

TITLE 21

CRIMES AND PUNISHMENTS

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Crimes and punishments, generally, see 21 O.S. § 1 et seq.

Code of Federal Regulations

Courts of Indian Offenses and Law and Order Code,

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Crimes and criminal procedures, see 18 U.S.C. § 1151 et seq.

Indian law enforcement reform, see 25 U.S.C. § 2801 et seq.

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IN GENERAL
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PRELIMINARY PROVISIONS

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11. Specific statutes in other titles as governing—Acts punishable in different ways—Acts not otherwise punishable by imprisonment

§ 1. Title of code

This title shall be known and may be cited as the Penal Code of Cherokee Nation.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 01–91, eff. February 9, 1991.

Library References

Criminal Law O12.

Westlaw Topic No. 110.

C.J.S. Conflict of Laws §§ 36, 60.

C.J.S. Criminal Law §§ 1, 25, 27 to 28, 31 to 36.

C.J.S. Statutes §§ 483 to 485, 525 to 530.

§ 2. Criminal acts are only those prescribed—“This code” defined

No act or omission shall be deemed criminal or punishable except as prescribed or authorized by this code. The words “**this code**” as used in the “penal code” shall be construed to mean “Cherokee Nation Code Annotated.”

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O13.

Westlaw Topic No. 110.

C.J.S. Criminal Law §§ 1, 31 to 33.

§ 3. Crime and public offense defined

A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, any of the following punishments:

1. Imprisonment;
2. Fine;

3. Removal from office;
4. Disqualification to hold and enjoy any office of honor, trust, or profit, under this Nation;
5. Restitution;
6. Community service; or
7. Victim compensation assessment.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O13.
Westlaw Topic No.110.
C.J.S. Criminal Law §§ 1, 31 to 33.

§ 4. Crimes classified

All crimes or offenses are classified as “crimes.”

History

Source. LA 10–90, eff. November 13, 1990.

§ 7. Objects of penal code

This title specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; and defines the nature of the various crimes; and prescribes the kind and measure of punishment to be inflicted for each. The manner of prosecuting and convicting criminals is regulated by the Code of Criminal Procedure, 22 CNCA.

History

Source. LA 10–90, eff. November 13, 1990.

§ 8. Conviction must precede punishment

The punishments prescribed by this title can be inflicted only upon a legal conviction in a court having jurisdiction.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O621.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 10. Punishment of crimes

Except in cases where a different punishment is prescribed by this title or by some existing provisions of law, every offense declared to be a crime is punishable by the maximum punishment provided for by the Indian Civil Rights

Act, 25 U.S.C. § 1302(a)(7). The Court may not impose for conviction of any one (1) offense any penalty or punishment greater than imprisonment for a

term of one (1) year or a fine of Five Thousand Dollars (\$5,000.00) or both; except that the Court may subject a defendant to a term of imprisonment greater than one (1) year but not to exceed three (3) years for any one (1) offense, or a fine greater than Five Thousand Dollars (\$5,000.00) but not to exceed Fifteen Thousand Dollars (\$15,000.00), or both, if the defendant is a person accused of a criminal offense who (a) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or (b) is being prosecuted for an offense comparable to an offense that would be punishable by more than one (1) year of imprisonment if prosecuted by the United States or any of the states.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 01–91, eff. February 9, 1991.

Amended. LA 10–13, eff. April 13, 2013.

Cross References

Abduction of person under 18, see 21 CNCA § 1119.
Abuse of children, penalties, see 21 CNCA § 843.
Abuse or exploitation of vulnerable adult by non-caretaker, see 21 CNCA § 843.3.
Acts prohibited, see 21 CNCA § 1040.13.
Assaults with intent to commit crime, punishment, see 21 CNCA § 681.
Caretaker, abuse, neglect or financial exploitation of charge, see 21 CNCA § 843.1.
Child stealing, punishment, see 21 CNCA § 891.
Child under 18 years of age, inducing, keeping, detaining or restraining for prostitution, punishment, see 21 CNCA § 1088.
Contempt, see 21 CNCA § 1040.21.
Crime against nature, see 21 CNCA § 886.
Duty to report obscene or pornographic material depicting minors, penalty, see 21 CNCA § 1021.4.
Elements of offense, see 21 CNCA § 866.
Exploitation of elderly persons or disabled adults, see 21 CNCA § 843.4.
Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor, see 21 CNCA § 1040.13a.
Guardians, etc., consent to participation of minors in child pornography, see 21 CNCA § 1021.3.
Incest, penalty, see 21 CNCA § 885.
Indecent exposure, indecent exhibitions or obscene material or child pornography, solicitation of minors, see 21 CNCA § 1021.
Involvement in business decision, crime defined, see 28 CNCA § 12.
Kidnapping defined, see 21 CNCA § 741.
Lewd or indecent proposals or acts as to child under 18, see 21 CNCA § 1123.
License required for gaming facilities, see 4 CNCA § 30.
Loitering around residence to watch occupants, see 21 CNCA § 1171.
Minors, child pornography, see 21 CNCA § 1021.2.
Misprision of crime and false statements to law enforcement, see 21 CNCA § 450.
Obscene, threatening or harassing telephone calls, penalty, see 21 CNCA § 1172.
Offering or transporting child for purpose of prostitution, penalty, see 21 CNCA § 1087.
Publication, distribution or participation in preparation of any obscene material or presentation, unsolicited mailings, penalty, see 21 CNCA § 1040.8.
Punishment, see 21 CNCA § 867.
Purchase, procurement or possession of child pornography, penalty, see 21 CNCA § 1024.2.
Rape defined, see 21 CNCA § 1111.
Residency restriction, sex offender notification and registration, penalty, see 57 CNCA § 17.
Sex offender notification and registration, penalties generally, see 57 CNCA § 15.
Sexual battery, see 21 CNCA § 1123.1.
Showing at outdoor theaters of pictures depicting sexual intercourse prohibited under certain conditions, penalty, see 21 CNCA § 1040.52.
Using computer networks to violate Cherokee Nation statutes, see 21 CNCA § 1124.
Verbal abuse by caretaker, see 21 CNCA § 843.2.
Zone of safety, see 21 CNCA § 1125.

United States Code

Constitutional rights, see 25 U.S.C. § 1302.

Library References

Indians O620.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 10a. Punishment of crimes concerning public officials, appointed officials or department heads

Any elected official, appointed official or department head who is convicted of a crime concerning bribery, embezzlement, fraud, perjury, or forgery or larceny may in addition to the punishments provided under this title, be subject to the punishment of disqualification from employment with Cherokee Nation.

History

Source. LA 18–06, eff. August 21, 2006.

Library References

Indians O627.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 11. Specific statutes in other titles as governing—Acts punishable in different ways—Acts not otherwise punishable by imprisonment

A. If there be in any other titles of the laws of this Nation a provision making any specific act or omission criminal and providing the punishment therefor, and there be in this penal code any provision or section making the same act or omission a criminal offense or prescribing the punishment therefor, that offense and the punishment thereof, shall be governed by the special provisions made in relation thereto, and not by the provisions of this penal code. But an act or omission which is made punishable in different ways by different provisions of this code may be punished under any of such provisions, the punishments therein prescribed are substituted for those prescribed for a first offense, but in no case can it be punished under more than one section of law; and an acquittal or conviction and sentence under any one section of law, bars the prosecution for the same act or omission under any other section of law.

B. Provided, however, notwithstanding any provision of law to the contrary, any offense, including traffic offenses, in violation of the laws of this Nation which is not otherwise punishable by a term of imprisonment or confinement shall be punishable by a term of imprisonment not to exceed one day in the discretion of the Court, in addition to any fine prescribed by law.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O627. Westlaw Topic No. 209.

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§ 21. Prohibited act a crime, when

Where the performance of an act is prohibited by any statute, and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law ○1, 13(2).
Westlaw Topic No. 110.

C.J.S. Criminal Law §§ 1 to 7, 10 to 11, 17,
31 to 33.

§ 22. Gross injuries—Grossly disturbing peace—Openly outraging public decency— Injurious acts not expressly forbidden

Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency, and is injurious to public morals, although no punishment is expressly prescribed therefor by this code, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law ○13(2).
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 31 to 33.

§ 24. Acts punishable under foreign laws

An act or omission declared punishable by this title is not less so because it is also punishable under the laws of a state, another government or country, unless the contrary is expressly declared in this title.

History

Source. LA 10–90, eff. November 13, 1990.

§ 25. Foreign conviction or acquittal

Whenever it appears upon the trial that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of a state, another government or country, founded upon the act or omission in respect to which he is upon trial, this is a sufficient defense.

History

Source. LA 10–90, eff. November 13, 1990.

§ 26. Contempts, criminal acts which are also punishable as

A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

History

Source. LA 10–90, eff. November 13, 1990.

§ 27. Mitigation of punishment

Where it is made to appear at the time of passing sentence upon a person convicted, that such person has already paid a fine or suffered an imprisonment for the act which he stands convicted, under an order adjudging it a contempt, the Court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O621.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 28. Aiding in a crime

Whenever an act is declared a crime, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act, is guilty of a crime, and punishable in the same manner as the principal offender.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O59(5), 68, 74.
Westlaw Topic No. 110.

C.J.S. Criminal Law §§ 170, 173 to 174, 176 to 181, 1349 to 1351, 1356.

§ 29. Sending letter—When complete—Place of prosecution

In the various cases in which the sending of a letter is made criminal by this title, the offense is deemed complete from the time when such letter is

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deposited in any post office or any other place, or delivered to any person with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it shall be received by the person to whom it is addressed.

History

Source. LA 10–90, eff. November 13, 1990.

§ 30. Failure to perform duty

No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

History

Source. LA 10–90, eff. November 13, 1990.

ATTEMPTS

§ 41. Conviction for attempt not permitted where crime is perpetrated

No person can be convicted of an attempt to commit a crime when it appears that the crime intended or attempted was perpetrated by such person in pursuance of such attempt.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O44.
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 148 to 158.

§ 42. Attempts to commit crimes – Punishment

Every person who attempts to commit any crime, and in such attempt does any act toward the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempt, as follows:

If the offense so attempted be punishable by imprisonment and or by a fine, the offender convicted of such attempt may be punished by both imprisonment and or fine, not exceeding one-half (1/2) the longest term of imprisonment and one-half (1/2) the largest fine which may be imposed upon a conviction for the offense so attempted.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O44.
Indians O621.

Westlaw Topic Nos. 110, 209.
C.J.S. Criminal Law §§ 148 to 158.

C.J.S. Indians §§ 151 to 179.

§ 43. Unsuccessful attempt—Another crime committed

The last two sections do not protect a person who in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

History

Source. LA 10–90, eff. November 13, 1990.

§ 44. Attempt defined

A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

1. purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or
2. when causing a particular result in an element of the crime, does anything with the purpose of causing or with the belief that it will cause such result, without further conduct on his part.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O44.
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 148 to 158.

§ 53. Attempt to conceal death of child—Punishment on subsequent conviction

Every person who, having endeavored to conceal the live birth of an child, or the death of any such child under the age of two (2) years, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O44.
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 148 to 158.

SENTENCE AND IMPRISONMENT

§ 61.1. Sentences to be served in order received by penal institution— Concurrent sentences

When any person is convicted of two or more crimes in the same proceeding or court or in different proceedings or courts, and the judgment and sentence for

each conviction arrives at a Cherokee Nation penal institution on different

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dates, the sentence which is first received at the institution shall commence and be followed by those sentences which are subsequently received at the institution, in the order in which they are received by the institution, regardless of the order in which the judgments and sentences were rendered by the respective courts, unless a judgment and sentence provides that it is to run concurrently with another judgment and sentence.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O621.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 61.2. Sentences to run concurrent with federal or state court sentence

When a defendant is sentenced in a Cherokee Nation Court and is also under sentence from a federal court or a state court, the Court may direct that custody of the defendant be relinquished to the federal or state authorities and that such Nation Court sentence as is imposed may run concurrently with the federal or state sentence imposed.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O621.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 61.4. Suspended sentence—Revocation—Relinquishment of custody

When a defendant has received a suspended sentence from a Cherokee Nation Court and is also under sentence from a federal court or a state court, the Court may revoke the suspended sentence and direct that custody of the defendant be relinquished to the federal or the state’s authorities and that the sentence may run concurrently with the federal or the state’s sentence which has been imposed.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O621.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 61.5. Return to Cherokee Nation to complete sentence

Provided, that, after a defendant has been transferred to another jurisdiction pursuant to the provisions of this title, if any sentence remains to be served in Cherokee Nation, such defendant shall be returned by the sentencing court to Cherokee Nation to complete his sentence.

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Criminal offenses, see 25 C.F.R. § 11.400 et seq.

Indian country detention facilities and programs, see 25 C.F.R. § 10.1 et seq.

Indian country law enforcement, see 25 C.F.R. § 12.1 et seq.

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CHAPTER 1
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- 12. Punishment of crimes
- 10a. Punishment of crimes concerning public officials, appointed officials or department heads
- 13. Specific statutes in other titles as governing—Acts punishable in different ways—Acts not otherwise punishable by imprisonment

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Amended. LA 01–91, eff. February 9, 1991.

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Westlaw Topic No. 110.

C.J.S. Conflict of Laws §§ 36, 60.

C.J.S. Criminal Law §§ 1, 25, 27 to 28, 31 to 36.

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§ 3. Crime and public offense defined

A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, any of the following punishments:

8. Imprisonment;
9. Fine;

10. Removal from office;
11. Disqualification to hold and enjoy any office of honor, trust, or profit, under this Nation;
12. Restitution;
13. Community service; or
14. Victim compensation assessment.

History

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Westlaw Topic No.110.
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The punishments prescribed by this title can be inflicted only upon a legal conviction in a court having jurisdiction.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O621.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 10. Punishment of crimes

Except in cases where a different punishment is prescribed by this title or by some existing provisions of law, every offense declared to be a crime is punishable by the maximum punishment provided for by the Indian Civil Rights

Act, 25 U.S.C. § 1302(a)(7). The Court may not impose for conviction of any one (1) offense any penalty or punishment greater than imprisonment for a

term of one (1) year or a fine of Five Thousand Dollars (\$5,000.00) or both; except that the Court may subject a defendant to a term of imprisonment greater than one (1) year but not to exceed three (3) years for any one (1) offense, or a fine greater than Five Thousand Dollars (\$5,000.00) but not to exceed Fifteen Thousand Dollars (\$15,000.00), or both, if the defendant is a person accused of a criminal offense who (a) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or (b) is being prosecuted for an offense comparable to an offense that would be punishable by more than one (1) year of imprisonment if prosecuted by the United States or any of the states.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 01–91, eff. February 9, 1991.

Amended. LA 10–13, eff. April 13, 2013.

Cross References

Abduction of person under 18, see 21 CNCA § 1119.
 Abuse of children, penalties, see 21 CNCA § 843.
 Abuse or exploitation of vulnerable adult by non-caretaker, see 21 CNCA § 843.3.
 Acts prohibited, see 21 CNCA § 1040.13.
 Assaults with intent to commit crime, punishment, see 21 CNCA § 681.
 Caretaker, abuse, neglect or financial exploitation of charge, see 21 CNCA § 843.1.
 Child stealing, punishment, see 21 CNCA § 891.
 Child under 18 years of age, inducing, keeping, detaining or restraining for prostitution, punishment, see 21 CNCA § 1088.
 Contempt, see 21 CNCA § 1040.21.
 Crime against nature, see 21 CNCA § 886.
 Duty to report obscene or pornographic material depicting minors, penalty, see 21 CNCA § 1021.4.
 Elements of offense, see 21 CNCA § 866.
 Exploitation of elderly persons or disabled adults, see 21 CNCA § 843.4.
 Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor, see 21 CNCA § 1040.13a.
 Guardians, etc., consent to participation of minors in child pornography, see 21 CNCA § 1021.3.
 Incest, penalty, see 21 CNCA § 885.
 Indecent exposure, indecent exhibitions or obscene material or child pornography, solicitation of minors, see 21 CNCA § 1021.
 Involvement in business decision, crime defined, see 28 CNCA § 12.
 Kidnapping defined, see 21 CNCA § 741.
 Lewd or indecent proposals or acts as to child under 18, see 21 CNCA § 1123.
 License required for gaming facilities, see 4 CNCA § 30.
 Loitering around residence to watch occupants, see 21 CNCA § 1171.
 Minors, child pornography, see 21 CNCA § 1021.2.
 Misprision of crime and false statements to law enforcement, see 21 CNCA § 450.
 Obscene, threatening or harassing telephone calls, penalty, see 21 CNCA § 1172.
 Offering or transporting child for purpose of prostitution, penalty, see 21 CNCA § 1087.
 Publication, distribution or participation in preparation of any obscene material or presentation, unsolicited mailings, penalty, see 21 CNCA § 1040.8.
 Punishment, see 21 CNCA § 867.
 Purchase, procurement or possession of child pornography, penalty, see 21 CNCA § 1024.2.
 Rape defined, see 21 CNCA § 1111.
 Residency restriction, sex offender notification and registration, penalty, see 57 CNCA § 17.
 Sex offender notification and registration, penalties generally, see 57 CNCA § 15.
 Sexual battery, see 21 CNCA § 1123.1.
 Showing at outdoor theaters of pictures depicting sexual intercourse prohibited under certain conditions, penalty, see 21 CNCA § 1040.52.
 Using computer networks to violate Cherokee Nation statutes, see 21 CNCA § 1124.
 Verbal abuse by caretaker, see 21 CNCA § 843.2.
 Zone of safety, see 21 CNCA § 1125.

United States Code

Constitutional rights, see 25 U.S.C. § 1302.

Library References

Indians O620.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 10a. Punishment of crimes concerning public officials, appointed officials or department heads

Any elected official, appointed official or department head who is convicted of a crime concerning bribery, embezzlement, fraud, perjury, or forgery or larceny may in addition to the punishments provided under this title, be subject to the punishment of disqualification from employment with Cherokee Nation.

History

Source. LA 18–06, eff. August 21, 2006.

Library References

Indians O627.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 11. Specific statutes in other titles as governing—Acts punishable in different ways—Acts not otherwise punishable by imprisonment

C. If there be in any other titles of the laws of this Nation a provision making any specific act or omission criminal and providing the punishment therefor, and there be in this penal code any provision or section making the same act or omission a criminal offense or prescribing the punishment therefor, that offense and the punishment thereof, shall be governed by the special provisions made in relation thereto, and not by the provisions of this penal code. But an act or omission which is made punishable in different ways by different provisions of this code may be punished under any of such provisions, the punishments therein prescribed are substituted for those prescribed for a first offense, but in no case can it be punished under more than one section of law; and an acquittal or conviction and sentence under any one section of law, bars the prosecution for the same act or omission under any other section of law.

D. Provided, however, notwithstanding any provision of law to the contrary, any offense, including traffic offenses, in violation of the laws of this Nation which is not otherwise punishable by a term of imprisonment or confinement shall be punishable by a term of imprisonment not to exceed one day in the discretion of the Court, in addition to any fine prescribed by law.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O627. Westlaw Topic No. 209.

IN GENERAL

21 CNCA §11

C.J.S. Indians §§ 151 to 179.

CHAPTER 2

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§ 21. Prohibited act a crime, when

Where the performance of an act is prohibited by any statute, and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law ○1, 13(2).
Westlaw Topic No. 110.

C.J.S. Criminal Law §§ 1 to 7, 10 to 11, 17,
31 to 33.

§ 22. Gross injuries—Grossly disturbing peace—Openly outraging public decency— Injurious acts not expressly forbidden

Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency, and is injurious to public morals, although no punishment is expressly prescribed therefor by this code, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law ○13(2).
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 31 to 33.

§ 24. Acts punishable under foreign laws

An act or omission declared punishable by this title is not less so because it is also punishable under the laws of a state, another government or country, unless the contrary is expressly declared in this title.

History

Source. LA 10–90, eff. November 13, 1990.

§ 25. Foreign conviction or acquittal

Whenever it appears upon the trial that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of a state, another government or country, founded upon the act or omission in respect to which he is upon trial, this is a sufficient defense.

History

Source. LA 10–90, eff. November 13, 1990.

§ 26. Contempts, criminal acts which are also punishable as

A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

History

Source. LA 10–90, eff. November 13, 1990.

§ 27. Mitigation of punishment

Where it is made to appear at the time of passing sentence upon a person convicted, that such person has already paid a fine or suffered an imprisonment for the act which he stands convicted, under an order adjudging it a contempt, the Court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O621.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 28. Aiding in a crime

Whenever an act is declared a crime, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act, is guilty of a crime, and punishable in the same manner as the principal offender.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O59(5), 68, 74.
Westlaw Topic No. 110.

C.J.S. Criminal Law §§ 170, 173 to 174, 176 to 181, 1349 to 1351, 1356.

§ 29. Sending letter—When complete—Place of prosecution

In the various cases in which the sending of a letter is made criminal by this title, the offense is deemed complete from the time when such letter is

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deposited in any post office or any other place, or delivered to any person with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it shall be received by the person to whom it is addressed.

History

Source. LA 10–90, eff. November 13, 1990.

§ 30. Failure to perform duty

No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

History

Source. LA 10–90, eff. November 13, 1990.

ATTEMPTS

§ 41. Conviction for attempt not permitted where crime is perpetrated

No person can be convicted of an attempt to commit a crime when it appears that the crime intended or attempted was perpetrated by such person in pursuance of such attempt.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O44.
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 148 to 158.

§ 42. Attempts to commit crimes – Punishment

Every person who attempts to commit any crime, and in such attempt does any act toward the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempt, as follows:

If the offense so attempted be punishable by imprisonment and or by a fine, the offender convicted of such attempt may be punished by both imprisonment and or fine, not exceeding one-half (1/2) the longest term of imprisonment and one-half (1/2) the largest fine which may be imposed upon a conviction for the offense so attempted.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O44.
Indians O621.

Westlaw Topic Nos. 110, 209.
C.J.S. Criminal Law §§ 148 to 158.

C.J.S. Indians §§ 151 to 179.

§ 43. Unsuccessful attempt—Another crime committed

The last two sections do not protect a person who in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

History

Source. LA 10–90, eff. November 13, 1990.

§ 44. Attempt defined

A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

3. purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or
4. when causing a particular result in an element of the crime, does anything with the purpose of causing or with the belief that it will cause such result, without further conduct on his part.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O44.
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 148 to 158.

§ 53. Attempt to conceal death of child—Punishment on subsequent conviction

Every person who, having endeavored to conceal the live birth of an child, or the death of any such child under the age of two (2) years, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O44.
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 148 to 158.

SENTENCE AND IMPRISONMENT

§ 61.1. Sentences to be served in order received by penal institution— Concurrent sentences

When any person is convicted of two or more crimes in the same proceeding or court or in different proceedings or courts, and the judgment and sentence for

each conviction arrives at a Cherokee Nation penal institution on different

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dates, the sentence which is first received at the institution shall commence and be followed by those sentences which are subsequently received at the institution, in the order in which they are received by the institution, regardless of the order in which the judgments and sentences were rendered by the respective courts, unless a judgment and sentence provides that it is to run concurrently with another judgment and sentence.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O621.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 61.2. Sentences to run concurrent with federal or state court sentence

When a defendant is sentenced in a Cherokee Nation Court and is also under sentence from a federal court or a state court, the Court may direct that custody of the defendant be relinquished to the federal or state authorities and that such Nation Court sentence as is imposed may run concurrently with the federal or state sentence imposed.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O621.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 61.4. Suspended sentence—Revocation—Relinquishment of custody

When a defendant has received a suspended sentence from a Cherokee Nation Court and is also under sentence from a federal court or a state court, the Court may revoke the suspended sentence and direct that custody of the defendant be relinquished to the federal or the state's authorities and that the sentence may run concurrently with the federal or the state's sentence which has been imposed.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O621.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 61.5. Return to Cherokee Nation to complete sentence

Provided, that, after a defendant has been transferred to another jurisdiction pursuant to the provisions of this title, if any sentence remains to be served in Cherokee Nation, such defendant shall be returned by the sentencing court to Cherokee Nation to complete his sentence.

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§ 309. Soliciting bribes – Trading votes

Every Member of the Council who asks, receives or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity or who gives, or offers or promises to give any official vote in consideration that another Member of the Council shall give any such vote, either upon the same or another question, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Bribery ○1.
Westlaw Topic No. 63.
C.J.S. Bribery §§ 1 to 3, 5 to 14.

§ 312. Forfeiture of office – Disqualification to hold office

The conviction of a Member of the Council of bribery involves as a consequence, in addition to the punishment prescribed by this code, a forfeiture of his office, and disqualifies him from ever afterwards holding any office under this Nation.

History

Source. LA 10–90, eff. November 13, 1990.

§ 318. Bribery

No person, firm, or member of a firm, corporation, or association shall give or offer any money, position or thing of value to any Member of the Council to influence him to work or to vote for any proposition, nor shall any Member of the Council accept any money, position, promise, or reward or thing of value for his work or vote upon any bill, resolution or measure before the Council.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Bribery ○1.
Westlaw Topic No. 63.
C.J.S. Bribery §§ 1 to 3, 5 to 14.

§ 321. Member of Council – Soliciting or securing employment with Cherokee Nation

It shall be unlawful for any Member of the Council to solicit, receive or

accept any money or thing of value either directly or through another person for soliciting or securing employment of or for another person from any department or institution of the Nation, where the said department or institution is supported in whole or in part from revenues levied pursuant to shall be given in any manner or upon any particular side of any question or matter

upon which he may be required to act in his official capacity, or who gives, or offers or promises to give any official vote in consideration that another Member of the Council shall give any such vote, either upon the same or another question, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 8

CRIMES AGAINST THE REVENUE AND PROPERTY OF THE NATION

Section

- 341. Embezzlement and false accounts by officers
- 344. Fraud by officer authorized to sell, lease or make contract
- 346. Obstructing the collection of taxes
- 349. Injuring or burning public buildings
- 351. False statement regarding taxes
- 353. Officer dealing in warrants—Crime
- 355. Member of governing body not to furnish public supplies for consideration
- 358. False, fictitious or fraudulent claims against Cherokee Nation
- 359. Penalties

§ 341. Embezzlement and false accounts by officers

Every public officer of the Nation and every deputy or clerk of any such officer and every other person receiving any money or other thing of value on behalf of or for account of this Nation or any department of the government of this Nation or any bureau or fund created by law and in which this Nation or the people thereof, are directly or indirectly interested, who either:

First: Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money or anything of value received by him as such officer, clerk, or deputy, or otherwise, on behalf of this Nation, or any subdivision of this Nation, or the people thereof, or in which they are interested; or

Second: Receives, directly or indirectly, any interest, profit or perquisites, arising from the use or loan of public funds in his hands or money to be raised through his agency for the Nation; or

Third: Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to any monies so received by him, on behalf of the Nation, or the people thereof, or in which they are interested; or

Fourth: Fraudulently alters, falsifies, cancels, destroys or obliterates any such account; or

Fifth: Willfully omits or refuses to pay over to the Nation, or its officers or agents authorized by law to receive the same, any money or interest, profit or perquisites arising therefrom, received by him under any duty imposed by law so to pay over the same, shall upon conviction thereof, be deemed guilty of a crime, and in addition thereto shall be disqualified to hold office in this Nation, and the court shall issue an order of such forfeiture, and should appeal be taken from the judgment of the Court, the defendant may, in the discretion of the Court, stand suspended from such office until such cause is finally determined.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement O21.
Westlaw Topic No. 146.

C.J.S. Embezzlement §§ 30, 32 to 35.

§ 344. Fraud by officer authorized to sell, lease or make contract

Every public officer, being authorized to sell or lease any property, or make any contract in his official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Public Contracts O460.
Westlaw Topic No. 316H.

C.J.S. States § 276.
C.J.S. Towns §§ 128 to 131.

C.J.S. Municipal Corporations §§ 1185 to
1190, 1360.

§ 346. Obstructing the collection of taxes

Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which, or any part of which the people of this Nation are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice O117.
Westlaw Topic No. 282.
C.J.S. Escape and Related Offenses; Rescue
§ 32.

C.J.S. Obstructing Justice or Governmental
Administration §§ 11 to 19, 22 to 34, 36 to
66, 73 to 74, 80, 85 to 89.

§ 349. Injuring or burning public buildings

Every person who willfully burns, destroys, or injures any public buildings or improvements in this Nation, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Arson O1.
Malicious Mischief O1.
Westlaw Topic Nos. 36, 248.

§ 351. False statement regarding taxes

C.J.S. Arson §§ 1 to 4, 9 to 29.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

Every person who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states

CRIMES AGAINST NATION REVENUE/PROPERTY 21 CNCA § 359

any material matter which he knows to be false, is guilty, upon conviction, of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 353. Officer dealing in warrants – Crime

It shall be unlawful for any public officer or deputy or employee of such officer to either directly or indirectly, buy, barter for, or otherwise engage in any manner in the purchase of any bonds, warrants or any other evidence of indebtedness against this Nation, any subdivision thereof, of which he is an officer.

History

Source. LA 10–90, eff. November 13, 1990.

§ 355. Member of governing body not to furnish public supplies for consideration

It shall be unlawful for any Member of the Council of the nation to furnish, for a consideration any material or supplies for the use of said Nation or subdivision.

History

Source. LA 10–90, eff. November 13, 1990.

§ 358. False, fictitious or fraudulent claims against Cherokee Nation

It shall be unlawful for any person, firm, corporation, association or agency to make, present, or cause to be presented to any employee or officer of Cherokee Nation, or to any department or agency thereof, any false, fictitious or fraudulent claim for payment of public funds upon or against Cherokee Nation, or any department or agency thereof, knowing such claim to be false, fictitious or fraudulent.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Fraud O68.10.
Westlaw Topic No. 184.
C.J.S. Fraud §§ 125 to 132.

§ 359. Penalties

Any person, firm, corporation, association or agency found guilty of violating the foregoing section shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

PART II
CRIMES AGAINST PUBLIC JUSTICE
CHAPTER 10
BRIBERY AND CORRUPTION

Section

- 380. Bribery of fiduciary
- 381. Bribing officers
- 382. Officers receiving bribes
- 383. Bribing jurors, referees, etc.
- 384. Receiving bribes by jurors, referees, etc.
- 385. Misconduct of jurors
- 386. Accepting gifts
- 387. Gifts defined
- 388. Attempts to influence jurors
- 389. Drawing jurors fraudulently
- 390. Misconduct by officer in charge of jury

§ 380. Bribery of fiduciary

A. Any fiduciary who, with a corrupt intent and without the consent of his beneficiary, intentionally or knowingly solicits, accepts, or agrees to accept any bribe from another person with the agreement or understanding that the bribe as defined by law will influence the conduct of the fiduciary in relation to the affairs of his beneficiary, upon conviction, is guilty of a crime.

B. Any person who offers, confers, or agrees to confer any bribe the acceptance of which is an offense pursuant to the provisions of subsection (A) of this section, upon conviction, is guilty of a crime.

C. As used in subsection (A) of this section:

- 1. **“Beneficiary”** means any person for whom a fiduciary is acting.
- 2. **“Fiduciary”** means:
 - a. an agent or employee; or
 - b. a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary; or
 - c. a lawyer, physician, accountant, appraiser, or other professional advisor; or
 - d. an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Bribery O1(1).
Westlaw Topic No. 63.
C.J.S. Bribery §§ 1 to 3, 5 to 10, 13 to 14.

§ 381. Bribing officers

Whoever corruptly gives, offers, or promises to any executive, legislative, judicial, or other public officer, or any employee of Cherokee Nation or any political subdivision thereof, including peace officers and any other law enforcement officer, or any person assuming to act as such officer, after his election or appointment, either before or after he has qualified or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or judgment on any matter, question, cause, or proceeding which then may be pending, or may by law come or be brought before him in his official capacity, or as a consideration for any speech, work, or service in connection therewith, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Bribery O1(2).
Westlaw Topic No. 63.
C.J.S. Bribery §§ 1 to 3, 5 to 14.

§ 382. Officers receiving bribes

Every executive, legislative, judicial, or other public officer, or any employee of Cherokee Nation or any political subdivision thereof, including peace officers and any other law enforcement officer, or any person assuming to act as such officer, who corruptly accepts or requests a gift or gratuity, or a promise to make a gift, or a promise to do an act beneficial to such officer, or that judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust, or appointment under the laws of this Nation, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Bribery O1(2).
Westlaw Topic No. 63.
C.J.S. Bribery §§ 1 to 3, 5 to 14.

§ 383. Bribing jurors, referees, etc.

Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, umpire or assessor, or to any person who may be authorized by law or agreement of parties interested to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, is guilty of a

crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Bribery O1(2).
Westlaw Topic No. 63.
C.J.S. Bribery §§ 1 to 3, 5 to 14.

§ 384. Receiving bribes by jurors, referees, etc.

Every juror, referee, arbitrator, umpire or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, shall be thereby influenced, is guilty of crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Bribery O1(2).
Westlaw Topic No. 63.
C.J.S. Bribery §§ 1 to 3, 5 to 14.

§ 385. Misconduct of jurors

Every juror or person drawn or summoned as a juror, or chosen arbitrator, or umpire, or appointed referee, who either:

1. Makes any promise or agreement to give a verdict for or against any party; or
2. Willfully permits any communication to be made to him, or receives any book, paper, instrument, or information relative to any cause pending before him, except according to the regular course of proceeding upon the trial of such cause,

is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 386. Accepting gifts

Bribery O1(2).
Westlaw Topic No. 63.
C.J.S. Bribery §§ 1 to 3, 5 to 14.

Library References

Every judicial officer, juror, referee, arbitrator or umpire, who accepts any gift from any person, knowing him to be a party in interest or the attorney or counsel of any party in interest to any action or proceeding then pending or about to be brought before him, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 387. Gifts defined

The word “**gift**” in the foregoing section shall not be taken to include property received by inheritance, by will or by gift in view of death.

History

Source. LA 10–90, eff. November 13, 1990.

§ 388. Attempts to influence jurors

Every person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as arbitrator or appointed a referee, in respect to his verdict, or decision of any cause or matter pending, or about to be brought before him, either:

- 1st, By means of any communication oral or written had with him, except in the regular course of proceedings upon the trial of the cause;
- 2nd, By means of any book, paper, or instrument, exhibited otherwise than in the regular course of proceedings, upon the trial of the cause;
- 3rd, By means of any threat or intimidation;
- 4th, By means of any assurance or promise of any pecuniary or other advantage; or,
- 5th, By publishing any statement, argument or observation relating to the cause, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice ○143.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration § 10.

§ 389. Drawing jurors fraudulently

Every person authorized by law to assist at the drawing of any jurors to attend any court, who willfully puts or consents to the putting upon any list of jurors as having been drawn any name which shall not have been drawn for that purpose in the manner prescribed by law; or, who omits to place on such list any name that shall have been drawn in the manner prescribed by law, or who signs or certifies any list of jurors as having been drawn which was not drawn according to law; or, who is guilty of any other unfair, partial or improper conduct in the drawing of any such list of jurors, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 390. Misconduct by officer in charge of jury

Every officer to whose charge any juror or jury is committed by any court or

magistrate who negligently or willfully permits them, or any one of them, either:

1. To receive any communication from any person;
2. To make any communication to any person;
3. To obtain or receive any book or paper or refreshment; or
4. To leave the jury room, the jury box, or his immediate custody or control, without the leave of such court or magistrate first obtained, is guilty of a crime.

Every bailiff, or other officer or person, into whose custody and care any court of record contemplates committing any juror or jury, before entering upon his duties as such for the Court term or such lesser period of such service as the Court may determine, shall first be admonished and shall make in writing and file with the Clerk of such Court a solemn oath, sworn to before the Clerk or Judge of such Court, to the effect that he will regard the foregoing provisions of this section and that he will faithfully prevent the same and obstruct any attempt to accomplish or to attempt to do any of them, but at the same time to have regard to the comfort and well-being of the jurors and all of them, entrusted into his care in each and every jury trial in any cause during such Court term or lesser period of appointment by such Court.

In every Court the same admonition shall be given and the same oath required as above, in each jury trial; but the Court shall have the option whether the same be oral, or in writing and filed in such case, but thereafter during the trial of the same cause and until such jury is dismissed from further consideration of the same it shall not be necessary, for all intent and purposes of this act, to administer again such admonition or to require such oath.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 11

CONSPIRACY

Section

- 421. Conspiracy—Definition—Punishment
- 422. Conspiracy outside Cherokee Nation against the peace of the Nation
- 423. Overt act necessary
- 424. Punishment for conspiracy against Cherokee Nation

§ 421. Conspiracy – Definition – Punishment

- A. If two or more persons conspire, either:
 - 1. To commit any crime; or
 - 2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or
 - 3. Falsely to move or maintain any suit, action or proceeding; or
 - 4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat or to obtaining money or property by false pretenses; or
 - 5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws, they are guilty of a conspiracy.
- B. Except in cases where a different punishment is prescribed by law the punishment for conspiracy shall be a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Conspiracy O23, 28, 32.
Westlaw Topic No. 91.

C.J.S. Conspiracy §§ 94 to 97, 99 to 112, 115 to 139, 141 to 149, 159 to 160, 168, 236 to 262, 273 to 278, 286 to 289, 291.

§ 422. Conspiracy outside Cherokee Nation against the peace of the Nation

If two or more persons, being out of this Nation, conspire to commit any act against the peace of this Nation, the commission or attempted commission of which, within this nation, would be treason against the Nation, they are guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 423. Overt act necessary

No agreement to commit a crime amounts to a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

Source. LA 10–90, eff. November 13, 1990.

History

Library References

Conspiracy O27.
Westlaw Topic No.91.

C.J.S. Conspiracy §§ 94 to 96, 116 to 117,
144 to 149, 241 to 242.

§ 424. Punishment for conspiracy against Cherokee Nation

If two or more persons conspire either to commit any offense against Cherokee Nation, any subdivision thereof, or to defraud Cherokee Nation, any subdivision thereof, in any manner or for any purpose, and if one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Conspiracy O41.
Westlaw Topic No.91.

C.J.S. Conspiracy §§ 140, 161 to 162, 164 to
167.

CHAPTER 11A

ELECTION FRAUD

Section

- 425. Voting fraud
- 426. Unlawful influence of voters
- 427. Receiving the votes of unqualified voters
- 428. Tampering with election returns

§ 425. Voting fraud

Every person, not having the qualification of a voter, who shall fraudulently vote, or attempt to vote, at any election, or who shall vote or attempt to vote, more than once for the same candidate, at any election, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not less than One Hundred Dollars (\$100.00), and be imprisoned for any time less than one (1) year and exceeding six (6) months, and be forever disqualified from voting.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Election Law O695.
Westlaw Topic No. 142T.

§ 426. Unlawful influence of voters

Every person who shall by bribery, treats or offers of employment, attempt to influence any voter in giving his vote, or shall use threats to procure any voter to vote contrary to the inclination of such voter, or to deter him from giving his vote, shall be deemed guilty of a crime, and, upon conviction, be fined in a sum of not less than One Hundred Dollars (\$100.00), and not more than Five Hundred Dollars (\$500.00), or be imprisoned for any time less than one (1) year, and exceeding three (3) months, or both by fine and imprisonment, at the discretion of the Court.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Election Law O696.
Westlaw Topic No. 142T.

§ 427. Receiving the votes of unqualified voters

Any Election Board member who shall willfully and knowingly receive or sanction the reception of the vote of any person not having the qualification of a voter, or who shall be guilty of a wilful neglect of duty, or of any corrupt action in the execution of the same, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined in a sum of not less than One Hundred Dollars (\$100.00), nor

more than One Thousand Dollars (\$1,000.00), and be imprisoned for any term less than one (1) year and exceeding three (3) months.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Election Law O689.
Westlaw Topic No. 142T.

