

TITLE VII

OFFENSE CODE

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TITLE VII
OFFENSES CODE

Chapter 1. GENERAL PROVISIONS

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

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

B. Purpose. The purposes of this chapter and of any other provisions of this code are:

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

C. Construction.

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

D. Enforcement.

The Northern Cheyenne Tribal Council authorizes the Bureau of Indian Affairs the authority to enforce this Code and the offenses in this Code.

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

- A. Prosecution of Multiple Offenses. When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted and sentenced for each such offense.
- B. Limitation. Except as provided below, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal offense.
- C. Separate Trials. Upon application of any party and if justice so requires, the Court may order that separate trials be held for two or more offenses based on the same conduct or arising from the same criminal offense.
- D. Double Jeopardy. If a defendant has been prosecuted in the Northern Cheyenne Courts for one or more offense arising out of the same conduct as the original prosecution, a subsequent prosecution in the Northern Cheyenne Courts for the same or a different offense arising out of the same conduct is barred.

7-1-3. Burden of Proof.

- A. Burden of Presumption of Innocence.
 - 1. A defendant in a criminal proceeding is presumed to be innocent until each element of the offense against him is proven beyond a reasonable doubt. In the absence of such proof the defendant shall be acquitted.
 - 2. By "Element of the offense" is meant:
 - a. The conduct, attendant circumstances or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; plus
 - b. The culpable mental state required.
- B. Negating Defenses. The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either side, or unless the defense is an affirmative defense and the defendant has presented evidence of such.

7-1-4. Principals and Accessories.

- A. This code makes no distinction between principals and accessories in criminal prosecutions.
- B. Any person who shall cause another to commit or who shall otherwise advise or assist another to commit any offense under

the laws of the Northern Cheyenne Reservation shall be guilty as if he had actually committed the offense.

7-1-5. Entrapment.

- A. A public law enforcement officer or official or a person acting in cooperation with such an official perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting an offense by either:
1. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
 2. Employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.
- B. The defense afforded by this section shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.
- C. Except as provided in subsection (B) of this section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the Court and not by the jury. Evidence of past offenses shall be admissible only if the defendant takes the stand in his own defense.

7-1-6. Liability.

- A. Acts and Omissions to Act:
1. The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which he or she is physically capable of performing.
 2. Possession is an act within the meaning of this section if there was knowing control of the thing possessed for a sufficient time to be able to terminate control.
- B. Culpability. A person is not guilty of an offense unless he acted purposely, knowingly, negligently, or recklessly as required with respect to each material element of the offense.

C. Corporations and Unincorporated Associations:

1. A person is legally accountable for any conduct he performs or causes to be performed in the name of a corporation or unincorporated association or in its behalf to the same extent as if it were performed in his own name or behalf.
2. Whenever a duty to act is imposed by law upon a corporation or unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.
3. When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the class involved.

7-1-7. Classification of Offenses and Sentences

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

Class A: Fine not to exceed \$5,000.00 and a term of imprisonment not to exceed 1 year.

Class B: Fine not to exceed \$1,000.00 and a term of imprisonment not to exceed 6 months.

Class C: Fine not to exceed \$200.00. [*As amended by Ord. 34(89)*]

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

7-1-8. Definitions

- A. Mental States:

1. Purposely - A person acts purposely with respect to a result or to conduct described in this Code defining an offense if it is his conscious objective or desire to engage in the conduct or to cause that result.
2. Knowingly - A person acts knowingly with respect to a circumstance or to conduct described in this Code defining an offense if he is aware of his conduct or that the [*cont'd on p. VII-10*]

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

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

B. Voluntary and Involuntary Acts:

1. Involuntary act - An "involuntary act" means any act which is:
 - a. A reflex or convulsion;
 - b. A bodily movement during unconsciousness or sleep;
 - c. Conduct during hypnosis or resulting from hypnotic suggestion; or
 - d. A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.
 2. Voluntary act - A voluntary act includes any bodily movement, and form of communication, and where relevant, any failure or omission to take action, that is not involuntary.
- C. Harm - means disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.
- D. Property - means anything of value. Property includes but is not limited to:

1. Real estate;
 2. Money;
 3. Commercial instruments;
 4. Admission or transportation tickets;
 5. Written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;
 6. Things growing on, affixed to, or found on land and things which are part of or affixed to any building;
 7. Electricity, gas, and water;
 8. Birds, animals, and fish which ordinarily are kept in a state of confinement;
 9. Food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof; and
 10. Any other articles, materials, devices, substance, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement.
- E. Sexual contact - means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.
- F. Sexual intercourse - means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or the anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.
- G. Weapon - means any instrument, article, or substance which regardless of its primary function, is readily capable of being used to produce death or bodily injury.

Chapter 2. DEFENSES AND JUSTIFICATIONS

7-2-1. Justification.

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

7-2-2. Duress.

It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist and the actor did not recklessly or negligently place himself in a situation in which it was probable he would be subjected to duress.

7-2-3. Ignorance or Mistake.

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

- A. The ignorance or mistake negate the intent, knowledge, belief, recklessness, or negligence required to establish a material element of the offense; or
- B. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

7-2-4. Public Duty.

Conduct is justified and an affirmative defense when it is required or authorized by law.

7-2-5. Protection of Self, Property, or Other Person.

The use of reasonable force upon or toward another person is justified and an affirmative defense when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself or a third person against the use of unlawful force by another person or to prevent or terminate an unlawful entry or other trespass upon land or the unlawful carrying away of tangible movable property.

7-2-6. Mental Disease.

A person is not responsible for criminal conduct, and it is an affirmative defense, if at the time of such conduct, as a result of mental disease or

defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

7-2-7. Use of Force.

A. Force in Defense of Persons.

1. A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such force is necessary to defend himself or a third person against such other's imminent use of unlawful force; however, a person is justified in using force which is necessary to prevent bodily injury only if he reasonably believes that such force is necessary to prevent death or serious bodily injury to himself or a third person.
2. A person is not justified in using force under the circumstances specified in subsection (A) (1) of this section if he:
 - a. Initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant;
 - b. Is attempting to commit, committing, or fleeing after the commission of an offense; or
 - c. Was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force.

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

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

1. The entry is attempted or made in a violent and tumultuous manner and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling or

person therein and that the force is necessary to prevent the assault or offer of personal violence; or

2. He reasonably believes that the entry is made or attempted for the purpose of committing a Class A offense or other offense involving threat of bodily injury therein and that such force is necessary to prevent the commission of such offense.

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

7-2-8. Intoxication Not a Defense.

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

B. When recklessness establishes an element of the offense, and the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial and does not constitute a defense.

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

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

Chapter 3. INCHOATE OFFENSES

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

7-3-2. Conspiracy.

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

or by a co-conspirator.

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

7-3-3. Criminal Attempt.

- A. Any person who purposely, knowingly, negligently or recklessly engages in any conduct which would reasonably result in the commission of any offense, if not for some unforeseen or intervening circumstance that prevents the actual commission of the offense, shall be guilty of an attempt to commit that offense.
- B. Criminal attempt to commit any offense shall be an offense of the same class as the substantive offense attempted.
- C. A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.
- D. Proof of the completed offense does not bar conviction for the attempt.

