting to the truth of what is stated, including a notarized statement whether or not given in connection with an official proceeding.

Section 802. Resisting Arrest

- A. A person commits *Resisting Arrest* by intentionally preventing or attempting to prevent a person reasonably known to the person to be a law enforcement officer, acting under color of such law enforcement officer's official authority, from making an arrest by:
- 1. Using or threatening to use physical force against the law enforcement officer or another, or;
 - 2. Using any other means which creates a substantial risk of causing physical injury or illness to the law enforcement officer or another.
- B. A violation of this section is a Class 3 offense.
- C. It is no defense to prosecution that the law enforcement officer lacked legal authority to make the arrest if the officer was acting in good faith and under the color of the officer's authority.

Section 803. Escape

- A. A person commits *Escape* if the person knowingly departs or attempts to depart from law enforcement custody, including a police station, probation office, correctional facility or

court house in which a person is held or detained with knowledge that such departure is not permitted.

- B. A violation of this section is a Class 3 offense.
- C. If any weapon or dangerous instrument was possessed or used during the offense, or if any physical injury was caused to another person in the commission of the offense, a violation of this section is a Class 2 offense.

Section 804. Hindering Prosecution/Arrest

- A. A person commits hindering prosecution/arrest if, with intent to, or knowledge of hindering the apprehension, prosecution, conviction or punishment of another for any offense, such person renders assistance to such person.
- B. Hindering prosecution/arrest is a Class 3 offense.

Section 805. Tampering with Physical Evidence

- A. A person commits *Tampering with Physical Evidence* if, with intent that evidence becomes unavailable in an official proceeding which is then pending or which such person believes is about to be instituted, the person intentionally or knowingly:
 - 1. Destroys, mutilates, alters, conceals or removes physical evidence with the intent to impair its verity or availability, or;
 - 2. Knowingly makes, produces or offers any false physical evidence, or;
 - 3. Prevents the production of physical evidence by an act of force, intimidation, or deception against any person.
- B. A violation of this section is a Class 3 offense.
- C. It is not a defense to this charge that the evidence is inadmissible.

Section 806. Failure to Appear

- A. A person commits *Failure to Appear* when by court order the person has been released from custody or allowed to remain at liberty, either upon bail or upon his or her own recognizance, upon condition that he will subsequently appear personally in connection with a charge against him, and when he does not appear personally on the required date or voluntarily within three (3) days thereafter.
- B. A person who knowingly violates his written promise to appear on a criminal charge as signified by his signature on the UTTC or any other release or court document, may be charged with this offense regardless of the disposition of the charge upon which he was originally arrested.
- C. A violation of this section is a Class 4 offense.

Section 807. Perjury

A. A person commits *Perjury* by knowingly:

1. Making a false, sworn statement in regard to a material issue, or;
2. Making a false unsworn declaration, certificate, verification or statement in regard to a material issue that the person subscribes as true under penalty of perjury.

B. A violation of this section is a Class 2 offense.

Section 808. Witness Tampering

A. A person commits *Witness Tampering* if, with intent that a witness becomes unavailable in an official proceeding which is then pending or which such person believes is about to be instituted, the person intentionally or knowingly induces, coerces, intimidates, menaces or otherwise causes a witness or informant to:

1. Testify or inform falsely; or
2. Withhold any testimony, information, document or other material evidence.

B. Violation of this section is a Class 3 offense.

C. If physical injury occurs, a violation is a Class 2 offense. If serious physical injury occurs, a violation is a Class 1 offense.

D. It is not a defense to this section that the victim was not actually being called as a witness and/or that the witness was not, in fact, tampered with.

Section 809. Bribery

A. A person commits *Bribery* if the person knowingly:

1. Gives or offers to give any money, property, services, or anything else of value to another person, with corrupt intent to influence another in the discharge of the other person's public duties or conduct, or;
2. Accepts, agrees to accept, solicits or attempts to solicit any money, property, services, or anything else of value from another person in exchange for an understanding that the person's vote, opinion, judgment, exercise of discretion or other action in carrying out the person's public duties is to be influenced.

B. A violation of this section is a Class 2 offense.

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

Section 810 Criminal Contempt of Court

A. A person commits *Criminal Contempt of Court* if the person knowingly:

1. Disobeys any order, subpoena, warrant, or command duly issued, made or given by the judiciary, or;
2. Engages in disorderly, disrespectful or insolent behavior during a session of the Court which directly interrupts its proceedings or impairs the respect due to its authority.

B. A violation of this section is a Class 3 offense. If the violation results in physical injury to the person named in the Order of Protection, violation is a Class 2 offense. If the violation results in serious physical injury to the person named in the Order of Protection, violation is a Class 1 offense.

Section 811. Violation of Court Order/Order of Protection

A. A person commits the offense of *Violation of Court Order/Order of Protection* if the person, with knowledge of the order, purposely or knowingly violates a provision of a court order or an order of protection. It may be inferred that the defendant had knowledge of an order at the time of the offense if the defendant had been served with the order before the time of the offense. Service of the order is not required upon a showing that the defendant had knowledge of the order and its contents.

B. A violation of this section is a Class 3 offense. If the violation results in physical injury to a person named in the Order, violation is a Class 2 offense. If the violation results in serious physical injury to a person named in the Order, violation is a Class 1 offense.

Section 812. False Reporting

A. A person commits *False Reporting* by knowingly making to a law enforcement officer or agency:

1. Any fraudulent report or statement to a law enforcement or first response officer or agency, or;
2. Any misrepresentation of the facts for the purpose of interfering with the orderly operation of a law enforcement agency or first response agency.

B. A violation of this section is a Class 3 offense.

C. A second or subsequent violation of this subsection within a 24 month period is a Class 2 offense.

Section 813 Denying, Hindering, or Delaying Provision of Emergency or Law Enforcement Services

A. A person commits *Denying, Hindering, or Delaying Provision of Emergency or Law Enforcement Services* by:

1. Using force, fear, or intimidation against another to prevent that person from contacting law enforcement services, emergency medical services, or the 911 reporting system to secure appropriate law enforcement or emergency services assistance on behalf of him/herself or another; or
2. Destroying, disabling, concealing, or removing from the immediate premises any telephone or other telecommunications devices, or any motor vehicle or other means of transportation, with the intent to deny, hinder, delay, or prevent another from attempting to secure law enforcement or emergency services in a timely and expedient manner.

B. A violation of this section is a Class 3 offense. If the violation occurs within a domestic violence relationship, as defined in Chapter 11 of this Code, violation is a Class 2 offense.

Section 814. Disorderly Conduct

A. A person commits *Disorderly Conduct* if, with intent to disturb the peace or quiet of a neighborhood, business, family or person, or with knowledge of doing so, such person:

1. Engages in fighting, violent or seriously disruptive behavior; or
2. Makes unreasonable noise; or
3. Makes any protracted commotion, utterance or display with the intent to prevent the conduct of any lawful meeting, gathering or procession;
4. Refuses to obey a lawful order to disperse.

B. Violation of this section is a Class 3 offense.

C. A second violation of this section within 24 months of the prior violation is a Class 2 offense. A person who commits a third or subsequent violation within a 36 month period of the prior violations, shall be sentenced to a minimum of 3 months imprisonment.

Section 815. Public Intoxication

A. A person commits *Public Intoxication* if, while the person is under the influence of alcohol, drugs, inhalants, or other intoxicants in public, the person poses a danger to themselves or to another person.

B. A violation of this section is a petty offense.

C. A second violation of this section within a 2 month period is a Class 4 offense. A third violation within a Four (4) month period is a Class 3 offense.

Section 816. Criminal Nuisance

A. A person commits *Criminal Nuisance* if the person:

1. By conduct either unlawful in itself or unreasonable under the circumstances, recklessly creates or maintains a condition which endangers the safety or health of others, or;
2. Knowingly conducts or maintains any premises, place, or resort where persons gather for purposes of engaging in unlawful conduct.

B. A violation of this section is a Class 4 offense.

Section 817. Criminal Littering or Polluting

A. A person commits *Criminal Littering or Polluting* if the person without lawful authority:

1. Throws, places, drops, or permits to be dropped on public property or the property of another person which is not a lawful dump, any trash, litter, hazardous, destructive or injurious material which the person does not immediately remove, or;
2. Discharges or permits to be discharged any sewage, petroleum products, mining byproducts, or other hazardous or harmful substances into any waters or onto any shoreline belonging to the Nation, or;
3. Dumps any earth, soil, stones, mining byproducts, ores, or minerals on any land.

B. A violation of this section is a Class 4 offense if the littering or polluting is of non-hazardous materials.

C. A violation of this section is a Class 1 offense if the littering or polluting is:

1. Of sewage or other hazardous materials, or;
2. Of any materials requiring mitigation and final site certification using specialized contractors certified or licensed by the Yavapai-Apache Nation, the U.S. Environmental Protection Agency, or any state equivalent.

Section 818. Terrorism

A. A person commits *Terrorism* when he or she intentionally:

1. Threatens to destroy or damage any structure, conveyance, or other real or personal property within the Reservation boundaries;
2. Attempts or conspires to destroy or damage any structure, conveyance, or other real or personal property within the Reservation boundaries; or
3. Creates a substantial risk of serious physical injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the Reservation boundaries.

B. A violation of this section is a Class 1 offense

Section 819. Animal Neglect/Cruelty

- A. A person commits *Animal Neglect/Cruelty* by knowingly cruelly neglecting, torturing or mistreating any animal.
- B. A violation of this section is a Class 4 offense.

Section 820. Fugitive from Justice/Extradition

- A. Any person located within the boundaries of the Reservation, who is a member of a federally-recognized tribe, and who is wanted by off-Reservation law enforcement and for whom a criminal warrant of arrest has been issued and presented to the Yavapai-Apache Nation Police Department or Probation Department, shall be considered a Fugitive from Justice, and is subject to detention by authority of this statute.

Excluding weekends and Tribal holidays, within 24 hours of detention, the person shall appear before the Tribal Court. The Tribal Court upon being presented with a criminal warrant from off-reservation authorities for any person on the Reservation, shall verify through the Yavapai-Apache Police Department that the warrant is valid and that the person in custody is the person named in said warrant. Upon verification, the Tribal Court may issue a tribal fugitive warrant by the authority of this section. The tribal warrant shall be issued by the Tribal Court and the person arrested on the tribal warrant shall be returned to tribal law enforcement for release to off-reservation authorities.

CHAPTER 9: DRUG OFFENSES

Section

901	Definitions
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903	Drug Sales Offense
904	Dangerous Drug Offenses
905	Synthetic Cannabinoid (“Spice) Offenses
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907	Synthetic/Substituted Cathinone (“Bath Salts”) Offenses
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909	Toxic Inhalant Offenses
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911	Injury during Drug Manufacturing Offenses
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913	Involving or Using a Minor in Drug Transactions Offenses
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Section 901 Definitions

In this Chapter, unless the context requires otherwise, the definitions of the most current edition of the Arizona Revised Statute section 13-3401 are adopted in full.

In addition, the following expanded definitions shall apply:

1. Produce or production includes knowingly growing, cultivating, manufacturing, delivering, expediting, or coordinating delivery of drugs, precursor materials, or equipment used in the production of drugs.
2. Use or usage includes residues or bodily fluid detections. If there is no other presence of the drug at the time of the contact with the person, the charging shall be at the lowest class for that drug unless otherwise indicated in a section.