§ 428. Tampering with election returns

Any person, who shall fraudulently alter, mutilate, destroy, or unlawfully open, after being sealed up, any returns of election, shall be deemed guilty of a misdemeanor, and, upon conviction, be imprisoned for any term less than one (1) year and exceeding three (3) months.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 12

ESCAPES AND AIDING THEREIN

Section

- 431. Rearrest of escaped prisoners
- 434. Escape from penal institution
- 436. Attempt to escape from penal institution
- 437. Assisting prisoner to escape
- 438. Carrying into penal institution things to aid escape
- 439. Concealing escaped prisoner
- 440. Harboring criminals and fugitives—Penalty
- 441. Assisting escape from officer
- 442. Prisoner defined
- 443. Escape from penal institution
- 443A. Additional punishment under rules and regulations of penal institution after escape
- 444. Escape or attempt to escape from arrest or detention
- 445. Unauthorized entry into penal institution, jail, etc.—Penalties

§ 431. Rearrest of escaped prisoners

Every prisoner confined upon conviction for a criminal offense, who escapes from a penal institution, may be pursued, retaken and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he is retaken, and he shall remain so imprisoned until tried for such escape, or discharged, on a failure to prosecute therefor.

History

Source. LA 10–90, eff. November 13, 1990.

§ 434. Escape from penal institution

Every prisoner confined in the penal institution, who escapes by force or fraud from such penal institution, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Escape O4.
Westlaw Topic No. 151.

C.J.S. Escape and Related Offenses; Rescue
§§ 16, 21 to 23.

§ 436. Attempt to escape from penal institution

Every prisoner confined in any penal institution who attempts by force or fraud, although unsuccessfully, to escape therefrom, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Westlaw Topic No. 151.

Escape O5.5.

Library References

C.J.S.
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§ 437. Assisting prisoner to escape

Every person who willfully by any means whatever, assists any prisoner confined in any penal institution to escape therefrom, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Escape ○5.
Westlaw Topic No. 151.

C.J.S. Escape and Related Offenses; Rescue
§§ 24 to 28, 30.

§ 438. Carrying into penal institution things to aid escape

Every person who carries or sends into any penal institution anything useful to aid any prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Escape ○5.
Westlaw Topic No. 151.

C.J.S. Escape and Related Offenses; Rescue
§§ 24 to 28, 30.

§ 439. Concealing escaped prisoner

Every person who willfully and knowingly conceals any prisoner, who having been confined in penal institution upon a charge or conviction of crime, has escaped therefrom, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice ○145.
Westlaw Topic No. 282.
C.J.S. Compounding Offenses § 5.

C.J.S. Escape and Related Offenses; Rescue
§ 31.

§ 440. Harboring criminals and fugitives – Penalty

Any person who shall knowingly feed, lodge, clothe, arm, equip in whole or in part, harbor, aid, assist or conceal in any manner any person guilty of any crime, or outlaw, or fugitive from justice, or any person seeking to escape arrest for any crime committed within this Nation or state, jurisdiction or territory, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice O145.

Westlaw Topic No. 282.

C.J.S. Compounding Offenses § 5.

C.J.S. Escape and Related Offenses; Rescue
§ 31.

§ 441. Assisting escape from officer

Every person who willfully assists any prisoner in escaping or attempting to escape from the custody of any officer or person having the lawful charge of such prisoner under any process of law or under any lawful arrest, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Escape O5.
Westlaw Topic No. 151.

C.J.S. Escape and Related Offenses; Rescue
§§ 24 to 28, 30.

§ 442. Prisoner defined

The term “**prisoner**” in this chapter includes every person held in custody under process of law issued from a court of competent jurisdiction, whether civil or criminal, or under any lawful arrest.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Escape O1.
Westlaw Topic No. 151.

C.J.S. Escape and Related Offenses; Rescue
§§ 1 to 4, 6 to 10, 12 to 17, 50.

§ 443. Escape from penal institution

Any person having been imprisoned awaiting charges or prisoner awaiting trial or having been sentenced to confinement who escapes from such confinement, either while actually confined therein, or while permitted to be at large as a trusty, or while awaiting transportation thereto, is guilty of a crime regardless of being in physical custody.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Escape O4.
Westlaw Topic No. 151.

C.J.S. Escape and Related Offenses; Rescue
§§ 16, 21 to 23.

§ 443A. Additional punishment under rules and regulations of penal institution after escape

In addition, all prisoners who escape from the aforesaid penal institutions either while confined therein, or while at large as a trusty, when apprehended and

returned to the penal institution, shall be punishable by the penal institution authorities in such manner as may be prescribed by the rules and regulations of the penal institution, provided that such punishment shall not be cruel or unusual.

History

Source. LA 10–90, eff. November 13, 1990.

§ 444. Escape or attempt to escape from arrest or detention

A. It is unlawful for any person, after being lawfully arrested or detained by a peace officer, to escape or attempt to escape from such peace officer.

B. Such person who escapes or attempts to escape after being lawfully arrested or detained for custody for a crime offense shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Escape ○1.

Westlaw Topic No. 151.

C.J.S. Escape and Related Offenses; Rescue

§§ 1 to 4, 6 to 10, 12 to 17, 50.

§ 445. Unauthorized entry into penal institution, jail, etc. — Penalties

Any person who willfully gains unauthorized entry into any Cherokee Nation penal institution, any place where prisoners are located, or the penal institution grounds, upon conviction, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 13

FALSIFYING EVIDENCE

Section

- 450. Misprision of crime and false statements to law enforcement
- 451. Offering false evidence
- 452. Deceiving witness
- 453. Preparing false evidence
- 454. Destroying evidence
- 455. Preventing witness from giving testimony
- 456. Bribing witness—Subornation of perjury

§ 450. Misprision of crime and false statements to law enforcement

A. Misprision of crime. It shall be unlawful for any person having knowledge of the actual commission of a crime cognizable by a Court of the Cherokee Nation, which crime would be a felony under the laws of the State of Oklahoma or the United States of America, to affirmatively conceal and not make known that crime to a Cherokee Nation Judge or some other person in civil authority within Cherokee Nation. Such act shall constitute a crime against Cherokee Nation, and shall be punished as provided in 21 CNCA § 10.

B. False statement to law enforcement. In connection with a law enforcement investigation, whoever, in any manner within the jurisdiction of Cherokee Nation knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be guilty of a crime, subject to punishment as provided in 21 CNCA § 10.

History

Source. LA 31–03, eff. November 19, 2003.

Library References

Obstructing Justice ○147.
Westlaw Topic No. 282.

C.J.S. Compounding Offenses §§ 1 to 3, 9 to
10, 13.

§ 451. Offering false evidence

Every person who, upon any trial, proceedings, inquiry or investigation whatever, authorized by law, offers in evidence, as genuine, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged, or fraudulently altered, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

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Obstructing Justice 128. Westlaw Topic No. 282.

Library References

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§ 452. Deceiving witness

Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, proceeding by authority of law, with intent to affect the testimony of such witness, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice O139.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 67, 72, 78.

§ 453. Preparing false evidence

Every person guilty of falsely preparing any book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced as genuine upon any trial, proceeding or inquiry whatever, authorized by law, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice O130, 131.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 74, 79 to 81.

§ 454. Destroying evidence

Every person who knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, proceeding, inquiry or investigation whatever, authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice O133.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 79 to 81.

§ 455. Preventing witness from giving testimony

Every person who willfully prevents any person from giving testimony who has been duly summoned or subpoenaed or endorsed on the criminal information as a witness or threatens physical or mental harm through force or fear with the intent to prevent the witness from appearing in Court to give his testimony, or to alter his testimony, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice ○138.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 67, 72, 78, 82, 88.

§ 456. Bribing witness – Subornation of perjury

Every person who gives or offers or promises to give to any witness or person about to be called as a witness in any matter whatever, any bribe upon any understanding or agreement that the testimony of such witness shall be influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony is guilty of a crime, but if the offer, promise, or bribe is in any way to induce the witness to swear falsely, then it shall be held to be subornation of perjury.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Perjury ○13.
Westlaw Topic No. 297.

CHAPTER 14

FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS

Section

- 461. Larceny or destruction of records by clerk or officer
- 462. Larceny or destruction of records by other persons
- 463. Offering forged or false instruments for record
- 464. Forging name to petition—Penalties

§ 461. Larceny or destruction of records by clerk or officer

Every clerk, register or other officer having the custody of any record, maps or book, or of any paper or proceeding of any Court, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying or unlawfully removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 462. Larceny or destruction of records by other persons

Every person not an officer such as is mentioned in the last section, who is guilty of any of the acts specified in that section, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 463. Offering forged or false instruments for record

Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this Nation, which instrument, if genuine, might be filed or registered or recorded under any law of this Nation or of the United States, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Fraud O68.10.
Westlaw Topic No. 184.
C.J.S. Fraud §§ 125 to 132.

§ 464. Forging name to petition—Penalties

Any person who shall knowingly sign, subscribe or forge the name of any other person, without the consent of such other person, to any petition, application, remonstrance, or other instrument of writing, authorized by law to be filed in or with any Court, board or officer, with intent to deceive or mislead such Court, board or officer, shall be guilty of a crime.

FORGING, ETC. RECORDS & DOCUMENTS

21 CNCA § 464

History

Source. LA 10–90, eff. November 13, 1990.

Forgery O15.
Westlaw Topic No. 181.
C.J.S. Forgery § 26.

CHAPTER 15

ILLEGAL USE OF GOVERNMENT DOCUMENTS

Section

471. Criminal activity with respect to Cherokee Nation citizenship

§ 471. Criminal activity with respect to Cherokee Nation citizenship

A. A person who knowingly buys or barterers the Cherokee Nation Citizenship Card from another tribal citizen for whatever purposes may be subject to criminal prosecution. The penalty upon conviction of the offense specified in this subsection shall be no longer than one (1) year imprisonment, or a fine of no more than Five Thousand Dollars (\$5,000.00), or both.

B. A person who knowingly sells or barterers his or her Cherokee Nation Citizenship Card to another tribal citizen or person for whatever purposes maybe subject to criminal prosecution. The penalty upon conviction of the offense specified in this subsection shall be no longer than one (1) year imprisonment, or a fine of no more than Five Thousand Dollars (\$5,000.00), or both.

C. In addition to the foregoing sanctions, any person who knowingly buys, sells, or barterers the Cherokee Nation Citizenship Card to or from another person for whatever purposes may be subject to a civil penalty as hereinafter provided. The penalty for violating this subsection shall be a fine of not more than Five Thousand Dollars (\$5,000.00).

D. Any person who knowingly uses, or allows another person to use, any Cherokee Nation Citizenship Card, Cherokee Nation Registry Number, or Cherokee Roll Number, for the purpose of defrauding Cherokee Nation or the United States, or for any other fraudulent purpose, may be subject to criminal prosecution. The penalty upon conviction of the offense specified in this subsection shall be no longer than one (1) year imprisonment, no greater than a Five Thousand Dollars (\$5,000.00) fine, or both.

History

Source. LA 2-93, eff. August 11, 1993.

CHAPTER 16

NEPOTISM

Section

- 481. Repealed
- 482. Unlawful to pay salary to ineligible persons
- 483. Appointment of one related to another officer
- 485. Penalty
- 486. Removal from office for violation of chapter
- 487. Officers affected

§ 481. Repealed by LA 34-07, eff. September 13, 2007

History

The repealed section related to nepotism in appointments within Cherokee Nation departments, and was derived from LA 10-90.

§ 482. Unlawful to pay salary to ineligible persons

It shall be unlawful for any such executive, legislative, ministerial or judicial officer mentioned in the preceding section, to draw or authorize the drawing of any warrant or authority for the payment out of any public fund, of the salary, wages, pay or compensation of any such ineligible person, and it shall be unlawful for any executive, legislative, ministerial or judicial officer to pay out of any public funds in his custody or under his control the salary, wages, pay or compensation of any such ineligible person.

History

Source. LA 10-90, eff. November 13, 1990.

Library References

Officers and Public Employees O121.
Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 445
to 452.

§ 483. Appointment of one related to another officer

It shall be unlawful for any executive, legislative, ministerial, or judicial officer to appoint and furnish employment for any person whose services are to be rendered under his direction and control and paid for out of the public funds, and who is related by either blood or marriage within the third degree to any other executive, legislative, ministerial or judicial officer when such appointment is made in part consideration that such other officer shall appoint and furnish employment to any one so related to the officer making such appointment.

History

Source. LA 10-90, eff. November 13, 1990.

Library References

Officers and Public Employees O121.

Westlaw Topic No. 283.

C.J.S. Officers and Public
Employees §§ 445 to 452.

§ 485. Penalty

Any executive, legislative, ministerial or judicial officer who shall violate any provision of this article, shall be deemed guilty of a crime involving official misconduct.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Officers and Public Employees O121.
Westlaw Topic No. 283.

C.J.S. Officers and Public Employees §§ 445
to 452.

§ 486. Removal from office for violation of chapter

Every person guilty of violating the provisions of this chapter, shall, independently of, or in addition to any criminal prosecution that may be instituted, be removed from office according to the mode of trial and removal prescribed in the Constitution and laws of this Nation.

History

Source. LA 10–90, eff. November 13, 1990.

§ 487. Officers affected

Under the designation executive, legislative, ministerial or judicial officer as mentioned herein are included the Principal Chief, Deputy Principal Chief, Council Members, Commissioners, all the heads of the Departments of the Nation Government, Judges of all the Courts of this Nation, Trustees, Officers and Commissioners of subdivisions of the Nation.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 17

PERJURY AND SUBORNATION OF PERJURY

Section

- 491. Perjury defined—Defense
- 492. Oath defined
- 493. Oath of office
- 494. Irregularities no defense
- 495. Incompetency no defense
- 497. Making deposition or certificate
- 498. Degree of proof required
- 500. Punishment for perjury
- 501. Summary committal of witness
- 503. Documents may be retained
- 504. Perjury by subornation—Attempted perjury by subornation
- 505. Punishment of subornation of perjury

§ 491. Perjury defined—Defense

Whoever, in a trial, hearing, investigation, deposition, certification or declaration, in which the making or subscribing of a statement is required or authorized by law, makes or subscribes a statement under oath, affirmation or other legally binding assertion that the statement is true, when in fact the witness or declarant does not believe that the statement is true or knows that it is not true or intends thereby to avoid or obstruct the ascertainment of the truth, is guilty of perjury. It shall be a defense to the charge of perjury as defined in this section that the statement is true.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Perjury O1, 15.
Westlaw Topic No.297.

C.J.S. Perjury §§ 1 to 3, 5 to 10, 17 to 19, 33
to 34, 46 to 50.

§ 492. Oath defined

The term “**oath**,” as used in the last section, includes an affirmation, and every other mode of attesting the truth of that which is stated, which is authorized by law.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Perjury O8, 10.
Westlaw Topic No.297.
C.J.S. Perjury §§ 10, 33 to 38.

§ 493. Oath of office

So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the previous sections.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Perjury O8, 10.
Westlaw Topic No.297.
C.J.S. Perjury §§ 10, 33 to 38.

§ 494. Irregularities no defense

It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Perjury O15.
Westlaw Topic No. 297.
C.J.S. Perjury §§ 17 to 19, 46 to 50.

§ 495. Incompetency no defense

It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was required to give such testimony or made such deposition or certificate.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Perjury O15.
Westlaw Topic No. 297.
C.J.S. Perjury §§ 17 to 19, 46 to 50.

§ 497. Making deposition or certificate

The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person with the intent that it be uttered or published as true.

History

Source. LA 10–90, eff. November 13, 1990.

§ 498. Degree of proof required

A. Proof of guilt beyond a reasonable doubt is sufficient for conviction under

this chapter, and it shall not be necessary also that proof be by a particular number of witnesses or by documentary or other type of evidence.

B. Lack of materiality of the statement is not a defense but the degree to which a perjured statement might have affected some phase or detail of the trial, hearing, investigation, deposition, certification or declaration shall be considered, together with the other evidence or circumstances, in imposing sentence.

PERJURY

21 CNCA § 504

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Perjury ○33.
Westlaw Topic No. 297.
C.J.S. Perjury § 60.

§ 500. Punishment for perjury

Perjury is a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Perjury ○1.
Westlaw Topic No. 297.

C.J.S. Perjury §§ 1 to 3, 5 to 10, 33 to 34.

§ 501. Summary committal of witness

Whenever it appears probable in any court of record, that any person who has testified in any action or proceeding in such Court has committed perjury, such Court must immediately commit such person by an order or process for that purpose to a penal institution or take a recognizance with sureties for his appearance and answering to an information for perjury.

History

Source. LA 10–90, eff. November 13, 1990.

§ 503. Documents may be retained

If, upon the hearing of such action or proceeding in which such perjury has probably been committed, any papers or documents produced by either party shall be deemed necessary to be used on the prosecution for such perjury, the Court may by order detain such papers or documents from the party producing them, and direct them to be delivered to the Prosecuting Attorney.

History

Source. LA 10–90, eff. November 13, 1990.

§ 504. Perjury by subornation – Attempted perjury by subornation

Whoever procures another to commit perjury is guilty of perjury by subornation. Whoever does any act with the specific intent to commit perjury by subornation but fails to complete that offense is guilty of attempted perjury by subornation.

Source. LA 10–90, eff. November 13, 1990.

History

Perjury O13, 14.

Library References

Westlaw Topic No. 297.

§ 505. Punishment of subornation of perjury

Any person guilty of subornation of perjury is punishable in the same manner as he would be if personally guilty of the perjury so procured.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 18

RESCUES

Section

521. Rescuing prisoners

522. Taking goods from legal custody

§ 521. Rescuing prisoners

Every person who by force or fraud rescues or attempts to rescue, or aids another person in rescuing or in attempting to rescue any prisoner from any officer or other person having him in lawful custody, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Rescue O1.

Westlaw Topic No. 337.

C.J.S. Escape and Related Offenses; Rescue

§§ 33 to 36, 38, 50.

§ 522. Taking goods from legal custody

Every person who willfully injures or destroys, takes or attempts to take, or assists any other person in taking or attempting to take from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 19

OTHER CRIMES AGAINST PUBLIC JUSTICE

Section

- 531. Injury to records—Embezzlement by officer
- 532. Permitting escapes
- 533. Refusing to receive prisoners
- 535. Arrest without authority
- 537. Refusing to aid officer
- 538. Refusing to make arrest
- 540. Obstructing officer
- 540A. Eluding police officer
- 540B. Roadblocks
- 543. Compounding crimes
- 544. Compounding prosecution
- 545. Attempt to intimidate officer
- 546. Suppressing evidence
- 547. Buying lands in suit
- 554. Attorneys—Buying demands for suit—Misleading inferior courts
- 555. Prosecutors and their partners
- 556. Prosecutor advising the defense
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- 565. Definition of direct contempt and indirect contempt
- Trial court—Power to punish contempt—Censure—Contempt proceedings
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- 567. Indirect contempts—Notice—Trial by jury—Appearance bond
- 567.1. Indirect contempt for failure to pay child support—Purge fee
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- 573. Fraudulent concealment of property
- 575. Attorneys, misconduct by—Deceit—Delaying suit—Receiving allowance for money not laid out
- 576. Attorney permitting other person to use his name
- 577. Attorneys, use of name lawful, when
- 578. Inheritance, intercepting by fraudulent production of infant
- 579. Substituting child
- 584. Prosecuting suit or bringing action or procuring arrest in false name
- 587. False certificate by public officer
- 588. Recording of petit jury proceedings—Listening or observing—Penalty
- 589. False reporting of crime

§ 531. Injury to records—Embezzlement by officer

Every sheriff, marshal, police officer, clerk, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of an ministerial officer who either:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or
2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property entrusted to him in virtue of his office;

is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement ○21.
Westlaw Topic No. 146.

C.J.S. Embezzlement §§ 30, 32 to 35.

§ 532. Permitting escapes

Every sheriff, marshal, policeman, coroner, clerk of a court, constable or other ministerial officer and any deputy or subordinate of any ministerial officer, who either:

1. Willfully or carelessly allows any person lawfully held by him in custody to escape or go at large, except as may be permitted by law; or
2. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or
3. Commits any unlawful act tending to hinder justice;

is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Escape ○5.
Westlaw Topic No. 151.

C.J.S. Escape and Related Offenses; Rescue
§§ 24 to 28, 30.

§ 533. Refusing to receive prisoners

Every officer who, in violation of a duty imposed upon him by law as such officer to receive into his custody any person as a prisoner, willfully neglects or refuses so to receive such person into his custody, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 535. Arrest without authority

Every public officer or person pretending to be a public officer, who under the pretense or color of any process or other legal authority arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses anyone of any lands or tenements without due and legal process, is guilty of a crime.

Source. LA 10–90, eff. November 13, 1990.

History**Cross References**

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

False Personation ○1.
Westlaw Topic No. 169.
C.J.S. False Personation §§ 2 to 4.

§ 537. Refusing to aid officer

Every person who, after having been lawfully commanded to aid any officer in arresting any person or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 538. Refusing to make arrest

Every person who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 540. Obstructing officer

Every person who willfully delays or obstructs any peace officer in the discharge or attempt to discharge any duty of his office, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice ○118. Westlaw Topic No. 282.	C.J.S. Obstructing Justice or Governmental Administration §§ 13 to 19, 22 to 34, 36 to 51, 53 to 66, 73.
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§ 540A. Eluding police officer

Any operator of a motor vehicle who has received a visual and audible signal, a red light and a siren from a peace officer driving a motor vehicle showing the same to be an official police, marshal, sheriff, highway patrol or state game ranger vehicle directing the said operator to bring his vehicle to a stop and who willfully increases his speed or extinguishes his lights in an attempt to elude such peace officer, or wilfully attempts in any other manner to elude the peace officer, or who does elude such peace officer, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Automobiles O324.
Westlaw Topic No. 48A.

C.J.S. Motor Vehicles §§ 1504 to 1505, 1508
to 1510, 1659, 1728 to 1731, 1750 to 1751.

§ 540B. Roadblocks

A peace officer may set up one or more roadblocks to apprehend any person riding upon or within a motor vehicle traveling upon a highway, street, turnpike, or area accessible to motoring public, when the officer has probable cause to believe such person is committing or has committed:

1. a violation of 21 CNCA § 540A;
2. escape from the lawful custody of any peace officer;
3. a crime under the laws of this Nation or the laws of any other jurisdiction.

A roadblock is defined as a barricade, sign, standing motor vehicle, or similar obstacle temporarily placed upon or adjacent to a public street, highway, turnpike or area accessible to the motoring public, with one or more peace officers in attendance thereof directing each operator of approaching motor vehicles to stop or proceed.

Every operator of a motor vehicle approaching such roadblock has a duty to stop at the roadblock unless directed otherwise by a peace officer in attendance thereof and the willful violation hereof shall constitute a separate offense from any other offense committed. Any person who willfully attempts to avoid such roadblock or in any manner willfully fails to stop at such roadblock or who willfully passes by or through such roadblock without receiving permission from a peace officer in attendance thereto, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Automobiles O349(9).
Westlaw Topic No. 48A.

C.J.S. Motor Vehicles §§ 1515, 1517, 1519 to
1520, 1523 to 1524.

§ 543. Compounding crimes

Every person who, having knowledge of the actual commission of a crime or violation of statute, takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal such crime, or violation of statute, or to abstain from any prosecution therefor, or to withhold any evidence thereof, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 544. Compounding prosecution

Every person who takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, discontinue or delay any

prosecution then pending for any crime or violation of statute, or to withhold any evidence in aid thereof, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 545. Attempt to intimidate officer

Every person who, directly or indirectly, utters or addresses any threat or intimidation to any judicial or ministerial officer, to any juror, referee, arbitrator, umpire or assessor or other person authorized by law to hear or determine any controversy, with intent to induce him either to any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice O123.
Westlaw Topic No. 282.

§ 546. Suppressing evidence

Every person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper, or other matter or thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other matter or thing which might be evidence in such suit or proceeding, or prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice O132.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 73, 79 to 81.

§ 547. Buying lands in suit

Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any Court, knowing the pendency of such suit, and that the grantor was not in possession of such lands or tenements, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 554. Attorneys – Buying demands for suit – Misleading inferior courts

Every attorney who either directly or indirectly buys or is interested in buying any evidence of debt or thing in action with intent to bring suit thereon

is guilty of a crime. Any attorney who in any proceeding before any Court in which he appears as attorney, willfully misstates any proposition or seeks to mislead the Court in any matter of law is guilty of a crime and on any trial therefor the nation shall only be held to prove to the Court that the cause was pending, that the defendant appeared as an attorney in the action, and showing what the legal statement was, wherein it is not the law. If the defense be that the act was not willful the burden shall be on the defendant to prove that he did not know that there was error in his statement of the law.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Champerty and Maintenance O9.
Westlaw Topic No. 74.

C.J.S. Champerty and Maintenance; Barratry
and Related Matters §§ 30 to 33.

§ 555. Prosecutors and their partners

Every attorney who directly or indirectly advises in relation to, or aids or promotes the defense of any action or proceeding in any Court, the prosecution of which is carried on, aided or promoted by any person as prosecutor or other public attorney; with whom such person is directly or indirectly connected as a partner, or who takes or receives, directly or indirectly, from or on behalf of any defendant therein, any valuable consideration, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Champerty and Maintenance O9.

C.J.S. District and Prosecuting Attorneys

District and Prosecuting Attorneys 11.
Westlaw Topic Nos. 74, 131.

§§ 62 to 63.

C.J.S. Champerty and Maintenance; Barratry
and Related Matters §§ 30 to 33.

§ 556. Prosecutor advising the defense

Every attorney who, having prosecuted or in any manner aided or promoted any action or proceeding in any court, as prosecutor or other public attorney, afterward, directly or indirectly, advises in relation to, or takes any part in the defense thereof, as attorney or otherwise, or takes or receives any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a crime; and in addition to the punishment prescribed therefor

he shall forfeit his license to practice.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

District and Prosecuting Attorneys O11.
Westlaw Topic No. 131.

C.J.S. District and Prosecuting Attorneys
§§ 62 to 63.

§ 557. Attorneys may defend themselves

The two last sections do not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

History

Source. LA 10–90, eff. November 13, 1990.

§ 565. Definition of direct contempt and indirect contempt

Contempts of court shall be divided into direct and indirect contempts. Direct and indirect contempts can be civil or criminal in nature.

A. Direct and indirect contempts

1. Direct contempts shall consist of disorderly or insolent behavior committed during the session of the Court and in its immediate view, and presence, and of the unlawful and willful refusal of any person to be sworn as a witness, and the refusal to answer any legal or proper question; and any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings, shall be deemed direct contempt of court, and may be summarily punished as hereinafter provided for.
2. Indirect contempts of court shall consist of willful disobedience of any process or order lawfully issued or made by court; resistance willfully offered by any person to the execution of a lawful order or process of a Court.

B. Civil and criminal contempts

1. Civil contempts: failure to obey a court order that was issued for another party's benefit. A civil contempt procedure is coercive or remedial in nature.
2. Criminal contempts: acts that obstruct justice or attack the integrity of the court. A criminal contempt proceeding is punitive in nature.

History

Source. LA 9—07, eff. March 21, 2007.

Library References

Indians O539, 639.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 565.1. Trial court—Power to punish contempt—Censure—Contempt proceedings

A. The Trial Judge has the power to cite for contempt anyone who, in his presence in open court, willfully obstructs judicial proceedings. If necessary, the Trial Judge may punish a person cited for contempt after an opportunity to be heard has been given.

B. Censure shall be imposed by the Trial Judge only if:

1. it is clear from the identity of the offender and the character of his acts that disruptive conduct is willfully contemptuous; or
2. the conduct warranting the sanction is preceded by a clear warning that the conduct is impermissible and that specified sanctions may be imposed for its repetition.

C. The Trial Judge, as soon as practicable after he is satisfied that court- room misconduct requires contempt proceedings, should inform the alleged offender of his intention to institute said proceedings.

D. Before imposing any punishment for contempt, the Judge shall give the offender notice of the charges and an opportunity to adduce evidence or argument relevant to guilt or punishment.

E. The Judge before whom courtroom misconduct occurs may impose appropriate sanctions including punishment for contempt. If the Judge's conduct was so integrated with the contempt that he contributed to it or was otherwise involved or his objectivity can reasonably be questioned, the matter shall be referred to another Judge.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O539, 639.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 566. Punishment for direct or indirect contempt—Guidelines for determination of sentence and purge fee for failure to comply with certain orders regarding children

A. Unless otherwise provided for by law, punishment for direct or indirect contempt shall be by the imposition of a fine in a sum not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail not exceeding six (6) months, or by both, at the discretion of the Court.

B. 1. In the case of indirect contempt for the failure to comply with an order for child support, other support, visitation, or other court orders regarding minor children the Supreme Court shall promulgate guidelines for determination of the sentence and purge fee. If the Court fails to follow said guidelines, the Court shall make a specific finding stating the reasons why the imposition of the guidelines would result in inequity. The factors that shall be used in determining the sentence and purge fee are:

- a. the proportion of the child support or other support that was unpaid in relation to the amount of support that was ordered paid;
- b. the proportion of the child support or other support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid;
- c. the present capacity of the party found in contempt to pay any arrearages;

d. any willful actions taken by the party found in contempt to reduce factor c;

- e. the past history of compliance or noncompliance with the support or visitation order; and
 - f. willful acts to avoid the jurisdiction of the Court.
2. When a court of competent jurisdiction makes an order compelling a parent to furnish monetary support, necessary food, clothing, shelter, medical attention, medical insurance or other remedial care for the minor child of the parent:
- a. proof that:
 - i. the order was made, filed, and served on the parent, or
 - ii. the parent had actual knowledge of the existence of the order, or
 - iii. the order was granted by default after prior due process notice to the parent, or
 - iv. the parent was present in Court at the time the order was pronounced; and
 - b. proof of noncompliance with the order,
- shall be prima facie evidence of an indirect civil contempt of court.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Disposition orders, see 10 CNCA § 1116.

Library References

Indians O539, 639.
 Westlaw Topic No.209.
 C.J.S. Indians §§ 151 to 179.

§ 567. Indirect contempts – Notice – Trial by jury – Appearance bond

A. In all cases of indirect contempt the party charged with contempt shall be notified in writing of the accusation and have a reasonable time for defense; and the party so charged shall, upon demand, have a trial by jury.

B. In the event the party so charged shall demand a trial by jury, the Court shall thereupon set the case for trial at the next jury term of said Court, and shall fix the amount of an appearance bond to be posted by said party charged, which bond shall be signed by said party and two sureties, which sureties together shall qualify by showing ownership of real property, the equal of which property shall be in double the amount of the bond, or, in the alternative, the party charged may deposit with the Court Clerk cash equal to the amount of the appearance bond.

C. In a case of indirect contempt, it shall not be necessary for the party alleging indirect contempt, or an attorney for that party, to attend an initial appearance or arraignment hearing for the party charged with contempt, unless the party alleging the indirect contempt is seeking a cash bond. If a cash

bond is not being requested, the Clerk of the Court shall, upon request, notify the party alleging the indirect contempt of the date of the trial.

D. Notwithstanding any other provision of law, a party charged with indirect civil contempt of court for failure to pay child support, day care expenses or unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses as required by the terms of a valid child support order shall not be entitled to trial by jury.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 9—07, eff. March 21, 2007

Library References

Indians O539, 639, 651.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 567.1. Indirect contempt for failure to pay child support – Purge fee

When a person is found guilty of indirect contempt of court for failure to pay child support, day care expenses or unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses, that person may purge the contempt by:

1. Making all future payments for child support, day care expenses and unreimbursed medical, dental, orthodontic, psychological, optometric, or any other physical or mental health expenses as required by the current order for child support; and

2. a. paying the full amount of the arrearage, or some portion thereof, as a lump sum if the Court determines the contemnor has the financial ability to do so; and

- b. if the full amount of the arrearage is not paid in a lump sum, then by making additional monthly payments in an amount equal to one-half of the current monthly child support obligation, exclusive of day care expenses.

All payments made pursuant to this subdivision (2)(b) shall be applied to reduce the amount of child support arrearage which was the subject of the contempt action. Payments made in accordance with the provisions of this subdivision (2)(b) shall bear interest as set forth in 43 CNCA § 511(C) and 43 CNCA § 513.

3. The total amount of the payments required to be made pursuant to subdivisions (1) and (2)(b) above shall not exceed forty percent (40%) of the contemnor's current gross monthly income. For purposes of this subdivision, the contemnor's gross income shall be determined in accordance with the provisions of 43 O.S. § 118(2) and (3) as incorporated by reference in the Cherokee Nation Code Annotated at 43 CNCA § 514. If the total amount of the payments required to be made pursuant to subdivisions (1) and (2)(b) above exceeds forty percent (40%) of the contemnor's gross monthly income, then the amount required to be paid under subdivision (2)(b) above shall be reduced such that the total payments required under

subdivision (1) and (2)(b) shall equal forty percent (40%) of the contemnor's gross monthly income. If application of this subdivision (3) creates a payout schedule which exceeds three (3) years then the terms and provisions of 43 CNCA § 511(B) shall apply.

4. The payments required to be made pursuant to this section shall continue until the child support arrearage, which was the subject of the contempt action has been paid in full, at which time the contempt shall be deemed purged.

5. If a contemnor is committed to the custody of the sheriff to serve the sentence imposed by the Court, the contemnor may thereafter only be discharged from the custody of the sheriff:

- a. upon payment in full of the adjudicated arrearage; or
- b. upon serving the full sentence: or
- c. upon the making of a subsequent agreement by the parties as to payment of the arrearages, which agreement has been approved by the Court and entry of a court order that the contemnor be released from the custody of the sheriff with the balance of the sentence to be conditionally suspended, subject to performance of the terms of the agreement and the provisions of the court order for release. Persons incarcerated pursuant to the provisions of this section shall not be entitled to credit for good time, blood time, trustee time, or any other credit for time served. Persons incarcerated pursuant to the provisions of this section shall serve flat time in all cases.

History

Source. LA 9—07, eff. March 21, 2007

Oklahoma Statutes

Child support guidelines, see 43 O.S. § 118.

Library References

Indians O539.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 179.

§ 568. Contempt— Substance of offense made of record

Whenever a person shall be imprisoned for contempt the substance of the offense shall be set forth in the order for his confinement, and made a matter of record in the Court.

History

Source. LA 10–90, eff. November 13, 1990.

C.J.S. Indians §§ 151 to 179.

Indians O639.

Westlaw Topic No.209.

Library References

§ 569. Attorneys—Second application to another judge to stay trial

Every attorney or counselor at law who, knowing that an application has been made for an order staying the trial of an indictment, to a Judge authorized to grant the same, and has been denied, without leave reserved to renew it, makes an application to another Judge to stay the same trial, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 573. Fraudulent concealment of property

Every person who, having been called upon, by the lawful order of any Court, to make a true exhibit of his real and personal effects, either:

1. willfully conceals any of his estate or effects, or any books or writing relative thereto; or,
2. willfully omits to disclose to the Court any debts or demands which he has collected, or any transfer of his property which he had made after being ordered to make an exhibit thereof, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Attorney and Client O26, 33.
Westlaw Topic No. 45.
C.J.S. Attorney and Client § 153.

§ 575. Attorneys, misconduct by—Deceit—Delaying suit—Receiving allowance for money not laid out

Every attorney who, whether as attorney or as counselor, who:

- 1st, is guilty of any deceit or collusion, or consents to any deceit or collusion with intent to deceive the Court or any party; or
- 2nd, willfully delays his client's suit, with a view to his own gain; or
- 3rd, willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for, is guilty of a crime; and, in addition to the punishment prescribed therefor by this code, he forfeits to the party injured treble damages, to be recovered in a civil action.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Fraud O68.
Westlaw Topic No. 184.
C.J.S. Fraud §§ 123 to 124.

§ 576. Attorney permitting other person to use his name

If any attorney knowingly permits any person not being his general law

partner or a clerk in his office to sue out any process or to prosecute or defend

any action in his name, except as authorized by the next section, such attorney, and every person who shall so use his name is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 577. Attorneys, use of name lawful, when

Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers or municipal corporation, on behalf of another party, the prosecutor, or attorney of such public officer or board or corporation may permit any proceeding therein to be taken in his name by an attorney to be chosen by the party in interest.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

District and Prosecuting Attorneys O7(1), 8.
Westlaw Topic No. 131.

C.J.S. District and Prosecuting Attorneys
§§ 26 to 42, 45 to 55, 62 to 63.

§ 578. Inheritance, intercepting by fraudulent production of infant

Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate, from any person lawfully entitled thereto, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 579. Substituting child

Every person to whom an infant has been confided for nursing, education, or any other person, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 584. Prosecuting suit or bringing action or procuring arrest in false name

Every person who maliciously institutes or prosecutes any action or legal proceeding; or makes or procures any arrest, in the name of a person who does

not exist, or has not consented that it be instituted or made, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

False Pretenses ○18.
Westlaw Topic No. 170.
C.J.S. False Pretenses § 38.

§ 587. False certificate by public officer

Every public officer who, being authorized by law to make or give any certificate or other writing, knowingly makes and delivers as true any such certificate or writing containing any statement which he knows to be false, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

False Pretenses ○18.
Westlaw Topic No. 170.
C.J.S. False Pretenses § 38.

§ 588. Recording of petit jury proceedings – Listening or observing – Penalty

Any person, firm or corporation who knowingly and willfully, by means of any device whatsoever, records or attempts to record the proceedings of any jury in any Court of Cherokee Nation while such jury is deliberating or voting or listens to or observes, or attempts to listen to or observe, the proceedings of any jury of which he is not a member in any Court of Cherokee Nation while such jury is deliberating or voting shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 589. False reporting of crime

It shall be unlawful to willfully, knowingly and without probable cause make a false report to any person of any crime or circumstances indicating the possibility of crime having been committed, including the unlawful taking of personal property, which report causes or encourages the exercise of police action or investigation, and any person violating the provisions hereof shall be guilty of a crime and upon conviction thereof shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Obstructing Justice ○120.	C.J.S. Obstructing Justice or Governmental
Westlaw Topic No. 282.	Administration §§ 74, 80.

PART III
CRIMES AGAINST THE PERSON
CHAPTER 20
ASSAULT AND BATTERY

Section

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§ 641. Assault defined

An assault is any willful and unlawful attempt or offer with force or violence to do a corporal hurt to another.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Domestic abuse reporting, definitions, see 22 CNCA § 60.1.

Library References

Assault and Battery O47.	C.J.S. Assault §§ 1 to 3, 73, 78 to 85, 98.
Westlaw Topic No. 37.	C.J.S. Robbery § 108.

§ 642. Battery defined

A battery is any willful and unlawful use of force or violence upon the person of another.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Domestic abuse reporting, definitions, see 22 CNCA § 60.1.

Library References

Assault and Battery O47.
Westlaw Topic No. 37.

C.J.S. Assault §§ 1 to 3, 73, 78 to 85, 98.
C.J.S. Robbery § 108.

§ 643. Force against another not unlawful, when – Self-defense – Defense of property

To use or to attempt to offer to use force or violence upon or toward the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting him or acting by his direction.
2. When necessarily committed by any person in arresting one who has committed any crime, and delivering him to a public officer competent to receive him in custody.
3. When committed either by the party about to be injured, or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass or other unlawful interference with real or personal property in his lawful possession; provided the force or violence used is not more than sufficient to prevent such offense.
4. When committed by a parent or the authorized agent of any parent, or by any guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, provided restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent or authorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree.
5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them at their request, in expelling from any carriage, railroad car, vessel or other vehicle any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety.
6. When committed by any person in preventing an idiot, lunatic, insane person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Assault and Battery O63 to 70.
Westlaw Topic No. 37.

C.J.S. Assault §§ 99 to 100, 104 to 119.

§ 644. Assault or assault and battery – Punishment

A. Assault shall be punishable by imprisonment in a penal institution not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or both, at the discretion of the Court.