Chapter 4. OFFENSES AGAINST THE PERSON

7-4-1. Criminal Homicide.

- A. A person commits the offense of criminal homicide if he purposely, knowingly, or negligently causes the death of another human being.
- B. Criminal Homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide.
 - 1. Criminal Homicide constitutes Deliberate Homicide if:

- a. It is committed purposely or knowingly; or
 - b. It is committed while the offender is engaged in or is an accomplice in the commission of an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use of or threat of physical force or violence against any individual.
2. Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.
 3. Criminal homicide constitutes negligent homicide when it is committed negligently.
- C. Criminal homicide is a Class A offense, and if the offense is found to have been committed purposely or knowingly, no suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration shall be imposed.

7-4-2. Assault and Related Offenses.

A. Assault:

1. A person commits the offense of assault if he:
 - a. Purposely or knowingly causes bodily injury to another;
 - b. Negligently causes bodily injury to another with a weapon;
 - c. Purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or;
 - d. Purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or knowledge that reasonable apprehension would be caused shall be present in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

2. Assault is a Class B offense.

B. Aggravated Assault:

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

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

2. Aggravated assault is a Class A offense.

7-4-3. Intimidation.

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

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

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

C. Intimidation is a Class B offense.

7-4-4. Mistreating Prisoners.

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

1. Assaults or otherwise injures a prisoner;

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

7-4-5. Kidnapping.

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

7-4-6. Custodial Interference.

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

he has no legal right to do so.

B. Custodial Interference is a Class A offense:

7-4-7. Sexual Offenses.

A. Rape:

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

B. Deviate Sexual Intercourse:

1. A person is guilty of deviate sexual intercourse if he engages in deviate sexual intercourse, or causes another to engage in deviate sexual intercourse and if:
 - a. He compels the other person to participate by force or by the threat of death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone;

- b. He compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution;
- c. He has substantially impaired the other person's power to appraise or control his conduct by administering or employing without his knowledge drugs, intoxicants or other means for the purpose of preventing resistance;
- d. He knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct or he knows that the other person is unconscious or submits because he is unaware that a sexual act is being committed on him; or
- e. The other person is under the age of 16 years of age.

2. Deviate sexual intercourse is a Class A offense.

C. Indecent Exposure:

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

D. Sexual Assault: [*As amended by Ord. 10(92)*]

1. A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.
2. Sexual Assault is a Class B offense.

E. Aggravated Sexual Assault: [*Added by Ord. 10(92)*]

1. A person commits the offense of Aggravated Sexual Assault if he knowingly subjects another person to any sexual contact without consent; and
 - a. the victim is sixteen (16) years of age or younger and the offender is three (3) or more years older than the victim; or
 - b. the offender inflicts bodily injury upon anyone in the course of committing the sexual assault. "Bodily injury" shall mean physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

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

F. Provisions Applicable to Sexual Offenses: [*Added by Ord. 10(92)*]

1. A prosecution for a Class A sexual offense may be commenced within seven (7) years after the victim reaches the age of eighteen (18) years old if the victim was less than eighteen (18) years old at the time the offense occurred.
2. A person fourteen (14) years of age or younger does not have the legal capacity to consent.
3. No evidence concerning the sexual conduct of the victim is admissible in prosecutions involving a sexual offense except evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.
4. Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim. Force, fear, or threat alone is sufficient to show lack of consent; resistance by the victim is not required.
5. A civil action for recovery of damages for injuries suffered by a minor as a result of a sexual offense must be commenced not later than seven (7) years after the victim reaches the age of eighteen (18).
6. Any person convicted of a Class A Sexual Offense in Tribal Court and/or any person residing on the reservation who is convicted of a Felony Sexual Offense in any other jurisdiction, shall be required to register in writing with the local reservation law enforcement agency as a convicted sexual offender. Public notice of a person's conviction of a Class A Sexual Offense in Tribal Court, or a Felony Sexual Offense in any other jurisdiction shall be published in a weekly

newspaper of general circulation for two (2) consecutive weeks; and posted at the Tribal Office, Tribal Court, Police Department, and in all post offices on or near the reservation.

7. Any person convicted of a Class A Sexual Offense in Tribal Court shall be required to obtain both a chemical dependency evaluation and a sexual offender evaluation, and comply with the recommendations thereof. Copies of such evaluations shall be filed with the Court within ninety (90) days of the date of conviction.
8. In the interest of protecting the community, the Court may order a convicted offender to comply with any reasonable condition of sentence, including but not limited to any of the following:
 - a. Restrictions against types of employment involving access to children, elderly or other classes of vulnerable potential victims.
 - b. Restrictions from being physically present on or near schools, playgrounds, day care centers, elderly residential facilities, and other specific locations.
 - c. Prohibition against the use of alcoholic beverages, illegal drugs, and other chemical substances; and being present in business establishments where alcoholic beverages are the chief item of sale.
 - d. Payment of the cost of any counseling and/or treatment that the victim may require.

7-4-8. Prostitution

- A. A person is guilty of prostitution if, that person practices prostitution or knowingly keeps, maintains, rents, leases, any house, room, tent, or other place for the purpose of prostitution. [*cont'd on p. VII-21*]

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

C. Prostitution is a Class B offense.

7-4-9 Venereal Disease

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

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

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

Chapter 5. OFFENSES AGAINST THE FAMILY

7-5-1. Bigamy

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

B. It shall be a defense if the defendant proves by a preponderance of the evidence that he reasonably believed that he and the other person were eligible to marry.

C. Bigamy is a Class B offense.

7-5-2. Incest

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

B. Incest is a Class A offense.

1. A person is guilty of criminal nonsupport if, without just cause, he fails to provide for the support of his spouse, child under the age of 18 years, or other dependent when such persons or any of them are in circumstances of need.
2. "Child" includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.
3. In a prosecution under this section, it is no defense that the person to be supported received necessary support from a source other than the defendant.
4. Criminal nonsupport is a Class B offense.

B. Endangering the Welfare of a Child:

1. A person is guilty of endangering the welfare of a child if he is a parent, guardian, or other person supervising the welfare of a child under 18 years of age and he knowingly endangers the child's welfare by violating a duty of care, protection or support or by intentionally leaving or abandoning a child without care or by neglecting to care for a child in any manner which threatens serious harm to the physical, emotional or mental well-being of the child.
2. Endangering the welfare of a child is a Class B offense.

7-5-4. Failure to Send Children to School.

Any person who shall, without good cause, neglect or refuse to send a child under his care, between the ages of six and eighteen years, to school unless that child has graduated from high school, shall be guilty of this offense. Failure to send children to school is a Class C offense.

7-5-5. Truancy.

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

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

- A. A person commits the offense of contributing to the delinquency of a minor if he knowingly:
1. Sells or gives explosives to a child under the age of

and, if the accused is found to be guilty, may in lieu of sentence, place such truant for a designated period under the supervision of a responsible person selected by him or may take such other action as he may deem advisable in the circumstances. Truancy is a Class C offense.

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

- A. A person commits the offense of contributing to the delinquency of a minor if he knowingly:
 - 1. Sells or gives explosives to a child under the age of majority except as authorized under proper tribal ordinances;
 - 2. Sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;
 - 3. Sells or gives alcoholic beverages to a person under 18 years of age; or
 - 4. Being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.
- B. Contributing to the delinquency of a minor is a Class B offense.