Section 902. Marijuana Offenses

- A. A person commits a *Marijuana* offense by knowingly possessing, using, transporting, or cultivating marijuana, as currently defined in A.R.S. §13-3401 (19), hashish or hashish oil, as provided herein.
- B. Possession, use, or transport of more than 1 ounce is a Petty Offense.
 - A. A person who is 21 years of age or older and who possesses, consumes, transports or transfers without remuneration any amount of marijuana, and/or marijuana concentrate or paraphernalia relating to the consumption of marijuana or marijuana products to a person between 18 and 21 years of age is guilty of:
 1. For a first violation: A Class 4 offense.
 2. For a second or subsequent violation: A Class 3 offense.

- B. A person who is under 21 years of age and who possesses, consumes, transports or transfers without remuneration one (1) ounce or less of marijuana, of which not more than five (5) grams is in the form of marijuana concentrate or paraphernalia relating to the consumption of marijuana or marijuana products is guilty of:
 - 1. For a first violation if the person is 18 or older: A Class 4 offense.
 - 2. For a second or subsequent violation if the person is 18 or over: A Class 3 offense.
 - 3. For any violation if the person is under 18: A Class 3 offense.
- C. A person who is under 21 years of age and who solicits another person to purchase marijuana or a marijuana product in violation of this Chapter is guilty of:
 - 1. For a first violation: A Class 4 offense.
 - 2. For a second or subsequent violation: A Class 3 offense.
- D. A person who smokes marijuana in a public place, government building, or federally assisted housing is guilty of a Class 4 offense.
- E. Possession of more than four (4) living marijuana plants is a Class 4 offense.
- F. Possession of any number of living marijuana plants in a public place, government building, or federally assisted housing is a Class 4 offense.

Section 903. Drug Sales Offense

- A. A person commits a *Drug Sales Offense* by knowingly manufacturing, distributing, delivering, dispensing, producing, transporting, offering to transport, advertising, or presenting for sale any quantity of a substance that is prohibited in this Chapter. This is a separate offense from possession or use.
- B. Violation of this section is a Class 1 offense.
- C. A person who has been convicted of a second violation of the section within 3 years of the date of a prior violation shall be sentenced to a minimum of (nine) 9 months imprisonment.

Section 904. Dangerous Drug Offenses

- A. A person commits a *Dangerous Drug* offense by knowingly possessing, using, transporting, producing or administering any “dangerous drug,” as defined in the current A.R.S. §13-3401(6).
- B. Violation of this section is a Class 1 offense.

Section 905. Synthetic Cannabinoid (“Spice”) Offenses

- A. A person commits a *Synthetic Cannabinoid* offense by knowingly manufacturing, distributing, delivering, dispensing, possessing, using, transporting, manufacturing, or producing any “synthetic cannabinoid,” as defined in the current A.R.S. §13-3401(6)(b).

B. Violation of this section is a Class 1 offense.

Section 906. Narcotic Drug Offenses

A. A person commits a *Narcotic Drug* offense by knowingly possessing, using, transporting, producing or administering any “narcotic drug,” as defined in the current A.R.S. §13-3401(20).

B. Violation of this section is a Class 1 offense.

Section 907. Synthetic/Substituted Cathinone (“Bath Salts”) Offenses

A. A person commits a *Synthetic/substituted Cathinone* offense by knowingly manufacturing, distributing, delivering, dispensing, possessing, using, transporting, manufacturing, producing or administering any synthetic or substituted cathine, synthetic or substituted cathinone, or “cathinomimetic substance,” as defined in the current A.R.S. §13-3401.

B. Violation of this section is a Class 1 offense.

Section 908. Peyote Offenses

A. A person commits a *Peyote* offense by knowingly manufacturing, distributing, delivering, dispensing, possessing, using, transporting, producing or administering any form of peyote.

B. It is a defense to prosecution that the peyote is used or is intended for use:

1. In connection with the bona fide practice of religious belief, and
2. As an integral part of a religious exercise, and
3. In a manner not dangerous to public health or safety.

C. A violation of this section is a Class 1 offense.

Section 909. Toxic Inhalant Offenses

A. A person commits a *Toxic Inhalant* offense by knowingly manufacturing, distributing, delivering, dispensing, possessing, using, inhaling, transporting, producing, giving, or administering any form of toxic inhalant.

B. For the purposes of this section, a “toxic inhalant” is equivalent to a “vapor-releasing substance containing a toxic substance” as defined in the current A.R.S. §13-3401(38).

C. Legal possession of a toxic inhalant for sale or use as the manufacturer intended is not a violation of this section.

D. A violation of this section is a Class 1 offense.

Section 910. Prescription-only Drug Offenses

A. A person commits a *Prescription-only Drug* offense if, without lawful authority, the person:

1. Knowingly distributes, delivers, dispenses, possesses, uses, transports, produces or administers any prescription-only drug; or
 2. Obtains a prescription-only drug by fraud, deceit, forgery, or misrepresentation.
- B. Violation of this section is a Class 1 offense.
- C. This section does not apply to any person who obtains and uses the prescription-only drug pursuant to a valid and current prescription from a prescriber licensed by the Yavapai-Apache Nation, the United States, or any state.
- D. It is a rebuttable presumption that possession of (six) 6 or more units of one kind of drug, or any quantity of two or more kinds of drugs, is “for sale” within the meaning of §903. For purposes of this section, a “unit” is one pill, one capsule or (five) 5 milliliters of liquid.
- E. Civil Sanction: Any authorized or licensed person who illegally prescribes or otherwise abuses their privilege to prescribe prescription-only drugs violates this section. In addition to any possible criminal sanction, a civil sanction including fines and exclusion from the Yavapai-Apache Nation may be applied.

Section 911: Injury during Drug Manufacturing Offenses

- A. A person commits an *Injury during Drug Manufacturing* offense by causing the injury of any other person while manufacturing, producing, or storing any illegally-manufactured drug.
- B. A violation of this section is a Class 3 offense for any physical injury or impairment, however slight.
- C. A violation of this section is a Class 2 offense for any serious physical injury.
- D. A violation of this section is a Class 1 offense if any physical injury is to a child under the age of 18.

Section 912. Drug Paraphernalia Offenses

- A. A person commits a *Drug Paraphernalia* offense by knowingly possessing, using, transporting, selling, producing, advertising, transferring, or giving any form of drug paraphernalia.
- B. For purposes of this section, “Drug paraphernalia” means all equipment, products, containers and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body any drug prohibited by this Chapter.
- C. A violation of this section is a Class 4 offense.

Section 913. Involving or Using a Minor in Drug Transactions Offenses

- A. A person commits an *Involving or Using a Minor in Drug Transactions* offense by:
 - 1. Hiring, employing, using, persuading, inducing, enticing, or coercing a person under 18 years of age to engage in any conduct prohibited by this Chapter that is completed, preparatory, or inchoate;
 - 2. Hiring, employing, using, persuading, inducing, enticing, or coercing a person under 18 years of age to assist in avoiding detection or apprehension for any offense prohibited by this Chapter by a Tribal or Federal law enforcement official;
 - 3. Distributing, delivering, dispensing, selling, transferring, or offering to sell or transfer to a person under 21 years of age, any substance or item if its possession is prohibited by this Chapter.
- B. A violation of this section is a Class 1 offense.
- C. A person who has been convicted of a second violation of this section within 3 years from the date of a prior violation shall be sentenced to a minimum of (nine) 9 months imprisonment.

Section 914. Drug-free School Zones

- A. A person commits a *Drug-Free School Zone* offense by committing any offense prohibited by this Chapter within 300 feet of any school, its grounds, or a school bus stop.
- B. A violation of this section is a Class 1 offense.
- C. A person who has been convicted of a second violation of this section, within 3 years from the date of the prior violation shall be sentenced to a minimum of 9 months imprisonment.

Section 915. Furnishing Marijuana to a Minor

- A. A person commits the offense of furnishing marijuana to a minor if he gives or furnishes marijuana to any person under 18 years of age.
- B. A violation of this section is a Class 2 offense.

Section 916. Medical Marijuana

- A. There is a presumption that a qualifying patient or designated caregiver is engaged in the medical use of marijuana if the qualifying patient or designated caregiver possesses:
 - 1. A registry identification card issued in his or her name by the Arizona Department of Health Services pursuant to Arizona Revised Statutes § 36-2804.02, as the same may be amended from time to time; and

2. An amount of marijuana that does not exceed the allowable amount of marijuana permitted pursuant to ARS § 36-2801(1)(A)(I), as the same may be amended from time to time.
- B. The presumption may be rebutted by evidence that the qualifying patient's conduct or the designated caregiver's conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition pursuant to the Arizona Administrative Code § R9-17-201, as the same may be amended from time to time.
- C. Medical use of marijuana is permitted if the:
1. Person is at least eighteen (18) years of age;
 2. Person does not possess more than two and a half (2 ½) ounces of marijuana, of which not more than twelve and a half (12 ½) grams is in the form of marijuana concentrate; and
 3. Person has a valid, unexpired medical marijuana card as referred to in Section 916A above; and
 4. Use does not occur in any public place, government building, in any federally assisted housing, or open space; and
 5. Person is not driving or in actual physical control of any motorized vehicle while under the influence of marijuana in violation of Section 1506 of this Code.

CHAPTER 10 – CRIMES AGAINST CHILDREN, ELDERS AND VUNLERABLE ADULTS

Section

- 1001 Definitions
- 1002 Endangering the Welfare of a Child
- 1003 Vulnerable Victim Abuse
- 1004 Contributing to the Delinquency or Dependency of a Minor

Section 1001. Definitions

In this chapter, unless the context requires otherwise:

1. Child: means any individual who is under eighteen years of age.
2. Elder: means any individual who is 62 years of age or older.
3. Gambling: Risking or giving something of value for the opportunity to obtain a benefit from a game or contest of chance or skill or a future contingent event but does not include bona fide business transactions which are otherwise lawful.
4. Vulnerable Adult: means an individual who is eighteen years of age or older and who is unable to protect himself or herself from abuse, neglect, or exploitation by others because of a mental or physical impairment.

Section 1002. Endangering the Welfare of a Child

A. A person commits *Endangering the Welfare of a Child* by knowingly:

1. Acting in a manner likely to be injurious to the physical, mental, or moral welfare of a child; or
2. Committing a crime of domestic violence, as defined in Chapter 11, in the presence of a child; or
3. Permitting a child to enter or remain in a place where unlawful narcotic or dangerous drug activity is maintained or conducted; or
4. Inducing, causing or permitting a child to participate in gambling as defined in this Chapter, or
5. Selling, or causing to be sold, tobacco in any form to child.

B. A violation of this section is a Class 3 offense.

Section 1003. Vulnerable Victim Abuse

A. A person commits *Vulnerable Victim Abuse* by having the care or custody of a “child,” “elder” or “vulnerable adult” and causing the child, elder or vulnerable adult to suffer physical injury, or permitting the moral or mental health of the child, elder or vulnerable

adult to be injured or causing the child, elder or vulnerable adult to be placed in a situation where their health is endangered.

- B. A violation of this section is a Class 1 offense if done intentionally or knowingly.
- C. A violation of this section is a Class 2 offense if done recklessly or with criminal negligence.