B. Assault and battery shall be punishable by imprisonment in a penal institution not exceeding ninety (90) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or by both such imprisonment and fine.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 645. Assault, battery, or assault and battery with a dangerous weapon punishment

Every person who with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon the person of another with any sharp or dangerous weapon, or who, without such cause, shoots at another with any kind of firearm or air gun or other means whatever, with intent to injure any person, although without the intent to kill such person or to commit any felony, upon conviction shall be guilty of a crime.

History

Source. LA 10–06, eff. June 16, 2006.

Library References

Indians O620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 646. Aggravated assault and battery defined

A. An assault and battery becomes aggravated when committed under any of the following circumstances:

1. When great bodily injury is inflicted upon the person assaulted; or
2. When committed by a person of robust health or strength upon one

who is aged, decrepit, or incapacitated, as defined in 21 CNCA § 641.

B. For purposes of this section “**great bodily injury**” means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

ASSAULT AND BATTERY

21 CNCA § 649

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–06, eff. June 16, 2006.

Cross References

Domestic abuse reporting, definitions, see 22 CNCA § 60.1.

Library References

Assault and Battery O54.

Indians O620.

Westlaw Topic Nos. 37, 209.

C.J.S. Assault §§ 86 to 88, 95 to 96, 98.

C.J.S. Indians §§ 151 to 179.

§ 647. Punishment for aggravated assault and battery

Aggravated assault and battery shall be a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Assault and Battery O54.

Westlaw Topic No. 37.

C.J.S. Assault §§ 86 to 88, 95 to 96, 98.

§ 648. Definitions

A. **“Dog handler”** means any police officer or peace officer who has successfully completed training in the handling of a police dog as established by the policy or standard of the law enforcement agency employing said officer.

B. **“Police dog”** means any dog used by a law enforcement agency of this Nation or political subdivision of this Nation which is especially trained for law enforcement work and is subject to the control of a dog handler.

C. **“Police horse”** means any horse which is used by a law enforcement agency of this Nation or political subdivision of this Nation for law enforcement work.

D. **“Police officer,” “police” or “peace officer”** means any duly appointed person who is charged with the responsibility of maintaining public order, safety, and health by the enforcement of all laws, ordinances or orders of this Nation or any of its political subdivisions and who is authorized to bear arms in execution of his responsibilities.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Police dog handlers—Civil liability, see 22 CNCA § 36.1.

§ 649. Assault, battery or assault and battery upon police officer or other peace officer—Penalties

A. Every person who, without justifiable or excusable cause, knowingly commits any assault upon the person of an officer of the Cherokee Nation

Marshal Service, police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other Nation peace officer employed by any Nation, state or federal governmental agency to enforce Nation laws while said officer is in the performance of his or her duties is upon conviction, guilty of a crime.

B. Every person who, without justifiable or excusable cause knowingly commits battery or assault and battery upon the person of a police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other Nation peace officer employed by any Nation governmental agency to enforce Nation laws while said officer is in the performance of his duties, upon conviction, is guilty of a crime.

C. As used in this section and in 21 CNCA § 650, “**corrections person- nel**” means any person, employed by the Nation or by a political subdivision, who has direct contact with inmates of a jail or Nation correctional facility, and includes but is not limited to, penal institution employees in job classifications requiring direct contact with inmates, persons providing vocational-technical training to inmates, education personnel who have direct contact with inmates because of education programs for inmates, and persons employed by county or municipal jails to supervise inmates or to provide medical treatment or meals to inmates of jails.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Assault and Battery O54.

Westlaw Topic No. 37.

C.J.S. Assault §§ 86 to 88, 95 to 96, 98.

§ 649.1. Certain acts against police dog or police horse prohibited – Penalties

A. No person shall willfully torture, torment, beat, mutilate, injure, disable, or otherwise mistreat a police dog or police horse owned, or the service of which is employed, by a law enforcement agency of the Nation or political subdivision of the Nation.

B. No person shall willfully interfere with the lawful performance of any police dog or police horse.

C. Except as provided in subsection (D) of this section, any person convicted of violating any of the provisions of this section shall be guilty of a crime.

D. Any person who knowingly and willfully and without lawful cause or justification violates the provisions of this section, during the commission of a crime shall be guilty of a crime.

Source. LA 10–90, eff. November 13, 1990.

History

ASSAULT AND BATTERY

21 CNCA § 650.1

Library References

Animals O45.
Westlaw Topic No. 28.
C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 649.2. Killing police dog or police horse – Penalties

A. No person shall willfully kill any police dog or police horse owned, or the service of which is employed, by a law enforcement agency of the State of Oklahoma, federal government, Nation or a political subdivision of the State of Oklahoma, federal government or Nation.

B. Except as provided in subsection (C) of this section, any person convicted of violating the provisions of this section is guilty of a crime.

C. Any person who knowingly and willfully and without lawful cause or justification violates the provisions of this section during the commission of a crime shall be guilty of a crime, punishable by imprisonment in a penal institution not exceeding six (6) months, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 650. Aggravated assault and battery upon peace officer

A. Every person who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of a marshal, police officer, sheriff, deputy sheriff or highway patrolman, corrections person- nel as defined in 21 CNCA § 649, or any state, federal or Nation peace officer employed by any Nation governmental agency to enforce Nation laws, while said officer is in the performance of his duties, shall upon conviction thereof be guilty of a crime.

B. This section shall not supersede any other act or acts, but shall be cumulative thereto.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Assault and Battery O54.
Westlaw Topic No. 37.
C.J.S. Assault §§ 86 to 88, 95 to 96, 98.

§ 650.1. Athletic contests – Assault and battery upon referee, umpire, etc.

Every person who, without justifiable or excusable cause and with intent to do

bodily harm, commits any assault, battery, or assault and battery upon the person of a referee, umpire, timekeeper, coach, official, or any person having

authority in connection with any amateur or professional athletic contest is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Assault and Battery ○54.
Westlaw Topic No. 37.

C.J.S. Assault §§ 86 to 88, 95 to 96, 98.

§ 650.2. Aggravated assault and battery upon Cherokee Nation corrections employee

Every person in the custody of the Cherokee Nation penal institution or who commits any aggravated assault and battery upon the person of a Nation employee while said employee is in the performance of his duties shall upon conviction thereof be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Assault and Battery ○54.
Westlaw Topic No. 37.
C.J.S. Assault §§ 86 to 88, 95 to 96, 98.

§ 650.3. Delaying, obstructing or interfering with emergency medical technician or other emergency medical care provider—Punishment

Every person who willfully delays, obstructs or in any way interferes with an emergency medical technician or other emergency medical care provider in the performance of or attempt to perform emergency medical care and treatment or in going to or returning from the scene of a medical emergency, upon conviction, is guilty of a crime punishable by imprisonment in the penal institution not exceeding six (6) months, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

§ 650.4. Assault, battery or assault and battery upon emergency medical technician or other emergency medical care provider—Punishment

A. Every person who, without justifiable or excusable cause, knowingly commits any assault upon the person of an emergency medical technician or other emergency medical care provider, upon conviction, is punishable by imprisonment in a penal institution not exceeding six (6) months, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or by both such fine and

imprisonment.

B. Every person who, without justifiable or excusable cause and with intent to do bodily harm, commits any battery or assault and battery upon the person

ASSAULT AND BATTERY

21 CNCA § 650.5

of an emergency medical technician or other emergency medical care provider, upon conviction, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Library References

Indians O620.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 650.5. Aggravated assault and battery or assault with firearm or other dangerous weapon upon emergency medical technician or other emergency medical care provider – Punishment

Every person who, without justifiable or excusable cause and with intent to do bodily harm, commits any aggravated assault and battery or any assault with a firearm or other deadly weapon upon the person of an emergency medical technician or other emergency medical care provider, upon conviction, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Assault and Battery O56.

Westlaw Topic No. 37.

C.J.S. Assault §§ 91 to 94.

CHAPTER 21

ATTEMPTS TO KILL

Section

651. Poison, attempt to kill by administering
652. Shooting or discharging firearm with intent to kill—Assault and battery with deadly weapon, etc.

§ 651. Poison, attempt to kill by administering

Every person who, with intent to kill, administers or causes or procures to be administered to another any poison which is actually taken by such other person but by which death is not caused, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O556.
Westlaw Topic No.203.
C.J.S. Homicide §§ 139 to 141.

§ 652. Shooting or discharging firearm with intent to kill—Assault and battery with deadly weapon, etc.

Every person who intentionally and wrongfully shoots another with or discharges any kind of firearm, with intent to kill any person, is guilty of a crime. Any person who commits any assault and battery upon another by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, or in resisting the execution of any legal process, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Assault and Battery O56.
Westlaw Topic No. 37.
C.J.S. Assault §§ 91 to 94.

CHAPTER 22

DUELS AND CHALLENGES

Section

661. Duel defined

662. Punishment for dueling

§ 661. Duel defined

A duel is any combat with deadly weapons fought between two persons by agreement.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O45.30.

Westlaw Topic No. 110.

C.J.S. Affray § 2.

§ 662. Punishment for dueling

Every person fighting any duel, although no death or wound ensues, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Criminal Law O45.30.

Indians O620.

Westlaw Topic Nos. 110, 209.

C.J.S. Affray § 2.

C.J.S. Indians §§ 151 to 179.

CHAPTER 23

CRIMINAL ASSAULTS

Section

681. Assaults with intent to commit crime; Punishment

§ 681. Assaults with intent to commit crime; Punishment

A. Every person who commits an assault with intent to commit any crime, except an assault with intent to kill, the punishment for which assault is not otherwise prescribed in this code, is guilty of a crime, punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment if the offense involved sexual assault.

B. Any person convicted for a violation of subsection (A) of this section where the offense involved sexual assault, shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Assault and Battery O49.

Westlaw Topic No. 37.

C.J.S. Assault §§ 73, 81, 85.

C.J.S. Robbery § 108.

CHAPTER 24

HOMICIDE

GENERAL PROVISIONS

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- 731. Excusable homicide, what is
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GENERAL PROVISIONS

§ 691. Homicide defined

Homicide is the killing of one human being by another.

Library References

Homicide O500.
Westlaw Topic No.203.
C.J.S. Homicide § 1.

§ 692. Homicide classified

Homicide is either:

1. Murder;
2. Manslaughter;
3. Excusable homicide; or

4. Justifiable homicide.

Library References

Homicide O504, 520, 654, 750.
Westlaw Topic No. 203.

C.J.S. Homicide §§ 34, 71, 150 to 152, 154.

§ 693. Proof necessary to conviction of murder or manslaughter

No person can be convicted of murder or manslaughter, or of aiding suicide, unless the death of the person alleged to have been killed and the fact of the killing by the accused are each established as independent facts beyond a reasonable doubt.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O613.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 694. Petit treason by killing master or husband abolished— Such offenses homicides

The rules of the common law, distinguishing the killing of a master by his servant and of a husband by his wife, as petit treason are abolished and these offenses are deemed homicides, punishable in the manner prescribed by this chapter.

History

Source. LA 10–90, eff. November 13, 1990.

§ 695. Confidential or domestic relation may be considered

Whenever the grade or punishment of homicide is made to depend upon its having been committed under circumstances evincing a depraved mind or unusual cruelty, or in a cruel manner, the jury may take into consideration the fact that any domestic or confidential relation existed between the accused and the person killed, in determining the moral quality of the acts proved.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O502.
Westlaw Topic No.203.
C.J.S. Homicide § 5.

MURDER

§ 701.7. Murder in the first degree

A. A person commits murder in the first degree when he unlawfully and with malice aforethought causes the death of another human being. Malice is

HOMICIDE

21 CNCA § 701.9

that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person also commits the crime of murder in the first degree when he takes the life of a human being, regardless of malice, in the commission of forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, first degree burglary, first degree arson, unlawful distributing or dispensing of controlled dangerous substances, or trafficking in illegal drugs.

C. A person commits murder in the first degree when the death of a child results from the willful or malicious injuring, torturing, maiming or using of unreasonable force by said person or who shall willfully cause, procure or permit any of said acts to be done upon the child pursuant to 21 CNCA § 843.

D. A person commits murder in the first degree when he unlawfully and with malice aforethought solicits another person or persons to cause the death of a human being in furtherance of unlawfully manufacturing, distributing or dispensing controlled dangerous substances, as defined in the Uniform Controlled Substances Act, 21 CNCA § 2101 et seq., unlawfully possessing with intent to distribute or dispense controlled dangerous substances, or trafficking in illegal drugs.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O539.
Westlaw Topic No.203.
C.J.S. Homicide §§ 74 to 91.

§ 701.8. Murder in the second degree

Homicide is murder in the second degree in the following cases:

1. When perpetrated by an act imminently dangerous to another person and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual; or
2. When perpetrated by a person engaged in the commission of any crime other than the unlawful acts set out in 21 CNCA § 701.7(B).

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O544.
Westlaw Topic No.203.
C.J.S. Homicide §§ 92 to 96.

§ 701.9. Punishment for murder

A. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be guilty of a crime.

B. A person who is convicted of or pleads guilty or nolo contendere to murder in the second degree shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O539, 544.

C.J.S. Homicide §§ 74 to 96.

Indians O620.

C.J.S. Indians §§ 151 to 179.

Westlaw Topic Nos. 203,209.

§ 701.16. Solicitation for murder in the first degree

It shall be unlawful for any person or agent of that person to solicit another person or persons to cause the death of a human being by the act of murder in the first degree as is defined by 21 CNCA § 701.7. A person who is convicted, pleads guilty or pleads nolo contendere to the act of solicitation for murder in the first degree, except as provided in 21 CNCA § 701.7, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O562.

Westlaw Topic No.203.

C.J.S. Homicide §§ 142 to 143.

§ 702. Design to effect death inferred

A design to effect death is inferred from the fact of killing, unless the circumstances raise a reasonable doubt whether such design existed.

History

Source. LA 10–90, eff. November 13, 1990.

§ 703. Premeditation

A design to effect death sufficient to constitute murder may be formed instantly before committing the act by which it is carried into execution.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O542.

Westlaw Topic No.203.

C.J.S. Homicide §§ 81, 83.

§ 704. Anger or intoxication no defense

Homicide committed with a design to effect death is not the less murder because the perpetrator was in a state of anger or voluntary intoxication at the time.

History

Source. LA 10–90, eff. November 13, 1990.

HOMICIDE

21 CNCA § 713

Library References

Homicide O820.
Westlaw Topic No.203.

§ 705. Act imminently dangerous and evincing depraved mind

Homicide perpetrated by an act imminently dangerous to others and evincing a depraved mind, regardless of human life, is not the less murder because there was no actual intent to injure others.

History

Source. LA 10–90, eff. November 13, 1990.

MANSLAUGHTER

§ 711. Manslaughter in the first degree defined

Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated without a design to effect death by a person while engaged in the commission of a crime.
2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon; unless it is committed under such circumstances as constitute excusable or justifiable homicide.
3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O654, 656.
Westlaw Topic No.203.
C.J.S. Homicide §§ 98 to 99, 125.

§ 712. Liability of physicians

Every physician who being in a state of intoxication without a design to effect death, administers any poison, drug or medicine, or does any other act as such physician to another person, which produces the death of such other person, is guilty of manslaughter in the first degree.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O656, 659, 700.
Westlaw Topic No. 203.

C.J.S. Homicide §§ 98 to 99, 123, 125, 130 to 132.

§ 713. Killing an unborn quick child

The
willful
killing of an
unborn
quick child
by any
injury
committed
upon the
person of
the mother
of such
child is
manslaughte
r in the first
degree.

21 CNCA § 713

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O503, 637.
Westlaw Topic No.203.
C.J.S. Homicide § 6.

§ 715. Punishment for manslaughter in the first degree

Every person committing manslaughter in the first degree is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O661(2).
Westlaw Topic No.203.
C.J.S. Homicide § 102.

§ 716. Manslaughter in the second degree

Every killing of one human being by the act, procurement or culpable negligence of another, which, under the provisions of this chapter, is not murder, nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O661(3).
Westlaw Topic No.203.
C.J.S. Homicide § 103.

§ 717. Owner of mischievous animal which kills person

If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances permitted, to avoid such animal, the owner is deemed guilty of manslaughter in the second degree.

History

Source. LA 10–90, eff. November 13, 1990.

§ 722. Punishment for manslaughter in the second degree

Every person committing of manslaughter in the second degree is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O661(3).
Indians O620.
Westlaw Topic Nos. 203,209.

C.J.S. Homicide § 103.
C.J.S. Indians §§ 151 to 179.

EXCUSABLE AND JUSTIFIABLE HOMICIDE**§ 731. Excusable homicide, what is**

Homicide is excusable in the following cases:

1. When committed by accident and misfortune in doing any lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent.
2. When committed by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat provided that no undue advantage is taken, nor any dangerous weapon used, and that the killing is not done in a cruel or unusual manner.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O750.
Westlaw Topic No.203.
C.J.S. Homicide §§ 150 to 152, 154.

§ 732. Justifiable homicide by officer

A peace officer, correctional officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

1. In effecting an arrest or preventing an escape from custody following arrest and the officer reasonably believes both that:
 - a. such force is necessary to prevent the arrest from being defeated by resistance or escape, and
 - b. there is probable cause to believe that the person to be arrested has committed a crime involving the infliction or threatened infliction of serious bodily harm, or the person to be arrested is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay; or
2. The officer is in the performance of his legal duty or the execution of legal process and reasonably believes the use of the force is necessary to protect himself or others from the infliction of serious bodily harm; or
3. The force is necessary to prevent an escape from a penal institution from custody while in transit thereto or therefrom unless the officer has reason to know:
 - a. the person escaping is not a person who has committed a crime involving violence, and

- b. the person escaping is not likely to endanger human life or to inflict serious bodily harm if not apprehended.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O752 to 756.

Westlaw Topic No.203.

C.J.S. Homicide §§ 155 to 160.

§ 733. Justifiable homicide by any person

Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any crime upon him, or upon or in any dwelling house in which such person is; or
2. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there is a reasonable ground to apprehend a design to commit a crime, or to do some great personal injury, and imminent danger of such design being accomplished; or
3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any crime committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Homicide O752, 753, 757 to 759.

Westlaw Topic No. 203.

C.J.S. Homicide §§ 155 to 156, 161 to 167.

CHAPTER 25

KIDNAPPING

Section

741. Kidnapping defined

745. Kidnapping for purpose of extortion—Assisting in disposing, receiving, possessing or exchanging money or property received

746. Venue

747. Holder of hostage—Telephone communications

§ 741. Kidnapping defined

A. Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, with intent, either:

1. To cause such other person to be confined or imprisoned in this Nation against the will of the other person; or,
2. To cause such other person to be sent out of this Nation against the will of the other person; or,
3. To cause such person to be sold as a slave, or in any way held to service against the will of such other person, is guilty of a crime, punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment when the offense was by a non-parent and involved sexual abuse or sexual exploitation.

B. Upon any trial for a violation of this section, the consent thereto of the person kidnapped or confined, shall not be a defense, unless it appears satisfactorily to the jury, that such person was above the age of twelve (12) years, and that such consent was not extorted by threat, or by duress.

C. Any person, except for the parent of the child, convicted for a violation of subsection (A) of this section where the offense involved sexual abuse or sexual exploitation, shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Kidnapping O10, 19.

Westlaw Topic No. 231E.

C.J.S. Kidnapping §§ 1 to 27.

§ 745. Kidnapping for purpose of extortion – Assisting in disposing, receiving, possessing or exchanging money or property received

A. Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, for the purpose of extorting any money, property or thing of value or advantage from the person so seized, confined, inveigled or kidnapped, or from any other person, or in any manner threatens either by written instrument, word of mouth, message, telegraph, telephone, by placing an ad in a newspaper, or by messenger, demands money or other thing of value, shall be guilty of a crime.

B. Every person, not a principal in the kidnapping and not a relative or agent authorized by a relative of a kidnapped person, but who knowingly aids, assists, or participates in the disposing, receiving, possession or exchanging of any moneys, property or thing of value or advantage from the person so seized, confined, inveigled or kidnapped, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 746. Venue

Every offense prohibited in the last section may be tried in the jurisdiction in which the crime may have been committed or in any jurisdiction through which the person so seized, confined, inveigled or kidnapped shall have been taken, carried, or into which such person may be brought.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O601.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 747. Holder of hostage – Telephone communications

A. The supervising law enforcement official having jurisdiction in the geographical area where hostages are held who has probable cause to believe that the holder of one or more hostages is committing a crime shall have the authority to order a telephone company to arrange to cut, reroute or divert telephone lines in any emergency in which such hostages are being held, for the purpose of preventing telephone communication by the holder of such hostages with any person other than a peace officer or a person authorized by the peace officer.

B. The serving telephone company within the geographical area of a law enforcement unit shall designate appropriate telephone company management employees to provide, or cause to be provided, all required assistance to law enforcement officials to carry out the purposes of this section.

C. Good faith reliance on an order by a supervising law enforcement official pursuant to this section, shall constitute a complete defense to any civil or

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criminal action brought against a telephone company, its agents or employees, as a result of compliance with said order.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 26

MAIMING

Section

- 751. Maiming defined
- 752. Maiming one's self
- 754. Means and manner of maiming immaterial
- 755. Maiming by disfigurement
- 756. Design to maim inferred
- 757. Premeditated design
- 758. Recovery before trial at bar—Conviction of assault and battery
- 759. Punishment for maiming

§ 751. Maiming defined

Every person who, with premeditated design to injure another, inflicts upon his person any injury which disfigures his personal appearance or disables any member or organ of his body or seriously diminishes his physical vigor, is guilty of maiming.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 752. Maiming one's self

Every person who with design to disable himself from performance of any legal duty, existing or anticipated, inflicts upon himself any injury whereby he is so disabled, is guilty of maiming.

History

Source. LA 10–90, eff. November 13, 1990.

§ 754. Means and manner of maiming immaterial

To constitute maiming it is immaterial by what means or instrument, or in what manner the injury was inflicted.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 755. Maiming by disfigurement

To constitute maiming by disfigurement, the injury must be such as is calculated, after healing, to attract observation. A disfigurement which can only be discovered by close inspection does not constitute maiming.

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History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O**1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 756. Design to maim inferred

A design to injure, disfigure, or disable, is inferred from the fact of inflicting an injury which is calculated to disfigure or disable, unless the circumstances raise a reasonable doubt whether such design existed.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians **O**611.
Malicious Mischief **O**1.
Westlaw Topic Nos. 209, 248.

C.J.S. Indians §§ 151 to 179.
C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 757. Premeditated design

A premeditated design to injure, disfigure or disable, sufficient to constitute maiming, may be formed instantly before inflicting the wound.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O**1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 758. Recovery before trial at bar—Conviction of assault and battery

Where it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming shall be had; but the accused may be convicted of assault and battery, with or without a special intent, according to proof.

History

Source. LA 10–90, eff. November 13, 1990.

O

Malicious Mischief 1. Westlaw Topic No. 248.

Library References

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 759. Punishment for maiming

Every person convicted of maiming is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.

Malicious Mischief O1.

Westlaw Topic Nos. 209,248.

C.J.S. Indians §§ 151 to 179.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

CHAPTER 28

ROBBERY

Section

- 791. Robbery defined
- 792. Force or fear—How employed
- 793. Degree of force immaterial
- 794. What fear is an element
- 795. Value of property not material
- 796. Taking secretly not robbery
- 797. Degrees of robbery
- 798. Punishment for first degree
- 799. Punishment for second degree
- 800. Robbery by two or more persons—Punishment
- 801. Robbery or attempted robbery with dangerous weapon or imitation firearm—
Punishment

§ 791. Robbery defined

Robbery is a wrongful taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Robbery ○1.	C.J.S. Robbery §§ 1 to 3, 17 to 18, 106 to 107,
Westlaw Topic No. 342.	109, 126 to 127, 133.

§ 792. Force or fear—How employed

To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Robbery ○6, 7.
Westlaw Topic No. 342.
C.J.S. Robbery §§ 1, 18 to 28, 30 to 31, 112.

§ 793. Degree of force immaterial

When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Robbery ○7.
Westlaw Topic No. 342.

C.J.S. Robbery §§ 1, 18 to 28, 30 to 31, 112.

§ 794. What fear is an element

The fear which constitutes robbery may be either:

1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed or of any relative of his, or member of his family; or
2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed, at the time of the robbery.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Robbery ○7.
Westlaw Topic No. 342.
C.J.S. Robbery §§ 1, 18 to 28, 30 to 31, 112.

§ 795. Value of property not material

When property is taken under the circumstances, required to constitute robbery, the fact that the property was of trifling value does not qualify the offense.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Robbery ○4.
Westlaw Topic No. 342.
C.J.S. Robbery §§ 5 to 12, 109, 130.

§ 796. Taking secretly not robbery

The taking of property from the person of another is not robbery, when it clearly appears that the taking was fully completed without his knowledge.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Robbery O5, 9.
Westlaw Topic No.342.

C.J.S. Robbery §§ 1 to 4, 9 to 12, 29, 128.

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§ 797. Degrees of robbery

Robbery, when accomplished by the use of force, or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree. When accomplished in any other manner, it is robbery in the second degree.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Robbery O11.
Westlaw Topic No.342.

C.J.S. Robbery §§ 6, 14 to 16, 32 to 38, 107,
112, 126, 132 to 133.

§ 798. Punishment for first degree

Every person convicted of robbery in the first degree is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.
Robbery O11.
Westlaw Topic Nos. 209, 342.

C.J.S. Indians §§ 151 to 179.
C.J.S. Robbery §§ 6, 14 to 16, 32 to 38, 107,
112, 126, 132 to 133.

§ 799. Punishment for second degree

Every person convicted of robbery in the second degree is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.
Robbery O11.
Westlaw Topic Nos. 209, 342.

C.J.S. Indians §§ 151 to 179.
C.J.S. Robbery §§ 6, 14 to 16, 32 to 38, 107,
112, 126, 132 to 133.

§ 800. Robbery by two or more persons – Punishment

Whenever two or more persons conjointly commit a robbery or where the whole number of persons conjointly commits a robbery and persons present and aiding such robbery amount to two or more, each and either of such persons is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 801. Robbery or attempted robbery with dangerous weapon or imitation

firearm – Punishment

Any person or persons who, with the use of any firearms or any other dangerous weapons, whether the firearm is loaded or not, or who uses a blank or imitation firearm capable of raising in the mind of the one threatened with such device a fear that it is a real firearm, attempts to rob or robs any person or

persons, or who robs or attempts to rob any place of business, residence or banking institution or any other place inhabited or attended by any person or persons at any time, either day or night, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Indians O620.

Robbery O11, 12.

Westlaw Topic Nos. 209, 342.

C.J.S. Indians §§ 151 to 179.

C.J.S. Robbery §§ 6, 14 to 16, 32 to 38, 106 to 107, 110, 112, 126, 132 to 133.

CHAPTER 29

SUICIDE

Section

811. Suicide defined

813. Aiding suicide

814. Furnishing weapon or drug

815. Aid in attempt to commit suicide

816. Incapacity of person committing or attempting suicide no defense

817. Punishment for aiding suicide

818. Punishment for aiding an attempt at suicide

§ 811. Suicide defined

Suicide is the intentional taking of one's own life.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Suicide O1.

Westlaw Topic No. 368.

C.J.S. Suicide §§ 1 to 5, 13.

§ 813. Aiding suicide

Every person who willfully, in any manner, advises, encourages, abets, or assists another person in taking his own life, is guilty of aiding suicide.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Suicide O3.

Westlaw Topic No. 368.

C.J.S. Suicide §§ 8 to 14.

§ 814. Furnishing weapon or drug

Every person who willfully furnishes another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life, is guilty of aiding suicide, if such person thereafter employs such instrument or drug in taking his own life.

History

Source. LA 10–90, eff. November 13, 1990.

Westlaw Topic No. 368.

C.J.S. Suicide §§ 8 to 14.

Suicide O3.

Library References

§ 815. Aid in attempt to commit suicide

Every person who willfully aids another in attempting to take his own life, in any manner which by the preceding sections would have amounted to aiding suicide if the person assisted had actually taken his own life, is guilty of aiding an attempt at suicide.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Suicide O3.
Westlaw Topic No. 368.
C.J.S. Suicide §§ 8 to 14.

§ 816. Incapacity of person committing or attempting suicide no defense

It is no defense to a prosecution for aiding suicide or aiding an attempt at suicide, that the person who committed or attempted to commit the suicide was not a person deemed capable of committing crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 817. Punishment for aiding suicide

Every person convicted of aiding suicide is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.	C.J.S. Indians §§ 151 to 179.
Suicide O3.	C.J.S. Suicide §§ 8 to 14.
Westlaw Topic Nos. 209, 368.	

§ 818. Punishment for aiding an attempt at suicide

Every person convicted of aiding an attempt at suicide is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.	C.J.S. Indians §§ 151 to 179.
Suicide O2, 3.	C.J.S. Suicide §§ 6 to 14.
Westlaw Topic Nos. 209, 368.	

CHAPTER 30

MISCELLANEOUS OFFENSES AGAINST THE PERSON

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- 833. Unlawful confinement of lunatics
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IN GENERAL

§ 831. Intoxicated physician

Every physician who being in the state of intoxication administers any poison, drug or medicine, or does any other act as such physician to another person, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Health O975.
Westlaw Topic No. 198H.

C.J.S. Health and Environment § 89.

§ 832. Willfully poisoning food, drink, medicine, or patent or proprietary medicine

A. 1. No person shall willfully mingle any poison, Schedule I through V drug pursuant to the provisions of 21 CNCA § 2203 et seq., or sharp object, or any other object or substance which if used in a manner which is not customary or usual is harmful to human life, with any food, drink, medicine, or patent or proprietary medicine with intent that the same shall be taken, consumed, applied, or used in any manner by any human being to his injury; and

2. Unless authorized by law, no person shall willfully poison or place any Schedule I through V drug pursuant to the provisions of 21 CNCA § 2203 et seq., or any other object or substance which if used in a manner which is not customary or usual is harmful to human life in any spring, well, or reservoir of water.

B. Any person convicted of violating any of the provisions of this section shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 833. Unlawful confinement of lunatics

Every overseer of the poor, constable, keeper of a penal institution, or other person who confines any idiot, lunatic, or insane person, in any other manner or in any other place than is authorized by law, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 834. Reconfining persons discharged upon writ of deliverance

Every person who, either solely or as a member of a court, in the execution of a judgment, order or process, knowingly recommits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged from a penal institution upon a writ of deliverance, is guilty of a crime; and, in addition to the punishment prescribed therefor, he forfeits to the party aggrieved One Thousand Dollars (\$1,000.00), to be recovered in a civil action.

History

Source. LA 10–90, eff. November 13, 1990.

§ 835. Concealing persons to avoid habeas corpus

Every person having in his custody or power, or under his restraint, a party who by the provisions of law relating to habeas corpus, would be entitled to a

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writ of habeas corpus, or for whose relief such writ has been issued, who, with intent to elude the service of such writ, to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who, without lawful excuse, refuses to produce him, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 836. Assisting in concealing person to avoid habeas corpus

Every person who knowingly assists in the violation of the preceding section is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 837. Intimidating laborers

Every person who, by use of force, threats or intimidation, prevents or endeavors to prevent any hired foreman, journeyman, apprentice, workman, laborer, servant or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or induces such hired person to relinquish his work or employment, or to return any work he has in hand, before it is finished, is guilty of a crime.

Every person who, by use of force, threats, or intimidation, prevents or endeavors to prevent any farmer or rancher from harvesting, handling, transporting or marketing any agricultural products, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 838. Intimidating employers

Every person who, by use of force, threats or intimidation, prevents or endeavors to prevent another from employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants or other persons employed by him, or their rate of wages or time of service, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

RIGHT OF PRIVACY

§ 839.1. Right of privacy—Use of name or picture for advertising without consent— Crime

Any person, firm or corporation that uses for the purpose of advertising for the sale of any goods, wares or merchandise, or for the solicitation of patronage

by any business enterprise, the name, portrait or picture of any person, without having obtained, prior or subsequent to such use, the consent of such person, or, if such person is a minor, the consent of a parent or guardian, and, if such person is deceased, without the consent of the surviving spouse, personal representatives, or that of a majority of the deceased's adult heirs, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 839.2. Right of action – Damages

Any person whose right of privacy, as created in 21 CNCA § 839.1, is violated or the surviving spouse, personal representatives or a majority of the adult heirs of a deceased person whose name, portrait, or picture is used in violation of 21 CNCA § 839.1, may maintain an action. Provided that this act shall not prevent the continued use of names of such persons by business establishments using such names and displaying such names at the effective date of this act.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Torts O383.
Westlaw Topic No. 379.

C.J.S. Right of Privacy and Publicity §§ 50 to
51, 55.

§ 839.3. Right of photographer to exhibit specimens of work – Other uses excepted

Nothing contained in this act shall be so construed as to prevent any person, firm or corporation, practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such establishment, unless the same is continued by such person, firm or corporation after written notice objecting thereto has been given by the person portrayed; and nothing contained in this act shall be so construed as to prevent any person, firm or corporation from using the name, portrait or picture of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by him which he has sold or disposed of with such name, portrait or picture used in connection therewith; or from using the name, portrait or picture of any author, composer or artist in connection with his literary, musical or artistic productions which he has sold or disposed of with such name, portrait or picture used in connection therewith. Provided that this act shall not prevent the continued use of names of such persons by business establishments using such names and displaying such names at the effective date of this act.

Source. LA 10–90, eff. November 13, 1990.

History

TATTOOING

§ 841. Tattooing prohibited – Definition – Exemption

It shall be unlawful for any person to tattoo or offer to tattoo any person. As used herein to **“tattoo”** means to insert pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, so as to produce a permanent indelible mark or figure visible on the skin. Provided, however, that the provisions hereof shall not apply to any act of a licensed practitioner of the healing arts performed in the course of his practice.

History

Source. LA 10–90, eff. November 13, 1990.

§ 842. Penalty

Any person violating the provisions of 21 CNCA § 841 shall be guilty of a crime and upon conviction thereof shall be punished by imprisonment in the penal institution not to exceed ninety (90) days or payment of a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

CHILD ABUSE

§ 843. Abuse of children – Penalties**A. For the purposes of this section:**

1. **“Abuse”** means harm or threatened harm to a child’s health, safety or welfare by a person responsible for the child’s health, safety or welfare, including sexual abuse and sexual exploitation.
2. **“Child”** means any unmarried person under the age of eighteen (18) years.
3. **“Harm or threatened harm to a child’s health or safety”** includes, but is not limited to:
 - a. nonaccidental physical or mental injury;
 - b. sexual abuse;
 - c. sexual exploitation;
 - d. neglect;
 - e. failure or omission to provide protection from harm or threatened harm; or
 - f. abandonment.
4. **“Neglect”** means abandonment, or failure or omission to provide any of the following:
 - a. adequate food, clothing, shelter, medical care, or supervision; or
 - b. special care made necessary by the physical or mental condition of the child.

5. **“Person responsible for a child’s health, safety or welfare”** includes a parent, a legal guardian, a custodian, a foster parent, a person eighteen (18) years of age or older with whom the child’s parent cohabitates or any other adult residing in the home of the child, an agent or employee of a public or private residential home, institution, facility or day treatment program, or an owner, operator, or employee of a child care facility.

6. **“Sexual abuse”** includes, but is not limited to, rape, incest and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child’s health, safety or welfare regardless of the age or consent of the child.

7. **“Sexual exploitation”** includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child’s health, safety or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the law, by a person responsible for the child’s health, safety or welfare.

B. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a crime, punishable pursuant to 21 CNCA § 10. As used in this subsection, **“child abuse”** means the willful or malicious abuse, as defined by paragraph 1 of subsection (A) of this section, of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.

C. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall, upon conviction, be punished pursuant to 21 CNCA § 10. As used in this subsection, **“enabling child abuse”** means the causing, procuring or permitting of a willful or malicious act of child abuse, as defined by paragraph 1 of subsection (A) of this section, of a child under eighteen (18) years of age by another. As used in this subsection, **“permit”** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.

D. Any parent or other person who shall willfully or maliciously engage in child neglect shall, upon conviction, be punished pursuant to 21 CNCA § 10. As used in this subsection, **“child neglect”** means the willful or malicious neglect, as defined by paragraph 3 of subsection (A) of this section, of a child under eighteen (18) years of age by another.

E. Any parent or other person who shall willfully or maliciously engage in enabling child neglect shall, upon conviction, be punished pursuant to 21 CNCA § 10. As used in this subsection, **“enabling child neglect”** means the causing, procuring or permitting of a willful or malicious act of child neglect, as defined by paragraph 3 of subsection (A) of this section, of a child under eighteen (18) years of age by another. As used in this subsection, **“permit”** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be

placed at risk of neglect as proscribed by this subsection.

F. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this section, **“child sexual abuse”** means the willful or malicious sexual abuse, as defined by paragraph 6 of subsection (A) of this section, of a child under eighteen (18) years of age by another.

G. Any parent or other person who shall willfully or maliciously engage in sexual abuse to a child under twelve (12) years of age shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

H. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this subsection, **“enabling child sexual abuse”** means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by paragraph 6 of subsection (A) of this section, of a child under the age of eighteen (18) by another. As used in this subsection, **“permit”** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

I. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this subsection, **“child sexual exploitation”** means the willful or malicious sexual exploitation, as defined by paragraph 7 of subsection (A) of this section, of a child under eighteen (18) years of age by another.

J. Any parent or other person who shall willfully or maliciously engage in sexual exploitation of a child under twelve (12) years of age shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

K. Any parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. As used in this subsection, **“enabling child sexual exploitation”** means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation, as defined by paragraph 7 of subsection (A) of this section, of a child under eighteen (18) years of age by another. As used in this subsection, **“permit”** means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

L. Notwithstanding any other provision of law, any parent or other person convicted of rape or lewd molestation of a child under fourteen (14) years of age subsequent to a previous conviction, in any court of competent jurisdiction, for any offense of forcible anal or oral sodomy, rape, or lewd molestation of a child under fourteen (14) years of age shall be punished, punishable pursuant to

21 CNCA § 10, provided that such sentence must include a term of imprisonment.

M. Any person convicted of violating the provisions of subsections (F) through (L) of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

N. Consent shall not be a defense for any violation of this section.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Definitions, see 57 CNCA § 3.

Murder in the first degree, see 21 CNCA § 701.7.

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Indians O620.

Infants O1559.

Westlaw Topic Nos. 209, 211.

C.J.S. Indians §§ 151 to 179.

C.J.S. Infants § 115.

§ 843.1. Caretaker – Abuse, neglect or financial exploitation of charge

A. No caretaker or other person as defined in 43A O.S. § 10-103 shall abuse, commit financial neglect of, commit neglect of, commit sexual abuse upon, or financially exploit any person entrusted to the care of such caretaker or other person in a nursing facility or other setting or knowingly cause, secure, or permit any of said acts to be done.

B. Any person convicted of violating the provisions of this section shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that when such conviction involves sexual abuse or sexual exploitation, such sentence must include a term of imprisonment.