7-5-7 Elderly Protection [Amended by Ords. 14(88), 18(89)]

- A. A person who purposely, knowingly or negligently exploits or abuses or neglects any elderly person shall be prosecuted for a violation of this Ordinance.
- B. Elderly Protection is a Class B offense.
- C. Definition:
 - 1. "Exploits" means to use the money or property of an elderly person for one's own advantage by means of duress, menace, fraud, or undue behavior.
 - 2. "Abuses" means to inflict physical or mental injury or to deprive an elderly person of food, shelter, clothing or services necessary to maintain the health of the elderly person.
 - 3. "Neglect" means the failure of a guardian, employee of any public facility, or any other person legally responsible for an elderly person's welfare, by failing to provide food, shelter, clothing, or services necessary to maintain the health of the elderly person.
 - 4. "Elderly person" is a person who is at least 60 years of age.

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7-5-10 Domestic Abuse [Added by Ord. 4(92)]

A. Any person who purposefully, knowingly, recklessly, or negligently abuses their spouse, family member, or household member shall be prosecuted for committing the offense of domestic abuse.

B. Definitions:

1. "Domestic abuse" is defined as causing physical harm, bodily injury, assault or inflicting fear of imminent harm, bodily injury or assault.
2. "Spouse" means a person with whom the victim is currently living or who has lived with the victim in the past, regardless of whether they are or were married, or, a person with whom the victim has a child in common, regardless of whether they were married or had lived together.
3. "Family member" or "household member" means a spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

C. Penalties:

Conviction of domestic abuse is a Class A offense. A person convicted of a first offense for domestic abuse shall be jailed for not less than 30 days and fined not less than \$500.00. A person convicted a second time for domestic abuse shall be jailed for not less than 90 days and fined not less than \$1,000.00. A person convicted for the third or subsequent times shall be jailed for not less than 180 days and fined not less than \$2,000.00. Restitution to the victim shall be ordered by the Judge when appropriate. Twenty-five sessions of mandatory counseling shall be ordered by the Judge in all convictions. This mandatory counseling shall include education on violence and learning non-violent behavior. This counseling may be ordered for up to one year by the Judge with progress reports to be made no less than monthly. If alcohol or drugs were involved in the offense, a chemical dependency evaluation and complete cooperation with recommendations for treatment shall be ordered by the Judge.

D. Other Provisions:

1. **Mandatory Arrest.** A police officer shall immediately arrest, without having to obtain an arrest warrant, and take into custody any person whom the officer has probable cause to believe has committed the crime of domestic abuse. The victim need not sign a complaint. The officer shall make the arrest even though an arrest may be against the expressed wishes of the victim.

An officer, under this section, is not required to arrest both parties when he/she believes that parties have assaulted one another. The officer shall arrest the person whom he/she believes to have been the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider (1) the intent to protect the victims of domestic abuse under this section; (2) the comparative extent of injuries inflicted, or serious threats creating fear of physical injury; and (3) the history of domestic abuse between the persons involved.

2. **Filing a Complaint.** The police officer making the arrest for domestic abuse shall sign the complaint and include a detailed report of the circumstance of the arrest and any available statements from witnesses or victims. The victim may be utilized in a prosecution as a witness, if the victim is willing. Otherwise, the arresting officer shall testify as the prime witness in the prosecution. Any spousal privilege not to testify as a husband and wife shall not apply in domestic abuse prosecution.
3. **Victim's Rights.** The victim of domestic abuse shall be informed by the arresting police officer of the local abode shelter, and shall see that the victim contact is made with that shelter; and shall inform the victim that a restraining order is available against the abuser, that an order can be obtained ordering the abuser from the household, school or business of the victim, that an order can be obtained awarding temporary custody of minor children to the victim; and that the abuser can be ordered to pay support to the victim and minor children regardless if the victim is male or female.
4. **Reports.** In cases where a police officer is called to a scene in which domestic abuse is suspected, but in the discretion of the police officer, no arrest is made by the officer, the officer shall write and file a written report explaining the reason for not making an arrest.
5. **Holding Time and Bail.** Any person arrested for domestic abuse shall be held without bail for not less than 24 hours and more than 36 hours mandatory cooling off period. No bail schedule shall be set until the time period expires. Bail put forth cannot be forfeited in lieu of court appearance. Appearance at court before a Judge is mandatory.
6. **Education of Public Officials.** All Judges, prosecutors, and police officers, shall be trained to implement this section with at least one eight hour initial session given by a domestic abuse specialist. In addition, all personnel shall have a minimum of four hours of refresher and update training in domestic abuse each year.

Chapter 6. OFFENSES AGAINST PROPERTY

7-6-1 Arson

- A. A person is guilty of arson if he starts a fire or causes an explosion with the purpose of:
1. Destroying a building or occupied structure of another; or
 2. Destroying or damaging any property whether his own or that of another to collect insurance for such loss.
- B. Definitions:
1. The term "Occupied Structure" includes a trailer, sleeping car, airplane or vehicle, structure or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present.
 2. Property is that of another, for the purpose of this section, if anyone other than the actor has a possessory or proprietary interest therein. If a building or structure is divided into separate occupied units, any unit not occupied by the actor is an occupied structure of another.
- C. Arson is a Class A offense.

7-6-2. Reckless Burning [*Amended by Ord. 7(90)*]

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- A.1 It shall be a criminal offense for any person who kindles a fire in or near any forest, timber, rangeland or other inflammable material upon land within the exterior boundaries of the Northern Cheyenne Reservation and then leaves said fire without totally extinguishing the same, or permits or suffers said fire to spread beyond his control, or leaves or suffers said fire to burn unattended. Such person shall be made to make complete restitution including resource loss, suppression and rehabilitation costs. Agricultural burning (weeds, stubble field, irrigation ditches, etc.) in excess of one (1) acre will require a burning permit. Recreational fires (i.e., camp fires) and residential fires (burn barrels, trash piles, etc.) will be excluded from this section if conducted under safe burning conditions. Traditional fires (seat lodges, sundances, etc.) will be excluded from this section at all times.
- A.2 The Tribal President shall have the authority to ban all fires (agricultural, recreational, residential, traditional, etc.) and to ban the sale and use of fireworks during high fire danger conditions.
- A.3 A burning permit shall be valid for a maximum of one (1) year, expiring December 31, and shall be issued by the Bureau of Indian Affairs and/or Tribal Forestry and shall constitute authority to burn as described in this section.
- B. Reckless burning is a Class B offense.

7-6-3 Criminal Mischief

- A. A person is guilty of criminal mischief if he:
1. Purposely or knowingly damages or destroys the livestock, domestic animals, or other property of another;
 2. Purposely or knowingly tampers with the property of another and thereby recklessly endangers human life, or recklessly causes substantial interruption or impairment of any public service.
- B. Criminal mischief is a Class B offense.

7-6-4 Burglary

- A. A person is guilty of burglary if he enters or remains unlawfully in a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit an offense therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to a prosecution for burglary that the building or structure was abandoned.

B. Definitions:

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

C. Burglary is a Class A offense.

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

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both or all of such other offenses that are Class A or B offenses.