Section 1004. Contributing to the Delinquency or Dependency of a Minor

A. A person commits *Contributing to the Delinquency or Dependency of a Minor* if the person:

1. Causes, encourages, or contributes in any manner which tends to debase or injure the health, safety, welfare, or morals of a minor under the age of 18, or;
2. Acts to cause, encourage, or contribute in any manner to cause the destitution, vagrancy, begging, or homelessness of a minor under the age of 18, or;
3. Furnishes alcohol, drugs, inhalants, tobacco, firearms or explosives to a minor under the age of 18, or;
4. Has care or custody of a dependent minor under the age of 16 and fails, neglects, or refuses to make diligent efforts to send said minor to school.

B. A violation of this section is a Class 3 offense.

C. It is an affirmative defense to subsection (4) that:

1. The minor is absent from the school either with the school's permission or as a result of suspension or expulsion; or
2. The minor is engaged in a cultural activity authorized by the parent or guardian; or
3. The minor is being home-schooled.

CHAPTER 11: DOMESTIC VIOLENCE OFFENSES

Section

1101	Purpose
1102	Definitions
1103	Crimes Involving Domestic Violence
1104	Penalties; Enhancements
1105	Duties of Law Enforcement to Victim; Required Notice
1106	Mandatory Arrest for Offenses
1107	Mandatory Arrest for Violations of Orders of Protection
1108	Officials who batter, including law enforcement officers; Procedure
1109	Pre-trial Release
1110	Mandatory Arrest for Violation of Conditions of Release
1111	Duty of Prosecutor to Notify Victim
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1115	Order of Protection; Procedure
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1124	Mediation Prohibited
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1126	Court Responsibilities
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Section 1101. Purpose

This Chapter shall be interpreted and applied to achieve the following general principles and promote the following:

- A. That violence against family members is not in keeping with traditional Yavapai or Apache tribal values. It is the expectation that the criminal justice system shall respond to victims of domestic violence in a prompt, educated and effective manner. Two of the goals of this Chapter are to provide victims of domestic violence with safety and protection.

- B. Another goal of this Chapter is to utilize the criminal justice system in setting standards of behavior within the family that are consistent with traditional Yavapai and Apache tribal values and, as such, the criminal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional values that hold women and children as sacred, in accordance with the Indian Civil Rights Acts.

Section 1102. Definitions

In this Criminal Code, unless context requires otherwise:

1. Domestic violence means the occurrence of one or more of the following:
 - a. An unlawful attempt, coupled with apparent ability, to commit a violent injury on another domestic household member;
 - b. An intentional, unlawful threat by word or act to do violence to another domestic household member, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other domestic household member that such violence is imminent;
 - c. The willful and unlawful use of force or violence upon the person of another domestic household member;
 - d. Actual, intentional and unlawful touching or striking of another domestic household member against their will;
 - e. Unlawfully and intentionally causing bodily harm to another domestic household member; or causing a domestic household member to engage involuntarily in sexual activity by force, threat of force, or duress.
2. Domestic household member means a spouse, former spouse, person related by blood, marriage or court order, persons who reside or who have resided together, persons who have a child in common or are expecting a child together, regardless of whether they have been married or have lived together at any time or persons who are currently or were previously in a romantic or sexual relationship.
3. For purposes of this Chapter “reside” shall mean one’s personal presence at some place of abode with no present intention of leaving and with purpose to remain for an undetermined period of time, but not necessarily combined with the design to stay permanently.
4. Domestic violence advocate means an employee of, or volunteer for, a program for victims of domestic violence and/or sexual assault.
5. Domestic Violence Prevention Fund is a fund set up to provide victims of domestic violence with needed short term resources to insure the safety of the victim and their family members who may suffer harm without this intervention. The fund is monitored and supervised by the Chief Prosecutor of the Yavapai-Apache Nation with the intent to meet a victim’s short term needs for housing, transportation, food, and hygienic items and other items that may be lost as a result of their displacement. The prosecutor shall, with the cooperation of the court, prepare a semi-annual report on the current monetary level of the fund as well as expenditures over the course of the reporting period.
6. Program for victims of domestic violence means a specialized program for victims of domestic violence and their children that includes, but is not limited to, advocacy, shelter, crisis intervention, supportive services, and referral, and makes available the specialized knowledge and expertise of elders and spiritual leaders.

7. Probation officer means a duly authorized probation officer of the Yavapai-Apache Probation Department, recognized and authorized to monitor and supervise persons placed on probation, parole, or supervised release.
8. Public servant means any law enforcement officer, dispatcher, detention officer, law enforcement supervisor or administrator, judge, court clerk, prosecutor, court administrator, or juvenile detention officer.

Section 1103. Crime(s) Involving Domestic Violence

Crimes involving domestic violence shall be charged under general crimes as defined within Title 5 of this Criminal Code with the additional relationship requirement that the perpetrator is a domestic household member. The offense title shall include the designation "Per Domestic Violence."

Section 1104. Penalties; Enhancement

A. When a defendant makes a judicial admission, pleads guilty to, or has been found guilty of a crime under Title 5 with the designation "Per Domestic Violence" the penalty for the offense shall be the same as prescribed in Title 5 with the following additional mandatory sentencing.

1. First Offense: Defendant may be sentenced to jail up to the maximum term allowed under Title 5. In addition, the defendant shall be ordered to receive the maximum term of probation allowed under Title 5 and pay \$100.00 dollars to the Domestic Violence Prevention Fund.

2. Second Offense: Defendant may be sentenced to jail up to the maximum term allowed under Title 5, however, defendant must serve a minimum term in custody, amounting to at least 25% of the maximum jail sentence allowed under Title 5. This time must be served consecutively (work release not allowed.) Defendant shall be placed on the maximum term of probation allowed under Title 5 and ordered to pay \$250.00 to the Domestic Violence Prevention Fund.

3. Third or Subsequent Offense: Defendant may be sentenced to jail up to the maximum term allowed under Title 5, however, defendant must serve a minimum term in custody, amounting to at least 50% of the maximum jail sentence allowed under Title 5. This time must be served consecutively (work release not allowed.) Defendant shall be placed on the maximum term of probation allowed under Title 5 and ordered to pay \$500.00 to the Domestic Violence Prevention Fund.

B. For any conviction or guilty plea to domestic violence, the Court shall order the defendant to complete a domestic violence offender's program recognized by the Yavapai-Apache Nation or the State of Arizona. The Court may enhance the sentencing level for any domestic violence offense but shall not reduce the sentencing level below the minimum prescribed by this section. The Judge shall have the discretion to order sentences to run concurrently where there is more than a single conviction for one incident.

C. The Yavapai-Apache Probation Department shall have administrative and rehabilitative latitude to set rehabilitative standards and probation conditions consistent with assisting the offender to attain a non-violent, productive, and alcohol-free/drug-free life path.

Section 1105. Duties of Law Enforcement Officer to Victim; Required Notice

A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence and shall have a duty to arrest upon finding probable cause to believe that domestic violence has occurred. A law enforcement officer need not obtain a search warrant in order to enter a residence where s/he has probable cause to believe a crime of domestic violence is occurring or has just occurred, nor to seize property under this subsection.

- A. The law enforcement officer shall give, in addition to verbal notification, written notice to the adult victim substantially as follows:

"If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an order of protection that will provide for your further protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a shelter, a family member's or friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. Please be advised that the prosecutor may choose to file a criminal complaint against your assailant.

You also have the right to file a petition requesting an order of protection from your domestic violence abuser. The forms you need to obtain an order of protection are available from the Yavapai-Apache Tribal Court or the Yavapai-Apache Police Department."

- B. Any law enforcement officer who enforces any portion of this section in good faith shall be immune from suit by any person alleging a violation of this subsection or any other section of tribal law.

Section 1106. Mandatory Arrest for Offenses

A law enforcement officer shall arrest any person, with or without a warrant, whom s/he has probable cause to believe committed any crime involving domestic violence as defined in Section 1102, either in the presence of the officer or within 72 hours of a report to law enforcement of the commission of such offense.

- A. The responding officer shall take a written statement signed and dated by the victim and shall obtain a signed release of medical records related to the incident from the victim. Such statements given by the victim or witnesses within 72 hours will be deemed

testimonial statements, and all such statements shall be admitted as reliable evidence at any trial related to such incident. All medical records, laboratory tests and scientific results from the same shall be admissible as reliable evidence so long as the laboratory or medical records department certifies in writing that the documents are true and correct copies of records on file with the institution generating the same.

- B. Copies of all reports shall be forwarded within the next day to the Yavapai-Apache Nation's Office of the Prosecutor, and the Yavapai-Apache Nation Department of Social Services if there are minors involved.

Section 1107. Mandatory Arrest for Violations of Protective Orders

When a law enforcement officer has probable cause to believe that a respondent has violated an order of protection and verifies the existence of the order, the officer shall, without a warrant, arrest the apparent violator, whether the violation was committed in or outside the presence of the officer. An officer making an arrest under this subsection shall be immune from suit provided s/he acted in good faith.

Section 1108. Officials Who Batter, Including Law Enforcement Officers

Law enforcement officers and public officials who are suspected of committing the crime of domestic violence shall be subject to all provisions of this Chapter, including mandatory arrest with probable cause, prohibitions against temporary release, and all laws involving firearms disqualification herein.

Section 1109. Pre-Trial Release

No person arrested for a crime of domestic violence or violation of a valid Tribal or State order of protection shall be released from detention until after their initial appearance and the expiration of 72 hours from arrest notwithstanding the ability to pay a cash bond or surety bond or the failure of the prosecutor to file a criminal complaint.

- A. No person arrested for a crime of domestic violence or violation of a valid Tribal or State order of protection shall be allowed a temporary release before arraignment except for extreme medical emergency or death of an immediate family member, and provided such release does not represent an imminent danger to the perpetrator's spouse/partner, immediate family, or others.
- B. In making a decision concerning pretrial release of a person who is arrested for, or charged with, a crime involving domestic violence or a violation of an order of protection, the court may ask for or entertain a pre-release investigative report from the Yavapai-Apache Nation's Probation Department. The court shall review the facts of arrest and detention of the person and consider the following factors in addition to those listed in the YAN Rules of Criminal Procedure:
 - 1. Whether the accused is a threat to an alleged victim or other person;

2. Whether the accused is a threat to the Police Department;
3. Whether the accused is reasonably likely to appear in court;
4. Past behavior of the accused while on previous pre-trial release(s) and;
5. The accused's past criminal history with an emphasis on crimes of violence, and history of alcohol or substance abuse;
6. The accused's current work status;
7. The accused's financial resources;
8. The accused's character and mental condition; and
9. The accused's length of residence in the community.

Concerning the factors listed above, the court may consider any Tribal, State or Federal information available.

- C. Bail shall not be granted when the prior record shows a prior failure to appear, arrests while on release or prior violations of court orders in any Tribal, State or Federal court. Before releasing a person arrested for or charged with a crime involving domestic violence, or a violation of an order of protection, the court shall make findings on the record, if possible, concerning the determination made in accordance with subsections 1- 3 above and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding.
- D. The court may release a perpetrator of a crime involving domestic violence only under conditions that would protect the safety of a victim of domestic violence or other family or household member.
- E. If conditions of release are imposed, the court shall:
 1. Issue a written order for conditional release;
 2. Immediately distribute a copy of the order to the Prosecutor's Office, Police Department, and Probation Department;
 3. Provide the Police Department with any available information concerning the location of the perpetrator in a manner that protects the safety of the victim; and
 4. Inform the person to be released that his/her release shall be monitored by a Probation Officer of the Yavapai-Apache Nation Probation Department for compliance with the conditions of release, and that a violation of those conditions may result in his/her arrest for failing to comply with conditions of release.
 5. The court clerk or on-duty detention officer shall provide a copy of the conditions of release to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has been provided other notice of the conditions.