C. Consent shall not be a defense for any violation of this section.

D. Any person convicted of violating the provisions of this section by committing sexual abuse or sexual exploitation shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

E. For purposes of this section and 21 CNCA §§ 843.2 through 843.4:

1. **“Abuse”** means causing or permitting:

- a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or
- b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely

to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

2. **"Caretaker"** shall be defined as a person who has:
 - a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship;
 - b. assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or
 - c. been appointed a guardian, limited guardian, or conservator.
3. **"Exploitation"** or **"exploit"** means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;
4. **"Financial neglect"** means repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:
 - a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;
 - b. refusing to pay for necessities or utilities in a timely manner; or
 - c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources.
5. **"Incapacitated person"** means:
 - a. any person eighteen (18) years of age or older:
 - i. who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability or other cause; and
 - ii. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that such person lacks the capacity to manage his or her financial resources or to meet essential requirements for his or her mental or physical health or safety without assistance from others; or
 - b. a person for whom a guardian, limited guardian, or conservator has been appointed.
6. **"Indecent exposure"** means forcing or requiring a vulnerable adult to:
 - a. look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or
 - b. touch or feel the body or private parts of another.
7. **"Neglect"** means:
 - a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest; or
 - b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; or

- c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services.
 - 8. **“Self-neglect”** means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult’s lack of awareness, incompetence or incapacity;
 - 9. **“Sexual abuse”** means:
 - a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object; or
 - b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or
 - c. indecent exposure by a caretaker or other person providing services to the vulnerable adult.
 - 10. **“Sexual exploitation”** includes, but is not limited to, a caretaker’s causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by the Nation’s laws.
 - 11. **“Verbal abuse”** means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.
 - 12. **“Vulnerable adult”** means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.
- F. Nothing in this section shall be construed to mean a vulnerable adult is abused or neglected for the sole reason the vulnerable adult, in good faith, selects and depends upon spiritual means alone, in accordance with the practices of a recognized religious method of healing, for the treatment or cure of disease or remedial care, or a caretaker or other person responsible, in good faith, is furnishing such vulnerable adult spiritual means alone, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care in accordance with the practices of or express consent of the vulnerable adult.

OFFENSES AGAINST PERSONS

21 CNCA § 843.3

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Persons and crimes to which act applies, see 57 CNCA § 4.

Oklahoma Statutes

Protective Services for Vulnerable Adults Act, definitions, see 43A O.S. § 10–103.

Library References

Infants O1556, 1559, 1560, 1564.

C.J.S. Evidence § 380.

Westlaw Topic No. 211.

C.J.S. Infants §§ 5, 115, 125 to 137.

§ 843.2. Verbal abuse by caretaker

No caretaker shall verbally abuse any person entrusted to the care of the caretaker, or knowingly cause, secure, or permit an act of verbal abuse to be done. Any person convicted of violating the provisions of this section shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Infants O1564.

C.J.S. Evidence § 380.

Westlaw Topic No. 211.

C.J.S. Infants §§ 125 to 137.

§ 843.3. Abuse or exploitation of vulnerable adult by non-caretaker

A. Any person who engages in abuse, sexual abuse, or exploitation of a vulnerable adult, as defined in 21 CNCA § 843, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment when the offense involved sexual abuse or exploitation.

Any person convicted of violating the provisions of this subsection by committing sexual abuse or exploitation shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy

that shall be in addition to the actual imprisonment.

B. Any person who has a responsibility to care for a vulnerable adult who purposely, knowingly or recklessly neglects the vulnerable adult shall be guilty of a crime punishable pursuant to 21 CNCA § 10.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Persons and crimes to which act applies, see 57 CNCA § 4.

21 CNCA § 843.3

Library References

Protection of Endangered Persons O3 to 8.
Westlaw Topic No. 315P.

§ 843.4. Exploitation of elderly persons or disabled adults

A. As used in this section, “**exploitation of an elderly person or disabled adult**” means:

1. Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:
 - a. stands in a position of trust and confidence with the elderly person or disabled adult; or
 - b. has a business relationship with the elderly person or disabled adult.
2. Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

B. Any person convicted of violating this section commits a crime punishable pursuant to 21 CNCA § 10.

C. For purposes of this section, “**elderly person**” means any person sixty-two (62) years of age or older.

History

Source. LA 20–08, eff. January 12, 2009.
Amended. LA 09–12, eff. May 23, 2012.

§ 844. Ordinary force as means of discipline not prohibited

Provided, however, that nothing contained in this act shall prohibit any parent, teacher or other person from using ordinary force as a means of discipline, including but not limited to spanking, switching or paddling.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Infants O1559.
Westlaw Topic No. 211.
C.J.S. Infants § 115.

§ 845. Repealed by LA 20-08, eff. January 12, 2009**History**

The repealed section related to a statement of child protection policy and definitions, and was derived from LA 10-90.

§ 846. Mandatory reporting of physical abuse or birth of chemically-dependent child – Investigations – Spiritual treatment exemption – Appointment of attorney for child

A. Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, every teacher of any child under the age of eighteen (18) years, and every other person having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to Cherokee Nation and the county office of the Department of Human Services in the county wherein the suspected injury occurred. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance shall promptly report the matter to Cherokee Nation and the county office of the Department of Human Services in the county in which such birth occurred. Provided it shall be a crime for any person to knowingly and willfully fail to promptly report any incident as provided above. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as maybe after it is initially made by telephone or otherwise and shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, the nature and extent of the child's dependence on a controlled dangerous substance and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

Cherokee Nation and the county office receiving any report as herein provided shall investigate said report in accordance with priority guidelines established by Cherokee Nation and the Department of Human Services and if the county office finds evidence of abuse and neglect forward its findings to the prosecutor together with its recommendation as to disposition. In addition, a copy of the findings shall be sent to the Child Welfare Division of the Department of Human Services which shall be responsible for maintaining a permanent central registry, suitably cross-indexed, of all such reported findings. Any information contained in the central registry shall be available to any county office and to any prosecutor's office or public law enforcement agency investigating a report of suspected child abuse or neglect. The Department of Human

Services may promulgate rules and regulations in furtherance of the provisions of this section.

All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the Nation, State of Oklahoma or United States in connection with the performance of their official duties. It shall be unlawful and a crime for the Commission, or any employee working under the direction of the Department of Human Services, any other public officer or employee, or any Court-Appointed Special Advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

No provision of this section shall be construed to mean that a child has been abused or neglected because said child's parent, guardian or custodian in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care of such child.

B. In every case filed under 21 CNCA § 843, the Judge of the District Court shall appoint an attorney-at-law to appear for and represent a child who is the alleged subject of child abuse in such case if the prosecutor has a conflict of interest. The attorney may be allowed a reasonable fee for such services to be paid from the Court Fund to be fixed by the District Court. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section. The attorney shall be charged with the representation of the child's best interests. To that end, he shall make such further investigation that he deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the Court and participate further in the proceedings to the degree appropriate for adequately representing the child. A Court-Appointed Special Advocate as defined by 10 CNCA § 1109 may be appointed to represent a child who is the alleged subject of child abuse or neglect. The Court-Appointed Special Advocate shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section.

History

Source. LA 10-90, eff. November 13, 1990.

Cross References

Questioning of children—Counsel—Appointment of guardian ad litem—Court appointed special advocates—Immunity—Confidentiality, see 10 CNCA § 1109.

Library References

Infants O1501 to 1507.
Westlaw Topic No.211.

C.J.S. Infants §§ 5 to 6, 8 to 9, 43, 71 to 95,
110 to 114, 116 to 121.

§ 846.1. Report of criminally inflicted injuries

Any physician, surgeon, osteopathic physician, resident, intern, physician's assistant, or registered nurse, examining, attending, or treating the victim of what appears to be criminally injurious conduct as defined by 21 CNCA § 142.3 shall

report orally or by telephone the matter promptly to the nearest appropriate law enforcement agency wherein the criminally injurious conduct occurred.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Infants O1504.
Westlaw Topic No.211.

C.J.S. Infants §§ 43, 71 to 95, 110 to 114, 118 to 121.

§ 847. Immunity from civil or criminal liability

Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of 21 CNCA § 846 or 21 CNCA § 846.1, or any person who, in good faith and exercising due care, allows access to a child by persons authorized to investigate a report concerning the child shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Infants O1506.
Westlaw Topic No.211.
C.J.S. Infants § 5.

§ 848. Admissibility of evidence

In any proceeding resulting from a report made pursuant to the provisions of 21 CNCA § 846 or 21 CNCA § 846.1 or in any proceeding where such a report or any contents of the report are sought to be introduced into evidence, such report, contents, or other fact related thereto or to the condition of the child or victim who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

History

Source. LA 10–90, eff. November 13, 1990.

EXPLOSIVES

**§ 849. Wiring or equipping of vehicles or structures with explosives –
Penalty**

Every person who shall attach to, or place in or upon any motor vehicle or any vehicle designed or customarily used to transport a person or persons or any structure designed or customarily used for the occupancy of a person or persons, any explosive material, thing or device with the intent of causing bodily injury or death to any person shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Explosives O4.
Westlaw Topic No. 164.

C.J.S. Explosives §§ 13, 20 to 22, 30, 33, 37,
41, 44, 49, 108 to 123.

INTIMIDATION OR HARASSMENT

§ 850. Malicious intimidation or harassment because of race, color, religion, ancestry, national origin or disability—Standardized reporting system

A. No person shall maliciously and with the specific intent to intimidate or harass another person because of that person's race, color, religion, ancestry, national origin or disability:

1. Assault or batter another person;
2. Damage, destroy, vandalize or deface any real or personal property of another person; or
3. Threaten, by word or act, to do any act prohibited by paragraph 1 or 2 of this subsection if there is reasonable cause to believe that such act will occur.

B. No person shall maliciously and with specific intent to incite or produce, and which is likely to incite or produce, imminent violence, which violence would be directed against another person because of that person's race, color, religion, ancestry, national origin or disability, make or transmit, cause or allow to be transmitted, any telephone or electronic message.

C. No person shall maliciously and with specific intent to incite or produce, and which is likely to incite or produce, imminent violence, which violence would be directed against another person because of that person's race, color, religion, ancestry, national origin or disability, broadcast, publish, or distribute, cause or allow to be broadcast, published or distributed, any message or material.

D. Any person convicted of violating any provision of subsections (A), (B) or (C) of this section shall be guilty of a crime on a first offense.

E. Cherokee Nation shall cooperate with the Oklahoma State Bureau of Investigation to develop a standard system for Nation, state and local law enforcement agencies to report incidents of crime which are apparently directed against members of racial, ethnic or religious groups to the Bureau within seventy-two (72) hours of the time such incidents are reported to such agencies.

F. No person, partnership, company or corporation that installs telephone or electronic message equipment shall be required to monitor the use of such equipment for possible violations of this section, nor shall such person, partnership, company or corporation be held criminally or civilly liable for the use by another person of the equipment in violation of this section, unless the person, partnership, company or corporation that installed the equipment had prior actual knowledge that the equipment was to be used in violation of this section.

OFFENSES AGAINST PERSONS

21 CNCA § 850

History

Source. LA 10–90, eff. November 13, 1990.

PART IV
CRIMES AGAINST PUBLIC DECENCY AND MORALITY
CHAPTER 31

ABANDONMENT AND NEGLECT OF WIFE OR CHILDREN

Section

- 851. Desertion of children under age of ten—Penalty
- 852. Omission to provide for a child—Penalties
- 852.1. Child endangerment—Knowingly permitting physical or sexual abuse—Good faith reliance on spiritual healing—Penalties
- 853. Desertion of wife or child under fifteen—Penalty
- 854. Proof of marriage—Wife as competent witness—Duty of prosecutor to prosecute

§ 851. Desertion of children under age of ten – Penalty

Any parent of any child or children under the age of ten (10) years, and every person to whom such child or children have been confided for nurture or education, who deserts such child or children within Cherokee Nation, or takes such child or children out of Cherokee Nation, with the intent wholly to abandon it, shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 852. Omission to provide for a child – Penalties

A. Unless otherwise provided for by law, any parent, guardian, or person having custody or control over a child as defined in 10 CNCA § 1101 who willfully omits, without lawful excuse, to perform any duty imposed upon such parent, guardian, or person having custody or control of a child by law to furnish necessary food, clothing, shelter, monetary child support, or medical attendance for such child, upon conviction, is guilty of a crime. As used in this section, the **“duty to furnish medical attention”** shall mean that the parent or person having custody or control of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or person having custody or control of a child is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted. Any person who leaves the Nation to avoid providing necessary food, clothing, shelter, court-ordered monetary child support, or medical attendance for such child, upon conviction, is guilty of a crime. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated. Nothing contained herein

shall prevent a Court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health or welfare. Psychiatric and psychological testing and counseling are exempt from the provisions of this section.

B. It is the duty of any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person, as such terms are defined by 43A O.S. § 3–403, to provide for the treatment, as such term is defined by 43A O.S. § 3–403, of such child. Any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person who without having made a reasonable effort fails or willfully omits to provide for the treatment of such child shall be guilty of a crime. For the purpose of this subsection, the **“duty to provide for such treatment”** shall mean that the parent having legal custody of a child must provide for the treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide.

History

Source. LA 10–90, eff. November 13, 1990.

Oklahoma Statutes

Oklahoma Alcohol and Drug Abuse Services Act, definitions, see 43A O.S. § 3–403.

Library References

Child Support O650.
Westlaw Topic No. 76E.

C.J.S. Parent and Child §§ 181, 254, 378 to
381, 383 to 384.

§ 852.1. Child endangerment – Knowingly permitting physical or sexual abuse – Good faith reliance on spiritual healing – Penalties

A. In this section **“abandon”** means to leave a child in any place without providing reasonable and necessary care for the child under circumstance under which no reasonable similarly situated adult would leave a child of that age and ability.

B. A person commits a crime if, having custody, care or control of a child younger than fifteen (15) years, he intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.

C. A person commits a crime if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than fifteen (15) years in imminent danger of death, bodily injury or physical or mental impairment.

D. A person who is the parent, guardian, or person having custody or control over a child as defined in 10 CNCA § 1101, commits the crime of child endangerment when the person knowingly permits physical or sexual abuse of a child or who knowingly permits a child to be present at a location when a controlled dangerous substance is being manufactured or attempted to be manufactured as defined in 21 CNCA § 2101. However, it is an affirmative defense to this paragraph if the person had a reasonable apprehension that any action to stop the abuse would result in substantial bodily harm to the person or

the child.

E. The provision of this action shall not apply to any parent, guardian or other person having custody or control of a child for the sole reason that the parent, guardian or other person in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care for such child. This subsection shall in no way limit or modify the protections afforded said child in 21 CNCA § 852 or 10 CNCA § 1130.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–06, eff. June 16, 2006.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Child Support O650.

Infants O1556.

Westlaw Topic Nos. 76E,211.

C.J.S. Evidence § 380.

C.J.S. Infants §§ 5, 115, 125 to 137.

C.J.S. Parent and Child §§ 181, 254, 378 to 381, 383 to 384.

§ 853. Desertion of wife or child under fifteen—Penalty

Every person who shall without good cause abandon his wife in destitute or necessitous circumstances and neglect and refuse to maintain or provide for her, or who shall abandon his or her minor child or children under the age of fifteen (15) years and willfully neglect or refuse to maintain or provide for such child or children, shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 854. Proof of marriage—Wife as competent witness—Duty of prosecutor to prosecute

No other evidence shall be required to prove marriage of such husband and wife, or that such person is the lawful father or mother of such child or children than is or shall be required to prove such fact in a civil action, and such wife shall be a competent witness to testify in any case brought under this chapter, and to any and all matters relevant thereto, including the fact of such marriage and the parentage of such child or children. It shall be the mandatory duty of each prosecutor of this Nation to diligently prosecute all persons violating any of the provisions of this chapter, and in all cases where the evidence is deemed sufficient to justify a prosecution for such violation, any prosecutor who shall willfully fail, neglect or refuse to institute criminal proceedings to enforce such provisions, shall be subject to removal from office.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 31A

CONTRIBUTING TO DELINQUENCY OF MINORS

Section

856. Contributing to delinquency of minor or in commission of crime—Punishment
Causing, aiding, abetting or encouraging minor to participate in certain drug-related crimes
857. Definitions
- 858.1. Causing, aiding, abetting or encouraging minor to be in need of supervision or dependent or neglected—Punishment—Second or subsequent conviction
- 858.2. Neglect of minor adjudicated delinquent, in need of supervision or dependent and neglected and placed in parents' or others' care

History

Source. LA 10–90, eff. November 13, 1990.

§ 856. Contributing to delinquency of minor or in commission of crime — Punishment

A. Except as otherwise specifically provided by law, every person who shall knowingly or willfully cause, aid, abet or encourage a minor to be, to remain, or to become a delinquent child, upon conviction, shall be guilty of a crime.

B. Every person eighteen (18) years of age or older who shall knowingly or willfully cause, aid, abet or encourage a minor to commit or participate in committing an act that would be a crime if committed by an adult shall, upon conviction, be guilty of a crime punishable by the maximum penalty allowed for conviction of the offense or offenses which the person caused, aided, abetted or encouraged the minor to commit or participate in committing.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Admissibility of prerecorded statements of child age 12 or under who is victim of abuse, see 10 CNCA § 1147.

Library References

Infants O1567.
Westlaw Topic No.211.

C.J.S. Evidence § 380.
C.J.S. Infants §§ 5, 125 to 137.

§ 856.1. Causing, aiding, abetting or encouraging minor to participate in certain drug-related crimes

Every person who shall knowingly, intentionally or willfully cause, aid, abet or encourage a minor child to:

1. Distribute, dispense, possess or manufacture a controlled dangerous substance, as provided in the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.;
2. Create, distribute, or possess a counterfeit controlled dangerous substance, as defined by 21 CNCA § 2101;
3. Distribute any imitation controlled substance as defined by 21 CNCA

§ 2101;

4. Conspire or participate in any scheme, plan or act for the purposes of avoiding, eluding or evading arrest or detection by law enforcement authorities for crimes involving controlled substances as defined by 21 CNCA § 2101; or
5. Violate any penal provisions of the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.;

shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Infants O1567, 1568.
Westlaw Topic No.211.

C.J.S. Evidence § 380.
C.J.S. Infants §§ 5, 125 to 137.

§ 857. Definitions

1. **“Delinquent child,”** as used in 21 CNCA § 856, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, shall include a minor, as herein defined, who shall have been or is violating any penal statute of this Nation, or who shall have been or is committing any one or more of the following acts, to wit:

- a. Associating with thieves, vicious or immoral persons;
- b. Frequenting a house of ill repute;
- c. Frequenting any policy shop, or place where any gambling device is operated;
- d. Frequenting any saloon, dram shop, still, or any place where intoxicating liquors are manufactured, stored or sold;
- e. Possession, carrying, owning or exposing any vile, obscene, indecent, immoral or lascivious photograph, drawing, picture, book, paper, pamphlet, image, device, instrument, figure or object;
- f. Willfully, lewdly or lasciviously exposing his or her person, or private parts thereof, in any place, public or private, in such manner as to be offensive to decency, or calculated to excite vicious or lewd thoughts, or for the purpose of engaging in the preparation or manufacture of obscene, indecent or lascivious photographs, pictures, figures or objects;
- g. Possessing, transporting, selling, or engaging or aiding or assisting in the sale, transportation or manufacture of intoxicating liquor, or the frequent use of same;
- h. Being a runaway from his or her parent or legal guardian;
- i. Violating any penal provision of the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.

2. **“Encourage,”** as used in 21 CNCA § 856, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, in addition to the usual meaning of the word,

shall include a willful and intentional neglect to do that which will directly tend to prevent such act or acts of delinquency on the part of such minor, when the person accused shall have been able to do so.

DELINQUENCY OF MINORS

21 CNCA § 858.2

3. **“Every person,”** as used in 21 CNCA § 856, 21 CNCA § 856.1, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, shall include human beings, without regard to their legal or natural relationship to such minor, as well as legal or corporate entities.
4. **“Minor” or “child,”** as used in 21 CNCA § 856, 21 CNCA § 857, 21 CNCA § 858.1 and 21 CNCA § 858.2, shall include male or female persons who shall not have arrived at the age of eighteen (18) years at the time of the commission of the offense.

History

Source. LA 10–90, eff. November 13, 1990.

§ 858.1. Causing, aiding, abetting or encouraging minor to be in need of supervision or dependent or neglected—Punishment—Second or subsequent conviction

- A. Any parent or other person who knowingly and willfully:
 1. causes, aids, abets or encourages any minor to be in need of supervision, or dependent and neglected; or
 2. shall by any act or omission to act have caused, encouraged or contributed to the dependency and neglect, or the need of supervision of the minor, or to such minor becoming dependent and neglected, or in need of supervision;

shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Admissibility of prerecorded statements of child age 12 or under who is victim of abuse, see 10 CNCA § 1147.

§ 858.2. Neglect of minor adjudicated delinquent, in need of supervision or dependent and neglected and placed in parents’ or others’ care

In all cases where a minor has been adjudged delinquent, in need of supervision or dependent and neglected by a court of competent jurisdiction and such court by order for care or probation, has placed such minor in the care or on probation to the parent, legal guardian, or legal custodian of such minor, any parent, legal guardian or legal custodian of such minor who shall neglect, fail or refuse to give such minor proper parental care, or to comply with the order for care or probation shall be deemed guilty of a crime and upon conviction thereof shall, as applicable, be punished as provided in 21 CNCA § 856 or 21 CNCA § 858.1.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Admissibility of prerecorded statements of child age 12 or under who is victim of abuse, see 10
CNCA § 1147.

CHAPTER 32

CONCEALING DEATH OF CHILDREN

Section

863. Concealing stillbirth or death of child

§ 863. Concealing stillbirth or death of child

Every person who endeavors either by himself or by the aid of others to conceal the stillbirth of an issue of a woman's body, or the death of any child, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 32A

TRAFFICKING IN CHILDREN

Section

- 865. Definitions
- 866. Elements of offense
- 867. Punishment
- 868. Partial invalidity
- 869. Construction of act

§ 865. Definitions

As used in 21 CNCA § 866, 21 CNCA § 867, 21 CNCA § 868, and 21 CNCA § 869, the terms hereinafter enumerated shall have the following meanings:

1. **“Birth parent”** means a parent of a child being placed for adoption and includes, but is not limited to, a woman who is pregnant or who presents herself as pregnant and who is offering to place her child, born or unborn, for adoption.
2. **“Child”** means an unmarried or unemancipated person under the age of eighteen (18) years.
3. **“Child-placing agency”** means any child welfare agency licensed by any government and authorized to place minors for adoption.
4. **“Department”** means the Cherokee Nation Department of Children, Youth and Family Services.
3. **“Foster home”** means a home or other place, other than the home of a parent, relative within the fourth degree, or guardian of the child concerned, wherein a child is received for permanent care, custody and maintenance.
4. **“Person”** means any natural person, corporation, association, organization, institution, or partnership.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Infants O1551.

Westlaw Topic No.211.

C.J.S. Evidence § 380.

C.J.S. Infants §§ 110 to 115, 118 to 137.

§ 866. Elements of offense

A. 1. The crime of trafficking in children is defined to consist of any of the following acts or any part thereof:

- a. the acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at any time, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child except as otherwise provided by the Cherokee Nation Adoption Code, 10 CNCA

§ 55 et seq.;

- b. the acceptance or solicitation of any compensation, in money, property or other thing of value, by any person or organization for services performed, rendered or purported to be performed to facilitate or assist in the adoption or foster care placement of a minor child, except by the Cherokee Nation Department of Children, Youth and Family Services or an agency licensed thereby, or an attorney authorized to practice law in Cherokee Nation. The provisions of this paragraph shall not prohibit an attorney licensed to practice law outside of Cherokee Nation or a non-Cherokee Nation child-placing agency from receiving compensation when working with an attorney licensed in Cherokee Nation who is, or when working with a child-placing agency licensed in Cherokee Nation which is, providing adoption services or other services necessary for placing a child in an adoptive arrangement.
- c. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for the purpose of an adoption by the birth parent of the child who at the time of the solicitation or receipt had no intent to consent to eventual adoption;
- d. the payment of a recognized hospital or a physician qualified under the laws of Cherokee Nation which renders competent and needed hospital and medical care to an expectant mother or reasonable domiciliary care to a mother and child when such hospital and medical care have been approved by the Judge of the District Court shall not be considered as compensation for the adoption of the child or in any sense of the words be referred to as “trafficking in children”; nor shall the charge of a reasonable attorney’s fee for services rendered in adoption or custody proceedings, approved by the Court, be considered as trafficking in children; nor shall the fees charged by a licensed child placing agency approved by the Court, for services rendered in the care of any child or its parent, the investigation and counseling services to and on behalf of the child, its parents and prospective adoptive home, be considered as trafficking in children; provided, however, that all such procedure relating to the care of an expectant unwed mother and her child and the adoption procedure therein comprised, or any other adoption, shall remain confidential in its nature, as otherwise provided by law;
- e. offering to place, or advertising to place, a child for adoption or for care in a foster home, by any person, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a child;
- f. bringing or causing to be brought into this Nation or sending or causing to be sent outside this Nation any child for the purpose of placing such child in a foster home or for the adoption thereof without first obtaining the consent of the Department of Children, Youth and Family Services. Provided, however, that this provision shall have no application to the parent or guardian of the child nor to a person bringing said child into this Nation for the purpose of adopting the child into such person’s same into his own family;

- g. acceptance of or the offering or payment of any compensation, in money, property or other thing of value, by any person, in connection with the acquisition or transfer of the legal or physical custody of a child, except as ordered by the Court or except as otherwise provided by law;
- h. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a woman who knows she is not pregnant but who holds herself out to be pregnant and offers to place a child upon birth for adoption;
- i. the receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a birth parent who receives, from one or more parties, an aggregate amount of One Thousand Dollars (\$1,000.00) or more in total value without first disclosing to each prospective adoptive parent, child-placing agency, or attorney the receipt of these expenses;
- j. advertising of services for compensation to assist with or effect the placement of a child for adoption or for care in a foster home by any person or organization except by the Department of Children, Youth and Family Services, or a child-placing agency licensed thereby. Nothing in this paragraph shall prohibit an attorney authorized to practice law in Cherokee Nation from the advertisement of legal services related to the adoption of children; and
- k. Advertising for and solicitation of a woman who is pregnant to induce her to place her child upon birth for adoption, except by the Department of Children, Youth and Family Services or an attorney authorized to practice law in Cherokee Nation.

2.a. Except as otherwise provided by this subsection, the violation of any of the subparagraphs in paragraph 1 of this subsection shall constitute a crime punishable pursuant to 21 CNCA § 10.

- b. Prospective adoptive parents who violate subparagraph a of paragraph 1 of this subsection, upon conviction thereof, may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

B. 1. No person shall knowingly publish for circulation within the borders of Cherokee Nation an advertisement of any kind in any print, broadcast or electronic medium, including, but not limited to, newspapers, magazines, telephone directories, handbills, radio or television, which violates subparagraph j or k of paragraph 1 of subsection (A) of this section.

- 2. Any person violating the provisions of this subsection shall, upon conviction thereof, be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

C. The payment or acceptance of costs and expenses listed in the Cherokee Nation Adoption Code shall not be a violation of this section as long as the petitioner or birth parent has complied with the applicable procedure specified therein, and such costs and expenses are approved by the Court.

D. Any person knowingly failing to file an affidavit of all adoption costs and expenses before the final decree of adoption as required by the Cherokee

Nation Adoption Code shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Infants O1551.

Westlaw Topic No.211.

C.J.S. Evidence § 380.

C.J.S. Infants §§ 110 to 115, 118 to 137.

§ 867. Punishment

A. The offense of trafficking in children by any person shall be a crime.

B. Conviction of the crime of trafficking in children, subsequent to a prior conviction for such offense in any form, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. Any person convicted of the offense of trafficking in children shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Infants O1551.

Westlaw Topic No.211.

C.J.S. Evidence § 380.

C.J.S. Infants §§ 110 to 115, 118 to 137.

§ 868. Partial invalidity

If any provision or section of this act or the application thereof to any person, corporation, organization, association, partnership, or institution shall be held to be invalid or unconstitutional, the remainder of the act and the application of such provision or section to any other person, organization, association, institution, corporation or partnership shall not be affected thereby.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Statutes O1535(6).
Westlaw Topic No.361.
C.J.S. Statutes § 124.

§ 869. Construction of act

Except as otherwise set forth or except in case of conflict between the provisions hereof and other law, the provisions of this act shall be cumulative to existing law.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 34

BIGAMY, INCEST AND SODOMY

Section

- 881. Bigamy defined
- 882. Exceptions to the rule of bigamy
- 883. Punishment of bigamy
- 884. Person marrying bigamist
- 885. Incest—Penalty
- 886. Crime against nature
- 887. Crime against nature, what penetration necessary
- 888. Repealed

§ 881. Bigamy defined

Every person who having been married to another who remains living, marries any other person except in the cases specified in the next section is guilty of bigamy.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Bigamy O1.
Westlaw Topic No. 55.
C.J.S. Bigamy and Related Offenses §§ 1 to 6.

§ 882. Exceptions to the rule of bigamy

The last preceding section does not extend:

1. To any person whose husband or wife by a former marriage has been absent for five (5) successive years without being known to such person within that time to be living; nor
2. To any person whose husband or wife by a former marriage has absented himself or herself from his wife or her husband and has been continually remaining without the United States for a space of five (5) years together; nor
3. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court; nor
4. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Bigamy O1, 2.
Westlaw Topic No.55.
C.J.S. Bigamy and Related Offenses §§ 1 to 8.

§ 883. Punishment of bigamy

Every person convicted of bigamy is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Bigamy O1.	C.J.S. Bigamy and Related Offenses §§ 1 to 6.
Indians O620.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 55, 209.	

§ 884. Person marrying bigamist

Every person who knowingly marries the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Bigamy O1.
Westlaw Topic No. 55.
C.J.S. Bigamy and Related Offenses §§ 1 to 6.

§ 885. Incest—Penalty

Persons who, being within the degrees of consanguinity within which marriages are by the laws of the Nation declared incestuous and void, intermarry with each other, or commit adultery or fornication with each other, are guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 20–08, eff. January 12, 2009.
Amended. LA 09–21, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.
 Definitions, see 57 CNCA § 3.
 Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Incest O1, 5, 6.	C.J.S. Incest §§ 1, 4 to 6, 8 to 20.
Mental Health O469(2).	C.J.S. Mental Health §§ 290 to 291, 299.
Westlaw Topic Nos. 207, 257A.	

§ 886. Crime against nature

Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is guilty of a crime punishable pursuant to 21 CNCA 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 20–08, eff. January 12, 2009.
Amended. LA 09–21, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.
 Limitations in general, see 22 CNCA § 152.
 Persons and crimes to which act applies, see 57 CNCA § 4.
 Victim of domestic abuse, definitions, see 22 CNCA § 40.

Library References

Sodomy O1.
 Westlaw Topic No. 357.
 C.J.S. Rape § 3.

§ 887. Crime against nature, what penetration necessary

Any sexual penetration, however slight, is sufficient to complete the crime against nature.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.
 Victim of domestic abuse, definitions, see 22 CNCA § 40.

Library References

Sodomy 1.
Westlaw Topic No. 357.
C.J.S. Rape § 3.

BIGAMY, INCEST & SODOMY

**21 CNCA §888
Repealed**

§ 888. Repealed by LA 20-08, eff. January 12, 2009

History

The repealed section, derived from LA 10-90,
related to forcible sodomy.

CHAPTER 35

CHILD STEALING

Section

891. Child stealing—Punishment

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

§ 891. Child stealing—Punishment

Whoever maliciously, forcibly or fraudulently takes or entices any child under the age of eighteen (18) years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child or to transport such child from the jurisdiction of Cherokee Nation or the United States without the consent of the person having lawful charge of such child shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA

§ 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Kidnapping O23.

Mental Health O469(2).

Westlaw Topic Nos. 231E, 257A.

C.J.S. Kidnapping §§ 30 to 32.

C.J.S. Mental Health §§ 290 to 291, 299.

CHAPTER 36

CRIMES AGAINST RELIGION AND CONSCIENCE

Section

- 913. Compelling form of belief
- 914. Preventing religious act
- 915. Disturbing religious meeting

§ 913. Compelling form of belief

Any willful attempt by means of threats or violence to compel any person to adopt, practice or profess any particular form of religious belief, is a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 914. Preventing religious act

Every person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 915. Disturbing religious meeting

Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts or things hereinafter enumerated, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 38

GAMBLING

GENERAL PROVISIONS

Section

- 941. Opening, conducting or carrying on gambling game—Dealing for those engaged in game
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GENERAL PROVISIONS

§ 941. Opening, conducting or carrying on gambling game—Dealing for those engaged in game

Every person who opens, or causes to be opened, or who conducts, whether for hire or not, or carries on either poker, roulette, craps or any banking or percentage, or any gambling game played with dice, cards or any device, for money, checks, credits, or any representatives of value, or who either as owner or employee, whether for hire or not, deals for those engaged in any such game, upon conviction thereof, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 942. Betting on or playing prohibited game—Punishment

Any person who bets or plays at any of said prohibited games, or who shall bet or play at any game whatsoever, for money, property, checks, credits or other representatives of value with cards, dice or any other device which may be adapted to or used in playing any game of chance or in which chance is a material element, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343, 620.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 188, 193.

§ 943. Gambling paraphernalia—Disposition

The magistrate to whom anything suitable to be used for gambling purposes, including any vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, or furniture or equipment used in a place conducted in violation of this act is delivered, as provided by law shall, upon the examination of the accused, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him and whether it was actually intended or employed by the accused or others in violation of the provisions of this chapter; and if he finds that it is of a character suitable to be used for gambling purposes, and that it was actually employed or intended to be used by the accused or others in violation of the provisions of this article, he shall so find and cause the same to be delivered to the marshal to await the order of the District Court. Provided, that any of the furniture or equipment susceptible of legitimate use, may be sold under the procedures enumerated in 21 CNCA

§ 1738(C)(1), and the proceeds thereof placed in the Court Fund of the Nation, and that any money so found by the officers shall be placed in the Court Fund of the Nation.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 40–02, eff. November 27, 2002.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

§ 944. Slot machines – Setting up, operating or conducting – Punishment

Any person who sets up, operates or conducts, or who permits to be set up, operated or conducted in or about his place of business, whether as owner, employee or agent, any slot machine for the purpose of having or allowing the same to be placed by others for money, property, checks, credits or any representative of value shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343, 620.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 188, 193.

§ 945. Use of real estate or buildings for gambling purposes – Punishment

It shall be unlawful for the owner or owners of any real estate buildings, structure or room to use, rent, lease or permit, knowingly, the same to be used for the purposes of violating 21 CNCA § 941. Any person who shall violate the provisions of this section shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343, 620.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 188, 193.

§ 946. Illegal use of building or vessel – Nuisance – Penalty

Any house, room, vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, or place where any of the games prohibited by 21 CNCA § 941 are opened, conducted or carried on, or where persons congregate to play at any such game is a public nuisance and the keepers and managers of any such nuisance, and persons aiding or assisting any

such keepers or managers in keeping or managing any such nuisance shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 42–02, eff. November 27, 2002.

Library References

Indians O343, 620.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 188, 193.

§ 952. Persons jointly charged – Severance

Persons jointly charged with the violation of any of the provisions of this act shall be tried together, provided the Court for good cause shown may grant a severance.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

§ 953. Accomplice testimony – Force of same

Any person charged with a violation of any of the provisions of this chapter may be convicted on the uncorroborated testimony of an accomplice, and the judgment thereon shall not be set aside or reversed by reason of the fact that such conviction was based on the testimony of an accomplice.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

§ 956. Permitting gambling in building or on grounds

Every person who shall permit any gaming table, bank, or gaming device prohibited by this chapter, to be set up or used for the purpose of gambling in any house, building, shed, shelter, booth, lot or other premises to him belonging, or by him occupied, or of which he has, at the time, possession or control, shall be, on conviction thereof, adjudged guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

§ 957. Leasing for gambling purposes

Every person who shall knowingly lease or rent to another any house, building or premises for the purpose of setting up or keeping therein, any of the gambling devices prohibited by the preceding provisions of this chapter, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

§ 959. Witnesses failing to testify

Every person duly summoned as a witness for the prosecution or defense on any proceedings ordered under this chapter, who neglects or refuses to attend and testify as required, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

§ 960. Seizure of apparatus and property and delivery to magistrate

Every person who is authorized or enjoined to arrest any person for a violation of the provisions of this chapter, is equally authorized and enjoined to seize any vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, which have been used for illegal gambling and any table, cards, dice, or other articles or apparatus suitable to be used for gambling purposes found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 41–02, eff. November 27, 2002.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

§ 961. Testimony, no person excused from giving

No person shall be excused from giving any testimony or evidence upon any investigation or prosecution for violation of this chapter, upon the ground that such testimony would tend to convict him of a crime, but such testimony or evidence shall not be received against him upon any criminal investigation or prosecution, except in a prosecution against him for perjury committed in giving such testimony.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

SLOT MACHINES AND PUNCH BOARDS

§ 964. "Slot machine" defined

For the purpose of this act, "**slot machine**" is defined to be:

First: Any machine, instrument, mechanism or device that operates or may be operated or played mechanically, electrically, electronically automatically or manually, and which can be played or operated by any person by inserting in any manner into said machine, instrument, mechanism or device, a coin, chip, token, check, credit, money, representative of value, or a thing of value, and by which play or operation such person will stand to win or lose, whether by skill or chance, or by both, a thing of value; and

Second: Any machine, instrument, mechanism or device that operates or may be played or operated mechanically, electrically, electronically, automatically, or manually, and which can be played or operated by any person by paying to or depositing with any person, or by depositing with or in any cache, receptacle, slot, or place a coin, chip, token, check, credit, money, representative of value, or a thing of value, and by which play or operation such person will stand to win or lose, whether by skill or chance, or by both, a thing of value.

History

Source. LA 10-90, eff. November 13, 1990.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

§ 965. "Thing of value" defined

For the purposes of this act, "**a thing of value**" is defined to be any money, coin, currency, check, chip, token, credit, property, tangible or intangible, or any representative of value or any other thing, tangible or intangible except amusement or entertainment, calculated or intended to serve as an inducement for anyone to operate or play any slot machine or punch board.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 966. “Punch board” defined

For the purposes of this chapter, “**punch board**” is defined to be any card, board, substance or thing upon or in which is placed or concealed in any manner any number, figure, name, design, character, symbol, picture, substance or thing which may be drawn, uncovered, exposed or removed therefrom by any person paying a thing of value, which number, figure, design, character, symbol, picture, substance or any other thing, when drawn, uncovered, exposed or removed therefrom, will stand the person drawing, uncovering, exposing or removing the same to win or lose a thing of value.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 967. Words in singular and plural

Any word or words used in this act in the singular number shall include the plural, and the plural the singular.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 968. “Person” defined

For the purposes of this act, “**person**” is defined to include any person, partnership, association, company, stock company, corporation, receiver, trustee, organization or club.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

§ 969. Possession, sale, or lease of slot machines or punch boards prohibited

It shall be unlawful for any person to have in his possession any slot machine or punch board, or sell or solicit the sale, or take orders for the sale of, or lease or rent any slot machine or punch board in this Nation, and any person violating the provisions of this section shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 971. Punch board – Acts prohibited – Punishment

Any person who sets up, operates, exposes, conducts, displays or plays, or who permits to be set up, operated, exposed, conducted, displayed or played, in or about any place or in or about any place of business, whether as owner, employee or agent, any punch board for the purpose of having or allowing the same to be played by others for money, property, tangible or intangible, coin, currency, check, chip, token, credit, amusement or any representative of value or a thing of value, shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343, 620.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 188, 193.