7-6-5. Burglary of a Vehicle.

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

7-6-6. Aggravated Trespass.

- A. A person is guilty of aggravated trespass if he enters or remains unlawfully on trust or non-trust property on which he is not otherwise privileged to enter or remain and:
 - 1. Accomplishes such entry by an act of force or violence or the use of key or similar device which provides entry and which device the actor is not authorized or privileged to use for such purpose;
 - 2. Intends to cause or causes annoyance or injury to any person thereon or damage to any property thereon;
 - 3. Intends to commit or commits an offense thereon; or
 - 4. Is reckless as to whether his presence will cause fear for the safety of another.
- B. Aggravated Trespass is a Class B offense.

7-6-7. Simple Trespass.

- A. A person is guilty of simple trespass if, knowing his entry or presence is unlawful, he enters or remains on property, trust or non-trust, as to which notice against entry is given by:
 - 1. Personal communication to the actor by the owner or someone with authority to act for the owner;
 - 2. Fencing or other enclosure obviously designed to exclude intruders; or
 - 3. Posting of signs reasonably likely to come to the attention of intruders.
- B. It is an affirmative defense to simple trespass that:
 - 1. The property was open to the public when the actor entered or remained and he had not been informed that he should leave or not enter; or

2. The actor's conduct did not substantially interfere with the owner's use of the property and the actor left the property when asked to do so.

C. Simple trespass is a Class C offense.

7-6-8. Robbery.

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

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

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

C. Robbery is a Class A offense.

7-6-9. Theft and Related Offenses.

A. Consolidation of Theft Offenses; General Provisions:

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

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

- a. Acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or
- b. Obtained or exercised control over the property or service honestly and reasonably believing that the owner if present would have consented.

3. It is no defense that:

- a. The theft was from the actor's spouse, except that misappropriation of household and personal effects or other property normally accessible to both spouses, is theft only if it occurs after the parties have stopped living together; or
- b. The actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe upon.

4. Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.

B. Punishment of Theft Offenses:

1. Theft of property or service as provided in this part shall be punishable as follows:

- a. If the value of the property or services involved is more than \$500.00, the offense shall be a Class A offense;
- b. If the value of the property or services involved is \$100.00 or more but less than \$500.00, the offense shall be a Class B offense; or
- c. If the value of the property or services involved is less than \$100.00, the offense shall be a Class C offense.

2. If no evidence as to the value of the property or services involved is presented and the value of such is not obvious without presentation of such evidence, and if it otherwise is proven that a theft offense has been committed, the offense shall be a Class C offense.

C. Theft of Property:

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

D. Theft by Deception:

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

2. Deception occurs when a person:

- a. Creates or reinforces a false impression, including false impression as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
 - b. Prevents another from acquiring information which would affect his judgment of a transaction;
 - c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
 - d. Fails to disclose a lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid or is or is not a matter of official record.
3. The term "deceive" does not, however, include matters having no pecuniary significance, or mere puffing or statements unlikely to deceive ordinary persons in the group addressed.

E. Theft by Extortion:

1. A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.
2. Extortion occurs when a person threatens to:
 - a. Inflict bodily injury on anyone or commit any other criminal offense;
 - b. Accuse anyone of a criminal offense;
 - c. Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation;
 - d. Take or withhold action as an official, or cause an official to take or withhold action;
 - e. Bring about or continue a strike, boycott or other

collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act;

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

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

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

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

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

G. Receiving Stolen Property:

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

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

a. Is found in possession or control of other property stolen on a separate occasion;

b. Has received stolen property in another transaction within the year preceding the transaction charge; or

c. Being a dealer in property of the sort received, acquires it for a consideration which he knows or should know is far below its reasonable value.

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

H. Theft of Services:

1. A person is guilty of theft if:
 - a. He obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefor; or
 - b. Having control over the disposition of services of others to which he is not entitled, he diverts such services to his own benefit or to the benefit of another not entitled thereto.
2. Where compensation for service is ordinarily paid immediately upon the rendering of such service, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to the intent to pay.
3. "Services" includes, but is not limited to a labor, professional service, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admissions to a place for which a charge for admission is made, the use of vehicles or other moveable or real property.

I. Theft by Failure to make Required Disposition of Funds Received.

1. A person is guilty of theft if he obtains property from anyone, or personal services from an employee, upon agreement, or subject to a known legal obligation to make a specified payment or other disposition to a third person, whether from the property or its proceeds or from his own property in an equivalent amount, and if he deals with the property as his own and fails to make the required payment or disposition.
2. It is no defense that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.
3. An officer or employee of the Tribe, another government, or of a financial institution is presumed:

- a. To know of any legal obligation relevant to his liability under this section; and
- b. To have dealt with the property as his own if he fails to pay or discount upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

7-6-10. Forgery.

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

7-6-11. Unauthorized Use of Vehicle.

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

Chapter 7. OFFENSES AGAINST PUBLIC ORDER

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

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

7-7-2. Resisting Arrest.

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

7-7-3. Carrying a Concealed Weapon.

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

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

- A. A person is guilty of firing of a firearms offense if he:
 - 1. Knowingly or willfully shoots or fires off a gun, pistol or any firearm within the limits of any town, community, village or any private enclosure which contains a dwelling house, or shoots from any vehicle, or shoots across any roadway on the Northern Cheyenne Reservation.
- B. Firing of a firearms offense is a Class B offense.

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

- A. A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:
 - 1. Quarreling, challenging to fight, or fighting;
 - 2. Making loud or unusual noises;
 - 3. Using threatening, profane, or abusive language;
 - 4. Discharging firearms;
 - 5. Rendering vehicular or pedestrian traffic impassable;
 - 6. Rendering the free ingress or egress to public or private place impassable;
 - 7. Disturbing or disrupting any lawful assembly or public meeting;
 - 8. Transmitting a false report or warning of a fire, impending explosion, or other catastrophe in such a place that its occurrence would endanger human life; or
 - 9. Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.
- B. Disorderly conduct is a Class C offense.

7-7-6. Maintaining a Public Nuisance.

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

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

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

7-7-8. Escape.

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

7-7-9. Curfew.

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

7-7-10. Sanitation and Public Health.

- A. A person is guilty of a sanitation and public health offense if he violates any rules or regulations enforced by the Department of Public Health, or United States Public Health Service

Division of Indian Health, as adopted by Tribal Council ordinances, or any Indian group, organization, or committee for tribal celebrations or gatherings, or fails to properly dispose of all body wastes, garbage, trash and other waste materials or litter.

- B. The sanitation and public health offense is a Class B offense.
- C. The Judge of the Tribal Court may, in his discretion, take any action deemed necessary under the circumstances to safeguard the health or well-being of any community, family or person.

7-7-11. Cruelty to Animals.

- A. A person is guilty of cruelty to animals if, he shall torture or cruelly mistreat any animal.
- B. Cruelty to animals is a Class C offense.

7-7-12. Desecration of Flags.

- A. Definitions. In this section "flag" means anything which is or purports to be the official flag of the United States, the United States Shield, the United States Coat of Arms and the Northern Cheyenne Reservation Flag.
- B. A person is guilty of desecration of flags if he purposely or knowingly publicly mutilates, defiles, or casts contempt upon the flag as defined in this section.
- C. Desecration of a flag is a Class C offense.