Section 1110. Mandatory Arrest for Violation of Conditions Of Release

If a law enforcement officer or probation officer has probable cause to believe that a person on domestic violence probation, parole, or other supervised release has violated a condition of release imposed in accordance with Title 5 Chapter 11, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

Section 1111. Duty of Prosecutor to Notify Victim

A prosecutor shall notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.

Section 1112. Spousal Privileges Inapplicable

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

- A. The privilege of confidential communication between spouses.
- B. The testimonial privilege of spouses.

Section 1113. Victim-Advocate Privilege

Except as otherwise provided in subsection 1112, a victim of domestic violence may refuse to disclose, and may prevent an advocate, elder, or medicine person from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim unless the privilege is waived by:

- (a) The victim; or
- (b) The death or unavailability of the victim.

This privilege does not relieve a person from any duty imposed in the mandatory reporting of child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse or neglect.

Section 1114. Arrest for Probation Violations

The court shall recognize the signed affidavit of the Yavapai-Apache Nation Probation Department and accompanying documentation outlining any violation of probation conditions as probable cause for warrantless arrest or issuance of a warrant for the perpetrator's arrest.

Section 1115. Order of Protection, Procedure

- A. A person who is or has been a victim of domestic violence may file a petition for an order of protection against any person who has threatened or has committed an act of domestic

violence as defined in Section 1102.

- B. A parent, guardian, or other representative may file a petition for an order of protection on behalf of a child or family or household member, or former household member on behalf of a child against a family or household or former household member, who commits an act of domestic violence.
- C. Issuance of an order of protection must arise from a situation of domestic violence as defined by Section 1102 of this Chapter. Any preexisting orders of protection granted by a foreign jurisdiction shall be given full faith and credit by the Yavapai-Apache Nation Court as having the same force and effect as one issued by the Yavapai-Apache Nation Court. The Court shall waive the filing fees associated with recognizing foreign orders of protection.

Section 1116. Jurisdiction; Venue; Residency Not Required

The Yavapai-Apache Tribal Court has jurisdiction over any petition for an order of protection under this Code when the petitioner or respondent is domiciled or found within the boundaries of the Yavapai-Apache Nation or any act of domestic violence occurred within the boundaries of the Yavapai-Apache Nation or when the court is being asked to recognize and enforce a valid order of another court of competent jurisdiction. The Court shall construe this section liberally to exercise maximum jurisdiction.

- A. All court proceedings in reference to the order of protection shall be carried out where the original order of protection was filed.
- B. There is no minimum requirement of residency to petition for or to be granted an order of protection.

Section 1117. Other Proceedings

At any hearing in a proceeding to obtain an order of protection, each party has a continuing duty to inform the court of each proceeding for an order of protection, any civil litigation, each proceeding in family or juvenile court, and each criminal case involving the parties, including the case name, the file number, and the tribe, county, and/or state, including federal proceedings, if that information is known by the party.

- A. An order of protection is in addition to, and not in lieu of, any other available civil or criminal proceeding. A petitioner is not barred from seeking relief because of the existence of a pending action between the parties.
- B. A petitioner may omit her or his address from all documents filed with the court. If a petitioner omits her or his address, the petitioner must provide the court a mailing address or, in the event the petitioner is utilizing advocacy services, the name of an advocate that has the knowledge to be able to contact the petitioner. If disclosure of petitioner's address is necessary to determine jurisdiction or consider venue, the court may order the disclosure to be made:

1. After receiving the petitioner's consent;
2. Orally and in chambers, out of the presence of the respondent and order that a sealed record be made; or
3. After a hearing, if the court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice.

Section 1118. Modifications of Orders of Protection

If it appears from a petition for an order of protection, or a petition to modify an order of protection, that domestic violence has occurred or a modification of an order of protection is required, the court may:

- (a) Without notice or hearing, immediately issue an order of protection ex parte or modify an order of protection ex parte as it deems necessary to protect the petitioner; or
 - (b) Upon notice, issue an order of protection or modify an order after a hearing, whether or not the respondent appears;
- A. A court may grant the following relief without notice and hearing in an order of protection or a modification issued ex parte, and the court may grant the following relief in a permanent order of protection or a modification of a permanent order of protection:
1. Enjoin the respondent from threatening to commit or committing acts of domestic violence against the petitioner and any minors or vulnerable adults;
 2. Prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly through friends, relatives, or co-workers;
 3. Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence or lessee of record;
 4. Order the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
 5. Seize and prohibit the respondent from using or possessing a firearm or other weapon specified by the court;
 6. Order possession of the parties' residence and use of or ownership of any vehicle and other essential personal effects, regardless of the ownership, be given to the petitioner and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, vehicle, and other personal effects, or to supervise the petitioner's or respondent's removal

of personal belongings;

7. Prohibit the destruction, liquidation or disposal of any and all joint assets or property and any and all specific assets or property of the petitioner;

8. Grant temporary custody of any minor children to the petitioner, including custody to any petitioner currently residing in a shelter or safe home; and

9. Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

B. The court may grant the following relief in an order of protection or a modification of an order after notice and hearing, whether or not the respondent appears:

1. Grant the relief available in accordance with subsection 1;

2. Specify arrangements for visitation of any minor child by the respondent and require supervision of that visitation by an independent third party who is willing to supervise the visitation or deny visitation if necessary to protect the safety of the petitioner, child and/or children;

3. In specifying visitation arrangements, the court shall consider the respondent's overall lifestyle, especially as it pertains to alcohol and other chemical use;

4. Order sole custody or no contact with either parent if the Court deems it necessary to protect the child and/or children and a victim;

5. Order the respondent to pay any legal fees;

6. Order the respondent to:

a. Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child;

b. Reimburse the petitioner or other person for any expenses associated with the domestic violence incident, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property; and/or

c. Pay any court costs and fees incurred by the petitioner in bringing the action;

C. The court shall:

1. Make reasonable efforts to ensure that the order of protection is understood by the petitioner, and the respondent, if present;

2. Transmit, by the end of the next business day after the order is issued, a copy of the order

of protection to the local law enforcement agency and law enforcement agencies designated by the petitioner; and

3. Transmit a copy of the order to the appropriate entity for placement in the tribal registry.

D. An order of protection issued ex parte or upon notice and hearing, or a modification of an order of protection issued ex parte or upon notice and hearing, is effective until further order of the court. If an ex parte order is entered, a hearing shall be scheduled within 30 days to allow the Respondent to respond to the petition. It shall be noted in bold or capital letters on the ex parte order:

1. Advising the respondent that, "If a permanent order of protection is granted at a hearing, this ex parte order shall remain in effect until service of the permanent order of protection is complete."

2. Advising the respondent that, "If the Respondent fails to appear at the hearing on a permanent order of protection, the court may issue a default judgment granting the relief requested."

E. The Yavapai-Apache Nation Police Department shall provide expedited service for protective orders.

Section 1119. Permanent Orders of Protection

Any permanent order of protection issued under this Chapter upon notice and opportunity to appear shall be issued for a period of not less than three (3) years. In the discretion of the Court, a permanent order of protection may be issued for a longer period of time, up to the projected lifespan of the petitioner. For the purpose of Full Faith & Credit compliance and enforcement, all such extended orders must include an expiration date, whether figured by actual length of the order or from projected lifespan of the petitioner.

Section 1120. Required Hearings; Service; Duty of Court When Order Denied

Except as otherwise provided in subsection 2, if a court issues an order of protection ex parte or a modification of an order of protection ex parte and the court provides relief pursuant to this Chapter, the court shall set a date for a permanent order of protection hearing regarding the ex parte order of protection within 30 days. If personal service cannot be completed, the court shall notify the respondent by mail, at the last and best known address of the respondent and/or petitioner, of the date and time of the hearing for a permanent order of protection.

A. Upon approval of an ex parte order, the court clerk shall set a hearing date within 30 calendar days and immediately serve the petitioner regardless of the involvement or lack of involvement of an advocate.

B. If applicable, the respondent shall be served a copy of the protective order upon arraignment on any related charge(s). The court clerk shall be responsible for forwarding a copy of the ex parte order to the jail for service before the respondent's release on any related charge(s).

- C. In the event that service is not successful, the judge shall ask the petitioner, under oath at the hearing for the permanent order of protection, if s/he believes the respondent is avoiding service by concealment or otherwise, and does not know the respondent's whereabouts or current residence. If the petitioner so states, the judge shall direct the court clerk to set another hearing date within 30 calendar days and to initiate service by mail to the last and best known address of the respondent. Any ex parte order shall remain in effect per provision of this Chapter.
- D. At a second hearing for a permanent order of protection and in the event the respondent again does not appear, regardless of service, the judge shall issue a permanent order of protection, if warranted, and grant relief as the court deems appropriate.
- E. At a second hearing for a permanent order of protection and having made reasonable efforts to contact the respondent, and in the event the petitioner requests, or the court provides relief in accordance with this Chapter concerning custody of a minor child or the petitioner requests relief pursuant to this Chapter such a hearing determining the above cited relief must be given precedence over all matters including older matters of the same character and involving the same petitioner and respondent.
- F. In a hearing held pursuant to subsection 1 or 5 of this section:
 - 1. Relief in accordance with this Chapter is available; and
 - 2. If the petitioner seeks further relief concerning an issue not outlined by the ex parte order of protection, the court may grant the relief or continue the hearing, or the petitioner may be granted a continuance to allow time to file a petition for modification of the order.
- G. Whether or not the respondent has been arrested or charged with domestic violence, the judge shall order the respondent to participate in a domestic violence offender's program. Further, should the court determine that an assault has occurred or the threat of assault has occurred, the judge shall notify a tribal prosecutor for follow up and possible investigation.
- H. The Yavapai-Apache Nation Police Department shall expedite service of permanent orders of protection. If the respondent is not able to be served in person after 30 days, the Yavapai-Apache Nation Police Department shall notify the court and the permanent order of protection shall be mailed to the last and best known address of the respondent and shall be published once a month for three consecutive months in the Yavapai Apache Nation's official newspaper.
- I. Any person against whom a permanent order of protection is granted under subsection 5 above may petition the court for reconsideration of the order of protection upon a showing, by clear and convincing evidence, that the respondent did not willingly and knowingly evade service and that there is a meritorious defense to the action. Upon such a showing, the court may grant another ex parte order to protect the petitioner and immediately schedule a hearing within 14 days. The respondent shall be served with a copy of the ex parte order at the same time the respondent's petition is granted.

- J. At any time during the period during which the order is in effect, a party who is under an order of protection or who is restrained from contacting the other party is entitled to one hearing upon written request. If the length of the protective order is longer than 3 years, the respondent may petition the court for a modification hearing upon a showing of good cause. The court is not required to grant that motion.

Section 1121. Petitioner Cannot Violate Order of Protection

If a respondent is excluded from the residence of, or ordered to stay away from the petitioner, an invitation by the petitioner to the respondent, and any acceptance of that invitation, does not waive or nullify an order of protection. Further, the petitioner cannot be considered by such invitation as having violated, or be subject to arrest for a violation of, his/her own ex parte or permanent order of protection.