§ 978. Bingo and regulated gaming not prohibited

None of the provisions of this chapter, except 21 CNCA § 995.11, shall apply to bingo and gambling regulated or operated by Cherokee Nation under Title 4 of the Code.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 39–02, eff. November 27, 2002.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

GAMBLING AND COMMERCIAL GAMBLING ACTIVITIES

§ 981. Definitions

As used in this chapter:

1. A **“bet”** is a bargain in which the parties agree that, dependent upon chance, or in which one of the parties to the transaction has valid reason to believe that it is dependent upon chance, one stands to win or lose something of value specified in the agreement. A **“bet”** does not include:
 - a. bona fide business transactions which are valid under the law of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance; or
 - b. any bingo game or a game of chance with comparable characteristics by or for participants conducted by an authorized organization under the laws of this Nation; or
 - c. offers of purses, prizes or premiums to the actual participants in public and semipublic events, as follows, to wit: Rodeos, animal shows, expositions, fairs, athletic events, tournaments and other shows and contests where the participants qualify for a monetary prize or other recognition. This subparagraph further excepts an entry fee from the definition of **“a bet”** as applied to enumerated public and semipublic events;
 - d. any gambling activity regulated or operated by Cherokee Nation provided by law.
2. **“Consideration”** as used in this section means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration. As used in this paragraph, the term **“consideration”** shall not include sums of money paid by or for participants in any bingo game or a game of chance with comparable characteristics as defined by subparagraph b of paragraph 1 of this section and it shall be conclusively presumed that such sums paid by or for said participants were intended by said participants to be for the benefit of the organizations described in subparagraph b of paragraph 1 of this section for the use of such organizations in furthering the purposes of such organizations;
3. A **“gambling device”** is a contrivance designed primarily for gambling purposes which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not

affect its character as a gambling device; and

4. A “**gambling place**” is any place, room, building, vehicle, tent or location which is used for any of the following: making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 982. Commercial gambling

A. Commercial gambling is:

1. Operating or receiving all or part of the earnings of a gambling place;
2. Receiving, recording or forwarding bets or offers to bet or, with intent to receive, record or forward bets or offers to bet, possessing facilities to do so;
3. For gain, becoming a custodian of anything of value bet or offered to be bet;
4. Conducting a lottery or with intent to conduct a lottery possessing facilities to do so;
5. Setting up for use or collecting the proceeds of any gambling device; or
6. Alone or with others, owning, controlling, managing or financing a gambling business.

B. Any person convicted of commercial gambling shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 983. Permitting premises to be used for commercial gambling

A. Permitting premises to be used for commercial gambling is intentionally:

1. Granting the use or allowing the continued use of a place as a gambling place; or
2. Permitting another to set up a gambling device for use in a place under the offender’s control.

B. Any person permitting premises to be used for commercial gambling shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 985. Possession of a gambling device

A. Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee or otherwise, of any gambling device.

B. Any person possessing a gambling device who knows or has reason to know said devices will be used in making or settling commercial gambling transactions and deals in said gambling devices with the intent to facilitate commercial gambling transactions shall be punished for a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 987. Dissemination of gambling information

A. Dissemination of gambling information is the transmitting or receiving, by means of any communications facilities, information to be used in making or settling bets. Provided that nothing herein shall prohibit a licensed radio or television station or newspaper of general circulation from broadcasting or disseminating to the public reports of odds or results of legally staged sporting events.

B. Any person found guilty of disseminating gambling information shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 988. Conspiracy

A. A conspiracy is any agreement, combination or common plan or scheme by two or more persons, coupled with an overt act in furtherance of such agreement, combination or common plan or scheme, to violate any section of this act.

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B. Any person found guilty of conspiracy shall be punished to the same extent as provided for in the section of this act which such person conspired to violate.

History

Source. LA 10-90, eff. November 13, 1990.

Library References

Indians O343.

Westlaw Topic No.209.

C.J.S. Indians §§ 179 to 188, 193.

BETTING, ETC., ON RACES

§ 991. Betting or letting premises for betting on races

A. Except as provided for in the Oklahoma Horse Racing Act, 3A O.S. § 200 et seq., it shall be unlawful for any person, association, or corporation:

1. to bet or wager upon the result of any trial of speed or power of endurance of animals or beasts; or
2. to occupy any room, shed, tenement or building, or any part thereof, or to occupy any place upon any grounds with books, apparatus, or paraphernalia for the purpose of recording or registering bets or wagers or of selling pools, or making books or mutuals upon the result of any trial of speed or power of endurance of animals or beasts; or
3. being the owner or lessee or occupant of any room, tent, tenement, shed, booth, or building, or part thereof at any place knowingly to permit the same to be used or occupied to keep, exhibit, or employ any device or apparatus for the purpose of recording or registering such bets or wagers or the selling or making of such books, pools or mutuals, or to become the custodian or depository for gain, hire or reward of any money, property or thing of value, bet or wagered or to be wagered or bet upon the result of any trial of speed or power of endurance of animals or beasts; or
4. to receive, register, record, forward or purport or pretend to forward to or for any racetrack within or without this Nation, any money, thing or consideration of value offered for the purpose of being bet or wagered upon the result of any trial of speed or power of endurance of any animal or beast; or
5. to occupy any place, or building or part thereof with books, papers, apparatus, or paraphernalia for the purpose of receiving or pretending to receive or for recording or for registering or for forwarding or pretending or attempting to forward in any manner whatever, any money, thing or consideration of value, bet or wagered or to be bet or wagered by any person or to receive or offer to receive any money, thing, or consideration of value bet or to be bet upon the result of any trial of speed or power of endurance or any animal or beast; or
6. to aid or assist or abet at any racetrack or other place in any manner in

any of the acts forbidden by this section.

B. Any person, association, or corporation convicted of violating the provisions of paragraph 1 of subsection (A) of this section shall be fined not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) and be imprisoned not more than ninety (90) days. Any person, association, or corporation convicted of violating any provision of paragraphs 2, 3, 4, 5 or 6 of subsection (A) of this section shall be guilty of a crime.

C. Any personal property used for the purpose of violating any of the provisions of this section shall be disposed of as provided for in 22 CNCA § 1261.

History

Source. LA 10–90, eff. November 13, 1990.

Oklahoma Statutes

Horse racing, see 3A O.S. § 200 et seq.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 993. Evidence for prosecution – Accomplices – Immunity for witnesses

A conviction for the violation of any of the provisions of this act may be had upon the unsupported evidence of an accomplice or participant, and such accomplice or participant shall be exempt from prosecution for any offense in this act about which he may be required to testify.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

BINGO

§ 995.2. Definitions

As used in this section and 21 CNCA §§ 995.11 through 995.15:

1. **“Bingo”** means a game in which each participant receives one or more cards each of which is marked off into twenty-five (25) squares arranged in five (5) horizontal rows of five (5) squares each and five (5) vertical rows of five (5) squares each, with each square being designated by number, letter or combination of numbers and letters, and the center square designated with the word “free,” with no two (2) cards being identical, with the players

covering squares as the operator of such game announces a number, letter or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically from a recepta-

cle in which have been placed objects bearing numbers, letters or combinations of numbers and letters corresponding to the system used for designating the squares, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of squares upon the card being used by him or them.

2. **“Rip-off games” or “pull-tab games”** means games wherein a participant receives a sealed card or tab, which when opened by the participant, reveals some combination of numbers, letters, or symbols the arrangement of which determines if the participant has won a prize.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 995.11. Intoxicating and nonintoxicating beverages prohibited

No licensee shall sell, serve or permit to be consumed any intoxicating and nonintoxicating beverages as defined in the laws of Cherokee Nation in any room or outdoor area where bingo is conducted during the time that it is so conducted.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Bingo and regulated gaming not prohibited, see 21 CNCA § 978.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 995.12. License required

No person shall conduct any game of bingo or pull tabs for which a charge is made or to the winner of which any prize is awarded except as regulated or operated by Cherokee Nation pursuant to law.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

21 CNCA § 995.13

CRIMES AND PUNISHMENTS

§ 995.13. Minors

No minor shall be permitted to play bingo for which a charge is made or to the winner of which any prize is awarded unless accompanied by a parent or guardian.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343.
Westlaw Topic No.209.
C.J.S. Indians §§ 179 to 188, 193.

§ 995.15. Penalties

Any violation of 21 CNCA §§ 995.2 through 995.15 is hereby declared to be a public nuisance. Any person violating the provisions of this act, 21 CNCA § 995.2 et seq., except as otherwise provided in this section shall be guilty of a crime.

Any person conducting, playing, or offering to play or conduct any rip-off game or pull-tab game in any place where bingo is conducted, except as otherwise provided in this act, 21 CNCA § 995.2 et seq., shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O343, 620.	C.J.S. Indians §§ 151 to 188, 193.
Nuisance O65.	C.J.S. Nuisances §§ 17 to 19, 26 to 30, 253.
Westlaw Topic Nos. 209, 279.	

§ 995.18. Severability

The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this act.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Statutes O1535(6).
Westlaw Topic No.361.
C.J.S. Statutes § 124.

CHAPTER 39

CHEROKEE NATION OBSCENITY AND CHILD PORNOGRAPHY ACT

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1040.20.	Sending or selling of materials with knowledge of judgment
1040.21.	Contempt
1040.22.	Extradition
1040.23.	Presumptions
1040.24.	Jurisdiction—Service of process—Fines—Execution against property
1040.51.	Repealed
1040.52.	Showing at outdoor theaters of pictures depicting sexual intercourse prohibited under certain conditions—Penalty
1040.53.	Projectionists, ushers or cashiers excepted from statutes relating to exhibition of obscene motion pictures
1040.54.	Seizure and forfeiture of equipment used in certain offenses relating to obscene material or child pornography

Section

- 1040.75. Definitions
- 1040.76. Material or performances harmful to minors—Prohibited acts
- 1040.77. Violations—Penalties

§ 1021. Indecent exposure—Indecent exhibitions—Obscene material or child pornography—Solicitation of minors**A. Every person who willfully and knowingly either:**

1. lewdly exposes his person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby;
2. procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;
3. writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, knowingly downloads or otherwise stores or views on a computer, or exhibits any obscene material or child pornography; or
4. makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any other kind of sound recording of any obscene material or child pornography

shall be guilty, upon conviction, of a crime punishable pursuant to 21 CNCA § 10, provided that upon a second conviction for a violation of subparagraph 1 or 2 of subsection (A), such sentence must include a term of imprisonment.

B. Every person who:

1. willfully solicits or aids a minor child to perform; or
2. shows, exhibits, loans, or distributes to a minor child any obscene material or child pornography for the purpose of inducing said minor to participate in any act specified in paragraphs 1, 2, 3 or 4 of subsection (A) of this section

shall be guilty, upon conviction, of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. For purposes of this section, “downloading on a computer” means electronically transferring an electronic file from one computer or electronic media to another computer or electronic media.

D. Any person convicted of a second violation of paragraphs 1 or 2 of subsection (A) of this section, or for a first violation of either paragraph 3 or 4 of subsection (A) of this section when the offense involves child pornography, or for a first violation of subsection (B), shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

OBSCENITY & CHILD PORNOGRAPHY

21 CNCA § 1021.2

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.
Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Infants O1587.
Obscenity O125, 130.

Westlaw Topic Nos. 211, 281.
C.J.S. Infants § 5.

§ 1021.1. Application

A. 21 CNCA §§ 1021 through 1024.4 shall not apply to persons who may possess or distribute obscene matter or child pornography or participate in conduct otherwise proscribed by this act, when such possession, distribution, or conduct occurs in the course of law enforcement activities.

B. The criminal provisions of this title shall not prohibit the Attorney General from seeking civil or injunctive relief to enjoin the production, publication, dissemination, distribution, sale of or participation in any obscene material or child pornography, or the dissemination to minors of material harmful to minors, or the possession of child pornography.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 20–08, eff. January 12, 2009.
Amended. LA 09–12, eff. May 23, 2012.

Library References

Infants O1587.
Obscenity O125, 130.

Westlaw Topic Nos. 211, 281.
C.J.S. Infants § 5.

§ 1021.2. Minors—Child pornography

A. Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography shall be guilty, upon conviction, of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

B. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 20–08, eff. January 12, 2009.
Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Infants O1587.
Westlaw Topic No.211.
C.J.S. Infants § 5.

§ 1021.3. Guardians, parents, custodians—Consent to participation of minors in child pornography

A. Any parent, guardian or individual having custody of a minor under the age of eighteen (18) years who knowingly permits or consents to the participation of a minor in any child pornography shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

B. The consent of the minor to the activity prohibited by this section shall not constitute a defense.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 20–08, eff. January 12, 2009.
Amended. LA 09–12, eff. May 23, 2012.

Cross References

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Infants O1587.
Westlaw Topic No.211.
C.J.S. Infants § 5.

§ 1021.4. Duty to report obscene or pornographic material depicting minors—Penalty

A. Any commercial film and photographic print processor or commercial computer technician who has knowledge of or observes, within the scope of such person's professional capacity or employment, any film, photograph, video tape, negative, or slide, or any computer file, recording, CD-ROM, magnetic disk memory, magnetic tape memory, picture, graphic or image that is intentionally saved, transmitted or organized on hardware or any other media including, but not limited to, CDs, DVDs and thumbdrives, whether digital, analog or other means and whether directly viewable, compressed or encoded depicting or appearing to depict a child under the age of eighteen (18) years engaged in an act of sexual conduct as defined in 21 CNCA § 1024.1 shall immediately, or as soon as possible, report by telephone such instance of suspected child abuse or child pornography to the Cherokee Nation Marshal Service and shall prepare and send a written report of the incident to the Cherokee Nation Marshal Service with an attached copy of such material,

within thirty-six (36) hours after receiving the information concerning the incident.

For the purposes of this section:

1. **“Commercial film and photographic print processor”** means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term shall also include any employee of such a person; and
2. **“Commercial computer technician”** means any person who repairs, installs, or otherwise services any computer including, but not limited to, any component part, device, memory storage or recording mechanism, auxiliary storage, recording or memory capacity, or any other materials relating to operation and maintenance of a computer or computer network or system, for compensation. The term shall also include any employee of such person.

B. Any person who violates the provisions of this section, upon conviction, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. Nothing in this section shall be construed to require or authorize any person to act outside the scope of such person’s professional capacity or employment by searching for prohibited materials or media.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

§ 1022. Obscene material or child pornography, by whom seized and to whom delivered

Every person who is authorized or enjoined to arrest any person for a violation of 21 CNCA § 1021(A)(3) is equally authorized and enjoined to seize one copy of the obscene material, or all copies of explicit child pornography, found in possession of or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken, provided that when the arrest is made pursuant to a federal warrant, the federal procedures for delivery of such materials shall be followed without violating this section.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

§ 1023. Child pornography or obscene material, how disposed of

The magistrate to whom any child pornography, or any obscene material, is delivered pursuant to the 21 CNCA § 1022, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such child pornography or obscene material, and if the magistrate finds it to be obscene material or child pornography the magistrate shall cause the same to be destroyed, or to be delivered to

the Attorney General. The magistrate shall issue in writing the factual and legal basis for the determination by the magistrate of the character of the child pornography or obscene material. The Attorney General may transmit the child pornography or obscene material to the United States Attorney's Office for the district wherein a crime occurred upon the written request of said United States Attorney's Office, or may deliver such materials to the Cherokee Nation Marshal Service for storage as evidence pending trial and any appeals.

History

Source. LA 10-90, eff. November 13, 1990.

Amended. LA 20-08, eff. January 12, 2009.

Amended. LA 09-12, eff. May 23, 2012.

§ 1024. Attorney General to destroy indecent articles, when

Upon the final conviction of the accused, the Attorney General shall cause any child pornography or obscene material, in respect whereof the accused stands convicted and which remains in the possession or under the control of the Attorney General to be destroyed.

History

Source. LA 10-90, eff. November 13, 1990.

Amended. LA 20-08, eff. January 12, 2009.

Amended. LA 09-12, eff. May 23, 2012.

§ 1024.1. Definitions

A. As used in 21 CNCA §§ 1021, 1021.1 through 1021.3, 1022 through 1024, and 1040.8 through 1040.24, **“child pornography”** means and includes any film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, CD-ROM, magnetic disk memory, magnetic tape memory, play or performance wherein a minor under the age of eighteen (18) years is engaged in any act with a person, other than his or her spouse, of sexual intercourse which is normal or perverted, in any act of anal sodomy, in any act of sexual activity with an animal, in any act of sadomasochistic abuse including, but not limited to, flagellation or torture, or the condition of being fettered, bound or otherwise physically restrained in the context of sexual conduct, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual conduct, in any lewd exhibition of the uncovered genitals in the context of masturbation or other sexual conduct, or where the lewd exhibition of the uncovered genitals has the purpose of sexual stimulation of the viewer, or wherein a person under the age of eighteen (18) years observes such acts or exhibitions.

B. As used in 21 CNCA §§ 1021 through 1024.4 and 1040.8 through 1040.24:

1. **“Explicit child pornography”** means material which a law enforcement officer can immediately identify upon first viewing without hesitation as child pornography.
2. **“Obscene material”** means and includes any representation, performance, depiction or description of sexual conduct, whether in any form or medium including still photographs, undeveloped photographs, motion

pictures, undeveloped film, videotape, CD-ROM, magnetic disk memory, magnetic tape memory or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication, if said items contain the following elements:

- a. depictions or descriptions of sexual conduct which are patently offensive as found by the average person applying contemporary community standards;
- b. taken as a whole, have as the dominant theme an appeal to prurient interest in sex as found by the average person applying contemporary community standards; and
- c. a reasonable person would find the material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.

The standard for obscenity applied in this section shall not apply to child pornography.

3. **“Performance”** means and includes any display, live or recorded, in any form or medium.
4. **“Sexual conduct”** means and includes any of the following:
 - a. acts of sexual intercourse including any intercourse which is normal or perverted, actual or simulated;
 - b. acts of deviant sexual conduct, including oral and anal sodomy;
 - c. acts of masturbation;
 - d. acts of sadomasochistic abuse including but not limited to:
 - i. flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature; or
 - ii. the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed;
 - e. acts of excretion in a sexual context; or
 - f. acts of exhibiting human genitals or pubic areas.

The types of sexual conduct described in paragraph 4 of this subsection are intended to include situations when, if appropriate to the type of conduct, the conduct is performed alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Child pornography or obscene material, how disposed of, see 21 CNCA § 1023.

**§ 1024.2. Purchase, procurement or possession of child pornography –
Penalty**

It shall be unlawful for any person to buy, procure or possess child pornography in violation of 21 CNCA §§ 1024.1 through 1024.4. Such person shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.
Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Infants O1587.

Westlaw Topic No.211.

C.J.S. Infants § 5.

§ 1024.3. Power to arrest and seizure of obscene material

Every person who is authorized or enjoined to arrest any person for a violation of 21 CNCA §§ 1021, 1021.1 through 1021.3, 1022 through 1024, and 1040.8 through 1040.24 is equally authorized and enjoined to seize an evidentiary copy of any obscene material or child pornography or all copies of explicit child pornography found in the possession of or under the control of the person so arrested and to deliver the obscene material or child pornography to the magistrate before whom the person so arrested is required to be taken, provided that when the arrest is made pursuant to a federal warrant, the federal procedures for delivery of such materials shall be followed without violating this section.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

§ 1024.4. Destruction of obscene material upon conviction

Upon final conviction of the accused, any magistrate or the Attorney General shall cause any obscene material or child pornography, in respect whereof the accused stands convicted and which remains in the possession or control of such magistrate or the Attorney General, to be destroyed.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

§ 1025. Bawdy house, etc. – Penalty

Every person who keeps any bawdy house, house of ill fame, of assignation, or of prostitution, or any other house or place for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene or indecent purpose, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Disorderly House O1.
Westlaw Topic No. 130.

C.J.S. Disorderly Houses §§ 1, 7 to 20.
C.J.S. Drugs and Narcotics § 321.

§ 1026. Disorderly house

Every person who keeps any disorderly house, or any house of public resort by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Disorderly House O1.
Westlaw Topic No. 130.

C.J.S. Disorderly Houses §§ 1, 7 to 20.
C.J.S. Drugs and Narcotics § 321.

§ 1027. Letting building for unlawful purposes

Every person who lets any building or portion of any building knowing that it is intended to be used for any purpose declared punishable by this chapter, or who otherwise permits any building or portion of a building to be so used, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

**§ 1028. Setting up or operating place of prostitution—Ownership—Rent- ing—
Procuring—Receiving person for forbidden purpose—Trans-
portation—Receiving proceeds**

It shall be unlawful in Cherokee Nation:

1. To keep, set up, maintain, or operate any house, place, building, other structure, or part thereof, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation;
2. To knowingly own any house, place, building, other structure, or part thereof, or vehicle, trailer, or other conveyance used for the purpose of lewdness, assignation, or prostitution, or to let, lease, or rent, or contract to let, lease, or rent any such place, premises, or conveyance, or part thereof, to another with knowledge or reasonable cause to believe that the intention of the lessee or rentee is to use such place, premises, or conveyance for prostitution, lewdness, or assignation;
3. To offer, or to offer to secure, another for the purpose of prostitution, or for any other lewd or indecent act;
4. To receive or to offer or agree to receive any person into any house, place, building, other structure, vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose;
5. To direct, take, or transport, or to offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation;
6. To knowingly accept, receive, levy, or appropriate any money or other thing of value without consideration from a prostitute or from the proceeds of any woman engaged in prostitution.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Disorderly House ○1.
Westlaw Topic No. 130.

C.J.S. Disorderly Houses §§ 1, 7 to 20.
C.J.S. Drugs and Narcotics § 321.

§ 1029. Engaging in prostitution, etc.—Soliciting or procuring—Residing or being in place for prohibited purpose—Aiding, abetting or participating

It shall further be unlawful:

1. To engage in prostitution, lewdness, or assignation;
2. To solicit, induce, entice, or procure another to commit an act of lewdness, assignation, or prostitution, with himself or herself;
3. To reside in, enter, or remain in any house, place, building, or other structure, or to enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation;
4. To aid, abet, or participate in the doing of any of the acts herein prohibited.

OBSCENITY & CHILD PORNOGRAPHY

21 CNCA § 1040.8

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Prostitution **O**10, 15.
Westlaw Topic No.315H.

C.J.S. Prostitution and Related Offenses §§ 3
to 9, 26, 31 to 33.

§ 1030. Prostitution defined—Lewdness defined

The term “**prostitution**” as used in this act shall be construed to include the giving or receiving of the body for sexual intercourse for hire, and shall also be construed to include the giving or receiving of the body for indiscriminate sexual intercourse without hire. The term “**lewdness**” shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Prostitution **O**10, 15.
Westlaw Topic No.315H.

C.J.S. Prostitution and Related Offenses §§ 3
to 9, 26, 31 to 33.

§ 1031. Punishment for violations

Any person violating any of the provisions of this act shall be guilty of a crime; and the Court in which any such conviction is had shall notify the county superintendent of public health of such conviction.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Indians O620.

Prostitution O15 to 18.

Westlaw Topic Nos. 209, 315H.

C.J.S. Indians §§ 151 to 179.

C.J.S. Prostitution and Related Offenses §§ 5
to 10, 20 to 21, 25 to 34, 45 to 46.

§ 1040.8. Publication, distribution or participation in preparation of any obscene material or presentation—Unsolicited mailings—Penalty

No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, giveaway, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, electronic video game or recording, image, cast, slide, figure, instrument,

statue, drawing, presentation, or other article which is obscene material or child pornography, as defined in 21 CNCA § 1024.1. In the case of any unsolicited mailing of any of the material listed in this section, the offense is deemed complete from the time such material is deposited in any post office or delivered to any person with intent that it shall be forwarded. Also, unless preempted by federal law, no unsolicited mail which is harmful to minors pursuant to 21 CNCA § 1040.75 shall be mailed to any person. The party mailing the materials specified in this section may be tried where such material is deposited or delivered, or in which it is received by the person to whom it is addressed. Any person who violates any provision of this section, upon conviction, shall be guilty of a crime punishable pursuant to 21 CNCA § 10. Any person convicted of a violation of this section where the offender is age eighteen (18) or over and the offense involved child pornography shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.
Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Infants O1587.

Obscenity O130, 131, 134.

Westlaw Topic Nos. 211, 281.

C.J.S. Infants § 5.

§§ 1040.9, 1040.10. Repealed by LA 20–08, eff. January 12, 2009

History

The repealed sections, which related to the definition of obscenity and the cumulative effect of the provisions, were derived from LA 10–90.

§ 1040.11. Short title

Sections 1021 through 1040.77 of this title shall be known as the “Cherokee Nation Obscenity and Child Pornography Act” and may be referred to by that designation.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Oklahoma Statutes

Oklahoma law on obscenity and child pornography, see 21 O.S. § 1021 et seq.

§ 1040.13. Acts prohibited

Every person who, with knowledge of its contents, sends, brings, or causes to be sent or brought into this Nation for sale or commercial distribution, or in this Nation prepares, sells, exhibits, commercially distributes, gives away, offers to give away, or has in his possession with intent to sell, to commercially distribute, to exhibit, to give away, or to offer to give away any obscene material or child pornography or gives information stating when, where, how, or from whom, or by what means obscene material or child pornography can be purchased or obtained, upon conviction, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such punishment must include a term of imprisonment. Any person convicted of a violation of this section where the offense involved child pornography shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Infants O1587.

Obscenity O165.

Westlaw Topic Nos. 211, 281.

C.J.S. Infants § 5.

§ 1040.13a. Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor

A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct with a minor, or other individual the person believes to be a minor, by use of any technology, or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology. For purposes of this subsection, “**by use of any technology**” means the use of any telephone or cell phone, computer disk (CD), digital video disk (DVD), recording or sound device, CD–ROM, VHS, computer, computer network or system, Internet or World Wide Web address including any blog site or personal web address, e-mail address, Internet Protocol address (IP), text messaging or paging device, any video, audio, photographic or camera device of any computer, computer network or system, cell phone, any other electrical, electronic, computer or mechanical device, or any other device capable of any transmission of any written or text message, audio or sound message, photographic, video, movie, digital or computer-generated image, or any other communication of any kind by use of an electronic device.

B. A person is guilty of violating the provisions of this section if the person knowingly transmits any prohibited communication by use of any technology defined herein, or knowingly prints, publishes or reproduces by use of any technology described herein any prohibited communication, or knowingly buys, sells, receives, exchanges, or disseminates any prohibited communication or

any information, notice, statement, website, or advertisement for communication with a minor or access to any name, telephone number, cell phone number, e-mail address, Internet address, text message address, place of residence, physical characteristics or other descriptive or identifying information of a minor, or other individual the person believes to be a minor.

C. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

D. Any violation of the provisions of this section shall be a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. For purposes of this section, each communication shall constitute a separate offense. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

E. For purposes of any criminal prosecution pursuant to any violation of this section, the person violating the provisions of this section shall be deemed to be within the jurisdiction of Cherokee Nation by the fact of accessing any computer, cellular phone or other computer-related or satellite-operated device in Cherokee Nation, regardless of the actual jurisdiction where the violator resides.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Infants O1587.

Westlaw Topic Nos. 211, 281.

Obscenity O165.

C.J.S. Infants § 5.

§ 1040.14. Action for adjudication of obscenity or child pornographic content of mailable matter

A. Whenever the Attorney General has reasonable cause to believe that any person, with knowledge of its contents, is (1) engaged in sending or causing to be sent, bringing or causing to be brought, into Cherokee Nation for sale or commercial distribution, or is (2) in Cherokee Nation preparing, selling, exhibiting or commercially distributing or giving away, or offering to give away, or has in his possession with intent to sell, or commercially distribute or to exhibit or give away or offer to give away, any obscene material or child pornography, the Attorney General may institute an action in the District Court for an adjudication of the obscenity or child pornographic content of the mailable matter.

B. The procedure to be followed shall be that set forth in this act.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Attorney General O6.
Obscenity O301.
Westlaw Topic Nos. 46,281.

C.J.S. Attorney General §§ 26 to 78.
C.J.S. Parent and Child § 271.

§ 1040.15. Petition

The action described in 21 CNCA § 1040.14 shall be commenced by filing with the Court a petition:

1. directed against the matter by name or description;
2. alleging it is obscene material or child pornography;
3. listing the names and addresses, if known, of its author, publisher and any other person sending or causing it to be sent, bringing or causing it to be brought into Cherokee Nation for sale or commercial distribution and of any person in Cherokee Nation preparing, selling, exhibiting or commercially distributing it, or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;
4. seeking an adjudication that it is either obscene material or child pornography, as defined in 21 CNCA § 1024.1;
5. seeking a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into Cherokee Nation for sale or commercial distribution, or in the Nation preparing, selling, exhibiting or commercially distributing it, giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;
6. seeking its surrender, seizure and destruction.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Obscenity O301.
Westlaw Topic No. 281.

§ 1040.16. Summary examination of material—Dismissal or show cause order

A. Upon the filing of the petition described in 21 CNCA § 1040.15, the Court shall summarily examine the obscene material or child pornography.

B. If the Court finds no probable cause to believe it is obscene material or child pornography, the Court shall dismiss the petition.

C. If the Court finds probable cause to believe it is obscene material or child

pornography, the Court shall immediately issue an order or rule to show cause why it should not be adjudicated to be obscene material or child pornography.

D. The order or rule to show cause shall be:

1. directed against it by name or description;
2. if their names and addresses are known, served personally in the manner provided in this act for the service of process or in any manner now or hereafter provided by law, upon its author, publisher, and any other person interested in sending or causing it to be sent, bringing or causing it to be brought, into Cherokee Nation for sale or commercial distribution, and on any person in the Nation preparing, selling, exhibiting or commercially distributing it or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;
3. returnable six (6) days after its service.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Obscenity O301.

Westlaw Topic No. 281.

§ 1040.17. Answer

A. On or before the return date specified in the order or rule to show cause, the author, publisher, or any person interested in sending or causing to be sent, bringing or causing to be brought, into Cherokee Nation for sale or commercial distribution, or any person in Cherokee Nation preparing, selling, exhibiting or commercially distributing, or giving away or offering to give away, or possessing with intent to sell or commercially distribute or exhibit or give away or offer to give away, the matter may appear and file an answer.

B. The Court may, by order, permit any other person to appear and file an answer as amicus curiae. A person granted permission and appearing and filing an answer has all the rights of a party to the proceeding.

C. If no person appears and files an answer on or before the return date specified in the order or rule to show cause, the Court shall enter judgment either:

1. adjudicating the matter not to be obscene material or child pornography, if the Court so finds; or
2. adjudicating it to be obscene material or child pornography, if the Court so finds.

D. Every person appearing and answering shall be entitled, upon request, to a trial of the issues before the Court not less than three (3) days after a joinder of the issues.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Obscenity O301.
Westlaw Topic No. 281.

§ 1040.18. Trial – Evidence

A. The Court shall conduct the trial in accordance with the rules of civil procedure applicable to the trial of cases by the Court without a jury.

B. The Court shall receive evidence at the trial, including the testimony of experts, pertaining, but not limited, to:

1. whether, to the average person, applying contemporary community standards, the dominant theme of the mailable matter taken as a whole is to prurient interest;
2. the artistic, literary, scientific and educational merits of the mailable matter considered as a whole;
3. the intent of the author and publisher in preparing, writing and publishing the mailable matter;
4. the appeal to prurient interest, or absence thereof, in advertising or other promotion of the mailable matter.

History

Source. LA 20–08, eff. January 12, 2009.
Amended. LA 09–12, eff. May 23, 2012.

Library References

Obscenity O301.
Westlaw Topic No. 281.

§ 1040.19. Destruction – Injunction

In the event that a judgment is entered adjudicating the matter to be obscene material or child pornography, the Court shall further:

1. order the person or persons having possession of it to surrender it to the Marshal Service for destruction and, in the event that person refuses, order the Marshal to seize and destroy it after all appeals are final;
2. enter a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into Cherokee Nation for sale or commercial distribution, and against any person in Cherokee Nation preparing, selling, exhibiting or commercially distributing it, giving it away or offering to give it away, or having it in his possession with intent to sell or commercially distribute or exhibit or give it away or offer to give it away.

History

Source. LA 20–08, eff. January 12, 2009.
Amended. LA 09–12, eff. May 23, 2012.

Library References

Obscenity O301.
Westlaw Topic No. 281.

§ 1040.20. Sending or selling of materials with knowledge of judgment

Any matter which, following the entry of a judgment that it is obscene material or child pornography, is sent or caused to be sent, brought or caused to be brought, into Cherokee Nation for sale or commercially distributed, given away or offered to be given away, by any person with knowledge of the judgment, or is in the possession of any such person with intent to sell or commercially distribute or exhibit or give away or offer to give away, is subject to the provisions of 21 CNCA § 1040.13.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

§ 1040.21. Contempt

After the entry of a judgment that the matter is obscene material or child pornography, any person who, with knowledge of the judgment or of the order or rule to show cause, sends or causes to be sent, brings or causes to be brought, into Cherokee Nation for sale or commercial distribution, the matter, or who in Cherokee Nation sells, exhibits or commercially distributes it, gives away or offers to give it away, or has it in his possession with intent to sell or commercially distribute or exhibit or give away or offer to give it away, shall be guilty of contempt of court and upon conviction after notice and hearing shall be guilty of a crime punishable pursuant to 21 CNCA § 10.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Indians O539.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 179.

§ 1040.22. Extradition

In all cases in which a charge or violation of any section or sections of this act is brought against a person who cannot be found in Cherokee Nation, the Principal Chief may demand extradition of such person from the executive authority of the state or tribal jurisdiction in which such person may be found.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

§ 1040.23. Presumptions

The possession of two or more of any single article that is obscene material or child pornography, or the possession of a combined total of any five articles that are obscene material or child pornography (except the possession of them for the purpose of return to the person from whom received) shall create a presumption that they are intended for sale or commercial distribution, exhibition or gift, but such presumption shall be rebuttable. The burden of proof that their possession is for the purpose of return to the person from whom received shall be on the possessor.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Indians O611.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 179.

§ 1040.24. Jurisdiction—Service of process—Fines—Execution against property

In order to protect the citizens and residents of Cherokee Nation against unfit articles and printed or written matter or material which originates outside Cherokee Nation, it is the purpose of this section to subject to the jurisdiction of the Courts of Cherokee Nation those persons who are responsible for the importation of those things into Cherokee Nation.

To that end and in the exercise of its power and right to protect its citizens and residents, it is hereby provided that any person, whether or not a citizen or resident of Cherokee Nation, who sends or causes to be sent into Cherokee Nation for resale in Cherokee Nation any article or printed matter or material, is for the purpose of this act transacting business in the Nation and by that act:

1. submits himself to the jurisdiction of the Courts of Cherokee Nation in any proceeding commenced under 21 CNCA § 1014;
2. constitutes the Secretary of State his agent for service of process in any proceeding commenced under 21 CNCA § 1014; and consents that service of process shall be made by serving a copy upon the Secretary of State or by filing a copy in the Secretary of State's office, and that this service shall be sufficient service provided that, within one (1) day after service, notice of the service and a copy of the process are sent by registered mail by the Attorney General to him at his last-known address and proof of such mailing filed with the clerk of the court within one (1) day after mailing;
3. consents that any fine levied against him under any section of this act may be executed against any of his real property, personal property, tangible or intangible, choses in action or property of any kind or nature, including debts owing to him, which are situated or found in Cherokee Nation.

Service of process upon any person who is subject to the jurisdiction of the

Courts of Cherokee Nation, as provided in this section, may also be made by

personally serving the summons upon him outside Cherokee Nation with the same force and effect as though summons had been personally served within Cherokee Nation. The service of summons shall be made in like manner as service within Cherokee Nation, by any person over twenty-one (21) years of age not a party to the action. No order of court is required. An affidavit of the server shall be filed stating the time, manner and place of service. The Court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Indians O501, 535.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 179.

§ 1040.51. Repealed by LA 20–08, eff. January 12, 2009

History

The repealed section, which related to buying and selling pictures and movies showing obscene acts, was derived from LA 10–90.

§ 1040.52. Showing at outdoor theaters of pictures depicting sexual intercourse prohibited under certain conditions – Penalty

A. Every owner or operator of an outdoor theater in Cherokee Nation is guilty of a crime who shows or causes to be shown a motion picture depicting:

1. Any person, whether nude or clad, in an act or simulation of an act of sexual intercourse, unnatural copulation or other sexual activity including the showing of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, or fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or
2. Nude or partially denuded figures including less than completely and opaquely covered human genitals, pubic regions, buttock and female breast below a point immediately above the top of the areola and including human male genitals in a discernably turgid state, even if completely and opaquely covered.

B. This section shall be applicable, however, only where the viewing portion of the screen of such theater is situated within the view of any residence or where children under eighteen (18) years of age have an understanding view of the picture.

C. Any prosecution under this section must be preceded by a written complaint from a resident affected by the terms of this section.

D. Upon conviction of a violation of this section such person shall be guilty

of a crime punishable pursuant to 21 CNCA § 10.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Obscenity O165.

Public Amusement and Entertainment O174.

Westlaw Topic Nos. 281, 315T.

§ 1040.53. Projectionists, ushers or cashiers excepted from statutes relating to exhibition of obscene motion pictures

The provisions of statutes of Cherokee Nation prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial theater open to the general public shall not apply to a projectionist or assistant projectionist, usher or cashier, provided he has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist, usher or cashier. Provided further, that such person is not acting as manager or director of such theater. The provisions of this act shall not exempt any projectionist or assistant projectionist, usher or cashier from criminal liability for any act unrelated to projection of motion pictures in a commercial theater open to the general public.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Obscenity O165.

Public Amusement and Entertainment O174.

Westlaw Topic Nos. 281, 315T.

§ 1040.54. Seizure and forfeiture of equipment used in certain offenses relating to obscene material or child pornography

A. Any peace officer of Cherokee Nation is authorized to seize any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in 21 CNCA § 1024.1(B)(1) or child pornography, as defined in 21 CNCA § 1024.1(A). Said equipment may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the Attorney General as petitioner; provided, in the event the Attorney General elects not to file such an action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, a forfeiture action may be brought by the entity seizing such equipment as petitioner.

B. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest by the party seeking forfeiture as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and
2. Upon all other owners or parties in interest, whose addresses are unknown, by one publication in a newspaper of general circulation in the county where the seizure was made.

C. Within sixty (60) days after the mailing or publication of the notice, the owner of the equipment and any other party in interest may file a verified answer and claim to the equipment described in the notice of seizure and of the intended forfeiture proceeding.

D. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the Court shall hear evidence upon the fact of the unlawful use and may order the equipment forfeited to the Nation, if such fact is proven.

E. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

F. At the hearing the party seeking the forfeiture shall prove by clear and convincing evidence that the equipment was used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in 21 CNCA § 1024.1(B)(1) or child pornography, as defined in 21 CNCA § 1024.1(A), with knowledge by the owner of the equipment.

G. The owner or party in interest may prove that the right or interest in the equipment was created without any knowledge or reason to believe that the equipment was being, or was to be, used for the purpose charged.

H. In the event of such proof, the court may order the equipment released to the bona fide or innocent owner or party in interest if the amount due the person is equal to, or in excess of, the value of the equipment as of the date of the seizure.

I. If the amount due to such person is less than the value of the equipment, or if no bona fide claim is established, the equipment shall be forfeited to Cherokee Nation and shall be sold pursuant to the judgment of the Court.

J. Equipment taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the Attorney General or in the custody of the party seeking the forfeiture. The Attorney General or the party seeking the equipment may release said equipment to the owner of the equipment if it is determined that the owner had no knowledge of the illegal use of the equipment or if there is insufficient evidence to sustain the burden of showing illegal use of the equipment. Equipment which has not been released by the Attorney General or the party seizing the equipment shall be subject to the orders and decrees of the District Court or the official having jurisdiction thereof.

K. The Attorney General or the party seizing such equipment shall not be held civilly liable for having custody of the seized equipment or proceeding with a forfeiture action as provided for in this section.

L. The proceeds of the sale of any equipment not taken or detained by the Cherokee Nation Marshal Service or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of the person's interest in the equipment, when the Court declaring the forfeiture orders a distribution to such person;
2. To the payment of the actual expenses of preserving the equipment; and
3. The balance to the Marshal Service. Monies from said fund may be used to pay costs for the storage of such equipment if such equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor and if such monies are available in said fund.

M. When any equipment is forfeited pursuant to this section, the District Court may order that the equipment seized may be retained by the Marshal Service for its official use.

N. If the Court finds the equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in 21 CNCA § 1024.1(B)(1) or child pornography as defined in 21 CNCA § 1024.1(A), the Court shall order the equipment released to the owner.

O. No equipment shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, or by any person other than such owner while such equipment was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Obscenity O271, 300.

Westlaw Topic No.281.