7-7-13. Itinerant Vendors Offense.

- A. A person is guilty of itinerant vendors offense if he fails to pay \$25.00 for a license to do business within the boundaries of the Northern Cheyenne Reservation. An offender shall be fined \$25.00 a day for each day he does business within the boundaries of the Northern Cheyenne Reservation without a license.
- B. The fee shall be deposited in the civil fees account so designated.
- C. The license shall state the following:

_____ is an itinerant vendor and has paid the sum of:
\$ _____ for _____ days to do business within the boundaries of
the Northern Cheyenne Reservation. This license is valid until:
_____, 19____, _____ o'clock __.m.

- D. The license must be accompanied with a receipt and signed by

- E. Itinerant vendors offense is a Class B offense.

7-7-14 Littering [Amended by Ord. 17(90)]

- A. A person is guilty of littering if he:
1. Throws, dumps, or places upon any roadway, upon the land or property of another, or upon Tribal land or property, garbage, junk, trash, debris, refuse, or any substance of any nature whatsoever which mars the appearance or detracts from the cleanliness of an area; or
 2. Stores or keeps any unserviceable vehicle, appliance or implement within any town or village, unless he has a permit from the Northern Cheyenne Land Committee to maintain a junkyard.
 3. Allows any abandoned building to remain on land he owns or controls within any town or village, unless he has a permit from the Northern Cheyenne Land Committee allowing him to maintain an abandoned building.
- B. Littering is a Class B offense.

7-7-15. Putting Refuse on Highway

- A. No person shall throw or deposit upon any highway any glass bottles, glass, nails, tacks, wire, cans, paper or any other substance likely to injure any person, animal or vehicle upon such a highway.
- B. Any person removing a wrecked or damaged vehicle from a highway on the reservation shall remove any glass or injurious substance dropped upon the highway from such vehicle.
- C. Conviction under this section is a Class C offense.

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

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

7-8-1. Bribery in Official Matters.

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

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

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

7-8-3. Official Misconduct.

- A. A person is guilty of official misconduct if:
1. Being a public servant, and with intent to benefit himself or another person or harm another person, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a nondiscretionary duty imposed on him by law or clearly inherent in the nature of his office; or
 2. Being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public

servant, which information has not been made public, he:

- a. Acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or
- b. Speculates or wagers on the basis of such action or information; or knowingly aids another to do any of the foregoing.

B. Official misconduct is a Class B offense.

7-8-4. Falsification in Official Matters.

A. Perjury:

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

B. Tampering with Witnesses:

1. A person is guilty of tampering with witnesses if:
 - a. Believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:
 - (1) Testify or inform falsely;
 - (2) Withhold any testimony, information, document or thing;
 - (3) Avoid legal process summoning him to testify or supply evidence; or
 - (4) Absent himself from any proceeding or investigation to which he has been legally summoned;
 - b. He harms another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or
 - c. He solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in this section.
2. Tampering with a witness is a Class A offense.

C. Tampering with Evidence:

1. A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:
 - a. Alters, destroys, conceals or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or
 - b. Makes, presents or uses any record, document, or thing knowing it to be false and with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.
2. Tampering with evidence is a Class B offense.

D. Welfare Offense:

1. A person is guilty of a welfare offense if he:
 - a. Gives false information to another for the purpose of obtaining or retaining welfare benefits;
 - b. Knowingly fails to correct misinformation which enables him to obtain or retain welfare benefits;
 - c. Continues to accept and use for his own benefit or the benefit of another, welfare benefits to which he knows he is not entitled to;
 - d. Uses or expends money or commodities granted him as a welfare benefit in an improper manner or in a manner which does not proportionately benefit each of those persons intended to benefit by the grant; or
 - e. He knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto.
2. Welfare offense is a Class B offense.

Chapter 9. DRUG AND ALCOHOL RELATED OFFENSES

7-9-1. Abuse of Psychotoxic Solvents.

- A. A person is guilty of abuse of psychotoxic solvents if:
 1. For the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or for dulling of his brain or nervous system, he purposely:

- a. Smells or inhales the fumes of any psychotoxic chemical solvent; or
 - b. Possesses, purchases, or attempts to possess or purchase any psychotoxic chemical solvent for the purpose described in subsection (1) of this section; or
2. Knowingly or believing that the purchaser or another intends to use a psychotoxic chemical solvent in violation of this section, he sells or offers to sell any psychotoxic chemical solvent.
- B. This section shall not apply to the inhalation of anesthesia for medical or dental purposes.
- C. As used in this section, "psychotoxic chemical solvents" include any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ether, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.
- D. Abuse of psychotoxic chemical solvents is a Class C offense.

7-9-2. Drug Abuse.

- A. A person is guilty of drug abuse if he:
1. Possesses, sells, trades, transports, gives away or manufactures an article or substance which contains any quantity of a substance classified as belonging in Schedule I of the Federal Controlled Substances Act, except peyote in the Native American Church; or
 2. Sells, barter, plants, cultivates, produces, gives away, or possesses marijuana; or
 3. Violates any provision of the Federal Controlled Substance Act.

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

C. Drug Abuse is a Class A offense.

7-9-3. Possession of Liquor.

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

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

C. Possession of liquor is is a Class C offense.

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

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

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

C. Presumption. The possession of 12 or more bottles of beverages with an alcohol content of 10% or greater, or the possession of 24 or more bottles or cans of beverages with an alcohol content of less than 10% shall give rise to the rebuttable presumption that the person possessed such quantity of alcoholic beverages intending to deliver the same.

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

7-9-5. Exceptions.

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

7-9-6. Intoxication [Added by Ord. 11(88)]

- A. A person who is found under the influence of intoxicating liquor within the exterior boundaries of the Northern Cheyenne Reservation shall be charged with a violation of this section.
- B. Intoxication is a Class C offense, but the maximum fine for any intoxication conviction is \$20.00. The bond shall also be set at \$20.00. [As amended by Ord. 84(89)]

Chapter 10. LIVESTOCK OFFENSES

7-10-1. Livestock Offenses

- A. A person is guilty of a livestock offense if he commits any of the following offenses:
 - 1. Knowingly or negligently permits his livestock to graze or trespass on the property or permit of another or of the Tribe its without the permission to do so;
 - 2. Knowingly or negligently refuses to sell, dispose of, or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock;
 - 3. Knowingly or negligently fails to treat or dispose of a sick animal where there is a substantial danger of infecting other livestock;
 - 4. Fails to dip, inoculate or otherwise treat livestock in the manner which the Northern Cheyenne Tribal Council or its designated representative shall direct;
 - 5. Makes a false report of livestock owned; or
 - 6. Purposely obstructs or interferes with a livestock roundup.
- B. Livestock found to be in violation of this section may be impounded at the time an arrest is made, and may be impounded without prior notice to the owner if a Court so orders, upon receipt of evidence that such animals are grazing upon the property or permit of another on the Reservation and that immediate action is necessary to protect such interests from harm. Impounded animals for trespass shall be assessed at \$1.00 per head for damages per day and at \$1.00 per head per day for forage consumed by said impounded animals, the charges being payable to the entity whose forage was consumed. Where animals are impounded with or without ownership known and are not claimed or the owner refuses to pay the impoundment and

trespass assessments within ten (10) days of the impoundment, the Northern Cheyenne Court shall arrange for transportation to and sale of the animals at a public livestock market. The costs of the roundup, impoundment and sale will be immediately deducted and paid from the receipts of the sale of the animals. The owner of the animals who has refused to pay the charges against the animals will be delivered the balance remaining from the sale of the impounded animals [*cont'd on p. VII-42*]

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less costs and charges. All unbranded animals that are sold and the money taken in will be returned to the Tribal Council treasurer.