Section 1122. Denial of Relief Prohibited

The continuing safety of the petitioner shall be the primary factor of consideration for petitions for relief under this chapter. The court is prohibited from:

1. Denying a petitioner relief requested pursuant to this Chapter solely because of a lapse of time between an act of domestic violence and the filing of the petition; or
2. Denying a petitioner relief requested pursuant to this Chapter solely because of ex parte contentions, gossip, or allegations made by the respondent or his family that disparages the character or lifestyle of the petitioner.

Section 1123. Mutual Orders of Protection Prohibited

A court shall not grant a mutual order of protection, either ex parte or permanent, to opposing parties.

Section 1124. Mediation Prohibited

A court shall not order parties into mediation or any type of counseling, alternative justice, restorative justice, peace-making, traditional Yavapai and Apache ceremonies, or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent for resolution of the issues in a petition for an order of protection.

Section 1125. Court Costs and Fees

Fees for filing and service of process shall not be charged for any proceeding seeking only the relief provided in this chapter.

Section 1126. Court Responsibilities

The court shall inform any petitioner for relief under this Chapter about local services and

advocacy available through Yavapai-Apache Nation, without regard to the victim's employment, economic, educational, mental or physical health, social, or political status.

Section 1127. Enforcement of Foreign Orders of Protection

A copy of an order of protection issued by another tribal, state, county, or other court jurisdiction shall be given full faith and credit by Yavapai-Apache tribal law enforcement authorities as having the same force and effect as one issued by the Yavapai-Apache Nation Court.

- A. Law enforcement officers shall attempt to verify the existence and/or validity of any foreign order of protection by any means available. In the event that the victim does not have a copy of the order, the officer cannot verify the order, or the copy is not clear enough to determine its validity, the officer shall arrest the subject on an applicable violation of this Criminal Code and shall assist the victim in obtaining verification of the order and/or explaining the procedure for obtaining a Yavapai-Apache Nation order of protection. The law enforcement officer shall also offer other assistance as provided in this Chapter.
- B. Valid foreign orders of protection shall be upheld as to the conditions of the foreign order whether or not those remedies or conditions are available within the Yavapai-Apache Nation through this Chapter.
- C. Under this section, the court shall utilize the penalties and procedures provided in this Chapter for the enforcement of orders of protection.
- D. In accordance with this Chapter, any violations of a foreign order of protection shall be acted upon in the same manner as if the order of protection were issued by the Yavapai-Apache Nation Court and in accordance with the full faith and credit provisions of Title 18 U.S.C. 2265.
- E. Law enforcement and criminal justice system personnel shall enter valid foreign orders of protection in the tribal registry.
- F. Law enforcement and criminal justice system personnel shall encourage persons possessing foreign orders of protection to file the foreign order with the tribal registry and with the Court.
- G. A peace officer may presume the validity of and rely on a copy of a protective order that is issued by another state, a United States territory, or an Indian tribe if the order was given to the officer by any source. A peace officer may also rely on the statement of any person who is protected by the order that the order remains in effects. A peace officers who acts in good faith reliance on a protective order is not civilly or criminally liable for enforcing the protective order pursuant to this section.
- H. Facsimile copies which meet the requirements of Title 18, United States Code, §2265 shall be recognized as valid verification of foreign orders of protection for the purpose of enforcement under this section.

Section 1128. Supersede and Replace

This Chapter of the Criminal Code shall supersede and replace Title 23 – Domestic Violence Code, and any and all prior domestic violence enactments and the same are hereby repealed.

CHAPTER 12 – SEX CRIMES

Section

1201	Definitions
1202	Indecent Exposure
1203	Rape
1204	Sexual Conduct with a Minor
1205	Sexual Abuse
1206	Child Pornography
1207	Child Prostitution
1208	Voyeurism
1209	Victim's Rights, Sexually Transmitted Infections
1210	Admissibility of Minor's Statement
1211	Sex Offender Registration
1212	Failure to Register
1213	No Marital Defense

Section 1201. Definitions

In this chapter, unless the context requires otherwise:

1. Sexual Intercourse means penetration, however slight, of the anus, vulva or genital opening of another by any part of the body or by any object.
2. Oral Sexual Contact means contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.
3. Anal Sexual Contact means contact between the penis and the anus.
4. Sexual Contact means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus, buttocks or female breast by any part of the body or by any object or causing a person to engage in such contact.
5. Lack of Consent. Lack of consent results from:
 - a. Force as defined by the totality of the circumstances, including, but not limited to: use or threatened use of a weapon; sufficient physical force to overcome, restrain or injure a person, including body weight; any offense as defined in Chapter 6 of this Code; or victim's knowledge of prior assaults by the defendant; or
 - b. Incapacity to consent; or
 - c. Where the offense charged is Sexual Abuse, any circumstances in addition to force or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the offender's conduct; or
 - d. Where the offense charged is Rape in the Second Degree, any circumstances which, at the time of the sexual act, the victim clearly expressed that he or she did not consent to engage in such act and a reasonable person in the offender's situation would have understood such person's words and/or acts as an expression of lack of consent to such act under all the circumstances.
6. A person is deemed incapable of consent when he or she is:
 - a. 15 years old or less; or
 - b. Mentally disabled; or

- c. Mentally incapacitated; or
 - d. Physically helpless.
7. Prostitution means engaging in or agreeing or offering to engage in sexual conduct with another person under a fee arrangement with that person or any other person.

Section 1202. Indecent Exposure

- A. A person commits *Indecent Exposure* if he or she exposes his or her genitals or anus or she exposes the areola or nipple of her breast or breasts and another person is present, and the defendant is reckless about whether the other person, as a reasonable person, would be offended or alarmed by the act.
- B. Indecent exposure does not include an act of breastfeeding by a mother.
- C. Indecent exposure to a person who is fifteen or more years of age is a Class 4 offense, except that it is a Class 3 offense if the defendant has had two or more prior convictions for a violation of this Section or has had one or more convictions for any other offense under this chapter. Indecent exposure to a person who is under fifteen years of age is a Class 3 offense.

Section 1203. Rape

- A. A person commits *Rape* by intentionally or knowingly engaging, or attempting to engage, in sexual intercourse, oral sexual contact or anal sexual contact with another person under any of the following circumstances:
 - 1. By using force against that other person; or
 - 2. By a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person; or
 - 3. By rendering another person unconscious; or
 - 4. By administering to another person by force or threat of force, or without knowledge or permission of that person, a drug, intoxicant, or other similar substance; or
 - 5. If the victim is physically helpless; or
 - 6. If the victim is under the age of 15; or
 - 7. Where the victim does not expressly or impliedly consent to the offender's conduct, and a reasonable person would have known that the victim did not consent; or
 - 8. Where the victim is intentionally deceived as to the identity of the defendant; or
 - 9. Where the victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant.

- B. It is not a defense to this Section that the Victim became voluntarily intoxicated.
- C. No physical evidence of trauma or physical injury is required.
- D. No corroboration is specifically required.
- E. Violation of this Section is a Class 1 offense.

Section 1204. Sexual Conduct with a Minor

- A. A person commits *Sexual Conduct with a Minor* if the person is eighteen years of age or older and intentionally or knowingly engages in sexual intercourse, oral sexual contact, anal sexual contact, or sexual contact with any person who is under eighteen years of age.
- B. It is a defense to a prosecution under this Section if the victim's lack of consent is based solely on incapacity to consent based on age, and the defendant is no more than thirty six months older than the victim and the conduct is non-forcible.
- C. It is a defense to a prosecution under this Section if the victim's lack of consent is based solely on incapacity to consent based on age, and the defendant is legally married to the victim.
- D. It is a defense to a prosecution under this Section if the victim is emancipated and the conduct was otherwise consensual.
- E. A violation of this Section is a Class 2 offense.
- F. If the child is 15 years of age or younger, a violation of this Section is a Class 1 offense.
- G. It is a defense to this Section that the offender's conduct was for a lawful purpose or not motivated by sexual interest.

Section 1205. Sexual Abuse

- A. A person commits *Sexual Abuse* by intentionally or knowingly engaging in sexual contact with another person without consent. Touching can be directly or over the clothing.
- B. It is a defense to this Section that the offender's conduct was for a lawful purpose or not motivated by sexual interest.
- C. A violation of this Section is a Class 2 offense.

Section 1206. Child Pornography

- A. A person commits *Child Pornography* by knowingly:
 - 1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitative exhibition or other sexual conduct, whether actual or simulated.

2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitative exhibition or other sexual conduct.

B. If any visual depiction of child pornography is admitted into evidence, the court shall seal that evidence at the conclusion of any proceeding, hearing or trial.

C. A violation of this Section is a Class 1 offense.

Section 1207. Child Prostitution

A. A person commits *Child Prostitution* by knowingly:

1. Causing any minor to engage in “prostitution”; or
2. Using any minor for purposes of prostitution; or
3. Having custody or control of a person under 18 years old, and permitting said person to engage in prostitution; or
4. Receiving any benefit from the proceeds pursuant to an agreement to participate in the prostitution of a person under 18 years old; or
5. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a person under 18 years old; or
6. Transporting or financing the transportation of any person under 18 years old across jurisdictional lines with the intent that such person engage in prostitution.

B. A violation of this Section is a Class 1 offense.

Section 1208. Voyeurism

A. A person commits *Voyeurism* by knowingly:

1. Invading the privacy of another person without the knowledge of the other person for the purpose of sexual stimulation; or
2. Disclosing, displaying, distributing or publishing a photograph, videotape, film or digital recording that is made in violation of this Section without the consent or knowledge of the person depicted.

B. For the purposes of this Section, a person’s privacy is invaded if both of the following apply:

1. The person has a reasonable expectation that the person will not be photographed, videotaped, filmed, digitally recorded or otherwise viewed or recorded; and

2. The person is photographed, videotaped, filmed, digitally recorded or otherwise viewed, with or without a device either:
 - a. While the person is in a state of undress or partial dress; or
 - b. While the person is engaged in sexual intercourse or sexual contact; or
 - c. While the person is urinating or defecating; or
 - d. In a manner that directly or indirectly captures or allows the viewing of the person's genitalia, buttock, or female breast, whether clothed or unclothed, that is not otherwise visible to the public.

C. This Section does not apply to either of the following:

1. Photographing, videotaping, filming or digitally recording for security purposes if notice of the use of photographing, videotaping, filming or digital recording equipment is clearly posted in the location and the location is not one in which the person has a reasonable expectation of privacy; or
2. Photographing, videotaping, filming or digitally recording by law enforcement officers acting in their official capacity.

D. Violation of this Section is a Class 2 offense.

Section 1209. Victim's Rights, Sexually Transmitted Infections

- A. A defendant, including a defendant who is a minor, who is alleged to have committed a sexual offense or another offense involving significant exposure to bodily fluid is subject to a court order that requires the defendant to submit to testing for the human immunodeficiency virus (HIV) and other sexually transmitted infections (STIs) and to release the test results to the Defendant, Victim Advocate and Victim.
- B. Pursuant to Subsection A of this Section, the Prosecutor shall petition the Court for an order requiring that the person submit a specimen, to be determined by the submitting entity, for laboratory testing for the presence of the HIV or other STIs.
 1. If the alleged act committed against the victim is a sexual offense, it shall be ordered by the Court that testing be performed.
 2. If the alleged act committed against the victim is not a sexual offense, the court shall determine if sufficient evidence exists to indicate that "significant exposure" occurred. If the Court makes this finding, it shall be ordered by the Court that testing be performed.