§ 1040.75. Definitions

As used in 21 CNCA §§ 1040.75 through 1040.77:

1. **“CD-ROM”** means a compact disk with read only memory which has the capacity to store audio, video and written materials and may be used by computer to play or display materials harmful to minors.
2. **“Harmful to minors”** means:
 - a. that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excite-

ment, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

- i. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors; and
- ii. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and
- iii. the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors; or

b. any description, exhibition, presentation or representation, in whatever form, of inappropriate violence.

3. **“Inappropriate violence”** means any description or representation, in an interactive video game or computer software, of violence which, taken as a whole, has the following characteristics:

- a. the average person eighteen (18) years of age or older applying contemporary community standards would find that the interactive video game or computer software is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and
- b. the interactive video game or computer software lacks serious literary, scientific, medical, artistic, or political value for minors based on, but not limited to, the following criteria:

- i. is glamorized or gratuitous;
- ii. is graphic violence used to shock or stimulate;
- iii. is graphic violence that is not contextually relevant to the material;
- iv. is so pervasive that it serves as the thread holding the plot of the material together;
- v. trivializes the serious nature of realistic violence;
- vi. does not demonstrate the consequences or effects of realistic violence;
- vii. uses brutal weapons designed to inflict the maximum amount of pain and damage;
- viii. endorses or glorifies torture or excessive weaponry; or
- ix. depicts lead characters who resort to violence freely.

4. **“Knowingly”** means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- a. the character and content of any material or performance which is reasonably susceptible of examination by the defendant; and
 - b. the age of the minor. However, an honest mistake, shall constitute an excuse from liability pursuant to 21 CNCA §§ 1040.75 through 1040.77 if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.
5. **“Magnetic disk memory”** means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including but not limited to floppy diskettes.
6. **“Magnetic tape memory”** means a memory system that stores and retrieves binary data on magnetic recording tape.
7. **“Material”** means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, CD-ROM disk, magnetic disk memory, magnetic tape memory, downloadable media including but not limited to podcasts, video tape, computer software or video games.
8. **“Minor”** means any unmarried person under the age of eighteen (18) years.
9. **“Nudity”** means the:
- a. showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering;
 - b. showing of the female breast with less than a full opaque covering of any portion of the female breast below the top of the nipple; or
 - c. depiction of covered male genitals in a discernibly turgid state.
10. **“Performance”** means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.
11. **“Person”** means any individual, partnership, association, corporation, or other legal entity of any kind.
12. **“Reasonable bona fide attempt”** means an attempt to ascertain the true age of the minor by requiring production of a driver license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.
13. **“Sadomasochistic abuse”** means flagellation or torture by or upon a person clothed or naked or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed or naked.
14. **“Sexual conduct”** means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.
15. **“Sexual excitement”** means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Lewd or indecent proposals or acts as to child under 18, see 21 CNCA § 1123.

§ 1040.76. Material or performances harmful to minors – Prohibited acts

No person, including but not limited to any persons having custody, control or supervision of any commercial establishment, shall knowingly:

1. Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material. Provided, however, a person shall be deemed not to have “dis- played” material harmful to minors if the material is kept behind devices commonly known as “blinder racks” so that the lower two-thirds (2/3) of the material is not exposed to view;
2. Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or
3. Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Infants O1585.

Obscenity O156.

Westlaw Topic Nos. 211, 281.

C.J.S. Infants § 5.

§ 1040.77. Violations – Penalties

Any person convicted of violating any provision of 21 CNCA § 1040.76 shall be fined a sum not exceeding Five Hundred Dollars (\$500.00) for the first or second offense. Any person convicted of a third or subsequent violation of any provision of 21 CNCA § 1040.76 shall be fined a sum not exceeding One Thousand Dollars (\$1,000.00). Each day that any violation of 21 CNCA § 1040.76 occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act or transaction prohibited by 21 CNCA § 1040.76 shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material as prohibited by 21 CNCA § 1040.76 shall constitute a single offense.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

OBSCENITY & CHILD PORNOGRAPHY

21 CNCA § 1040.77

Library References

Indians O623.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

CHAPTER 40

JUNK DEALERS

Section

1048. Storage or accumulation of wrecked or abandoned motor vehicle or part thereof within view of preexisting residence

§ 1048. Storage or accumulation of wrecked or abandoned motor vehicle or part thereof within view of preexisting residence

No person, firm, partnership or corporation shall with malice or without valid business purpose store, accumulate, allow to accumulate, or allow to remain stored or accumulated after receipt of notice as is hereinafter provided, any wrecked or abandoned motor vehicle, or any recyclable or nonrecyclable hulk or part of a motor vehicle within view of any preexisting residence situated outside the territorial limits of any incorporated municipality. Any homeowner aggrieved by any violation of this section may order the removal of any motor vehicle, hulk or part stored in violation hereof upon thirty (30) days' written notice to the owner of the land where such motor vehicle, hulk or part is stored. Upon the failure of the offending party to comply with said order, the aggrieved party may obtain injunctive and mandamus relief for the removal of matter so stored or accumulated from the district court of the county where the residence is situated and, further; shall be entitled to recover reasonable attorneys' fees, court costs and other reasonable expenses of bringing suit.

History

Source. LA 10-90, eff. November 13, 1990.

CHAPTER 42

PANDERING

Section

- 1081. Offense defined—Punishment
- 1082. Part of offense outside of Nation no defense
- 1083. Injured party as witness
- 1084. Marriage no defense
- 1085. Restraining person in house of prostitution a crime
- 1086. Allowing offense on premises—Punishment
- 1087. Offering or transporting child for purpose of prostitution—Penalty
- 1088. Child under eighteen years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment

§ 1081. Offense defined – Punishment

Any person who shall procure an inmate for a house of prostitution, or who, by promise, threats, violence or by any device or scheme shall cause, induce, persuade or encourage a person to become an inmate of a house of prostitution; or shall procure a place as inmate in a house of prostitution for a person; or who shall, by promise, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or who shall, by fraud, or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority procure any person to become an inmate of a house of ill-fame, or to enter any place in which prostitution is encouraged or allowed within this Nation, or to come into this Nation or leave this Nation for the purpose of prostitution, or who shall procure any person, who has not previously practiced prostitution to become an inmate of a house of ill-fame within this Nation, or to come into this nation or leave this nation for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill-fame within this Nation, or to come into this Nation or leave this Nation for the purpose of prostitution, shall be guilty of pandering, and upon conviction for any offense under this chapter shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Prostitution ○17.
Westlaw Topic No.315H.

C.J.S. Prostitution and Related Offenses §§ 25
to 30, 34, 45 to 46.

§ 1082. Part of offense outside of Nation no defense

It shall not be a defense to a prosecution for any of the acts prohibited in the

foregoing section that any part of such act or acts shall have been committed outside this Nation.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Prostitution O17, 21.
Westlaw Topic No.315H.

C.J.S. Prostitution and Related Offenses
§§ 13, 23, 25 to 30, 34, 39, 45 to 46, 48.

§ 1083. Injured party as witness

Any such person, referred to in the foregoing sections, shall be a competent witness in any prosecution under this chapter, to testify for or against the accused as to any transaction or as to any conversation with the accused or by him with another person or persons in her presence, notwithstanding the fact of her having married the accused before or after the violation of any of the provisions of this chapter, whether called as a witness during the existence of the marriage or after its dissolution.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O610.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 1084. Marriage no defense

The act or state of marriage shall not be a defense to any violation of this chapter.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Prostitution O21.
Westlaw Topic No.315H.

C.J.S. Prostitution and Related Offenses
§§ 13, 23, 39, 48.

§ 1085. Restraining person in house of prostitution a crime

Whoever shall by any means keep, hold, detain, or restrain against their will, any person in a house of prostitution or other place where prostitution is practiced or allowed; or whoever shall, directly or indirectly keep, hold, detain or restrain or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means for the purpose of compelling such person, directly or indirectly to pay, liquidate or

cancel any debt, dues or obligations incurred or said to have been incurred by such person, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

§ 1086. Allowing offense on premises—Punishment

Any owner, proprietor, keeper, manager, conductor, or other person, who knowingly permits or suffers the violation of any provision of this article, in any house, building, room, tent, lot or premises under his control or of which he has possession shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Disorderly House O1, 9.
Westlaw Topic No. 130.

C.J.S. Disorderly Houses §§ 1, 3 to 5, 7 to 20.
C.J.S. Drugs and Narcotics § 321.

§ 1087. Offering or transporting child for purpose of prostitution—Penalty**A. No person shall:**

1. Offer, or offer to secure, a child under eighteen (18) years of age for the purpose of prostitution, or for any other lewd or indecent act, or procure or offer to procure a child for, or a place for a child as an inmate in, a house of prostitution or other place where prostitution is practiced;
2. Receive or offer or agree to receive any child under eighteen (18) years of age into any house, place, building, other structure, vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or
3. Direct, take, or transport, or offer or agree to take or transport, or aid or assist in transporting, any child under eighteen (18) years of age to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;

B. 1. Any person violating the provisions of subsection (A) of this section shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

2. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits any violation of this section in any house, building, room, or other premises or any conveyances under his control or of which he has possession shall, upon conviction for the first offense, be guilty of a crime punishable pursuant to 21 CNCA § 10. Upon conviction for a subsequent offense pursuant to this subsection such person shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Infants O1589.

C.J.S. Evidence § 380.

Westlaw Topic No.211.

C.J.S. Infants §§ 125 to 137.

§ 1088. Child under eighteen years of age – Inducing, keeping, detaining or restraining for prostitution – Punishment

A. No person shall:

1. By promise, threats, violence, or by any device or scheme, including but not limited to the use of any controlled dangerous substance prohibited pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq., cause, induce, persuade, or encourage a child under eighteen (18) years of age to engage or continue to engage in prostitution or to become or remain an inmate of a house of prostitution or other place where prostitution is practiced;
2. Keep, hold, detain, restrain, or compel against his or her will, any child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or other place where prostitution is practiced or allowed;
3. Directly or indirectly keep, hold, detain, restrain, or compel or attempt to keep, hold, detain, restrain, or compel a child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or any place where prostitution is practiced or allowed for the purpose of compelling such child to directly or indirectly pay, liquidate, or cancel any debt, dues, or obligations incurred, or said to have been incurred by such child.

B. 1. Any person violating the provisions of this section, upon conviction, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

2. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits a violation of this section in any house, building, room, tent, lot or premises under his control or of which he has possession, upon

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

conviction for the offense, shall be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

PANDERING

21 CNCA § 1088

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Infants O1589, 1590.

Westlaw Topic No.211.

C.J.S. Evidence § 380.

C.J.S. Infants §§ 5, 125 to 137.

CHAPTER 45
RAPE, ABDUCTION, CARNAL ABUSE OF
CHILDREN AND SEDUCTION

Section

- 1111. Rape defined
- 1111.1, 1112. Repealed
- 1113. Slight penetration sufficient to complete crime
- 1114, 1115. Repealed
- 1116. Punishment for rape in second degree
- 1117. Compelling woman to marry
- 1118. Intent to compel woman to marry
- 1119. Abduction of person under eighteen
- 1123. Lewd or indecent proposals or acts as to child under eighteen
- 1123.1. Sexual battery
- 1124. Using computer networks to violate Cherokee Nation statutes
- 1125. Zone of safety

§ 1111. Rape defined

A. A person commits the offense of rape if the person intentionally or knowingly:

1. causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;
2. causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
3. causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
4. causes the anus of another person, without that person's consent, to contact the mouth, anus, or sexual organ of another person, including the actor; or
5. causes the mouth of another person, without that person's consent, to contact the anus or sexual organ of another person, including the actor; or
6. engages in any of the activities listed in paragraphs 1 through 5 of this subsection with an animal.

B. A rape under subsection (A) of this section is without the consent of the other person:

1. Where the victim is under the age of fourteen (14) years of age; or
2. The victim is age fourteen (14) or older but has not yet attained the age of sixteen (16), except when:
 - a. the victim otherwise consents; and
 - b. the accused is not required to register as a sex offender; and
 - c. the accused is less than nineteen (19) years of age or the accused is married to the victim; or
3. Where the actor knows that as a result of mental disease or defect, whether temporary or permanent, the other person is at the time of the act incapable either of appraising the nature of the act or of resisting it; or
4. Where force or violence is used accompanied by apparent power of execution to the victim or to another person; or
5. Where the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; or
6. Where the actor, or someone in privity with the actor, has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; or

7. Where the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; or
8. Where the other person has not consented and the actor knows the other person is unaware that the rape is occurring; or
9. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce such belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape; or
10. Where the victim is under the legal custody or supervision of a Cherokee Nation, other tribal, state, municipal, other governmental subdivision, or federal agency and engages in sexual intercourse with a Cherokee Nation, other tribal, state, municipal, other governmental subdivision, or federal employee or official in the belief that such intercourse or activity will influence the professional responsibility of the employee or if not submitted to will result in detrimental condition for the victim; or
11. Where the victim is a student, or under the legal custody, supervision, or authority of any public or private elementary or secondary school, junior high or high school, or public vocational school, or any Cherokee Nation agency and engages in sexual intercourse with a person who is an employee or official of the same school system or Cherokee Nation agency or otherwise exercises power as an official over the school system or Cherokee Nation agency regardless of the ages of the victim and the accused; or
12. Where the actor is a public servant who coerces the other person to submit or participate; or
13. Where the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor; or
14. Where the actor is a clergyman, or purports to be a clergyman, who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or
15. Where the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other.

C. For purposes of this section:

1. **“Health care services provider”** means:

- a. a physician licensed by any government;
- b. a chiropractor licensed by any government;
- c. a physical therapist licensed by any government;
- d. a physician assistant licensed by any government; or
- e. a licensed practical nurse, a registered nurse, a vocational nurse, or an advanced practice nurse licensed by any government.

2. **“Mental health services provider”** means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including:

- a. a social worker;
- b. a chemical dependency counselor;
- c. any counselor;
- d. any marriage and family therapist;
- e. a member of the clergy; or
- f. a psychologist or psychiatrist offering psychological services.

D. It is a defense to prosecution under subsection (A) of this section that the conduct consisted of medical care for a child under eighteen (18) years of age and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

E. Any person convicted of committing rape is guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of this section shall not be eligible for any form of probation.

F. All references in current statutes to rape in either the first or second degree are hereby deemed references to the crime of rape.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Definitions,

Domestic abuse, see 22 CNCA § 40.

Sex offender registration, see 22 CNCA § 60.1.

Victims of rape, etc., see 57 CNCA § 3.

Limitations in general, see 22 CNCA § 152.

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Rape ○1.

283 Westlaw Topic No. 321.

RAPE, ETC.

21 CNCA § 1117

C.J.S. Rape §§ 1 to 5, 15 to 16, 20 to 21, 25,
27.

§§ 1111.1, 1112. Repealed by LA 20–08, eff. January 12, 2009

History

The repealed sections, relating to rape by instrumentation and age limits for convictions of rape, were derived from LA 10–90.

§ 1113. Slight penetration sufficient to complete crime

Any sexual penetration, however slight, is sufficient to complete the crime of rape.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2013.

Library References

Rape ○7.

Westlaw Topic No. 321.

C.J.S. Rape §§ 3, 20 to 21.

§§ 1114, 1115. Repealed by LA 20–08, eff. January 12, 2009

History

The repealed sections, relating to rape in the first and second degree and its punishment, were derived from LA 10–90.

§ 1116. Punishment for rape in second degree

Rape in the second degree is a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Rape ○1.

Westlaw Topic No. 321.

C.J.S. Rape §§ 1 to 5, 15 to 16, 20 to 21, 25,
27.

§ 1117. Compelling woman to marry

Every person who takes any woman against her will, and by force, menace or duress, compels her to marry him or to marry any other person, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1118. Intent to compel woman to marry

Every person who takes any woman unlawfully against her will, with the intent to compel her by force, menace or duress to marry him, or to marry any other person, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1119. Abduction of person under eighteen

Every person who takes away or induces to leave any person under the age of eighteen (18) years, from a parent, guardian or other person having the legal charge of the person, without the consent of said parent, guardian, or other person having legal charge, for the purpose of marriage or concubinage, or any crime involving moral turpitude is guilty of a crime punishable pursuant to 21 CNCA § 10.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2013.

Library References

Infants O1592.

Westlaw Topic No.211.

C.J.S. Infants § 5.

§ 1123. Lewd or indecent proposals or acts as to child under eighteen

A. It is a crime for any person to knowingly and intentionally:

1. make any oral, written, or electronically or computer-generated lewd or indecent proposal to any child under eighteen (18) years of age, or other individual the person believes to be a child under eighteen (18) years of age, for the child to have unlawful sexual relations or sexual intercourse with any person; or
2. look upon, touch, maul, or feel the body or private parts of any child under eighteen (18) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or
3. ask, invite, entice, or persuade any child under eighteen (18) years of age, or other individual the person believes to be a child under eighteen (18) years of age, to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or
4. in any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under eighteen (18) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest;

or

5. in a lewd or lascivious manner and for the purposes of sexual gratification:

a. urinate or defecate upon a child under eighteen (18) years of age;

- b. ejaculate upon or in the presence of a child under eighteen (18) years of age;
- c. cause, expose, force or require a child under eighteen (18) years of age to look upon the body or private parts of another person;
- d. force or require any child under eighteen (18) years of age or other individual the person believes to be a child under eighteen (18) years of age to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by 21 CNCA § 1024.1 and 21 CNCA § 1040.75;
- e. cause, expose, force or require a child under eighteen (18) years of age or other individual the person believes to be a child under eighteen (18) years of age to look upon sexual acts performed in the presence of the child; or
- f. force or require a child under eighteen (18) years of age or other individual the person believes to be a child under eighteen (18) years of age to touch or feel the body or private parts of said child or another person, upon conviction, shall be deemed guilty of a crime.

B. The provisions of this section shall apply:

- 1. Where the victim is under the age of fourteen (14) years of age; or
- 2. Where the victim is age fourteen (14) or older but has not yet attained the age of sixteen (16), except when:
 - a. the victim otherwise consents; and
 - b. the accused is not required to register as a sex offender; and
 - c. the accused is less than nineteen (19) years of age or the accused is married to the victim; or
- 3. To any person without the victim's consent when the victim is between age sixteen (16) and eighteen (18) years.

C. Any person convicted of violating this section is guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of this section shall not be eligible for any form of probation.

D. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2013.

Cross References

Definitions, see 57 CNCA § 3.

Limitations in general, see 22 CNCA § 152.

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Infants O1591.
Westlaw Topic No.211.

§ 1123.1. Sexual battery

A. No person shall commit sexual battery on any other person. “Sexual battery” shall mean the intentional touching, mauling or feeling of the body or private parts, in a lewd and lascivious manner, of:

1. a victim under the age of 14 years of age; or
2. a victim age 14 or older but who has not yet attained the age of 16, except when:
 - a. the victim otherwise consents, and
 - b. the accused is not required to register as a sex offender, and
 - c. the accused is less than 19 years of age or the accused is married to the victim; or
3. any person without the victim’s consent when the victim is over age sixteen (16) years, or
4. any person who is a student, or under the legal custody, supervision, or authority of any public or private elementary or secondary school, junior high or high school, or public vocational school, or any Cherokee Nation agency and the accused is a person who is an employee or official of the same school system or Cherokee Nation agency or otherwise exercises power as an official over the school system or Cherokee Nation agency regardless of the ages of the victim and the accused.

B. Any person convicted of violating this section is guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of this section shall not be eligible for any form of probation.

C. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

History

Source. LA 20–08, eff. January 12, 2009.
Amended. LA 09–12, eff. May 23, 2013.

Cross References

Definitions, see 57 CNCA § 3.

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Assault and Battery ^Q59.
Westlaw Topic No. 37.

§ 1124. Using computer networks to violate Cherokee Nation statutes

No person shall communicate with, store data in, or retrieve data from a computer system or computer network for the purpose of using such access to violate any of the provisions of Cherokee Nation statutes. Any person convicted of violating the provisions of this section shall be guilty of a crime punishable pursuant to 21 CNCA § 10.

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2013.

§ 1125. Zone of safety

A. A zone of safety is hereby created around elementary, junior high, and high schools, licensed child care centers, playgrounds, and parks. A person is prohibited from loitering within three hundred (300) feet of any elementary, junior high, or high school, licensed child care facility, playground, or park if the person has been convicted of a crime that requires the person to register pursuant to the Sex Offenders Registration and Notification Act, 57 CNCA § 1 et seq., or the person has been convicted of an offense in another jurisdiction, which offense if committed or attempted in Cherokee Nation, would have been punishable as one or more of the offenses listed in 57 CNCA § 4 and the victim was a child under the age of thirteen (13) years.

B. A person convicted of a violation of subsection (A) of this section shall be guilty of a crime punishable pursuant to 21 CNCA § 10. This proscription of conduct shall not modify or remove any restrictions currently applicable to the person by court order, conditions of probation or as provided by other provision of law.

C. 1. A person shall be exempt from the prohibition of this section regarding a school or a licensed child care facility only under the following circumstances:

- a. the person is the custodial parent or legal guardian of a child who is an enrolled student at the school or child care facility; and
- b. the person is enrolling, delivering or retrieving such child at the school or child care facility during regular school or facility hours.

2. This exception shall not be construed to modify or remove any restrictions applicable to the person by court order, conditions of probation, or as provided by other provision of law.

D. The provisions of subsection (A) of this section shall not apply to any person receiving treatment at a hospital or other facility certified or licensed by any government to provide medical services.

E. Nothing in this section shall prohibit a person, who is registered as a sex offender pursuant to the Sex Offender Registration and Notification Act, from attending a recognized church or religious denomination for worship; provided, the person has notified the religious leader of his or her status as a registered sex offender and the person has been granted written permission by the religious leader.

21 CNCA § 1125

CRIMES AND PUNISHMENTS

History

Source. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2013.

Library References

Disorderly Conduct O107.

Education O121.

Westlaw Topic Nos. 129, 141E.

C.J.S. Disorderly Conduct §§ 1 to 4.

CHAPTER 46

DOMESTIC ABUSE

Section

- 1130. Domestic abuse assault and battery—Definition
- 1131. Domestic abuse assault and battery—Punishment
- 1132. Assault and battery domestic abuse by strangulation—Definition
- 1133. Domestic abuse strangulation—Punishment
- 1134. Stalking

Cross References

Victims not to be discouraged from pressing charges—Warrantless arrest of certain persons, see 22 CNCA § 40.3.

§ 1130. Domestic abuse assault and battery – Definition

Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of the crime of domestic abuse assault and battery.

History

Source. LA 29–06, eff. December 20, 2006.

Library References

Assault and Battery ○47.
Westlaw Topic No. 37.

C.J.S. Assault §§ 1 to 3, 73, 78 to 85, 98.
C.J.S. Robbery § 108.

§ 1131. Domestic abuse assault and battery – Punishment

A. Domestic abuse assault and battery shall be punishable by imprisonment in a penal institution not exceeding one (1) year, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both, at the discretion of the Court.

B. Any person convicted of domestic abuse as defined in this provision, that was committed in the presence of a child shall be punished by imprisonment in a penal institution not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Any person who is convicted of a second or subsequent domestic violence assault and battery offense shall be punished by imprisonment in a penal institution not exceeding three years, or by fine of not more than Five Thousand Dollars (\$5000.00), or both such fine and imprisonment at the discretion of the Court.

D. For every conviction of domestic abuse, the Court shall:

1. specifically order as a condition of a deferred or suspended sentence or probation that a defendant participate in batterer's treatment; or

2. require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse-counseling program approved by the Court. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend and complete the program and be evaluated before and after attendance of the program by a program counselor or a private counselor.

E. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this section. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant (whether or not defendant evaluates as a perpetrator of domestic violence) should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional.

F. The Court shall set review hearings within one hundred twenty (120) days to ensure that the defendant attends and fully complies with the provisions of this section and the domestic abuse counseling or treatment requirements. The defendant shall be required to be present at the review hearing. Defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the Court. The victim may attend but is not required to do so.

G. The Court shall set a final review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of Cherokee law. The Court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing.

H. The Court may set interim review, follow-up post-completion review, or other review hearings as the Court determines necessary to assure the defendant attends and fully complies with the provisions of this section and the domestic abuse counseling or treatment requirements. After the initial review hearing referenced in subsection (F), the Court may waive Defendant's appearance at reviews or compel Defendant's attendance at reviews. The Court may review progress reports on the defendant from individual counseling, domestic abuse counseling, or the treatment program without appearances.

I. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, or is not making progress in treatment, the Court may:

1. order the defendant to further or continue counseling, treatment, or other necessary services; and

2. revoke all or any part of a suspended sentence, deferred sentence, or probation; and
3. subject the defendant to any or all remaining portions of the original sentence.

J. Nothing in this provision shall prohibit the Presiding Judge of the District Court from appointing and compensating a Special Master to hear all or designated cases set for review under this section.

K. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the Court.

L. Penalty enhancement—For the purposes of this section, any former conviction in any jurisdiction for assault and battery against any current or former spouse, any present spouse of a former spouse, parents, any foster parent, any child, any person otherwise related by blood or marriage, any person with whom the defendant is in a dating relationship, any individual with whom the defendant has had a child, any person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for an enhanced penalty under subsection (C) of this section as a second or subsequent offense.

History

Source. LA 29–06, eff. December 20, 2006.

Amended. LA 10–13, eff. April 13, 2013.

Library References

Assault and Battery O47.

Indians O620.

Westlaw Topic Nos. 37, 209.

C.J.S. Assault §§ 1 to 3, 73, 78 to 85, 98.

C.J.S. Indians §§ 151 to 179.

C.J.S. Robbery § 108.

§ 1132. Assault and battery domestic abuse by strangulation—Definition

Any person who commits any assault or assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against a current or former spouse, a present spouse of a former spouse, parent, a foster parent, child, person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant, by means of a form of asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck, shall be guilty of the crime of domestic abuse by strangulation.

History

Source. LA 29–06, eff. December 20, 2006.

Westlaw Topic No. 37.

C.J.S. Assault §§ 95 to 96.

Assault and Battery O55.

Library References

§ 1133. Domestic abuse strangulation – Punishment

Upon conviction of domestic abuse by strangulation, defendant shall be punished by incarceration for a period of not less than one (1) year but no more than three (3) years, or by a fine of not more than Five Thousand Dollars (\$5,000.00) plus restitution, or by both such fine and incarceration. Upon a second or subsequent conviction, the defendant shall be punished by imprisonment for a period of not less than three (3) years, or by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment. Provided, the prosecutor may refer such case for federal prosecution on a first offense or a second or subsequent offense.

History

Source. LA 29–06, eff. December 20, 2006.

Amended. LA 10–13, eff. April 13, 2013.

Library References

Assault and Battery O55.

Indians O620.

Westlaw Topic Nos. 37, 209.

C.J.S. Assault §§ 95 to 96.

C.J.S. Indians §§ 151 to 179.

§ 1134. Stalking

A. Definitions. For purposes of this section:

1. **“Course of conduct”** means a pattern of conduct composed of a series of two (2) or more separate acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”
2. **“Emotional distress”** means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling.
3. **“Harasses”** means conduct directed toward a person that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the victim. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.
4. **“Member of the immediate family”** means any spouse, parent, Child, person related within the third degree of consanguinity or affinity or any other person who regularly resides in the household or who has regularly resided in the household within the prior six (6) months.
5. **“Unconsented contact”** means any contact with another individual that is initiated or continued without the consent of the individual, or in disregard of that individual’s expressed desire that the contact be avoided or discontinued. Constitutionally protected activity is not included within the meaning of unconsented contact. Unconsented contact includes but is not limited to any of the following:
 - a. following or appearing within the sight of that individual;
 - b. approaching or confronting that individual in a public place or on

private property;

c. appearing at the work place or residence of that individual;

- d. entering onto or remaining on property owned, leased, or occupied by that individual;
- e. contacting that individual by telephone;
- f. sending mail or electronic communications to that individual; and
- g. placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

B. Any person who willfully, maliciously, and repeatedly follows or harasses another person in a manner that:

- 1. would cause a reasonable person or a member of the immediate family of that person as defined in subsection (F) below to feel frightened, intimidated, threatened, harassed, or molested; or
- 2. actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested, upon conviction, shall be guilty of the crime of stalking which is punishable by a fine of not more than Five Thousand Dollars (\$5,000.00), by imprisonment for not more than one (1) year, or both.

C. Any person who violates the above provisions when any of the following conditions exist at the time of the offense shall be guilty of a separate offense which is punishable by a fine of not more than Five Thousand Dollars (\$5,000.00), by imprisonment for a term not exceeding three (3) years, or both:

- 1. there is a temporary restraining order, a protective order, emergency ex parte order or an injunction in effect prohibiting the behavior described in this section against the same party, when the person violating such provisions has actual notice of the issuance of such order or injunction;
- 2. said person is on probation or parole, a condition of which prohibits the behavior described in this section against the same party; or
- 3. said person, within ten (10) years preceding the violation of this section, completed the execution of sentence or conviction of a crime involving the use or threat of violence against the same party, or against a member of the immediate family of such party.

D. Any person who is convicted of a second act of stalking within ten (10) years of the completion of sentence for a prior conviction under this section shall be punished by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), by imprisonment for a term not exceeding three (3) years, or both.

E. Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, shall give rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

History

Source. LA 10–13, eff. April 13, 2013.

Library References

Protection of Endangered Persons ○43. 300 Westlaw Topic No. 315P.

21 CNCA § 1134

C.J.S. Breach of the Peace §§ 18, 20, 32 to 35.

CRIMES AND PUNISHMENTS

C.J.S. Domestic Abuse and Violence §§ 1, 5, 7 to 10, 15 to 16, 18.

CHAPTER 47

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD

Section

- 1151. Disposal of one's own body
- 1152. Duty of burial
- 1153. Burial in other states
- 1154. Autopsy—Definition—When allowed
- 1155. Unlawful dissection a crime
- 1156. Remains after dissection
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- 1160. Persons entitled to custody of body
- 1161. Unlawful removal of dead body—Violation of or damage to casket or burial vault
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HUMAN SKELETAL REMAINS AND BURIAL FURNITURE

- 1168. Definitions
- 1168.1. Buying, selling, transporting or bartering for profit of human skeletal remains or associated burial furniture—Crime
- 1168.2. Certain institutions and museums to consult tribal leaders or certain Nation entities before disposition of remains
- 1168.3. Display of open burial ground, furniture or skeletal remains for profit or commercial enterprise
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- 1168.5. Designation of repository for remains and furniture for scientific purposes
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§ 1151. Disposal of one's own body

Every person has the right to direct the manner in which his body shall be disposed of after his death, and to direct the manner in which any part of his body which becomes separated therefrom during his lifetime shall be disposed of. The provisions of this chapter do not apply where such person has given directions for the disposal of his body or any part thereof inconsistent with these provisions.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies O1, 2.
Westlaw Topic No. 116.

C.J.S. Dead Bodies §§ 1 to 29, 31 to 33.

§ 1152. Duty of burial

Except in the cases in which a right to dissect a dead body is expressly conferred by law, every dead body of a human being must be decently buried within a

reasonable time after the death.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies ○2.
Westlaw Topic No. 116.

C.J.S. Dead Bodies §§ 11 to 29, 31 to 33.

§ 1153. Burial in other states

The last section does not affect the right to carry the dead body of a human being through this Nation, or to remove from this Nation the body of a person dying within it, for the purpose of burying the same in another state or territory.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies ○4.
Westlaw Topic No. 116.
C.J.S. Dead Bodies §§ 11 to 18.

§ 1154. Autopsy – Definition – When allowed

A. Autopsy means a post-mortem dissection of a dead human body in order to determine the cause, seat or nature of disease or injury and includes, but is not limited to, the retention of tissues for evidentiary, identification, diagnostic, scientific and therapeutic purposes.

B. An autopsy may be performed on the dead body of a human being in the following cases:

- 1st. In cases authorized by positive enactment of the Council;
- 2nd. Whenever the death occurs under circumstances in which the medical examiner is authorized as provided in Title 63 of the Oklahoma Statutes to conduct such autopsy;
- 3rd. Whenever consent is given to a licensed physician to conduct an autopsy on the body of a deceased person by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, or in the absence of any of the foregoing, a friend, or a person charged by law with the responsibility for burial. If two or more such persons assume custody of the body, the consent of one (1) of them shall be deemed sufficient.

History

Source. LA 10–90, eff. November 13, 1990.

Oklahoma Statutes

Public health and safety, see 63 O.S. § 1–101 et seq.

Library References

Coroners **O**14.

Westlaw Topic No. 100.

C.J.S. Coroners and Medical Examiners §§ 9 to 10, 13, 15.

§ 1155. Unlawful dissection a crime

Every person who makes or procures to be made any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies O7.
Westlaw Topic No. 116.
C.J.S. Dead Bodies §§ 67 to 72, 74.

§ 1156. Remains after dissection

In all cases in which a dissection has been made, the provisions of this chapter requiring the burial of a dead body, and punishing interference with or injuries to a dead body, apply equally to the remains of the body dissected as soon as the lawful purposes of such dissection have been accomplished.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies O2, 7.
Westlaw Topic No. 116.
C.J.S. Dead Bodies §§ 11 to 29, 31 to 33, 67 to 72, 74.

§ 1157. Dead limb or member of body

All provisions of this chapter requiring the burial of a dead body, or punishing interference with or injuries to a dead body, apply equally to any dead limb or member of a human body, separated therefrom during lifetime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies O2, 7.
Westlaw Topic No. 116.
C.J.S. Dead Bodies §§ 11 to 29, 31 to 33, 67 to 72, 74.

§ 1158. Duty of burial devolves upon whom

The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

- 1st. If the deceased were a married woman, the duty of burial devolves upon her husband.
- 2nd. If the deceased were not a married woman, but left any kindred, the duty of burial devolves upon any person or persons in the same degree nearest of

kin to the deceased, being of adult age, and possessed of sufficient means to defray the necessary expenses.

3rd. If the deceased left no husband, nor kindred, answering to the foregoing description, the duty of burial devolves upon the officer conducting an inquest upon the body of the deceased, if any such inquest is held; if none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

4th. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant, or, if there be no tenant, upon the owner of the premises where the death occurs or the body is found.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies O2.
Westlaw Topic No. 116.
C.J.S. Dead Bodies §§ 11 to 29, 31 to 33.

§ 1159. Neglect of burial

Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a crime; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies O7 to 9.
Westlaw Topic No. 116.
C.J.S. Dead Bodies §§ 30, 34 to 74.

§ 1160. Persons entitled to custody of body

The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it, except that in the cases in which an inquest is required by law to be held upon a dead body, the officer holding the inquest is entitled to its custody until such inquest has been completed.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1161. Unlawful removal of dead body— Violation of or damage to casket or burial vault

A. No person shall intentionally remove the dead body of a human being or any part thereof from the initial site where such dead body is located for any purpose, unless such removal is authorized by a prosecutor or his authorized representative or medical examiner or his authorized representative, or is not required to be investigated pursuant to the provisions of 63 O.S. § 938, said authorization by the prosecutor or medical examiner shall not be required prior to the removal of said body. A prosecutor having jurisdiction may refuse to prosecute a violation of this subsection if the prosecutor determines that circumstances existed which would justify such removal or that such removal was not an act of malice or wantonness.

B. No person shall remove any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it without authority of law, or from malice or wantonness.

C. No person shall willfully or with malicious intent violate or cause damage to the casket or burial vault holding the deceased human remains.

D. Any person convicted of violating any of the provisions of this section shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Oklahoma Statutes

Types of deaths to be investigated, autopsies, see 63 O.S. § 938.

Library References

Dead Bodies O5, 7.
Westlaw Topic No. 116.
C.J.S. Dead Bodies §§ 19 to 29, 67 to 72, 74.

§ 1162. Purchasing dead body

Whoever purchases, or who receives, except for the purpose of burial, any dead body of a human being, knowing the same has been removed contrary to the last section is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies O7.
Westlaw Topic No. 116.
C.J.S. Dead Bodies §§ 67 to 72, 74.

§ 1163. Unlawful interference with places of burial

Every person who opens any grave or any place of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent either:

1. To remove any dead body of a human being for the purpose of selling the same, or for the purpose of dissection; or
2. To steal the coffin, or any part thereof or anything attached thereto, or connected therewith, or the vestments or other articles buried with the same, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies **O**7.

Westlaw Topic No. 116.

C.J.S. Dead Bodies §§ 67 to 72, 74.

§ 1164. Removal to another burial place

Whenever a cemetery or other place of burial is lawfully authorized to be removed from one place to another, the right and duty to disinter, remove and rebury the remains of bodies there lying buried devolves upon the same persons required to bury the deceased in the order in which they there are named, and if they all fail to act, then upon the lawful custodians of the place of burial so removed. Every omission of such duty is punishable in the same manner as other omissions to perform the duty of making burial.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies O5, 7, 9.

Westlaw Topic No. 116.

C.J.S. Dead Bodies §§ 19 to 30, 34 to 72, 74.

§ 1165. Arresting or attaching dead body

Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies O7.

Westlaw Topic No. 116.

C.J.S. Dead Bodies §§ 67 to 72, 74.

§ 1166. Disturbing funerals

Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for the purpose of any funeral, or who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying any dead body of a human being to a place of burial, is guilty of a crime.

SEPULTURE & THE DEAD

21 CNCA § 1168

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Cemeteries O22.

Dead Bodies O7.

Westlaw Topic Nos. 71, 116.

C.J.S. Cemeteries §§ 33 to 34.

C.J.S. Dead Bodies §§ 67 to 72, 74.

§ 1167. Injury to cemetery or tomb

Every person who shall willfully or with malicious intent destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure placed in any cemetery or private burying ground, or any fence, railing, or other work for the protection or ornament of any such cemetery or place of burial of any human being, or tomb, monument or gravestone, memento, or memorial, or other structure aforesaid, or of any lot within a cemetery, or shall willfully or with malicious intent destroy, cut, break, or injure any tree, shrub or plant, within the limits thereof, shall be deemed guilty of a crime, and shall, upon conviction thereof, be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the penal institution for a term not to exceed six (6) months, or by both such fine and imprisonment.

History

Source. LA 10-90, eff. November 13, 1990.

Library References

Cemeteries O22.

Westlaw Topic No. 71.

C.J.S. Cemeteries §§ 33 to 34.

HUMAN SKELETAL REMAINS AND BURIAL FURNITURE

§ 1168. Definitions

As used in this section and 21 CNCA §§ 1168.1 to 1168.6:

1. **“Archaeologist”** means the individual of this title appointed by the Principal Chief.
2. **“Burial furniture”** means any items intentionally placed with human remains at the time of burial and shall include but not be limited to burial markers, items of personal adornment, casket and hardware, stone, bone, shell and metal ornaments and elaborately decorated pottery vessels.
3. **“Burial grounds”** means any place where human skeletal remains are buried.
4. **“Historic Preservation Officer”** means the individual of this title appointed by the Principal Chief.
5. **“Human skeletal remains”** means the bony portion of a human body which remains after the flesh has decomposed.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1168.1. Buying, selling, transporting or bartering for profit of human skeletal remains or associated burial furniture—Crime

Anyone who knowingly buys, sells, transports or barters for profit human skeletal remains or associated burial furniture, previously buried within Cherokee Nation, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Cemeteries O22.
Dead Bodies O7.
Westlaw Topic Nos. 71, 116.

C.J.S. Cemeteries §§ 33 to 34.
C.J.S. Dead Bodies §§ 67 to 72, 74.

§ 1168.2. Certain institutions and museums to consult tribal leaders or certain Nation entities before disposition of remains

Accredited educational institutions, or officially designated institutions or museums as provided by 53 O.S. § 361, coming into possession or knowledge of human skeletal remains or associated burial furniture from Cherokee Nation shall consult with tribal leaders, identified by the Principal Chief, regarding the final disposition of said remains prior to any activities related to scientific or educational purposes. Where direct historical ties to existing tribal groups cannot be established, consultation regarding final disposition shall take place with the Oklahoma Historic Preservation Officer, Oklahoma Nation Archaeologist and the Director of the Oklahoma Museum of Natural History.