C. Livestock offenses are a Class A Offense.

7-10-2. Barrier Offense.

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

B. Barrier offenses are Class B offenses.

7-10-3. Gate Offense.

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

B. Gate offense is a Class C offense.

7-10-4. Misbranding.

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

B. Misbranding is a Class A offense.

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

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

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

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

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

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

Chapter 11. TRAFFIC OFFENSES

7-11-1. GENERAL PROVISIONS

7-11-1-1. Purpose.

The purpose of the Northern Cheyenne Traffic Code is to implement safeguards for persons living within and passing through the Northern Cheyenne Reservation while driving any motorized vehicle. The code will give authority and responsibility to the Northern Cheyenne Police Department and other law enforcement agencies recognized by the Northern Cheyenne Tribe and Reservation to enforce the Northern Cheyenne Traffic Code.

7-11-2-2. Definitions.

- 1) Motor vehicle shall mean every vehicle propelled by its own power and designed primarily to transport persons or property upon Federal, State and Tribal highways.
- 2) Tribe shall mean the Northern Cheyenne Tribe.
- 3) Motorcycle shall mean a motor vehicle having not more than three wheels in contact with the ground. The term does not include a tractor or a bicycle.
- 4) Bicycle shall mean every device propelled by human power having two tandem wheels upon which any person may ride and which shall not be considered a motorized vehicle.
- 5) Truck shall mean every motor vehicle designed, used or maintained primarily for the transportation of property.
- 6) Road tractor shall mean every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any thereon either independently or any part of the weight of a vehicle or load so drawn.
- 7) Pole trailer means every vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach pole or by being boomed or otherwise secured to the towing vehicle.
- 8) Bus shall mean every motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons.
- 9) School bus shall mean every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.
- 10) Police vehicle shall mean any vehicle used in the service of the

Northern Cheyenne Police Department or any law enforcement agency.

- 11) Authorized emergency vehicle shall mean emergency service vehicles of the Northern Cheyenne Reservation or of the state, county or municipal agencies.
- 12) Highways shall mean the entire width between the boundary lines of every publicly-maintained way when any part thereof is open to the use of the public for the purpose of vehicular travel.
- 13) Street shall mean the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel.
- 14) Intersection shall mean the area embraced within the prolongation or connection of the lateral curb lines or if non-curbed then the lateral boundary lines of the roadways of two highways which join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty (30) feet or more apart, then crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty (30) feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.
- 15) Chief of Police shall mean the Chief of Police for the Northern Cheyenne Police Department.
- 16) Police Officer shall mean every officer of the Northern Cheyenne Police Department or police officers authorized by the Northern Cheyenne Tribe to direct or regulate traffic or to make arrests for violations of traffic regulations.
- 17) Highway Patrolman shall mean every state officer authorized to direct or regulate traffic on state highways or to make arrests for violation of traffic violations on state highways that are so maintained by the state of Montana.
- 18) Local authorities shall mean the Northern Cheyenne Tribal Council which has the authority to enact laws relating to traffic under the constitution and laws of the Northern Cheyenne Tribe but not contrary to federal law.
- 19) Pedestrian shall mean every person or any person afoot.
- 20) Driver shall mean every person who drives or is in actual physical control of a vehicle.
- 21) Owner shall mean the person who holds the legal title to a vehicle.

- 22) Operator shall mean a person who is in actual physical control of a motor vehicle.
- 23) Traffic means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using any highways for purposes of travel.
- 24) Traffic-control signal means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.
- 25) Official traffic control devices shall mean all signs, signals, markings and devices not inconsistent with this title, placed or erected by the authority of the Northern Cheyenne Tribal Council or official having jurisdiction, for the purposes of regulating, warning or guiding traffic.
- 26) Safety zone shall mean the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all time while set apart as a safety zone.
- 27) Stop means complete cessation from movement when required.
- 28) Right-of-way shall mean the privilege of the immediate use of the roadway.
- 29) Suspension shall mean that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of such suspension.
- 30) Registration shall mean a registration certificate or certificates and registration plates issued under the laws of the State of Montana pertaining to the registration of motor vehicles.
- 31) Certificate of ownership shall mean the certificate issued by the division of motor vehicles of the State of Montana to the transferee upon a transfer of ownership of a motor vehicle.

7-11-2. POWERS OF LOCAL AUTHORITIES

7-11-2-1. Powers of Local Authorities to Regulate Traffic.

The local authorities have the following traffic regulation powers:

- 1) Regulating the standing or parking of vehicles.
- 2) Regulating the traffic by means of police officers or traffic-control devices.

- 3) Regulating or prohibiting processions or assemblages on the highways.
- 4) Designating particular highways as one-way highways and requiring that all vehicles thereon move in one specific direction.
- 5) Regulating the speed of vehicles in public parks.
- 6) Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same, designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections.
- 7) Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee.
- 8) Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections.
- 9) Altering the speed limits not contrary to Federal law.
- 10) Regulating the driving of vehicles by any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle within the limits of any town or community or highway within the boundaries of the Northern Cheyenne Reservation.
- 11) Regulating or prohibiting any person who is under the influence of intoxicating liquor from driving or being in actual physical control of any vehicle within the limits of any town or community or highway within the boundaries of the Northern Cheyenne Reservation.
- 12) Regulating or prohibiting the driving of vehicles by any person in willful or wanton disregard for the safety of persons or property within the limits of any town or community or highway within the boundaries of the Northern Cheyenne Reservation.
- 13) Enacting as ordinances any and all other provisions or laws regulating traffic, pedestrians, vehicles, and operators thereof, not in conflict with Federal regulations and to enforce the same within their jurisdiction.

7-11-3. ENFORCEMENT BY THE NORTHERN CHEYENNE POLICE
DEPARTMENT AND OTHERS AUTHORIZED BY THE
NORTHERN CHEYENNE TRIBAL COUNCIL

7-11-3-1. Enforcement.

The Northern Cheyenne Police Department shall enforce the Northern

Cheyenne Traffic Code. The Northern Cheyenne Tribal Council may also authorize other law enforcement agencies, at its discretion, enforcement of these ordinances.

7-11-3-2. Training of Police Officers.

The Northern Cheyenne Police Department shall provide such training as required to qualify those officers to competently perform their duties under this code and shall adopt such rules as required and necessary for qualification. The officers shall not make arrests until they have successfully completed such training as required by the Northern Cheyenne Police Department.

7-11-3-3. Official Attire Required for Making Arrests.

Qualified officers may make arrests throughout the Northern Cheyenne Reservation only when dressed in official uniform and displaying the official badge authorized by the Northern Cheyenne Police Department. Authorized officers may not carry firearms unless officially attired.