C. For the purposes of this Section:

1. STIs or STDs include but are not limited to: Chlamydia, Genital herpes, Gonorrhea, Syphilis, Hepatitis, and Trichomonas.
2. Significant Exposure means contact of the victim's ruptured or broken skin or mucous membranes with a person's blood or bodily fluids.

D. Testing results obtained pursuant to this Section shall not be used against the Defendant in the case number, or current case, under which the testing was ordered.

Section 1210. Admissibility of Victim's Statement

A. Notwithstanding any other provision of the law, a statement made by a victim/child who is under the age of ten years old describing any sexual offense or physical abuse performed with, on, or witnessed by the victim/child, which is not otherwise admissible by statute or court rule, is admissible in evidence in any criminal or civil proceeding if both of the following are true:

1. The Court finds, in an in camera hearing, that the time, content and circumstances of the statement provide sufficient indicia of reliability; and
 - a. Either of the following are true:
 - (1) The victim/child testifies at the proceedings; or
 - (2) The victim/child is unavailable as a witness, provided that if the victim/child is unavailable as a witness, the statement may be admitted only if there is corroborative evidence of the statement.

B. A statement shall not be admitted under this Section unless the proponent of the statement makes known to the adverse party his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

Section 1211. Sex Offender Registration

A defendant convicted under this Chapter must register as a sex offender under Yavapai-Apache Nation Title 24, and Arizona Revised Statutes §13-3821.

Section 1212. Failure to Register

A person who is subject to registration under Title 24 or Arizona Revised Statutes §13-3821 and who fails to comply with the requirements of this article is guilty of a class 1 offense.

Section 1213. No Marital Defense

It is not a defense to prosecution under this Chapter that the offender was legally married, by a court of competent jurisdiction, to the victim.

CHAPTER 13: WEAPONS OFFENSES

Section

- 1301 Definitions
- 1302 Misconduct Involving Weapons
- 1303 Aggravated Misconduct Involving Weapons
- 1304 Prohibited Possessor
- 1305 Drive-by-Shooting
- 1306 Right to Bear Arms

Section 1301. Definitions

In this Chapter, unless the context requires otherwise:

1. Deface means to remove, alter, or destroy the manufacturer's serial number.
2. Deadly weapon means anything designed or intended for lethal use. The term includes a firearm.
3. Explosive means any dynamite, nitroglycerine, black powder or other similar explosives but does not mean or include ammunition or ammunition components such as primers, percussion caps, smokeless powder, black powder and black powder substitutes used for loading purposes.
4. Firearm means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, air rifle, or other weapon which is designed to, or may readily be converted to, expel a projectile by the action of an explosive or rapidly expanding gas, except that it does not include a firearm in a permanently inoperable condition.
5. Occupied structure means any structure in which one or more human beings either is or is likely to be present or so near as to be in equivalent danger at the time a discharge of a firearm occurs. The term includes any dwelling house, whether occupied, unoccupied or vacant.
6. Pocket knife is defined as a folding knife with a blade length of (four) 4 inches or less.
7. Possess or Possession means knowingly having substantial physical possession of, or to otherwise substantially exercise dominion or control over property.
8. Prohibited Possessor means any person who has been prohibited by any court from possessing any deadly weapon and whose civil rights have not been restored.
9. Prohibited Weapon means a:
 - a. Bomb, grenade, mine, or rocket having a propellant charge of more than four ounces, and that is explosive, incendiary or contains poisonous gas, or;
 - b. Firearm that is capable of shooting more than one shot automatically by a single operation of the trigger, or;
 - c. Rifle with a barrel length of less than 16 inches, or a shotgun with a barrel length of less than 18 inches (barrel length is measured from the muzzle to the rearmost portion of the

- firing chamber), or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than 26 inches, or;
- d. Breakable container that contains a flammable liquid with a flash point of 150 degrees F. or less and that has a wick or similar device capable of ignition, or;
- e. Chemical or combination of chemicals, compounds or materials, including dry ice, that are placed in a sealed or unsealed container for the purpose of generating a gas to cause a mechanical failure, rupture or bursting of the container, or;
- f. An improvised explosive device, or;
- g. Combination of parts or materials that is designed and intended for use in making or converting a device into an item set forth in this Section.
 - i. Prohibited weapon *does not mean*: fireworks approved for use on the Yavapai-Apache Nation; any propellant actuated industrial tools when used for their intended use, or; any device commercially manufactured for the purpose of illumination and used for their intended use.

10. Stun Gun means a Taser or equivalent weapon that applies a debilitating electrical charge to the target when discharged.

Section 1302. Misconduct Involving Weapons

A. A person commits *Misconduct Involving Weapons* by knowingly and without lawful authority, under any of the following circumstances:

1. Manufacturing, possessing, transporting, selling, or transferring a deadly weapon that has been stolen, or;
2. Defacing a deadly weapon; or
3. Possessing a defaced deadly weapon; or
4. Using, carrying, or possessing, or assisting in the use, carrying, or possession, of a deadly weapon or stun gun during the commission of any Class 3, Class 4, or Petty offense; or
5. Pointing a firearm, stun gun, or simulated firearm at any person; or
6. Carrying a deadly weapon or stun gun, except a pocket knife, concealed upon the person, if the person is under the age of 18; or
7. Carrying a deadly weapon while exhibiting any sign or symptom of impairment from alcohol or drug use; or
8. Recklessly handling, displaying, or discharging a deadly weapon or dangerous instrument.

B. Violation of this Section is a Class 3 offense.

- C. Any deadly weapon involved in the violation of this Section shall be seized and stored in a secure place by a law enforcement officer pending resolution of the case. The deadly weapon is subject to forfeiture.

Section 1303. Aggravated Misconduct Involving Weapons

- A. A person commits *Aggravated Misconduct Involving Weapons* by knowingly and without lawful authority, under any of the following circumstances:
 - 1. Possessing a deadly weapon or stun gun if the person is a prohibited possessor; or
 - 2. Transferring any deadly weapon or stun gun to a prohibited possessor; or
 - 3. Using, carrying, or possessing, or assisting in the use, carrying, or possession, of a deadly weapon or stun gun during the commission of any Class 1 or Class 2 offense; or
 - 4. Discharging, either knowingly or recklessly, a firearm at, in the general direction of, or near any person, structure, property of a government or utility, vehicle; or
 - 5. Manufacturing, possessing, transporting, selling, or transferring a prohibited deadly weapon.
- B. Violation of this Section is a Class 1 offense.
- C. Any deadly weapon involved in the violation of this Section shall be seized and stored in a secure place by a law enforcement officer pending resolution of the case. The deadly weapon is subject to forfeiture.

Section 1304. Prohibited Possessor

- A. A person commits a *Prohibited Possessor* offense if, at the time of the person's possession of a deadly weapon, the person:
 - 1. Is presently deemed by any court to constitute a danger to himself or to others; or
 - 2. Has been convicted by the Tribal Court of a Class 1 or Class 2 offense on the Yavapai-Apache Nation, or a felony in any other jurisdiction, and whose civil right to possess or carry a deadly weapon has not been restored; or
 - 3. Is a named defendant in any jurisdiction on a current Order of Protection, Injunction Against Harassment, Temporary or Permanent Injunction, or other Court order involving Domestic Violence as defined in Chapter 11 of this Criminal Code;
 - 4. Is serving a term of supervised probation.
- B. Violation of this Section is a Class 1 offense.

- C. Any deadly weapon involved in the violation of this Section shall be seized and stored in a secure place by a law enforcement officer pending resolution of the case. The deadly weapon is subject to forfeiture.

Section 1305. Drive-by Shooting

- A. A person commits a *Drive-by Shooting* offense if the person intentionally discharges a deadly weapon from a vehicle at a person, another motor vehicle, any residence, or any occupied structure.
- B. A violation of this Section is a Class 1 offense.
- C. Any deadly weapon involved in the violation of this Section shall be seized and stored in a secure place by a law enforcement officer pending resolution of the case. The deadly weapon is subject to forfeiture.

Section 1306. Right to Bear Arms

Except as specifically limited by the above sections, nothing in this Chapter shall be construed or interpreted to infringe upon the right of tribal members to keep and bear arms consistent with the standards set forth under the 2nd Amendment to the United States Constitution as interpreted by the United States Supreme Court.

CHAPTER 14: FRAUD AND DECEPTION OFFENSES

Section

1401	Definitions
1402	Fraud
1403	Appropriation of Tribal Resources
1404	Misuse of Tribal Funds, Commodities or Articles
1405	Embezzlement
1406	Forgery
1407	Possession of a Forged Instrument
1408	Criminal Impersonation
1409	Identification Theft
1410	Credit Card Fraud
1411	Computer Tampering

Section 1401 Definitions

In this Chapter, unless the context requires otherwise:

- A. Written or Electronic Instrument means any paper, document, instrument or article containing written, electronic or printed matter, or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol of evidence of value, right privilege or identification, which is capable of being used to the advantage or disadvantage of some person.
- B. Complete Written or Electronic Instrument means one which purports to be a genuine written or electronic instrument fully drawn with respect to every essential feature thereof.
- C. Incomplete Written or Electronic Instrument means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written or electronic instrument.
- D. To Falsely Make a written or electronic instrument means to make or draw a complete instrument in its entirety, or an incomplete instrument which purports to be an authentic creation of its ostensible maker but which is not, either because the ostensible maker is fictitious or because, if real, the ostensible maker did not authorize the making or drawing thereof.
- E. To Falsely Complete a written or electronic instrument means to transform, by adding, inserting or changing matter, an incomplete written or electronic instrument into a complete one, without the authority of anyone entitled to grant the revision, so that the complete written or electronic instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.
- F. To Falsely Alter a written or electronic instrument means to change without authorization by anyone entitled to grant the change, a written or electronic instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports

to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

- G. To Utter means to issue, deliver, publish, circulate, disseminate, transfer, or tender a written or electronic instrument or object to another.

Section 1402. Fraud

- A. A person commits *Fraud* by knowingly obtaining the property of another or services of another under any of the following circumstances:
1. Falsifying, concealing, or covering up by any trick, scheme or device a material fact; or
 2. Making any materially false, fictitious, or fraudulent statement or misrepresentation; or
 3. Making or using any false writing or document knowing the same to contain any material false, fictitious or fraudulent statement or entry.
- B. A violation of this Section is a Class 1 offense if committed against the Yavapai-Apache Nation.
- C. A violation of this Section is a Class 2 offense if the value of the money, property, or services is \$1000 or more.
- D. A violation of this Section is a Class 3 offense if the value of the converted money, property, or services is less than \$1000.

Section 1403. Appropriation of Tribal Resources

- A. A person commits *Appropriation of Tribal Resources* if the person, having lawful or unlawful possession or control of any Tribal resource, fraudulently uses, converts, encumbers, or disposes of the Tribal resource to the person's use or benefit, or to a third party's use or benefit.
- B. A violation of this Section is a Class 1 offense.

Section 1404. Misuse of Tribal Funds, Commodities, or Articles

A person commits *Misuse of Tribal Funds, Commodities, or Articles* if the person knowingly:

A. Fails or neglects to properly expend funds awarded to the person either for the person's welfare and relief, or;

B. Improperly disposes of commodities or articles awarded to the person for the person's individual use, or;

C. Makes false claims to any YAN agency in an attempt to gain payment, reimbursement, or other consideration not properly payable to the person.

D. A violation of this Section is a class 4 offense. If the value of the offense exceeds \$1,000.00, a violation of this Section is a Class 2 offense.