History

Source. LA 10–90, eff. November 13, 1990.

Oklahoma Statutes

Anthropological and archaeological projects, see 53 O.S. § 361.

Library References

Indians O144.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 50, 53.

§ 1168.3. Display of open burial ground, furniture or skeletal remains for profit or commercial enterprise

A. Anyone who knowingly displays an open burial ground, burial furniture or human skeletal remains previously buried in Cherokee Nation for profit or to aid and abet a commercial enterprise or any other form of exploitation that defers final disposition of said remains, shall be guilty of a crime and each day of display shall be a separate offense.

B. Anyone who knowingly displays human skeletal remains previously buried in Cherokee Nation shall be guilty of a crime and each day of display shall be a separate offense.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Cemeteries O22.

Indians O144.

Westlaw Topic Nos. 71,209.

C.J.S. Cemeteries §§ 33 to 34.

C.J.S. Indians §§ 46 to 50, 53.

§ 1168.4. Discovery of remains or furniture – Reporting and notification procedure

A. All persons who encounter or discover human skeletal remains or what they believe may be human skeletal remains or burial furniture thought to be associated with human burials in or on the ground shall immediately cease any activity which may cause further disturbance and shall report the presence and location of such human skeletal remains to an appropriate law enforcement officer. Any person who fails to cease activity is guilty of a crime.

B. Any person who willfully fails to report the presence or discovery of human skeletal remains or what they believe may be human skeletal remains within forty-eight (48) hours to an appropriate Cherokee Nation Marshal shall be guilty of a crime.

C. Any person who knowingly disturbs human skeletal remains or burial furniture other than a law enforcement officer, registered mortician, a representative of the Office of the Chief Medical Examiner, a professional archaeologist or physical anthropologist, or other officials designated by law in performance of official duties, shall be guilty of a crime.

D. Anyone not covered under subsection (C) of this section who disturbs or permits disturbance of a burial ground with the intent to obtain human skeletal remains or burial furniture shall be guilty of a crime.

E. The law enforcement officer, if there is a reason to believe that the skeletal remains may be human, shall promptly notify the landowner and the Chief Medical Examiner. If remains reported under 21 CNCA §§ 1168.1 through 1168.6 are not associated with or suspected of association with any crime, the Archaeologist and Historic Preservation Officer shall be notified within fifteen (15) days. If review by the Archaeologist and the Historic Preservation Officer of the human skeletal remains and any burial furniture demonstrates or suggests a direct historical relationship to a tribal group, then the Archaeologist shall:

1. Notify the Historic Preservation Officer; and
2. Consult with the tribal leader within fifteen (15) days regarding any proposed treatment or scientific studies and final disposition of the materials.

If said remains have a direct relationship to a tribal group which is not specifically found to be in Cherokee Nation then the Archaeologist and the Historic Preservation Officer shall make reasonable attempts to contact the proper tribal

group for a determination of the final disposition of the remains.

21 CNCA § 1168.4

CRIMES AND PUNISHMENTS

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Dead Bodies O7.

Indians O144.

Westlaw Topic Nos. 116, 209.

C.J.S. Dead Bodies §§ 67 to 72, 74.

C.J.S. Indians §§ 46 to 50, 53.

§ 1168.5. Designation of repository for remains and furniture for scientific purposes

If the human skeletal remains and any burial furniture are not directly related to a tribal group or if the remains are not claimed by the consulted entity, the Archaeologist and the Historic Preservation Officer with the Director of the Oklahoma Museum of Natural History may designate a repository for curation burial furniture for scientific purposes and burial of human skeleton remains.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O144.

Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 50, 53.

§ 1168.6. Penalties

Any person convicted of an offense pursuant to the provisions of 21 CNCA §§ 1168.1 through 1168.6 shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Cemeteries O22.

Dead Bodies O7.

Indians O144.

Westlaw Topic Nos. 71, 116, 209.

C.J.S. Cemeteries §§ 33 to 34.

C.J.S. Dead Bodies §§ 67 to 72, 74.

C.J.S. Indians §§ 46 to 50, 53.

CHAPTER 47A

GENERAL AND MISCELLANEOUS PROVISIONS

Section

1171. Loitering around residence to watch occupants
1172. Obscene, threatening or harassing telephone calls—Penalty

§ 1171. Loitering around residence to watch occupants

A. Every person who hides, waits or otherwise loiters in the vicinity of any private dwelling house, apartment building, any other place of residence, or in the vicinity of any locker room, dressing room, restroom, or any other place where a person has a right to a reasonable expectation of privacy, with the unlawful and willful intent to watch, gaze, or look upon any person in a clandestine manner, is guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

B. Every person who uses photographic, electronic or video equipment in a clandestine manner for any illegal, illegitimate, prurient, lewd or lascivious purpose with the unlawful and willful intent to view, watch, gaze or look upon any person without the knowledge and consent of such person when the person viewed is in a place where there is a right to a reasonable expectation of privacy, or who publishes or distributes any image obtained from such act, shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 20–08, eff. January 12, 2009.
Amended. LA 09–12, eff. May 23, 2012.

Cross References

Persons and crimes to which act applies, see 57 CNCA § 4.

Library References

Disorderly Conduct ○123.
Westlaw Topic No. 129.
C.J.S. Disorderly Conduct §§ 1 to 4.

§ 1172. Obscene, threatening or harassing telephone calls – Penalty

A. It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either:

1. Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent;
2. Makes a telecommunication or other electronic communication with intent to terrify, intimidate or harass, or threaten to inflict injury or physical

harm to any person or property of that person;

3. Makes a telecommunication or other electronic communication, whether or not conversation ensues, with intent to put the party called in fear of physical harm or death;
4. Makes a telecommunication or other electronic communication, whether or not conversation ensues, without disclosing the identity of the person making the call or communication and with intent to annoy, abuse, threaten, or harass any person at the called number or other type of electronic communication identifier;
5. Knowingly permits any telecommunication or other electronic communication from a device under his control to be used for any purpose prohibited by this section; and
6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s) or other type of electronic communication address.

B. As used in this section, **“telecommunication”** and **“electronic communication”** mean any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet. The term includes:

1. A communication initiated by electronic mail, instant message, network call, or facsimile machine; and
2. A communication made to a pager.

C. Use of a telephone or other electronic communications facility under this section shall include all use made of such a facility between the points of origin and reception. Any offense under this section is a continuing offense and shall be deemed to have been committed at either the place of origin or the place of reception.

D. Any person who is convicted of the provisions of this section, shall be guilty of a crime punishable pursuant to 21 CNCA § 10.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 20–08, eff. January 12, 2009.

Amended. LA 09–12, eff. May 23, 2012.

Library References

Telecommunications O1013.

Westlaw Topic No. 372.

C.J.S. Telecommunications §§ 121, 124.

PART V
CRIMES AGAINST PUBLIC HEALTH AND SAFETY
CHAPTER 48
GENERAL AND MISCELLANEOUS PROVISIONS

Section

- 1190. Hazing—Prohibition—Presumption as forced activity—Penalty—Definition
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DISASTER AREAS

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- 1216. Penalties
- 1217. Firemen—Interference with performance of duties—Penalty
- 1220. Transporting intoxicating or nonintoxicating beverage except in original unopened container prohibited—Exceptions—Penalty

§ 1190. Hazing—Prohibition—Presumption as forced activity—Penalty—Definition

A. No student organization or any person associated with any organization sanctioned or authorized by the governing board of any public or private school or institution of higher education in this nation shall engage or participate in hazing.

B. Any hazing activity described in subsection (F) of this section upon which the initiation or admission into or affiliation with an organization sanctioned or authorized by a public or private school or by any institution of higher education in this nation is directly or indirectly conditioned shall be presumed to be a forced activity, even if the student willingly participates in such activity.

C. A copy of the policy or the rules or regulations of the public or private school or institution of higher education which prohibits hazing shall be given

to each student enrolled in the school or institution and shall be deemed to be part of the bylaws of all organizations operating at the public school or the institution of higher education.

D. Any organization sanctioned or authorized by the governing board of a public or private school or of an institution of higher education in this Nation which violates subsection (A) of this section, upon conviction, shall be guilty of a crime, and may be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00) and the forfeit for a period of not less than one (1) year all of the rights and privileges of being an organization organized or operating at the public or private school or at the institution of higher education.

E. Any individual convicted of violating the provisions of subsection (A) of this section shall be guilty of a crime.

F. For purposes of this section:

1. **“Endanger the mental health”** shall include any activity, except those activities authorized by law, which would subject the individual to extreme mental stress, such as prolonged sleep deprivation, forced prolonged exclusion from social contact, forced conduct which could result in extreme embarrassment, or any other forced activity which could adversely affect the mental health or dignity of the individual.

2. **“Endanger the physical health”** shall include but not be limited to any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, alcoholic beverage as defined in 37 O.S. § 506, nonintoxicating beverage as defined in 37 O.S. § 163.2, drug, controlled dangerous substance, or other substance, or any other forced physical activity which could adversely affect the physical health or safety of the individual; and

3. **“Hazing”** means an activity which recklessly or intentionally endangers the mental health or physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating subject to the sanction of the public or private school or of any institution of higher education in this Nation;

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Library References

Education O1195.

Westlaw Topic No. 141E.

§ 1191. Public nuisance a crime

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

MISCELLANEOUS PROVISIONS

21 CNCA § 1194

Oklahoma Statutes

Intoxicating liquors, low-point beer, definitions, see 37 O.S. § 163.2.
Oklahoma alcoholic beverage control act, see 37 O.S. § 506.

Library References

Nuisance O61, 65.
Westlaw Topic No.279.

C.J.S. Nuisances §§ 7 to 8, 13, 17 to 19, 26 to 30, 57 to 69, 71 to 97, 99 to 106, 253.

§ 1192. Spread of infectious diseases

Any person who shall inoculate himself or any other person or shall suffer himself to be inoculated with smallpox, syphilis or gonorrhea and shall spread or cause to be spread to any other persons with intent to or recklessly be responsible for the spread of or prevalence of such infectious disease, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Health O985.
Westlaw Topic No. 198H.

C.J.S. Health and Environment § 89.

§ 1192.1. Engaging in activity with intent or causing another person to be infected with human immunodeficiency virus (HIV)

A. It shall be unlawful for any person to engage in any activity with the intent to infect or cause to be infected any other person with the human immunodeficiency virus (HIV).

B. Any person convicted of violating the provisions of this section shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Health O985.
Westlaw Topic No. 198H.

C.J.S. Health and Environment § 89.

§ 1194. Gas tar, throwing into public water

Every person who throws or deposits any gas tar, or refuse of any gas house or factory, into any public waters, river or stream, or into any sewer or stream emptying into any such public waters, river or stream, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Environmental Law ○743.

Westlaw Topic No. 149E.

C.J.S. Health and Environment § 160.

§ 1195. Quarantine regulations, violating

Every person who having been lawfully ordered by any health officer to be detained in quarantine and not having been discharged leaves the quarantine grounds or willfully violates any quarantine law or regulation, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Health O985.
Westlaw Topic No. 198H.

C.J.S. Health and Environment § 89.

§ 1198. Fires, refusing to aid at or interfering with others' acts

Every person who, at any burning of a building, is guilty of any disobedience to lawful orders of any public officer or fireman, or of any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or of any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Fires O1.
Westlaw Topic No. 175.
C.J.S. Fires §§ 1 to 4.

§ 1199. Contagious disease, exposing oneself or another with

Every person who willfully exposes himself or another person, being affected with any contagious disease in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Health O985.
Westlaw Topic No. 198H.

C.J.S. Health and Environment § 89.

§ 1204. Dump near highway a nuisance

Any dump ground for the reception and deposit of garbage, tin cans, rubbish or refuse and other items and matters generally referred to as trash maintained or operated within one hundred (100) yards of any Nation or state highway or any county road, is hereby declared to be a publicnuisance.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Nuisance O61, 65.
Westlaw Topic No.279.

C.J.S. Nuisances §§ 7 to 8, 13, 17 to 19, 26 to 30, 57 to 69, 71 to 97, 99 to 106, 253.

§ 1205. Dumping near highway unlawful—Establishment of dumping ground by city or town

It shall be unlawful for any person to throw or leave or deposit garbage, tin cans, junk, rubbish or refuse and other items and matters commonly referred to as trash within one hundred (100) yards of any state highway or any county road. Provided, however, that the Nation or any city or town operating or desiring to operate a dump ground within the distance above prescribed may establish same dump ground when said dump ground is approved by the health officer of the Nation, or by the Oklahoma State Health Commissioner.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Environmental Law O746.
Westlaw Topic No. 149E.
C.J.S. Health and Environment § 160.

§ 1206. Punishment for violations

Any person or any officer of any city or town violating any of the provisions of this act shall upon conviction be fined not more than One Thousand Dollars (\$1,000.00), or be imprisoned in the penal institution for not more than ninety (90) days, or by both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1207. Operation of boats or water craft while under influence of intoxicating liquor or drugs in careless, wanton or reckless manner— Penalty

It shall be unlawful for any person or persons to operate any boat, motor boat, sail boat, or any other type of water craft on any of the waters of this Nation, except private owned waters, while under the influence of intoxicating liquor, narcotics, or other habit-forming drugs, or to operate any boat, motor boat, sail boat, or any other type of water craft on any of the waters of this Nation, except private owned waters, in a careless, wanton or reckless manner as to endanger the life or property of another. Any person convicted under this section shall be

History

Source. LA 10–90, eff. November 13, 1990.

deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Shipping ○17.
Westlaw Topic No.354.
C.J.S. Shipping §§ 22 to 23.

**§ 1208. Abandonment of refrigerators and iceboxes in places accessible to children –
Penalty**

Any person, firm or corporation who abandons or discards, in any place accessible to children, any refrigerator, icebox, or ice chest, of a capacity of one and one-half (1 1/2) cubic feet or more, which has an attached lid or door which may be opened or fastened shut by means of an attached latch, or who, being the owner, lessee, or manager of such place, knowingly permits such abandoned or discarded refrigerator, icebox or ice chest to remain in such condition, shall be deemed negligent as a matter of law and shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

DISASTER AREAS

§ 1209. Disaster areas – Prevention of unauthorized persons from hampering rescue operations

The purpose of this act is to prevent sightseers, thrill-seekers, souvenir hunters and other unauthorized persons from hampering the work of rescue operations in a disaster area.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1210. Definitions

For the purpose of, and when used in this act:

1. **“Authorized person”** shall include all nation, county and municipal police and fire personnel; hospital and ambulance crews; National Guard and Civil Defense personnel ordered into the disaster area by proper authority; federal civil and military personnel on official business; persons who enter the disaster area to maintain or restore facilities for the provision of water, electricity, communications, or transportation to the public; and such other officials as have a valid reason to enter said disaster area.
2. **“Disaster area”** means the scene or location of a natural or military

History

Source. LA 10–90, eff. November 13, 1990.

disaster, an explosion, an aircraft accident, a fire, a railroad accident and a major traffic accident.

History

Source. LA 10-90, eff. November 13, 1990.

§ 1211. Following of emergency vehicles unlawful

It shall be unlawful for the driver of any vehicle other than one on official business to follow any emergency vehicle or to purposely drive to any location on or near a highway where a disaster area exists.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1212. Proceeding to or remaining at disaster area unlawful – Removal of objects

It shall be unlawful for any person except an authorized person to proceed to or to remain at a disaster area for the purpose of being a bystander, spectator, sightseer or souvenir hunter; or for any such person to take or remove from the disaster area, or disturb or move, any material objects, equipment or thing either directly or indirectly relating or pertaining to the disaster.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1213. Penalties

- A. It is a crime for any person to violate any of the provisions of this act.
- B. Every person convicted of a crime for violating any provision of this act shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than ten (10) days.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1214. Radio or other electronic units capable of receiving on police frequencies – Illegal use defined

- A. It shall be unlawful for any person to operate a mobile radio or any other electronic receiving unit capable of receiving transmissions made by any law enforcement agency for illegal purposes, or while in the commission of a crime.
- B. Any person convicted of violating this section shall be guilty of a crime.

History

Source. LA 32–03, eff. November 12, 2003.

§ 1215. Intoxicating beverages – Possession by persons under age twenty-one unlawful

It shall be unlawful for any person under the age of twenty-one (21) years to be in the possession of any intoxicating beverage containing more than three and

two-tenths percent (3.2%) alcohol by weight while such person is upon any public street, road, or highway or in any public building or place.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O320 to 323.

Intoxicating Liquors O139.

Westlaw Topic Nos. 209, 223.

C.J.S. Indians §§ 79, 194.

C.J.S. Intoxicating Liquors §§ 323, 361 to 364, 366 to 368.

§ 1216. Penalties

Any person violating the provisions of 21 CNCA § 1215 shall be guilty of a crime and upon conviction thereof shall be punished by imprisonment in the penal institution not to exceed thirty (30) days or by payment of a fine not to exceed Five Hundred Dollars (\$500.00) or by both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1217. Firemen – Interference with performance of duties – Penalty

Any person or persons acting in concert with each other who knowingly and willfully interfere with, molest, or assault firemen in the performance of their duties, or who knowingly and willfully obstruct, interfere with or impede the progress of firemen to reach the destination of a fire, shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1220. Transporting intoxicating or nonintoxicating beverage except in original unopened container prohibited – Exceptions – Penalty

It shall be unlawful for any person to knowingly transport in any moving vehicle upon a public highway, street or alley any intoxicating or nonintoxicating beverage, as defined by 37 O.S. §§ 163.1 and 163.2, except in the original container which shall not have been opened and from which the original cap or seal shall not have been removed, unless the opened container be in the rear trunk or rear compartment, which shall include the spare tire compartment in a station wagon or panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while it is in motion. Any person violating the provisions of this act shall be deemed guilty of a crime, and upon conviction shall be punished by a fine of not more than Fifty Dollars (\$50.00).

History

Source. LA 10–90, eff. November 13, 1990.

Oklahoma Statutes

Intoxicating beverages and low-point beer distinguished, application of statute, see 37 O.S. § 163.1.
Intoxicating liquors, low-point beer, definitions, see 37 O.S. § 163.2.

MISCELLANEOUS PROVISIONS

21 CNCA § 1220

Library References

Indians O321.
Intoxicating Liquors O138.
Westlaw Topic Nos. 209, 223.

C.J.S. Indians § 194.
C.J.S. Intoxicating Liquors §§ 323, 369 to
375.

CHAPTER 49

ANIMALS AND CARCASSES

Section

- 1221. Contagious diseases among domestic animals
- 1222. Disposition of animals dying of contagious or infectious diseases
- 1223. Leaving carcass in certain places unlawful
- 1224. Violation of sections regarding carcasses a crime

§ 1221. Contagious diseases among domestic animals

Any person who shall suffer to run at large, or who shall keep in any place where other animals can have access to or become infected by them, any horse, mare, mule, ass, ox, bull, cow, sheep or other domestic animals owned by him, or in his care or possession, and known by him, or good reason to believe such animal to be infected by glanders, farcy, or Texas mange or other infectious or contagious disease, or who shall bring into this nation any diseased cattle, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O34.
Westlaw Topic No. 28.

C.J.S. Animals §§ 174 to 181, 183 to 186.

§ 1222. Disposition of animals dying of contagious or infectious diseases

It shall be the duty of the owner of any domestic animal in Cherokee Nation, which may hereafter die of any contagious or infectious disease, either to burn the carcass thereof or bury the same within twenty-four (24) hours after he has notice or knowledge of such fact so that no part of such carcass shall be nearer than two and one-half (2 1/2) feet of the surface of the soil. Provided, that all hogs dying of any disease shall be burned. It shall further be unlawful to bury any such carcass as mentioned in this section in any land along any stream or ravine, where it is liable to become exposed through erosion of the soil, or where such land is any time subject to overflow. **“Owner”**, as used in this section, shall mean and include any person having domestic animals in his possession, either by reason of ownership, rent, hire, loan, or otherwise, and shall be subject to all the pains and penalties of this chapter.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O34.

Westlaw Topic No. 28.

C.J.S. Animals §§ 174 to 181, 183 to 186.

§ 1223. Leaving carcass in certain places unlawful

It shall be unlawful for any person to leave or deposit, or cause to be deposited or left the carcass of any animal, chicken or other fowl, whether the same shall have died from disease or otherwise, in any well, spring, pond or stream of water; or leave or deposit the same within one-fourth (1/4) of a mile of any occupied dwelling or of any public highway, without burying the same as provided in the preceding section of this act.

History

Source. LA 10-90, eff. November 13, 1990.

Library References

Animals O34.
Westlaw Topic No. 28.
C.J.S. Animals §§ 174 to 181, 183 to 186.

§ 1224. Violation of sections regarding carcasses a crime

Every person who violates the two preceding sections, shall be guilty of a crime.

History

Source. LA 10-90, eff. November 13, 1990.

Library References

Animals O34.
Westlaw Topic No. 28.

C.J.S. Animals §§ 174 to 181, 183 to 186.

CHAPTER 50

TOBACCO

Section

1241. Furnishing tobacco products to minors—Punishment
1242. Refusal of minor to disclose place where and person from whom obtained
1247. Smoking in certain public areas prohibited—Punishment

§ 1241. Furnishing tobacco products to minors – Punishment

Any person who shall furnish to any minor by gift, sale or otherwise any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product shall be guilty of a crime and upon conviction thereof shall be sentenced to pay a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) and be confined in the penal institution not less than ten (10) days nor more than ninety (90) days for each offense.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Infants O1554.
Westlaw Topic No.211.

C.J.S. Evidence § 380.
C.J.S. Infants §§ 125 to 137.

§ 1242. Refusal of minor to disclose place where and person from whom obtained

Any minor being in possession of cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product and being by any police officer, constable, juvenile court officer, truant officer, or teacher in any school, asked where and from whom such cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product were obtained, who shall refuse to furnish such information, shall be guilty of a crime and upon conviction thereof before the District Court, or any Judge of the District Court, such minor being of the age of sixteen (16) years or upwards shall be sentenced to pay a fine not exceeding Five Dollars (\$5.00) or to undergo an imprisonment in the jail of the proper county not exceeding five (5) days, or both; if such minor shall be under the age of sixteen (16) years, he or she shall be certified by such magistrate or justice to the juvenile court of the county for such action as said Court shall deem proper.

History

Source. LA 10–90, eff. November 13, 1990.

O

Infants 1554. Westlaw Topic No.211.

Library References

C.J.S.
Evidence
§ 380.
C.J.S.
Infants §§
125 to
137.

§ 1247. Smoking in certain public areas prohibited – Punishment

A. The possession of lighted tobacco in any form is a public nuisance and dangerous to public health when such possession is in any of the following places used by or open to the public:

1. Elevators;
2. Indoor movie theaters and other indoor theaters;
3. Libraries, art galleries, museums, indoor roller skating rinks of a permanent structure with permanent walls and concert halls; and
4. Buses.

Provided, however, that in indoor movie theaters and other indoor theaters, libraries, art galleries, museums, indoor roller skating rinks of a permanent structure with permanent walls and concert halls, certain areas separated from the principal room or rooms of the facility may be posted as “SMOKING PERMITTED” areas; provided further, that portions of buses may be posted “SMOKING PERMITTED” if such posting is pursuant to authorization by the Executive Branch of Cherokee Nation.

B. There shall be posted prominently in all public places included in this section, a “NO SMOKING” sign or “NO SMOKING” signs in sufficient numbers as to be visible from all sections of the “NO SMOKING” area.

C. “NO SMOKING” signs, as required by this act, shall be no smaller than eight inches (89) by ten inches (109) with lettering no smaller than one inch (19). The letters shall be of contrasting colors to the sign.

D. Responsibility for posting “NO SMOKING” signs shall be as follows:

1. In privately-owned facilities, the owner or lessee, if a lessee is in possession of the facilities, shall be responsible.
2. In corporately-owned facilities, the manager and/or supervisor of the facility involved shall be responsible.
3. In publicly-owned facilities, the manager and/or supervisor of the facility shall be responsible.
4. Any person who knowingly violates this act is guilty of a crime, and upon conviction thereof, shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00).

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Environmental Law O744.
Westlaw Topic No. 149E.
C.J.S. Health and Environment § 160.

PART VI
CRIMES AGAINST PUBLIC PEACE
CHAPTER 53

MANUFACTURING, SELLING AND WEARING WEAPONS

Section

- 1272. Carrying weapons—Exceptions
- 1272.1. Carrying weapons or firearms into establishments wherein beer and intoxicating liquor are consumed
- 1272.2. Penalties
- 1273. Selling or giving weapons to minors
- 1276. Degree of punishment
- 1277. Public buildings and gatherings
- 1278. Intent of persons carrying weapons
- 1279. Pointing weapon at another
- 1280. Punishment
- 1283. Convicted felons prohibited from carrying firearms—Exceptions
- 1284. Penalty
- 1286. Reckless conduct defined
- 1287. Use of firearm or other offensive weapon while committing or attempting to commit a crime—Penalties
- 1288. Purchases of firearms, ammunition and equipment in contiguous states by Cherokee Nation residents—Purchases in Cherokee Nation by residents of contiguous states

CHEROKEE NATION FIREARMS ACT OF 1971

- 1289.1. Short title
- 1289.2. Council findings
- 1289.3. “Pistol” defined
- 1289.4. “Rifle” defined
- 1289.5. “Shotgun” defined
- 1289.6. Conditions under which firearms may be carried
- 1289.7. Firearm in motor vehicle
- 1289.8. Carrying concealed weapon
- 1289.9. Carrying or using firearms while under influence of intoxicating liquors or drugs
- 1289.10. Furnishing firearms to mentally incompetent or insane persons
- 1289.11. Reckless conduct
- 1289.12. Selling or transferring of firearms to convicted felons, disturbed persons or persons under influence of alcohol or drugs—Displaying notice
- 1289.13. Transporting loaded firearm in motor vehicle
- 1289.14. Transporting or discharging firearm from boat
- 1289.15. Penalties
- 1289.16. Pointing firearms
- 1289.17. Penalty
- 1289.18. “Sawed-off shotgun” and “sawed-off rifle” defined—Violations—Penalties—Defense to prosecution
- 1289.19. “Restricted bullet” and “body armor” defined
- 1289.20. Manufacture, importation or advertisement for sale of restricted bullets—Penalty
- 1289.21. Use or attempted use of restricted bullet and/or body armor—Penalty
- 1289.22. Exemptions
- 1289.23. Off-duty peace officers authorized to carry weapons
- 1289.25. Unlawful entry of dwelling—Physical or deadly force against intruder—Affirmative defense and immunity from civil liability

§ 1272. Carrying weapons – Exceptions

It shall be unlawful for any person to carry upon or about his person, or in his portfolio or purse, any pistol, revolver, dagger, bowie knife, dirk knife, switchblade knife, spring-type knife, sword cane, knife having a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife, blackjack, loaded cane, billy, hand chain, metal knuckles, or any other offensive weapon, except as in this chapter provided. Provided further, that this section shall not prohibit the proper use of guns and knives for hunting, fishing or recreational purposes, nor shall this section be construed to prohibit any use of weapons in a manner otherwise permitted by statute. Any person convicted of violating the foregoing provision shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons O162, 203.
Westlaw Topic No. 406.

C.J.S. Weapons §§ 24 to 31, 37 to 52.

§ 1272.1. Carrying weapons or firearms into establishments wherein beer and intoxicating liquor are consumed

It shall be unlawful for any person, except a peace officer, as defined in 21 CNCA § 99, a registered security officer, or the owner or proprietor of the establishment being entered, to carry into or to possess in any establishment where beer or alcoholic beverages are consumed any firearm or any of the weapons designated in 21 CNCA § 1272.

Provided however, nothing in this chapter shall be interpreted to authorize such peace officer or registered security officer in actual physical possession of a weapon to consume beer or alcoholic beverages, except in the authorized line of duty as an undercover officer.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 35–12, eff. October 19, 2012.

Library References

Weapons O171.
Westlaw Topic No. 406.
C.J.S. Weapons §§ 37, 40.

§ 1272.2. Penalties**History**

Source. LA 10–90, eff. November 13, 1990.

Any person who intentionally, knowingly or recklessly carries on his person any weapon in violation of 21 CNCA § 1272.1 shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons O171.
Westlaw Topic No.406.
C.J.S. Weapons §§ 37, 40.

§ 1273. Selling or giving weapons to minors

It shall be unlawful for any person within this Nation, to sell or give to any minor any of the arms or weapons designated in 21 CNCA § 1272.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Infants O1556.	C.J.S. Evidence § 380.
Weapons O148.	C.J.S. Infants §§ 5, 115, 125 to 137.
Westlaw Topic Nos. 211, 406.	

§ 1276. Degree of punishment

Any person violating the provisions of any one of the foregoing sections, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 10–13, eff. April 13, 2013.

§ 1277. Public buildings and gatherings

It shall be unlawful for any person, except a peace officer or a registered security officer, to carry into any church or religious assembly, any schoolroom or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ballroom, or to any social party or social gathering, or to any election, or to any political convention, or to any other public assembly, any of the weapons designated in 21 CNCA § 1272.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 35–12, eff. October 19, 2012.

Library References

Weapons O171.
Westlaw Topic No.406.
C.J.S. Weapons §§ 37, 40.

§ 1278. Intent of persons carrying weapons

It shall be unlawful for any person in this Nation to carry or wear any deadly

History

Source. LA 10–90, eff. November 13, 1990.

weapons or dangerous instrument whatsoever, openly or secretly, with the intent or for the avowed purpose of injuring his fellow man.

History

Source. LA 10-90, eff. November 13, 1990.

§ 1279. Pointing weapon at another

It shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons either in anger or otherwise.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons O193.
Westlaw Topic No. 406.

C.J.S. Weapons §§ 57 to 60, 62 to 64.

§ 1280. Punishment

Any person violating the provisions of the three preceding sections, 21 CNCA §§ 1277 to 1279, shall, on conviction, be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

§ 1283. Convicted felons prohibited from carrying firearms – Exceptions

It shall be unlawful for any person having previously been convicted of any felony in any court of Oklahoma or one of the United States to have in his possession or under his immediate control, or in any vehicle which he is operating, or in which he is riding as a passenger, any pistol, imitation or homemade pistol, machine gun, sawed-off shotgun or rifle, or any other dangerous or deadly firearm which could be easily concealed on the person, in personal effects or in an automobile, provided any person elected or appointed as a peace officer who has previously been convicted of any felony in any court of Oklahoma or one of the United States, and who has received a full and complete pardon from the proper authority and has been subsequently certified by the Council on Law Enforcement Education and Training, pursuant to 70

O.S. § 3311, and is actively employed as a full-time peace officer on the effective date of this act, shall be permitted to possess a weapon specified in this section for the sole purpose of performing duties of a peace officer. For the purposes of this section, “sawed-off shotgun or rifle” shall mean any shotgun or rifle which has been shortened to any length.

History

Source. LA 10–90, eff. November 13, 1990.

Oklahoma Statutes

Council on Law Enforcement Education and Training, see 70 O.S. § 3311.

Library References

Weapons ^O 173.
Westlaw Topic No.406.

§ 1284. Penalty

Any person who violates any provision of this chapter shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1286. Reckless conduct defined

Reckless conduct as used in this chapter consists of an act which creates a situation of unreasonable risk and probability of death or great bodily harm to another and which demonstrates a conscious disregard for the safety of another.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1287. Use of firearm or other offensive weapon while committing or attempting to commit a crime – Penalties

Any person who, while committing or attempting to commit a crime, possesses a firearm or any other offensive weapon in such commission or attempt, whether the firearm is loaded or not, or who possesses a blank or imitation firearm capable of raising in the mind of one threatened with such device a fear that it is a real firearm, or who possesses an air gun or carbon dioxide or other gas-filled weapon, electronic dart gun, knife, dagger, dirk, switchblade knife, blackjack, ax, loaded cane, billy, hand chain or metal knuckles, in addition to the penalty provided by statute for the crime committed or attempted, upon conviction shall be guilty of a crime for possessing such weapon or device, which shall be a separate offense.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Weapons O189.
Westlaw Topic No.406.

C.J.S. Weapons §§ 42 to 43, 57 to 60, 62 to 64.

§ 1288. Purchases of firearms, ammunition and equipment in contiguous states by Cherokee Nation residents—Purchases in Cherokee Nation by residents of contiguous states

A. Residents of Cherokee Nation may purchase rifles, shotguns, ammunition, cartridge and shotgun shell handloading components and equipment in a state contiguous to Cherokee Nation, provided that such residents conform to the

applicable provisions of the federal Gun Control Act of 1968, 18 U.S.C. § 921 et seq., and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Cherokee Nation and in the contiguous state in which the purchase is made.

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21 CNCA § 1289.4

B. Residents of a state contiguous to Cherokee Nation may purchase rifles, shotguns, ammunition, cartridge and shotgun shell handloading components and equipment in Cherokee Nation, provided that such residents conform to the applicable provisions of the Gun Control Act of 1968, and regulations thereunder, as administered by the United States Secretary of the Treasury and provided further that such residents conform to the provisions of law applicable to such purchase in Cherokee Nation and in the state in which such persons reside.

History

Source. LA 10–90, eff. November 13, 1990.

United States Code

Firearms, definitions, see 18 U.S.C. § 921 et seq.

CHEROKEE NATION FIREARMS ACT OF 1971

§ 1289.1. Short title

This act shall be known and may be cited as the Cherokee Nation Firearms Act of 1971.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1289.2. Council findings

The Council finds as a matter of public policy and fact that it is necessary for promotion of the safe and lawful use of firearms to curb and prevent crime wherein weapons are used by enacting legislation having the purpose of control of use of firearms, and of prevention of their use, without unnecessarily denying their lawful use in defense of life, home and property, and their use by the United States or state military organizations and as otherwise provided by law, including their use and transportation for lawful purposes.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1289.3. “Pistol” defined

“**Pistol**” as used herein shall mean any firearm capable of discharging a projectile composed of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels less than sixteen (16) inches in length, and using either gunpowder, gas or any means of rocket propulsion, but not to include flare guns, underwater fishing guns or blank pistols.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1289.4. “Rifle” defined

“**Rifle**” as used herein shall mean any firearm capable of discharging a projectile composed of any material which may reasonably be expected to be

able to cause lethal injury, with a barrel or barrels more than sixteen (16) inches in length, and using either gunpowder, gas or any means of rocket propulsion, but not to include archery equipment, flare guns or underwater fishing guns. In addition, any rifle capable of firing “shot” but primarily designed to fire single projectiles will be regarded as a “rifle.”

History

Source. LA 10–90, eff. November 13, 1990.

§ 1289.5. “Shotgun” defined

“Shotgun” as used herein shall mean any firearm capable of discharging a series of projectiles of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels more than eighteen (18) inches in length, and using either gunpowder, gas or any means of rocket propulsion, but not to include any weapon so designed with a barrel less than eighteen (18) inches in length. In addition, any “shotgun” capable of firing single projectiles but primarily designed to fire multiple projectiles such as “shot” will be regarded as a “shotgun.”

History

Source. LA 10–90, eff. November 13, 1990.

§ 1289.6. Conditions under which firearms may be carried

A person shall be permitted to carry shotguns, rifles or pistols, open and not concealed, under the following conditions:

1. When going to, during participation in or coming from hunting animals or fowl, including moving from place to place by vehicle. However, a rifle or shotgun may be carried in a landborne motor vehicle over a public highway or roadway when clip- or magazine-loaded and not chamber-loaded when carried in a locked compartment of the vehicle, such as the trunk of an automobile.
2. When going to, during competition in or practicing or coming from a safety or hunter safety class, target shooting, skeet, trap or other recognized sporting events;
3. When unloaded, going to or coming from a gunsmith;
4. When unloaded, going to or coming from a store for purposes of repair, trade, barter or sale;
5. Going to or coming from a military function of the state military forces to be defined as the Cherokee Nation Army or Air National Guard, federal military reserve and active military forces;
6. Going to or coming from a recognized police function of either a municipal, county or Nation government as functioning police officials;
7. When unloaded, going to or coming from a place of publicly-recognized firearms display such as a “gun show” where the public is invited;
8. When unloaded, going to or coming from a point of private trade for purposes of transferring a firearm to another private citizen in exchange

for moneys, payment for services or trade;

WEAPONS

21 CNCA § 1289.9

9. When going to, coming from and during a performance for entertainment purposes; or
10. For any legitimate purpose not in violation of this code or any legislative enactment regarding the use, ownership and control of firearms.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons ○162.
Westlaw Topic No.406.
C.J.S. Weapons §§ 24 to 31, 41 to 50.

§ 1289.7. Firearm in motor vehicle

A person may carry or transport in a motor vehicle a rifle, shotgun or pistol,unloaded, at any time.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons ○172.
Westlaw Topic No.406.
C.J.S. Weapons §§ 42 to 43, 49.

§ 1289.8. Carrying concealed weapon

It shall be unlawful for any person, except a peace officer as defined in 21 CNCA § 99, or a registered security officer to carry a concealed weapon other than permitted by this chapter.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 35–12, eff. October 19, 2012.

Library References

Weapons ○168.
Westlaw Topic No.406.

C.J.S. Weapons §§ 42 to 44, 47 to 50.

§ 1289.9. Carrying or using firearms while under influence of intoxicating liquors or drugs

It shall be unlawful to carry or use shotguns, rifles, any other form or explosive or incendiary device, or pistols under any circumstances while under the influence of intoxicating liquors or any hallucinogenic, unlawful or unpres- cribed drug, nor

shall any person be permitted to carry or use shotguns, rifles or pistols when under the influence of any drug prescribed by a licensed physician if the aftereffects of such consumption affect mental, emotional or physical processes to a degree that would result in abnormal behavior.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons ○183.
Westlaw Topic No.406.

§ 1289.10. Furnishing firearms to mentally incompetent or insane persons

It shall be unlawful for any person to knowingly transmit, transfer, sell, lend or furnish any shotgun, rifle or pistol to any person who is under an adjudication of mental incompetency, or to any person who is a moron, idiot or is insane.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons ○183.
Westlaw Topic No.406.

§ 1289.11. Reckless conduct

It shall be unlawful for any person to engage in reckless conduct while having in his possession any shotgun, rifle, pistol, or any other form of explosive or incendiary device, such actions consisting of creating a situation of unreasonable risk and probability of death or great bodily harm to another, and demonstrating a conscious disregard for the safety of another person.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

**§ 1289.12. Selling or transferring of firearms to convicted felons, disturbed persons or persons under influence of alcohol or drugs—
Displaying notice**

It shall be unlawful for any person within this Nation to knowingly sell, trade, give, transmit or otherwise cause the transfer of rifles, shotguns, any other form or explosive or incendiary device, or pistols to any convicted felon, nor shall it be lawful for any person within this Nation to knowingly sell, trade, give, transmit or otherwise cause the transfer of any shotgun, rifle, any other form or explosive or incendiary device, or pistol to any individual who is under the influence of alcohol or drugs or is mentally or emotionally unbalanced or disturbed. All persons who engage in selling, trading or otherwise transferring firearms will

display this section prominently in full view at or near the point of normal firearms sale, trade or transfer.

Source. LA 10–90, eff. November 13, 1990.

Weapons 148.
Westlaw Topic No.406.

§ 1289.13. Transporting loaded firearm in motor vehicle

Except as otherwise provided, it shall be unlawful to transport a loaded firearm in a landborne motor vehicle over a public highway or roadway. However, a rifle or shotgun may be transported when clip- or magazine-loaded and not chamber-loaded when transported in a locked compartment of the vehicle, such as the trunk of an automobile.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons O151.
Westlaw Topic No.406.
C.J.S. Weapons § 69.

§ 1289.14. Transporting or discharging firearm from boat

Except as herein otherwise provided, it shall be unlawful to transport or discharge a shotgun, rifle or pistol from a boat under power or sail, except for the purposes of hunting animals or fowl, and in compliance with existing Nation and federal laws.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons O151, 188(1).
Westlaw Topic No.406.
C.J.S. Weapons §§ 62 to 64, 69.