7-11-3-4. Identification Badge and Uniform

Officers of the Northern Cheyenne Police Department engaged in the enforcement of the civil code shall wear and prominently display an identification badge. The department may authorize the uniform dress for officers engaged in such enforcement.

7-11-3-5. Power to Inspect Vehicle Registration, Receipts and Other Documents.

Officers may, when officially dressed, make reasonable inspection of vehicle registration receipts and other documents required to be carried in or for a vehicle traveling on the public highways of Montana through the Northern Cheyenne Reservation and other highways on the Northern Cheyenne Reservation.

7-11-3-6. Cooperation with Other Agencies.

The Northern Cheyenne Police Department shall when at all possible cooperate with other law enforcement agencies.

7-11-3-7. Duty Upon Making an Arrest - Power to Fix and Accept Bail

Officers making an arrest, shall deliver to the offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to appear before the Northern Cheyenne Court. The bonded officer may accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the notice. If the officer accepts bail, he shall give a signed receipt to the offender setting forth the amount received. The officer shall deliver the bail money to the Police Department for deposit into an appropriate account. The bail/bond

monies shall be counted after each officer shift for justification. After filing of the complaint, and appearance of the defendant, the Judge of the Court shall assume jurisdiction and may set further appearance bond.

7-11-4. REMOVAL AND SALE OF ABANDONED VEHICLES

7-11-4-1. Taking Vehicle into Custody.

- A. The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of forty-eight (48) hours or more on a highway within the Northern Cheyenne Reservation, or for a period of five (5) days or more on any town or community street on the Reservation or on private property or the Northern Cheyenne Tribal property:
 1. The Northern Cheyenne Police Department if the vehicle is upon the right-of-way of any public highway or Reservation maintained highway or roadway.
 2. Other law enforcement agencies recognized by the Northern Cheyenne Tribal Council.
- B. The Northern Cheyenne Police Department or other law enforcement agency recognized by the Tribal Council may use its own equipment or personnel approved by the Chief of Police and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for those purposes. The cost is to be made up by the registered owner before release of such vehicle or the vehicle may be sold at a sale so designated by the Chief of Police.
- C. At the request of the owner in lawful possession or control of the private property, the Chief of Police may remove the vehicle and hold it. The vehicle is not to be released until storage costs are paid at the rate of \$2.00 per day plus any other charges against it.

7-11-4-2. Notice to Owner.

- A. The Chief of Police shall secure a complete description of the vehicle to include: year, make, model, serial number and license number if available, any costs incurred to that date in the removal, preservation and the custody of the vehicle and any available information concerning its ownership.
- B. The Chief of Police shall make reasonable efforts to ascertain the name and address of the owner and lienholder, if any, or person entitled to possession, to notify them of the location of the vehicle.
- C. If the vehicle is registered in the office of the division of

motor vehicles of the State of Montana, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the division of motor vehicles of the State of Montana, return receipt requested and postage prepaid thereon, is mailed at least thirty (30) days before the vehicle is sold as hereinafter provided.

- D. If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements prescribed for notice by certified or registered mail.

7-11-4-3. Reclaiming Vehicle.

The owner, lienholder or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the Chief of Police satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation and custody of the vehicle. He shall not be required to pay storage charges for a period longer than ninety (90) days.

7-11-4-4. Sale of Vehicle not Reclaimed.

- A. If a vehicle is not reclaimed within 30 days after notification by registered or certified mail or prescribed publication, the Chief of Police shall sell it at public auction.
- B. After any vehicle has been sold, the former owner or person entitled to possession has no further claim, right, title or interest in or to the vehicle.

7-11-4-5. Certificate of Sale.

- A. When any vehicle has been sold, the Chief of Police at the time of the payment of the purchase price shall execute a certificate of sale in duplicate. He shall deliver the original certificate to the purchaser and retain the copy.
- B. The certificate shall contain the name and address of the purchaser, the date of the sale, the consideration paid, and a stipulation that no warranty is made as to the condition or title of the vehicle.

7-11-4-6. Certificate of Ownership.

It shall be up to the purchaser of the vehicle so bought to file with the

Division of Motor Vehicles of the State of Montana for issuance of a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of fees required by the Division of Motor Vehicles, State of Montana.

7-11-4-7. Transmitting Return of Sale and Balance of Proceeds.

- A. When any vehicle is sold as provided in 10-4-4 the Chief of Police shall transmit to the Northern Cheyenne Tribal Council Treasurer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.
- B. With the return of the sale, the Chief of Police shall transmit to the Northern Cheyenne Tribal Council Treasurer the balance of the proceeds of the sale after deducting the costs of the custody of the vehicle.
- C. Upon receipt of the return of sale and such balance the Northern Cheyenne Tribal Council Treasurer shall file the return in his office and deposit the balance in the police budget.

7-11-4-8. Penalty.

Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$25.00 or more than \$300.00 or by imprisonment for not less than 5 days or more than 90 days or by both fine and imprisonment.

7-11-5. JURISDICTION OF MINORS

7-11-5-1. Unlawful Operation by Minor - Jurisdiction of Court - Penalties.

- A. The Northern Cheyenne Court shall have original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of 18 years.
- B. Whenever, after a hearing before the court, it shall be found that a child under the age of 18 years has unlawfully operated a motor vehicle, the court may:
 - 1. Impose a fine, not to exceed \$50.00 provided such child shall not be imprisoned;
 - 2. Revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court; and

3. Order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding 60 days, as shall be fixed by the court. However, if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded.
- C. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

7-11-5-2. Summons - Issuing to Minor

Whenever any child under the age of 18 years of age unlawfully operates a motor vehicle in the presence of a police officer, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to appear before the Northern Cheyenne Court and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the Judge.

7-11-5-3. Penalties.

Whenever the court shall be informed that a child has unlawfully operated a motor vehicle said child shall be required to appear before the Court and the Court shall, after hearing and investigation, take action as provided in this Code, or may dismiss the proceeding if it be found and determined that it is for the best interest of the child to do so.

7-11-6. DISPOSITION OF FINES

7-11-6-1. Northern Cheyenne Police Department-Disposition of Fines and Forfeitures.

- A. All fines and forfeitures collected in the Court from persons apprehended or arrested by police officers for violations of the laws and regulations relating to the use of State and Tribal highways on the Northern Cheyenne Reservation and the operation of vehicles thereon must be deposited in the appropriate account. A separate account shall be established for traffic fines and forfeitures.
- B. At the time of payment of any such fine or forfeitures, there shall be filed with the Clerk of the Court and the Northern

Cheyenne Tribal Council Treasurer, a complete statement showing the total of the fines and forfeitures received or incurred, which statement shall give the title of the Court and cause and be subscribed to by the person or officer making the payments.

- C. Traffic fines and forfeitures shall be used in the purchase of docket books, printing of citation books for officers, receipt books and the maintenance of police vehicles (gas, vehicle repairs, tune-ups, oil change).

7-11-6-2. Disposition of Traffic Fines Collected from Juveniles

All fines collected by the Court from persons under the age of eighteen (18) years of age as a result of traffic summonses for unlawful operation of motor vehicles issued by the Police Department shall be deposited in a separate account.