Section 1405. Embezzlement

- A. A person commits *Embezzlement* if the person, who has lawful possession of and has been entrusted with the property of another person or entity, fraudulently converts, encumbers, or disposes of the property to the person's use or benefit, or to a third party's use or benefit.
- B. A violation of this Section is a Class 1 offense if committed against the Yavapai-Apache Nation.
- C. A violation of this Section is a Class 2 offense if the value of the converted property is \$1000 or more.
- D. A violation of this Section is a Class 3 offense if the value of the converted property is less than \$1000.

Section 1406. Forgery

- A. A person commits *Forgery* if the person, with intent to injure or defraud:
 - 1. Falsely makes, completes or alters a written or electronic instrument; or
 - 2. Utters a written or electronic instrument, whether accepted or not, which he knows to be forged or which contains false information; or
 - 3. Utters an electronic transaction, including credit card transactions, whether accepted or not, which the person knows to be forged or which contains false information.
- B. A violation of this Section is a Class 1 offense if the written or electronic instrument or electronic transaction is offered against the Yavapai-Apache Nation.
- C. A violation of this Section is a Class 2 offense when the value of the instrument or transaction, or the aggregate value of several instruments and transactions offered by the person within a (six) 6 month period, is \$1000 or more.
- D. A violation of this Section is a Class 2 offense when the written instrument or electronic transaction is or purports to be any of the following, regardless of value:
 - 1. Part of an issue of money, securities, postage or revenue stamps, or other valuable instruments issued by a government or governmental agency; or
 - 2. Part of an issue of stock, bonds or other instruments representing interests in or claims against any property or person; or
 - 3. A deed, will, codicil, contract or assignment; or

4. A check for \$1,000 or more, a credit card purchase slip for \$1,000 or more, or a combination of checks and credit card purchase slips that, in the aggregate, total \$1,000 or more; or
5. Any other commercial instrument or other document that does or may evidence, create, transfer, alter, terminate or otherwise affect a legal right, interest, obligation or status; or
6. A public record.

E. A violation of this Section is a Class 3 offense otherwise.

Section 1407. Possession of a Forged Instrument

- A. A person commits *Possession of a Forged Instrument* if, knowing it to be forged and with intent to utter the instrument, the person possesses the forged instrument.
- B. A violation of this Section is a Class 2 offense if the purported value is \$1000 or more.
- C. A violation of this Section is otherwise a Class 3 if the purported value is less than \$1000.

Section 1408. Criminal Impersonation

- A. A person commits *Criminal Impersonation* if, with the intent to defraud another, the person:
 1. Assumes a false identity; or
 2. Pretends to be a representative of some other person or organization; or
 3. Pretends to be, or assumes a false identity of, an employee or a representative of some other person or organization with the intent to induce another person to provide or allow access to property.
- B. A violation of this Section is a Class 1 offense if committed against the Yavapai-Apache Nation.
- C. A violation of this Section is a Class 3 offense otherwise.
- D. This Section does not apply to law enforcement officers or their designees in the performance of law enforcement duties.

Section 1409. Identification Theft

- A. A person commits *Identification Theft* of a another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any identifying information of the other person or entity, including any real or fictitious person or entity, without the consent of the other person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose, or to cause a loss to any person or entity, whether or not the other person or entity actually suffers any loss as a result of the offense.

- B. A violation of this Section is a Class 2 offense if the taking of the identity:
 - 1. Is from three or more persons; or
 - 2. Causes any other person or entity to suffer a loss of \$1000 or more; or
 - 3. Is for the purpose of obtaining employment.
- C. A violation of this Section is a Class 3 offense otherwise.
- D. This Section does not apply to a person under the age of 21 who attempts to purchase alcohol.

Section 1410. Credit Card Fraud

- A. A person commits a *Credit Card Fraud* if, without the cardholder's consent and with intent to defraud, the person:
 - 1. Possesses or controls another person's or entity's credit card; or
 - 2. Sells, transfers, or conveys a credit card; or
 - 3. Obtains possession, care, custody or control over a credit card as security for a debt; or
 - 4. Alters or falsely makes, manufactures, fabricates or produces any credit card or instrument or device purporting to be a credit card; or
 - 5. When authorized to provide goods or services, the person knowingly furnishes money, goods, or services upon presentation of a credit card the authorized person knows to be stolen, forged, expired, cancelled, or revoked; or
 - 6. Being a third party, the person obtains any benefit from the fraudulent use of another person's credit card; or
 - 7. Unlawfully possesses a credit card scanning device or re-encoder. Unauthorized possession of these devices provides an inference of the intent to defraud.
- B. A violation of this Section is a Class 1 offense if committed against the Yavapai-Apache Nation.
- C. A violation of this Section is a Class 2 offense if the value of the money, property, or services is \$1000 or more.
- D. A violation of this Section is a Class 3 offense if the value of the converted money, property, or services is less than \$1000.
- E. For the purposes of this Section "control" includes unauthorized electronic transactions or attempted transactions involving credit card information.

Section 1411. Computer Tampering

- A. A person commits *Computer Tampering* if the person without authority, with or without intent to defraud:
1. Knowingly alters, damages, or destroys all or part of any computer, computer system or network; or
 2. Knowingly alters, damages, deletes, or destroys computer programs or data; or
 3. Knowingly introduces any computer contaminant into any computer, program, computer system or network; or
 4. Recklessly disrupts a computer, computer system or network to engage in a scheme or course of conduct directed at another person or entity and that reasonably and seriously alarms, torments, threatens or terrorizes the person or entity.
- B. A violation of this Section is a Class 1 offense if committed against the Yavapai-Apache Nation.
- C. A violation of this Section is a Class 3 offense otherwise.

CHAPTER 15: TRAFFIC AND DRIVING UNDER THE INFLUENCE

Section

1501	Definitions
1502	Alcohol in Vehicles
1503	Aggressive Driving
1504	Reckless Driving
1505	Distracted Driving
1506	Driving Under the Influence
1507	Driving Under the Influence – First Offense
1508	Driving Under the Influence – Second Offense
1509	Driving Under the Influence – Third Offense
1510	Negligent Vehicular Assault
1511	Transporting Hazardous Materials

Section 1501. Definitions

In this Chapter, unless the context requires otherwise:

1. Actual physical control means that a person who is under the influence of alcohol or drugs has the potential for operating a stopped vehicle under conditions that could present a danger to a person, property, or the public. When determining “actual physical control” the totality of the circumstances must be considered. Factors to be considered might include, but are not limited to:
 - a. Whether the vehicle was running;
 - b. Whether the ignition was on;
 - c. Where the ignition key was located;
 - d. Where and in what position the driver was found in the vehicle;
 - e. Whether the person was awake or asleep;
 - f. Whether the vehicle’s headlights were on;
 - g. Where the vehicle was stopped;
 - h. Whether the driver had voluntarily pulled off the road;
 - i. Time of day;
 - j. Weather conditions;
 - k. Whether the heater or air conditioner was on;
 - l. Whether the windows were up or down; or
 - m. Any explanation of the circumstances shown by the evidence.
2. For purposes of this Section, a keyless ignition is considered always keyed unless any electronic fob has been relocated outside of the vehicle by the person.
3. Drive: means to operate or be in actual physical control of a motor vehicle.
4. Driver: means a person who drives or is in actual physical control of a vehicle.

Section 1502. Alcohol in Vehicles

- A. It shall be unlawful for any person to consume alcoholic substances while operating or while within the passenger compartment of a motor vehicle.

- B It shall be unlawful for any person to possess an open container with an alcoholic substance in it anywhere within the passenger or driver's compartment of a motor vehicle.
- C A violation of Section is a class 4 offense.

Section 1503. Aggressive Driving

- A. A person commits an *Aggressive Driving* offense if a person does at least two of the following during a continuous course of conduct:
 - 1. Commits a violation of posted speed limit restrictions;
 - 2. Fails to obey a traffic control device, including signs;
 - 3. Passes another vehicle on the right by driving off of the roadway;
 - 4. Makes an unsafe lane change;
 - 5. Follows another vehicle too closely;
 - 6. Fails to yield the right-of-way.
- B. A violation of this Section is a Class 3 offense.
- C. If a traffic accident results from *Aggressive Driving*, a violation of this Section is a Class 2 offense.

Section 1504. Reckless Driving

- A. A person commits *Reckless Driving* if the person drives a vehicle with a reckless disregard for the safety of persons or property.
- B. A violation of this Section is a Class 4 offense.
- C. If a traffic accident results from *Reckless Driving*, a violation of this Section is a Class 3 offense.
- D. A violation of this Section is a Class 2 offense if serious physical injury to another person results from the violation. If serious physical injury to another person results, violation of this Section is a Class 1 offense.

Section 1505. Distracted Driving

- A. A person commits *Distracted Driving* if the person:
 - 1. Actively writes or reads a text message while operating a moving motor vehicle; or

2. Operates a computer, or telecommunications device while operating a moving motor vehicle; or
3. Reads a newspaper, book, map, electronic reader, or other written material while operating a moving motor vehicle.

B. A violation of this Section is a Petty Offense.

C. A violation of this Section is a Class 2 offense if an accident results from the violation.

D. A violation of this Section is a Class 1 offense if any physical injury to another person results from the violation.

Section 1506. Driving Under the Influence

A. It is unlawful for a person to drive or be in actual physical control of a vehicle under any of the following circumstances:

1. While under the influence of an intoxicating liquor, any drug, a vapor releasing substance, or any combination thereof, if the person is impaired to the slightest degree.
2. The person has an alcohol concentration of 0.10 or more within two hours of driving, and that alcohol concentration resulted from alcohol consumed before or while driving. A person with an alcohol concentration of 0.10 or more is deemed conclusively to be impaired if there is any other sign or symptom of impairment.
3. The person has an alcohol concentration of 0.08 to 0.099 within two hours of driving, and that alcohol concentration resulted from alcohol consumed before or while driving. A person with an alcohol concentration of 0.08 to 0.099 is presumed to be impaired.
4. While there is any drug or that drug's metabolite, in the person's body and there is any other sign or symptom of impairment. For the purposes of this Section, refer to the Section 901 of this Code for the definition of "drug."

B. It is not a defense to this offense that the person is prescribed or otherwise entitled to use a drug under the laws of the Yavapai-Apache Nation, the U.S., or the state of Arizona.

C. "Impairment" may be established by witness observation, National Highway Traffic Safety Administration field sobriety tests, horizontal gaze nystagmus examination, breath or bodily fluid examinations, or any other method generally accepted within the highway traffic safety or law enforcement professions.

Section 1507. Driving Under the Influence – First Offense

A. A violation of *Driving under the Influence - First Offense* is a Class 3 offense.

B. The person shall be sentenced to serve 30 days in jail. Up to 29 days of jail time may be suspended with proof of Yavapai-Apache Nation approved Alcohol and Substance Abuse

program assessment, or an equivalent program approved by the Tribal Court, and successful completion of recommendations. There is a presumptive minimum jail time of 24 continuous hours upon conviction.

- C. The person shall serve a minimum of six months of supervised probation.
- D. The person shall pay a minimum fine of \$300.

Section 1508. Driving Under the Influence – Second Offense

- A. A violation of *Driving under the Influence - Second Offense* is a Class 2 offense.
- B. To be chargeable, the date of violation for the Second Offense shall occur within 36 months of the date of violation for the First Offense.
- C. The person shall be sentenced to serve up to 45 days in jail. Up to 35 days of jail time may be suspended with proof of Yavapai-Apache Nation approved Alcohol and Substance Abuse program assessment, or equivalent program approved by Tribal Court, and successful completion of recommendations. There is a presumptive minimum jail time of 10 days upon conviction, excluding any time previously served.
- D. Work time release may be directed by the Court. All hours out of custody shall be added to the time to be served.
- E. The person shall serve a minimum of 12 months of supervised probation.
- F. The person shall pay a minimum fine of \$600.00.

Section 1509. Driving Under the Influence – Third Offense

- A. A violation of *Driving under the Influence - Third Offense* is a Class 1 offense.
- B. To be chargeable, the date of violation for the Third Offense shall occur within 60 months of the date of violation for the First Offense.
- C. The person shall be sentenced to serve a minimum of 120 days in jail upon conviction, excluding any time previously served.
- D. Work time release is not allowed.
- E. Upon release from jail,
 - 1. The person shall attend a Yavapai-Apache Nation approved Alcohol and Substance Abuse program assessment, or equivalent approved by the Tribal Court, and shall successfully complete the recommendations.
 - 2. The person shall only be allowed to drive:

- a. If the person has a valid driver license and,
 - b. The person installs an approved ignition interlock device at the person's cost on all vehicles that the person drives. The person shall provide proof of installation to the court and monthly proof of payment through probation for a period of twelve (12) months.
- F. The person shall serve a minimum of 24 months of supervised probation.
- G. The person shall pay a minimum fine of \$1,200.00.

Section 1510. Negligent Vehicular Assault

- A. A person commits *Negligent Vehicular Assault* if the person, while operating a motor vehicle, causes serious physical injury to another person under any of the following circumstances:
- 1. The person's driving privilege is revoked or suspended for any reason or the person fraudulently obtains a driver's license;
 - 2. The person disobeys any traffic control police officer or device, including traffic signs, stop signs, school zone signs, speed limit signs and yield signs;
 - 3. The person is driving in the wrong lane;
 - 4. The person does not properly yield the right-of-way;
 - 5. The person does not exercise due care to avoid colliding with any pedestrian;
 - 6. The person does not exercise proper precaution on observing a child or a confused or incapacitated person on a roadway; or
 - 7. The person does not yield for a stopped school bus.
- B. A violation of this Section is a Class 2 offense.

Section 1511. Transporting Hazardous Materials

A person commits *Transporting Hazardous Materials* if the person violates any traffic law in this Chapter while operating a motor vehicle transporting any hazardous material, substance, or waste that requires placarding as prescribed by the Yavapai-Apache Nation, the State of Arizona, or the United States.

A violation of this Section is a Class 3 offense. If a traffic accident or discharge of hazardous material, substance or waste results from a violation of this Section, such a violation is a Class 1 offense.

CHAPTER 16: MISCELLANEOUS

Section

1601	Search and Seizure
1602	Contents of Search Warrants
1603	Service of Search Warrants
1604	Inventory
1605	Return of Warrant
1606	Return of Property if Seizure Unlawful
1607	Arrest by Law Enforcement Officer
1608	Arrest by Private Person
1609	Arrest in Hot Pursuit
1610	Forfeiture
1611	Exceptions to Forfeiture

Section 1601. Search and Seizure

- A. Search Warrants. A search warrant is an order directed to any Tribal or Federal law enforcement officer directing them to search a particular place for described persons or property and if found, to seize them.
- B. A warrant shall issue only probable cause, supported by affidavit, naming or describing the person and particularly describing the property to be seized and the place to be searched.
1. Before issuing a warrant, the Judge may examine on oath the person or persons seeking the warrant, and any witnesses produced, and must take his affidavit, or their affidavits, in writing and cause the affidavit to be subscribed by the party or parties making the affidavit.
2. The affidavit or affidavits must set forth the facts tending to establish the grounds of the application or probable cause for believing the grounds exist.
3. In lieu of, or in addition to, a written affidavit, or affidavits, as provided in Subsection 1, the Judge may take an oral statement under oath which shall be recorded on tape or other comparable method. This statement may be given in person to the Judge or by telephone, radio or other means of electronic communication. This statement is deemed to be an affidavit for the purposes of issuance of a search warrant.
- C. A Tribal Judge shall be available at all times of day and night to issue a search warrant, and the same may be issued by email scanning or facsimile transmission if required because of the Judge's location at the time of the application and/or issuance of the same. Electronic communication of the documents and testimony is acceptable, but no search warrant shall be served until it is issued by a Tribal Judge under the Judge's signature even if a facsimile or other electronic issuance is used. The original documents shall be filed as well as the facsimile documents.

- D. The Tribal Court shall delay any other proceedings to insure that the application for a search warrant is processed within one hour of the filing of the same, including the recessing of a jury trial. Search warrant applications shall be given top priority and ruled upon within one (1) hour of the filing of the application.
- E. The application for the search warrant shall be considered filed when delivered for filing to the Clerk of the Court if during hours when the Courthouse of the Nation is open for regular business or when presented to the Tribal Judge for consideration.
- F. All search warrants shall be issued based on factual evidence that probable cause exists that a crime has been committed and that evidence or contraband of the crime is likely to be found in the area(s) sought to be searched judging all factual information in support of the warrant under the totality of the circumstances test including the unverified information, the verified information, confidential informant information, information observed by law enforcement officers and others, information made known to law enforcement officers, the reputation and training of the officers, including expert training in specific criminal areas, and all other information available and presented. Hearsay information may be included in the application for a search warrant.

Section 1602. Contents of Search Warrants

Every search warrant shall contain the name and address of the Court and the signature of the Judge issuing the warrant. It shall specifically describe the places and/or persons to be searched and the items subject to the search and seizure. The warrant shall be directed to any Tribal or Federal police or law enforcement officer or official and shall command such person or persons to search, within a specified period of time, not to exceed ten (10) days, the person and/or place named for the property or persons specified. The search warrant shall also contain the date on which it was issued.

Section 1603. Service of Search Warrants

Search warrants shall be served by any Tribal or Federal law enforcement officer at any time of day or night. A copy of the warrant shall be left with an occupant or owner over sixteen (16) years of age of the place searched if that person was present during the search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the premises. The officer may break open any outer or inner door or window of a place to be searched, or any part of any place to be searched, or anything thereon to execute a search warrant, if after notice of his authority and purpose, he is denied or refused admittance, when necessary to liberate himself or a person aiding the executing of the warrant, or when the premises to be searched are unoccupied at the time of the search.

Section 1604. Inventory

The officer serving a search warrant shall make a signed inventory of all property seized and attach such inventory to the warrant. The inventory will be left with a copy of the warrant as indicated in Section 1603.

Section 1605. Return of Search Warrants

A.The officer shall endorse on the warrant the date, time and place of service and the signature of the officer serving it.

B.The warrant shall be returned to the Court with an inventory of property seized within twenty-four (24) hours of service, weekends and legal holidays including Tribal holidays excluded.

C.In every case, the warrant shall be returned within ten (10) days of the date of issuance, unless the tenth day falls on a weekend, legal or Tribal holiday, in which case, the return shall be made on the next business day the Court is open.

Section 1606. Return of Property If Seizure Unlawful

A person aggrieved by an unlawful search and seizure may move the Tribal Court for the return of the property, not contraband, on the ground that he is entitled to lawful possession of the property illegally seized. The judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned, if not contraband, and shall not be admissible at any hearing or trial.

Section 1607. Arrest by Law Enforcement Officer

A.An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by a Tribal or Federal law enforcement officer or by a private person.

B.A police or law enforcement officer may make an arrest in obedience to an arrest warrant, or he may, without a warrant, arrest a person:

- (1) When he has probable cause to believe than an offense has been committed in his presence; and/or
- (2) When he has probable cause for believing the person has committed an offense, although not in his presence, and there is probable cause to believe the person to be arrested has committed the offense.

C.A law enforcement officer may stop any person in a public place whom he has reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense, and demand of him his name, address, and an explanation of his actions and may conduct a frisk type search of such person for weapons.

D.A law enforcement officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the UTTC for any alleged civil or criminal traffic violation, Petty, Class 4 or Class 3 offense in lieu of detention.

E.When making an arrest with or without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest and, if a warrant had been issued for the person's arrest, except when the person flees or forcibly resists before the officer

has opportunity so to inform him, or when the giving of such information will imperil the arrest. In the case of a warrant, the warrant shall be shown to the person as soon as is practicable.

F.A law enforcement officer may use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest except that deadly force may be used only as otherwise provided by law.

G.A law enforcement officer may break open a door or window of a building in which the person to be arrested is, or is reasonably believed to be after demanding admittance and explaining the purpose of which admittance is desired.

H.A law enforcement officer may search the person arrested and take from him and put into evidence any weapons, contraband or evidence of commission of a criminal offense that he may have about his person.

I.A law enforcement officer shall, as soon as is reasonably possible, deliver the person arrested to a jail for processing of a complaint unless, in his discretion, a citation in lieu of detention for a criminal traffic, Petty, Class 4 or Class 3 offense should issue.

Section 1608. Arrest by Private Person

A.A private person may arrest another, for prompt delivery to a law enforcement officer when an offense is committed or attempted in his presence or when an arrest warrant for that person is in fact outstanding.

B.Any person, upon making an arrest:

- (1) Must inform the person to be arrested of his intention to arrest him of the cause or reasons for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to, commit an offense, or is pursued immediately after its commission or an escape if such is not reasonably possible under the circumstances;
- (2) Must show the warrant of arrest as soon as is practicable, if such exists and is demanded;
- (3) Shall, as soon as is reasonably possible, deliver the person arrested to a police officer or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

Section 1609. Arrest in Hot Pursuit

A.Any law enforcement officer otherwise empowered to arrest a person within this jurisdiction may continuously pursue such person from a point of initial contact within the jurisdiction of the Nation to any point of arrest within or without the jurisdiction of the Nation and such arrest shall be valid.

B Any law enforcement officer commissioned by the Federal Government, an Indian Nation or State, when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction may enter the Nation and arrest the person pursued.

Section 1610. Forfeiture

Any property, including cash, weapons, homes, and motor vehicles used in the commission of a criminal offense may be forfeited with notice to the owner by personal service.

Section 1611. Exceptions to Forfeiture

A.No vehicle used by any person as a common carrier in the transaction of business as a common carrier may be forfeited under the provisions of this Code unless it appears that the owner or other person in charge of the vehicle was a consenting party or privy to the act or omission giving rise to the forfeiture or knew or had reason to know of it.

B.No vehicle may be forfeited under the provisions of this Code for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this Nation or of the United States.

C.No owner's or interest holder's interest may be forfeited under this Chapter if the owner or interest holder establishes all of the following:

D.The owner did not empower any person whose act or omission gives rise to the forfeiture with legal or equitable power to convey the interest, as to a bona fide purchaser for value, and he was not married to any such person or if married to such person, held the property as separate property.

E. The owner did not know and could not reasonably have known of the act or omission or that it was likely to occur.

F.The owner acquired the interest after the conduct giving rise to forfeiture.

G.The owner is a bona fide purchaser for value not knowingly taking part in an illegal transaction.

H.The owner was at the time of purchase and at all times after the purchase and filing of notice of pending forfeiture or the filing and notice of a civil or criminal proceeding under this title relating to the property, whichever is earlier, reasonably without notice of the act or omission giving rise to the forfeiture and reasonably without cause to believe that the property was subject to forfeiture.