- A. Juvenile fines collected shall be used in part for mileage for the prosecutors and probation officers.
- B. Juvenile fines collected shall be used for printing for the police department and the Court.

[Secs. 7-11-7, -8, -9 repealed by Ord. 7(89). Therefore, no p. VII-53.]

7-11-10-1. Accident Involving Damage to Vehicle

- A. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to and in every event shall remain at the scene of such accident. Every stop shall be made without obstructing traffic more than is necessary.
- B. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor and shall be punished by a fine upon conviction of \$20.00.

7-11-10-2. Duty to Give Information and Render Aid

- A. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and the registration number of the vehicle he is driving and upon request and if available exhibit his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such persons to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary if such carrying is requested by the injured person.
- B. Any person failing to stop or comply with said requirements under such circumstances may be fined \$20.00.

7-11-10-3. Accidents Involving Death or Personal Injuries

- A. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements above. Every such stop shall be made without [*cont'd on p. VII-55*]

obstructing traffic more than is necessary.

- B. Any person failing to stop or to comply with said requirements under such circumstances may be imprisoned for not less than 30 days or more than 6 months or by a fine of not less than \$100.00 or more than \$500.00 or both.

7-11-10-4. Accident Reports to the Police.

- A. The persons involved in an accident shall report such accident or accidents to the Northern Cheyenne Police or other law enforcement agencies having such jurisdiction on the Northern Cheyenne Reservation.
- B. A person failing to report as required above may be fined in an amount up to \$50.00 dollars or imprisoned for a period not to exceed ninety (90) days or both.

7-11-10-5. Leaving the Scene of an Accident.

Any person involved in an accident or who witnessed an accident and who leaves such accident without reporting the said accident to the police may be fined not less than \$300.00 or imprisoned for a period of not less than ninety (90) days or both.

7-11-11. ENFORCEMENT - PENALTIES

7-11-11-1. Charging Violations.

In every charge of a violation of any speed regulation the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven and the speed applicable within the district or at the location.

7-11-11-2. Use of Radar - Evidence Admissible.

The speed of any motor vehicle may be measured by the use of radio microwaves or other electrical device. The results of such measurements shall be accepted as evidence of the speed of such motor vehicle in tribal court or other legal proceedings where the speed of the motor vehicle is at issue.

7-11-11-3. Arrest Without a Warrant in Radar Cases.

- A. The driver of any such motor vehicle may be arrested without a warrant under this section provided the arresting officer is in uniform or displays his badge of authority and has either:
 - 1. Observed the recording of the speed of the vehicle by radio microwaves or other electrical device; or

2. Received, from the officer who has observed the speed of the vehicle recorded by the radio microwaves or other electrical device, a radio message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded.

B. The arrest without warrant of any such driver must be made immediately after such observation or radio message and as a result of uninterrupted pursuit.

7-11-11-4. Erection of Signs

A. No operator of a motor vehicle may be arrested under speeding regulations unless signs have been placed at a conspicuous place upon a highway or street or townsite or community within the boundaries of the Northern Cheyenne Reservation.

B. The Northern Cheyenne Police Department shall erect and maintain appropriate signs giving such notice of such use.

7-11-11-5. Officers or Highway Patrolmen Authorized to Remove Illegally Stopped Vehicles

Whenever any police officer or highway patrolman finds a vehicle standing upon a highway in violation of any of the traffic laws of the Northern Cheyenne Tribal Council, such officer or highway patrolman is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same to a position off the paved or main-traveled part of such highway.

7-11-11-6. Injury to or Removal of Sign Marker, a Misdemeanor-Penalty

A. No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or signal or any inscription, shield or signals thereon or any part thereof.

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

7-11-11-7. Speeding [Amended by Ord. 7(91)]

A. Any person who purposely, or negligently drives any car, truck or pickup within any town or village at a speed greater than 25 m.p.h., or who drives at a speed in excess of the speed limit posted at any particular location, or who drives upon any public roadway or highway at a speed greater than 65 m.p.h., shall be prosecuted for speeding. The Police shall post all needed speed limit signs. Notice that radar is being used shall be posted where appropriate.

- B. Starting one day before the Annual July 4th Pow-wow and ending the day after the Pow-wow of each year, a 35 m.p.h. speed limit shall be vigorously enforced by the Northern Cheyenne Police Department on the paved road between Lame Deer and the Northern Cheyenne Pow-wow complex. Violators of this speed limit will be issued a warning for their first violation and shall be fined \$5.00 for each violation thereafter.
- C. A citation procedure shall be utilized by the Police Department so each person who is stopped has the option to pay a bond at the time the Police stop is initially made or they may elect to go to court and appear before the reservation Judge to await a hearing on the speeding violation. The Police will install 35 m.p.h. signs before this Ordinance is to be used by the Police Department.
- D. Speeding is a Class C offense.

7-11-11-8. Driving While Intoxicated [*Amended by Ord. 34(89)*]

A person will be charged with a violation of this section if while driving or in physical control of any motorized vehicle, the person is under the influence of liquor. Any person arrested for this offense shall be given an opportunity to have his breath analyzed with a Breathalyzer. The concentration of alcohol as shown by the Breathalyzer shall give rise to the following presumptions:

- A. If there was at the time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.
- B. If there was at the time an alcohol concentration in excess of 0.05 or less than 0.10, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining guilt or innocence.
- C. If there was at the time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol.
- D. Any person who refuses to take the Breathalyzer shall not be forced to do so, but if refused it shall be taken as a presumption of guilt. Driving while intoxicated is a Class A offense. It is a bondable offense and the bond cannot be forfeited. Any person prosecuted under this section must answer and appear in Court and shall be required to attend and complete a driving while intoxicated Court mandated school, to be taken on the Northern Cheyenne Reservation, the costs of the Court school to be paid by the person who is sentenced to attend the DUI school.

7-11-11-9. Reckless Driving

- A. A person is guilty of a reckless driving offense if he:

1. Drives any motorized vehicle in a knowing, willful or wanton disregard for his safety or the safety of others or property; or

B. Reckless driving is a Class B offense.

7-11-11-10. Failure to Yield to an Emergency Vehicle

A. Upon the immediate approach of an authorized emergency vehicle making an audible or visual signal, the driver of every other vehicle shall immediately yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway or roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a Northern Cheyenne Police Officer. For the purposes of this subsection, the term "authorized emergency vehicle" shall mean vehicles of any fire department, the Northern Cheyenne Police Department and such ambulances and other emergency vehicle designated or authorized as such.

B. All persons in operational control of a motor vehicle upon a highway or roadway shall comply with any lawful order of a Northern Cheyenne Police Officer to bring his motor vehicle to a stop, to drive to the edge or curb or the highway or roadway, or to otherwise alter or control the movement or position of his motor vehicle.

C. Any person convicted of willfully failing or refusing to comply

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with any provision of this ordinance shall be guilty of a Class B offense.

7-11-11-11. Passing School Buses [*As amended by Ord. 34(89)*]

Any motorized vehicle which passes any school bus with its flashing red lights and stop sign extended and which is either loading or unloading school children shall be confiscated and impounded by the Police department and that vehicle shall not be released until the owner of that vehicle pays all towing charges and a fine of not less than \$200.00 but not more than \$1,000.00 and serves a jail term not to exceed six (6) months.

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