§ 1289.15. Penalties

Any person adjudged guilty of violating the preceding sections shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 10–13, eff. April 13, 2013.

§ 1289.16. Pointing firearms

It shall be unlawful for any person to willfully or without lawful cause point a

shotgun, rifle or pistol, or any deadly weapon, whether loaded or not, at any person or persons for the purpose of threatening or with the intention of discharging the firearm or with any malice or for any purpose of injuring, either through physical injury or mental or emotional intimidation, or for purposes of whimsy, humor or prank, but not to include the pointing of shotguns, rifles or pistols by law enforcement authorities in the performance of their duties, members of the state military forces in the form of the Oklahoma

21 CNCA § 1289.16

CRIMES AND PUNISHMENTS

Army or Air National Guard in the performance of their duties, members of the federal military reserve and active military components in the performance of their duties, or any federal government law enforcement officer in the performance of his duty, or in the performance of a play on stage, rodeo, television or on film, or in defense of one's person, home or property.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons ○187.
Westlaw Topic No.406.
C.J.S. Weapons §§ 57 to 61.

§ 1289.17. Penalty

Any violation of 21 CNCA § 1289.16 or of the provisions of 21 CNCA § 1283, shall constitute a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1289.18. “Sawed-off shotgun” and “sawed-off rifle” defined – Violations – Penalties – Defense to prosecution

A. **“Sawed-off shotgun”** shall mean any firearm capable of discharging a series of projectiles of any material which may reasonably be expected to be able to cause lethal injury, with a barrel or barrels less than eighteen (18) inches in length, and using either gunpowder, gas or any means of rocket propulsion.

B. **“Sawed-off rifle”** shall mean any rifle having a barrel or barrels of less than sixteen (16) inches in length or any weapon made from a rifle (whether by alteration, modification, or otherwise) if such a weapon as modified has an overall length of less than twenty-six (26) inches in length, including the stock portion.

C. Every person who has in his possession or under his immediate control a sawed-off shotgun or a sawed-off rifle, whether concealed or not, shall upon conviction be guilty of a crime for the possession of such device.

D. It is a defense to prosecution under this section, if the approved application form that authorized the making or transfer of the particular firearm to the defendant, which indicates the registration of the firearm to said defendant pursuant to the National Firearms Act, 26 U.S.C. § 5841 et seq., is introduced.

History

Source. LA 10–90, eff. November 13, 1990.

United States Code

Registration of firearms, see 26 U.S.C. § 5841 et seq.

§ 1289.19. “Restricted bullet” and “body armor” defined

As used in this act:

1. **“Restricted bullet”** means a round or elongated missile with a core of less than sixty percent (60%) lead and having a fluorocarbon coating, which is designed to travel at a high velocity and is capable of penetrating body armor; and
2. **“Body armor”** means a vest or shirt of ten (10) plies or more of bullet resistant material as defined by the Office of Development, Testing and Dissemination, a division of the United States Department of Justice.

History

Source. LA 10–90, eff. November 13, 1990.

**§ 1289.20. Manufacture, importation or advertisement for sale of restricted bullets –
Penalty**

A. Except for the purpose of public safety or national security, it shall be unlawful to manufacture, cause to be manufactured, import, advertise for sale or sell within this nation any restricted bullet as defined in 21 CNCA § 1289.19.

B. Any person convicted of violating subsection (A) of this section shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Weapons ○149.
Westlaw Topic No.406.

**§ 1289.21. Use or attempted use of restricted bullet and/or body armor –
Penalty**

A. It shall be unlawful for any person to possess, carry upon his person, use or attempt to use against another person any restricted bullet as defined in 21 CNCA § 1989.19.

B. It shall be unlawful for any person, who has been convicted of, or plead no contest or guilty to, a felony, to wear body armor as defined in 21 CNCA § 1289.19.

C. Any person convicted of violating subsections (A) or (B) of this section shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 36–03, eff. December 17, 2003.

§ 1289.22. Exemptions

The prohibition of possessing or using a restricted bullet shall not apply to law enforcement agencies when such bullet is used for testing, training or demonstration.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1289.23. Off-duty peace officers authorized to carry weapons

A. A full-time duly appointed peace officer who is certified by the Council on Law Enforcement Education and Training, pursuant to the provisions of 70 O.S. § 3311, is hereby authorized to carry a weapon certified and approved by his employing agency during periods when he is not on active duty.

B. When an off-duty officer carries a certified weapon, the officer shall be in law enforcement uniform prescribed by the employing agency or when not wearing the prescribed law enforcement uniform shall be required:

1. To have his official peace officers badge, Commission Card and C.L.E.E.T. Certification Card on his person at all times when carrying a weapon certified and approved by the employing agency; and
2. To keep the authorized weapon concealed from view at all times except when the weapon is used within the guidelines, rules and regulations established by the employing agency.

C. Nothing in this section shall be construed to alter or amend the provisions of 21 CNCA § 1272.1 or expand the duties, authority or jurisdiction of any peace officer.

History

Source. LA 10–90, eff. November 13, 1990.

Oklahoma Statutes

Council on Law Enforcement Education and Training, see 70 O.S. § 3311.

Library References

Weapons O162, 170.

Westlaw Topic No.406.

C.J.S. Weapons §§ 24 to 31, 41 to 50, 56.

§ 1289.25. Unlawful entry of dwelling—Physical or deadly force against intruder—Affirmative defense and immunity from civil liability

A. The Council hereby recognizes that the citizens of Cherokee Nation have a right to expect absolute safety within their own homes.

B. Any occupant of a dwelling is justified in using any degree of physical force, including but not limited to deadly force, against another person who has made an unlawful entry into that dwelling, and when the occupant has a reasonable belief that such other person might use any physical force, no matter how slight, against any occupant of the dwelling.

C. Any occupant of a dwelling using physical force, including but not limited to deadly force, pursuant to the provisions of subsection (B) of this section, shall have an affirmative defense in any criminal prosecution for an offense arising from the reasonable use of such force and shall be immune from any civil liability

for injuries or death resulting from the reasonable use of such force.

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21 CNCA § 1289.25

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Assault and Battery O49.

Disorderly Conduct O120.

Westlaw Topic Nos. 37,129.

C.J.S. Assault §§ 73, 81, 85.

C.J.S. Disorderly Conduct §§ 1 to 4.

C.J.S. Robbery § 108.

CHAPTER 54

MASKS AND DISGUISES; THREATENING LETTERS; UNLAWFUL ORGANIZATIONS

Section

1302. Trespass—Masked person demanding admission to premises

1303. Assaults while masked or disguised

1304. Letters—Mailing threatening or intimidating letters

§ 1302. Trespass—Masked person demanding admission to premises

Any person, masked or in disguise, who shall enter upon the premises of another or demand admission into the house or enclosure of another (with intent to inflict bodily injury, or injury to property) shall be deemed guilty of assault with intent to commit a crime and such entrance or demand for admission shall be prima facie evidence of such intent, and upon conviction thereof, such person shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Assault and Battery O49.

Disorderly Conduct O120.

Westlaw Topic Nos. 37, 129.

C.J.S. Assault §§ 73, 81, 85.

C.J.S. Disorderly Conduct §§ 1 to 4.

C.J.S. Robbery § 108.

§ 1303. Assaults while masked or disguised

Any person, while masked or in disguise, who shall assault another with a dangerous weapon, or other instrument of punishment, shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Assault and Battery O47.

Disorderly Conduct O120.

Westlaw Topic Nos. 37, 129.

C.J.S. Assault §§ 1 to 3, 73, 78 to 85, 98.

C.J.S. Disorderly Conduct §§ 1 to 4.

C.J.S. Robbery § 108.

§ 1304. Letters—Mailing threatening or intimidating letters

Any person who shall send, deliver, mail or otherwise transmit to any person, or persons, in this Nation any letter, document or other written or printed matter, anonymous or otherwise, designed to threaten or intimidate such person or persons, or designed to put him or them in fear of life, bodily harm or the destruction of his or their property, upon conviction shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

MASKS, THREATS, ETC.

21 CNCA § 1304

Library References

Postal Service O33.
Westlaw Topic No.306.

C.J.S. Postal Service and Offenses Against
Postal Laws §§ 70 to 71.

CHAPTER 55
OTHER CRIMES AGAINST PUBLIC PEACE
ENTRY OR INTRUSION ON REAL ESTATE

Section

- 1351. Forcible entry and detainer
- 1352. Returning to possession after lawful removal

MISCELLANEOUS PROVISIONS

- 1361. Disturbing lawful meeting
- 1362. Disturbance by loud or unusual noise or abusive, violent, obscene, profane or threatening language
- 1363. Use of language calculated to arouse anger or cause breach of peace
- 1364. Discharging firearms in public place
- 1368. Possession of explosives by convicted felons—Penalty
- 1377. Projecting object at public event

ENTRY OR INTRUSION ON REAL ESTATE

§ 1351. Forcible entry and detainer

Every person guilty of using or procuring, encouraging or assisting another to use any force, or violence in entering upon or detaining any lands or other possessions of another except in the cases and manner allowed by law, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forcible Entry and Detainer O49.
Westlaw Topic No. 179.

C.J.S. Forcible Entry and Detainer § 114.

§ 1352. Returning to possession after lawful removal

Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterward, without authority by law, returns to settle or reside upon such lands, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

MISCELLANEOUS PROVISIONS

§ 1361. Disturbing lawful meeting

Every person who without authority of law willfully disturbs or breaks up any

assembly or meeting, not unlawful in its character, other than a religious meeting, public meeting of electors, or funeral, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Disorderly Conduct ○116.
Westlaw Topic No. 129.
C.J.S. Disorderly Conduct §§ 1 to 4.

§ 1362. Disturbance by loud or unusual noise or abusive, violent, obscene, profane or threatening language

If any person shall willfully or maliciously disturb, either by day or night, the peace and quiet of any city of the first class, town, village, neighborhood, family or person by loud or unusual noise, or by abusive, violent, obscene or profane language, whether addressed to the party so disturbed or some other person, or by threatening to kill, do bodily harm or injury, destroy property, fight, or by quarreling or challenging to fight, or fighting, or shooting off any firearms, or brandishing the same, or by running any horse at unusual speed along any street, alley, highway or public road, he shall be deemed guilty of a crime, and, on conviction thereof, shall be fined in any sum not to exceed Five Hundred Dollars (\$500.00), or by imprisonment in the penal institution not to exceed thirty (30) days, or by both such fine and imprisonment, at the discretion of the Court or jury trying the same.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Disorderly Conduct ○109, 110.
Westlaw Topic No. 129.
C.J.S. Disorderly Conduct §§ 1 to 4.

§ 1363. Use of language calculated to arouse anger or cause breach of peace

If any person shall make use of any profane, violent, abusive or insulting language toward or about another person, in the presence or hearing, which language, in its common acceptation, is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault, every such person shall be deemed guilty of a breach of the peace, and, upon conviction thereof, shall be punished by a fine in any sum not to exceed One Hundred Dollars (\$100.00), or by imprisonment in the penal institution not to exceed thirty (30) days, or by both such fine and imprisonment, at the discretion of the Court or jury trying the same.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Disorderly Conduct ○127.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct §§ 1 to 4.

§ 1364. Discharging firearms in public place

Every person who willfully discharges any species of firearm, air gun or other weapon, or throws any other missile in any public place, or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Disorderly Conduct O137.
Weapons O188(1).
Westlaw Topic Nos. 129, 406.

C.J.S. Disorderly Conduct §§ 1 to 4.
C.J.S. Weapons §§ 62 to 64.

§ 1368. Possession of explosives by convicted felons – Penalty

Any person who has been convicted of a crime under the laws of this or any other state or the laws of the United States who, with an unlawful intent, is in possession of any explosives is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Explosives O4.
Westlaw Topic No. 164.

C.J.S. Explosives §§ 13, 20 to 22, 30, 33, 37,
41, 44, 49, 108 to 123.

§ 1377. Projecting object at public event

It shall be unlawful for any person in attendance at an athletic or other public entertainment event to project in any manner an object which could cause bodily harm to another person.

Any person violating the provisions of this section shall be subject to ejection from the event by the officials supervising the event.

A violation of this section shall be a crime.

The provisions of this section shall not apply to the participants in the athletic or other public entertainment event.

History

Source. LA 10–90, eff. November 13, 1990.

PART VII
CRIMES AGAINST PROPERTY
CHAPTER 56
ARSON

Section

1401. Arson in the first degree—Punishment
1402. Arson in the second degree—Punishment
1403. Arson in the third degree—Punishment
1404. Arson in the fourth degree—Punishment

§ 1401. Arson in the first degree – Punishment

Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device or substance destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels or procures the burning or destruction of any building or structure or contents thereof, inhabited or occupied by one or more persons, whether the property of himself or another, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Arson O8, 12.	C.J.S. Arson §§ 1 to 2, 5, 22 to 25.
Explosives O4.	C.J.S. Explosives §§ 13, 20 to 22, 30, 33, 37,
Westlaw Topic Nos. 36, 164.	41, 44, 49, 108 to 123.

§ 1402. Arson in the second degree – Punishment

Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device or substance destroys in whole or in part, or cause to be burned or destroyed, or aids, counsels or procures the burning or destruction of any uninhabited or unoccupied building or structure or contents thereof, whether the property of himself or another, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Arson O8, 12.	C.J.S. Arson §§ 1 to 2, 5, 22 to 25.
Explosives O4.	C.J.S. Explosives §§ 13, 20 to 22, 30, 33, 37,
Westlaw Topic Nos. 36, 164.	41, 44, 49, 108 to 123.

§ 1403. Arson in the third degree – Punishment

A. Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device or substance destroys in whole or in part, or causes

to be burned or destroyed, or aids, counsels or procures the burning of any property whatsoever, including automobiles, trucks, trailers, motorcycles, boats, standing farm crops, pasture lands, forest lands, or any other property not herein specifically named, such property being worth not less than Fifty Dollars (\$50.00), whether the property of himself or another, shall be guilty of a crime.

B. Any person who willfully and maliciously, and with intent to injure or defraud the insurer, sets fire to or burns or by use of any explosive device or substance destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels, or procures the burning or destruction of any building, property, or other chattels, whether the property of himself or another, which shall at the time be insured against loss or damage by fire or explosion, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Arson O5, 12.
Explosives O4.
Westlaw Topic Nos. 36,164.

C.J.S. Arson §§ 1 to 5, 15 to 19, 21 to 23.
C.J.S. Explosives §§ 13, 20 to 22, 30, 33, 37,
41, 44, 49, 108 to 123.

§ 1404. Arson in the fourth degree – Punishment

A. Any person who willfully and maliciously attempts to set fire to or burn or attempts by use of any explosive device or substance to destroy in whole or in part, or causes to be burned or destroyed, or attempts to counsel or procure the burning or destruction of any building or property mentioned in 21 CNCA § 1401, 21 CNCA § 1402 or 21 CNCA § 1403 shall be guilty of a crime.

B. The placing or distributing of any flammable, explosive or combustible material or substance or any device in any building or property mentioned in 21 CNCA § 1401, 21 CNCA § 1402 or 21 CNCA § 1403, in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn or to procure the setting fire to or burning of same, shall for the purposes of this section constitute an attempt to burn such building or property, and shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Arson O12, 13.
Explosives O4.
Westlaw Topic Nos. 36,164.

C.J.S. Arson §§ 5 to 6.
C.J.S. Explosives §§ 13, 20 to 22, 30, 33, 37,
41, 44, 49, 108 to 123.

CHAPTER 58

BURGLARY AND HOUSEBREAKING

Section

- 1431. Burglary in first degree
- 1435. Burglary in second degree—Acts constituting
- 1436. Punishment of burglary
- 1437. Possession of burglar's implements
- 1438. Entering buildings or structures with certain intent
- 1439. Dwelling house defined
- 1440. "Night time" defined
- 1441. Burglary with explosives—Punishment

§ 1431. Burglary in first degree

Every person who breaks into and enters the dwelling house of another, in which there is at the time some human being, with intent to commit some crime therein, either:

1. By forcibly bursting or breaking the wall, or an outer door, window, or shutter of a window of such house or the lock or bolts of such door, or the fastening of such window or shutter; or
2. By breaking in any other manner, being armed with a dangerous weapon or being assisted or aided by one or more confederates then actually present; or
3. By unlocking an outer door by means of false keys or by picking the lock thereof, or by lifting a latch or opening a window;

is guilty of burglary in the first degree.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.
Seizure and forfeiture proceedings—Vehicles, airplanes, vessels, etc., used in attempt or commission of certain crimes, see 21 CNCA § 1738.

Library References

Burglary O6, 10.
Westlaw Topic No.67.

C.J.S. Burglary §§ 1 to 4, 7 to 10, 30, 33 to 35.

§ 1435. Burglary in second degree—Acts constituting

Every person who breaks and enters any building or any part of any building, room, booth, tent, railroad car, automobile, truck, trailer, vessel or other structure or erection, in which any property is kept, or breaks into or forcibly opens, any coin-operated or vending machine or device with intent to steal any property therein or to commit any crime, is guilty of burglary in the second degree.

Source. LA 10–90, eff. November 13, 1990.

History

Cross References

Seizure and forfeiture proceedings—Vehicles, airplanes, vessels, etc., used in attempt or commission of certain crimes, see 21 CNCA § 1738.

Library References

Burglary O4, 10.
Westlaw Topic No.67.

C.J.S. Burglary §§ 1 to 4, 7 to 10, 30 to 31,
33, 36 to 43.

§ 1436. Punishment of burglary

Burglary is a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Burglary O2.
Westlaw Topic No.67.
C.J.S. Burglary §§ 1 to 4, 19.

§ 1437. Possession of burglar's implements

Every person who, under circumstances not amounting to a crime has in his possession any dangerous offensive weapon or instrument whatever, or any pick-lock, crow, key, bit, jack, jimmy, nippers, pick, betty or other implement of burglary, with intent to break and enter any building or part of any building, booth, tent, railroad car, vessel or other structure or erection and to commit any crime therein, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Burglary O12.
Westlaw Topic No.67.
C.J.S. Burglary §§ 49 to 54.

§ 1438. Entering buildings or structures with certain intent

Every person who, under circumstances not amounting to any burglary, enters any building or part of any building, booth, tent, warehouse, railroad car, vessel, or other structure or erection with intent to commit any crime, larceny, or malicious mischief, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Burglary O9.
Westlaw Topic No.67.

C.J.S. Burglary §§ 1 to 4, 11 to 18, 20 to 24.

§ 1439. Dwelling house defined

The term “**dwelling house**,” as used in 21 CNCA § 1431, includes every house or edifice, any part of which has usually been occupied by any person lodging therein at night, and any structure joined to and immediately connected with such a house or edifice.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1440. “Night time” defined

The words “**night time**” in this chapter include the period between sunset and sunrise.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1441. Burglary with explosives – Punishment

Any person who enters any building, railway car, vehicle, or structure and there opens or attempts to open any vault, safe, or receptacle used or kept for the secure keeping of money, securities, books of accounts, or other valuable property, papers or documents, without the consent of the owner, by the use of or aid of dynamite, nitroglycerine, gunpowder, or other explosives, or who enters any such building, railway car, vehicle, or structure in which is kept any vault, safe or other receptacle for the safe keeping of money or other valuable property, papers, books or documents, with intent and without the consent of the owner, to open or crack such vault, safe or receptacle by the aid or use of any explosive, shall in either case be deemed guilty of crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Burglary O1.
Explosives O4.
Westlaw Topic Nos. 67, 164.

C.J.S. Burglary §§ 1 to 4, 11 to 24, 28 to 48.
C.J.S. Explosives §§ 13, 20 to 22, 30, 33, 37,
41, 44, 49, 108 to 123.

CHAPTER 59

EMBEZZLEMENT

Section

- 1451. “Embezzlement” defined
- 1452. Embezzlement by officer, etc., of corporation, etc.
- 1453. Embezzlement by carrier or other person
- 1454. Embezzlement by trustee
- 1455. Embezzlement by bailee
- 1456. Embezzlement by clerk or servant
- 1457. Distinct taking not necessary
- 1458. Evidence of debt subject of embezzlement
- 1459. Property taken under claim of title
- 1460. Intent to restore no defense
- 1461. Mitigation of punishment
- 1462. Punishment for embezzlement
- 1463. Diversion of Nation funds made crime

§ 1451. “Embezzlement” defined

“**Embezzlement**” is the fraudulent appropriation of property by a person to whom it has been entrusted.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement O1.
Westlaw Topic No. 146.
C.J.S. Embezzlement §§ 1 to 2, 5.

§ 1452. Embezzlement by officer, etc., of corporation, etc.

If any person, being an officer, director, trustee, clerk, servant or agent of any association, society or corporation, public or private, fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose he is guilty of embezzlement.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement O20.
Westlaw Topic No. 146.
C.J.S. Embezzlement §§ 30 to 31, 35.

§ 1453. Embezzlement by carrier or other person

If any carrier or other person having under his control personal property for the

purpose of transportation for hire, fraudulently appropriates it to any use of purpose inconsistent with the safekeeping of such property and its transportation according to his trust, he is guilty of embezzlement, whether he has broken

EMBEZZLEMENT

21 CNCA § 1456

the packages in which such property is contained, or has otherwise separated the items thereof, or not.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement ○16.
Westlaw Topic No. 146.
C.J.S. Embezzlement §§ 27, 30, 35.

§ 1454. Embezzlement by trustee

If any person being a trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator or collector, or being otherwise entrusted with or having in his control property for the use of any other person, or for any public or benevolent purpose, fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement ○18.
Westlaw Topic No. 146.
C.J.S. Embezzlement §§ 29 to 30, 35.

§ 1455. Embezzlement by bailee

If any person being entrusted with any property as bailee, or with any power of attorney for the sale or transfer thereof, fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, he is guilty of embezzlement, whether he has broken the package or otherwise determined the bailment or not.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement ○16.
Westlaw Topic No. 146.
C.J.S. Embezzlement §§ 27, 30, 35.

§ 1456. Embezzlement by clerk or servant

If any clerk or servant of any private person or copartnership or corporation, except apprentices and persons within the age of eighteen (18) years, fraudulently appropriates to his own use, or secretes with a fraudulent intent to

appropriate to his own use, any property of any other person which has come into his control or care by virtue of his employment as such clerk or servant, he is guilty of embezzlement.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement ○13.
Westlaw Topic No. 146.
C.J.S. Embezzlement §§ 23, 30, 35.

§ 1457. Distinct taking not necessary

A distinct act of taking is not necessary to constitute embezzlement, but any fraudulent appropriation, conversion or use of property, coming within the above prohibitions is sufficient.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement ○11(1).
Westlaw Topic No. 146.
C.J.S. Embezzlement §§ 8, 16 to 18.

§ 1458. Evidence of debt subject of embezzlement

Any evidence of debt, negotiable by delivery only, and actually executed, is equally the subject of embezzlement whether it has been delivered or issued as a valid instrument or not.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1459. Property taken under claim of title

Upon any prosecution for embezzlement it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith even though such claim is untenable. But this provision shall not excuse the retention of the property of another, to offset or pay demand held against him.

History

Source. LA 10–90, eff. November 13, 1990.

C.J.S. Embezzlement §§ 20 to 22.

Embezzlement ○23.
Westlaw Topic No. 146.

Library References

§ 1460. Intent to restore no defense

The fact that the accused intended to restore the property embezzled is no ground of defense, or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

EMBEZZLEMENT 21 CNCA § 1463

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement O23.
Westlaw Topic No.146.
C.J.S. Embezzlement §§ 20 to 22.

§ 1461. Mitigation of punishment

Whenever it is made to appear that prior to any information laid before a magistrate charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such is not a ground of defense to the indictment, but it authorizes the court to mitigate punishment in its discretion.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 1462. Punishment for embezzlement

Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled, except that every person convicted of embezzlement of any item valued at less than Fifty Dollars (\$50.00) shall be punished for a crime. And where the property embezzled is an evidence of debt or right in action, the sum due upon it, or secured to be paid by it, shall be taken as its value.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.

Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 1463. Diversion of Nation funds made crime

Any Nation officer, deputy or employee of such nation officer, who shall divert any money appropriated by law from the purpose and object of such appropriation, shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Embezzlement O11(2).

Westlaw Topic No. 146.

21 CNCA § 1463

CRIMES AND PUNISHMENTS

C.J.S. Embezzlement §§ 8, 16 to 18.

CHAPTER 60

EXTORTION AND BLACKMAIL

Section

- 1481. Extortion defined
- 1482. Threats constituting extortion
- 1483. Punishment for extortion
- 1484. Extortion under color of official right
- 1485. Obtaining signature by extortion
- 1486. Letters, threatening
- 1487. Attempting to extort money
- 1488. Blackmail

§ 1481. Extortion defined

Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Extortion O1, 7.
Westlaw Topic No. 164T.

§ 1482. Threats constituting extortion

Fear such as will constitute extortion, may be induced by a threat, either:

- 1st. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family; or
- 2nd. To accuse him, or any relative of his or member of his family, of any crime; or
- 3rd. To expose, or impute to him, or them, any deformity or disgrace; or
- 4th. To expose any secret affecting him or them.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Extortion O10.
Westlaw Topic No. 164T.

§ 1483. Punishment for extortion

History

Source. LA 10–90, eff. November 13, 1990.

Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat such as is mentioned in 21 CNCA § 1482 is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Extortion O7.
Indians O620.

Westlaw Topic Nos. 164T, 209.
C.J.S. Indians §§ 151 to 179.

§ 1484. Extortion under color of official right

Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this code, or by some of the statutes, which it specifies as continuing in force, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Extortion O15.
Westlaw Topic No. 164T.

§ 1485. Obtaining signature by extortion

Every person, who by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge or right of action were obtained.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1486. Letters, threatening

Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as is specified in 21 CNCA § 1482, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Extortion O10.
Westlaw Topic No. 164T.

§ 1487. Attempting to extort money**History**

Source. LA 10–90, eff. November 13, 1990.

Every person who unsuccessfully attempts by means of any verbal threat such as is specified in 21 CNCA § 1482 to extort money or other property from another is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Extortion O26.
Westlaw Topic No. 164T.

§ 1488. Blackmail

Blackmail is verbally or by written or printed communication and with intent to extort or gain any thing of value from another or to compel another to do an act against his will:

1. Accusing or threatening to accuse any person of a crime or conduct which would tend to degrade and disgrace the person accused; or
 2. Exposing or threatening to expose any fact, report or information concerning any person which would in any way subject such person to the ridicule or contempt of society, coupled with the threat that such accusation or exposure will be communicated to a third person or persons unless the person threatened or some other person pays or delivers to the accuser or some other person some thing of value or does some act against his will.
- Blackmail is a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Extortion O7.
Westlaw Topic No. 164T.

CHAPTER 61

FALSE PRETENSES, FALSE PERSONATIONS, CHEATS AND FRAUDS

FRAUDS IN GENERAL

Section

- 1500. Real property loans—Securing by false instrument—Penalty
- 1501. Securing credit fraudulently—Penalty
- 1503. Defrauding hotels, inns, restaurants, etc.
- 1510. Destroying evidence of ownership of wrecked property
- 1518. Misrepresentation of age by false document
- 1519. Penalties
- 1520. Provisions as cumulative
- 1524. Falsely holding out as notary or performing notarial act—Penalty

FALSE PERSONATION

- 1531. Marriage by impersonator—Becoming bail or surety—Execution of instrument—
Creating liability or benefit
- 1532. Receiving money or property intended for individual personated
- 1533. Falsely personating officers and others

FALSE PRETENSES; TRICK OR DECEPTION

- 1541.1. False or bogus checks
- 1541.2. False or bogus check; notice of complaint; procedure
- 1541.3. Repealed
- 1541.4. “False or bogus check or checks” defined
- 1541.5. “Credit” defined
- 1542. Obtaining property or signature under false pretenses
- 1543. Obtaining signature or property for charitable purposes by false pretenses
- 1550. Person committing crime in possession or control of firearm with removed,
defaced, etc. serial number

FRAUDS IN GENERAL

§ 1500. Real property loans—Securing by false instrument—Penalty

A. It shall be unlawful for any person willfully, knowingly, or fraudulently to make, issue, deliver, use or submit, or to participate in making, issuing, delivering, using or submitting any fictitious, false or fraudulent offer, agreement, contract or other instrument concerning any real property or improvements thereon for the purpose either of inducing or attempting to induce any lender, prospective lender or government agency to make any loan, advance or commitment or of securing any guaranty or insurance in connection therewith.

B. Any person violating the provisions of this act shall be deemed to be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Fraud O68, 68.10.

352 Westlaw Topic No. 184.

C.J.S. Fraud §§ 123 to 132.

§ 1501. Securing credit fraudulently – Penalty

Any person who shall:

1st. Knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself, or any other person, firm or corporation, in whom he is interested, or for whom he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange or promissory note, for the benefit of either himself or of such person, firm or corporation; or 2nd. Knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself, or such person, firm or corporation in which he is interested, or for whom he is acting, procures, upon the faith thereof, for the benefit either of himself, or of such person, firm or corporation, either or any of the things of benefit mentioned in paragraph 1st of this section; or

3rd. Knowing that a statement in writing has been made, respecting the financial condition or means or ability to pay for himself, or such person, firm or corporation, in which he is interested, or for whom he is acting, represents on a later date in writing, that such statement theretofore made, if then again made on said day, would be then true, when in fact, said statement if then made would be false, and procures upon the faith thereof, for the benefit either of himself or of such person, firm or corporation, either or any of the things of benefit mentioned in paragraph 1st of this section;

shall be deemed guilty of a crime and punished by imprisonment for not more than six (6) months or by a fine of not more than Five Hundred Dollars (\$500.00), or both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Fraud O68, 68.10.
Westlaw Topic No. 184.
C.J.S. Fraud §§ 123 to 132.

§ 1503. Defrauding hotels, inns, restaurants, etc.

Any person who shall obtain food, lodging, services or other accommodations at any hotel, inn, restaurant, boarding house, rooming house, motel or auto camp, with intent to defraud the owner or keeper thereof, if the value of such food, lodging, services or other accommodations is Five Hundred Dollars (\$500.00) or more, upon conviction shall be guilty of a crime. Proof that such lodging, food, services or other accommodations were obtained by false pre- tense or by false or fictitious show or pretense of any baggage or other

property, or that he gave a check on which payment was refused, or that he left the hotel, inn, restaurant, boarding house, rooming house, motel, trailer camp or auto camp, without payment or offering to pay for such food, lodging, services or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, or that he registered under a fictitious name, shall be prima facie proof of the intent to defraud mentioned in this section; but this act shall not apply where there has been an agreement in writing for delay in payment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Library References

Innkeepers O16.

Westlaw Topic No.213.

C.J.S. Inns, Hotels, and Eating Places § 18.

§ 1510. Destroying evidence of ownership of wrecked property

Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1518. Misrepresentation of age by false document

It shall be unlawful for any person, for the purpose of violating any statutes of Cherokee Nation, to willfully and knowingly misrepresent his age by presenting a false document purporting to state his true age.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1519. Penalties

Any person violating the provisions of 21 CNCA § 1518 shall be deemed guilty of a crime and upon conviction thereof shall be fined in an amount not to exceed One Hundred Dollars (\$100.00), or shall be confined to the penal institution for a period of not to exceed thirty (30) days, or by both such fine and confinement.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1520. Provisions as cumulative

The provisions of this act shall be cumulative to existing laws.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1524. Falsely holding out as notary or performing notarial act—Penalty

A. No person in this Nation shall hold himself out as a notary public, attach his signature as a notary public, use a notary public seal, or perform any notarial act unless he is authorized pursuant to the provisions of 49 CNCA § 114 to perform such acts.

B. Any person convicted of knowingly and willfully violating any of the provisions of this section shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

FALSE PERSONATION

§ 1531. Marriage by impersonator—Becoming bail or surety—Execution of instrument—Creating liability or benefit

Every person who falsely personates another, and in such assumed character:

1. Marries or pretends to marry, or to sustain the marriage relation toward another, with or without the connivance of such other person; or
2. Becomes bail or surety for any party, in any proceeding whatever, before any court or officer authorized to take such bail or surety; or
3. Subscribes, verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true; or
4. Does any other act whereby, if it were done by the person falsely personated, he might in any event become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

False Personation ○1, 2.
Westlaw Topic No. 169.
C.J.S. False Personation §§ 1 to 4.

§ 1532. Receiving money or property intended for individual personated

Every person who falsely personates another, and in such assumed character receives any money or property, that knowing it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that

of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

False Personation ○2.
Westlaw Topic No. 169.
C.J.S. False Personation §§ 1, 4.

§ 1533. Falsely personating officers and others

Every person who falsely personates any public officer, civil or military, or any fireman, or any emergency medical technician or other emergency medical care provider, or any private individual having special authority by law to perform any act affecting the rights or interests of another, or assumes, without authority, any uniform or badge by which such are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, vexed or annoyed, upon conviction, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Library References

False Personation ○2.
Westlaw Topic No. 169.
C.J.S. False Personation §§ 1, 4.

FALSE PRETENSES; TRICK OR DECEPTION**§ 1541.1. False or bogus checks**

A. Any person who, with intent to cheat and defraud, shall obtain or attempt to obtain from any person, firm or corporation any money, property or valuable thing, by making, drawing, uttering or delivering a false or bogus check, draft, or order, as herein defined, and fails to pay the check, draft or order within ten (10) days after receiving actual notice in person or in writing that it has not been paid because of insufficient funds or credit with the drawee, or because it was drawn on a nonexistent or closed account with drawee, shall be guilty of a crime.

B. Actual notice in writing is presumed to have been given when deposited as certified matter in the United States mail, addressed to the person at the address provided upon issuance of the instrument.

C. The requirement of notice shall also be satisfied for written communications which are tendered to the defendant and which the defendant refuses to accept.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 25–02, eff. August 22, 2002.

Cross References

Limitations in general, see 22 CNCA § 152.

Library References

False Pretenses O16.
Westlaw Topic No. 170.

C.J.S. False Pretenses §§ 27 to 28, 35 to 36,
40 to 45.

§ 1541.2. False or bogus check; notice of complaint; procedure

A. Upon referral of a complaint to the Cherokee Nation's Prosecuting Attorney in the Department of Justice that payment was refused by the drawee/bank for lack of funds, or a closed or nonexistent account, a notice of the complaint shall be sent by certified mail to the defendant, evidenced by return receipt, to the address printed on the check or given at the time of issuance, or to the current residence.

B. The notice shall contain:

1. The date and amount of the check, plus any applicable service charges the payee may have been required to pay a financial institution as the result of having received the false or bogus check;
2. The amount of any fees charged by any financial institution as a result of the check not being honored;
3. The amount of any administrative fees or costs assessed in the collection of said checks;
4. The name of the payee;
5. The name of the drawee/bank;
6. The date before which the defendant must contact the Office of the Prosecuting Attorney concerning the complaint; and
7. A statement of the penalty for obtaining money, merchandise or services by means of a false and bogus check.

C. The Cherokee Nation Justice Department may assess a reasonable fee against individuals whose checks have been returned under, the above section(s). Such fees must be placed in a specific account, used by the Justice Department to offset the actual costs of collection, including salaries, supplies, and expenses, and must be accounted for in the annual budget process.

History

Source. LA 25-02, eff. August 22, 2002.

Cross References

Limitations in general, see 22 CNCA § 152.

Library References

Indians O603.

Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 1541.3. Repealed by LA 25-02, eff. August 22, 2002

History

The repealed section, which related to the penalty for false or bogus checks, was derived from LA 10-90.

§ 1541.4. “False or bogus check or checks” defined

The term “**false or bogus check or checks**” shall include checks or orders which are not honored on account of insufficient funds of the maker to pay same, or because the check or order was drawn on a closed account or on a nonexistent account when such checks or orders are given in exchange for money or property or in exchange for any benefit or thing of value, as against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence of intent to defraud and the knowledge of insufficient funds in, or credit with, such bank or other depository; provided, such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with the protest fees, within five (5) days from the date the same is presented for payment; and provided, further, that said check or order is presented for payment within thirty (30) days after same is delivered and accepted.

History

Source. LA 10-90, eff. November 13, 1990.

Library References

False Pretenses O6.
Westlaw Topic No. 170.

C.J.S. False Pretenses §§ 18 to 19, 40 to 45.

§ 1541.5. “Credit” defined

The word “**credit**,” as used herein, shall be construed to mean an arrangement or understanding with the bank or depository for the payment of such check, draft or order.

History

Source. LA 10-90, eff. November 13, 1990.

§ 1542. Obtaining property or signature under false pretenses

Every person who, with intent to cheat or defraud another, designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property, is guilty of a crime.

History

Source. LA 10-90, eff. November 13, 1990.

False Pretenses O 11, 13.

Library References

Westlaw Topic No. 170.

C.J.S. False Pretenses §§ 19, 30 to 32.

§ 1543. Obtaining signature or property for charitable purposes by false pretenses

Every person who designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property for any alleged charitable or benevolent purpose whatever, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

False Pretenses O11 to 13.

Westlaw Topic No. 170.

C.J.S. False Pretenses §§ 19, 30 to 32.

§ 1550. Person committing crime in possession or control of firearm with removed, defaced, etc. serial number

A. Any person who, while in the commission or attempted commission of a crime, has in his possession or under his control a firearm, the factory serial number or identification number of which has been removed, defaced, altered, obliterated or mutilated in any manner, upon conviction, shall be guilty of a crime.

B. Any person who removes, defaces, alters, obliterates or mutilates in any manner the factory serial number or identification number of a firearm, or in any manner participates therein, upon conviction, shall be guilty of a crime.

C. 1. Upon a conviction of a violation of this section, the Marshal, the Court Clerk, Sheriff, peace officer or other person having custody of the firearm shall immediately deliver the firearm to the Cherokee Nation Marshal, who shall preserve the firearm pending an order of the Court.

2. At the conclusion of a trial or proceeding for a violation of this section, if a finding is made that the factory serial number or identification number of the firearm has been removed, defaced, altered, obliterated or mutilated, the Court shall issue a written order to the Cherokee Nation Marshal for destruction of the firearm, unless the defendant files a timely motion to preserve the firearm pending appeal. At the conclusion of the appeal, if a finding is made that the factory serial number or identification number of the firearm has been removed, defaced, altered, obliterated or mutilated, the Supreme Court or the Trial Court shall issue a written order to the Marshal for destruction of the firearm.

History

Source. LA 10–90, eff. November 13, 1990.

CHAPTER 63

FORGERY OR COUNTERFEITING

FORGERY IN FIRST DEGREE

Section

- 1561. Wills, deeds and certain other instruments, forgery of
- 1562. Forgery of public securities

FORGERY IN SECOND DEGREE

- 1571. Public and corporate seals, forgery of
- 1572. Records, forgery of
- 1573. Making false entries in record
- 1585. Forging process of court or title to property, etc.
- 1586. Making false entries in public book
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- 1621. Punishment for forgery
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- 1627.1. False or bogus orders as payment for labor—Penalties

FORGERY IN FIRST DEGREE

§ 1561. Wills, deeds and certain other instruments, forgery of

Every person who, with intent to defraud, forges, counterfeits or falsely alters:

- 1st. Any will or codicil of real or personal property, or any deed or other instrument being or purporting to be the act of another, by which any right or interest in real property is, or purports to be, transferred, conveyed or in any way changed or affected; or
- 2nd. Any certificate or endorsement of the acknowledgment by any person of any deed or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any officer duly authorized to make such certificate or endorsement; or
- 3rd. Any certificate of the proof of any deed, will, codicil or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any court or officer duly authorized to make such certificate;

is guilty of forgery in the first degree.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery O7(1).

Westlaw Topic No. 181.

FORGERY OR COUNTERFEITING

21 CNCA § 1571

C.J.S. Forgery §§ 3, 14 to 19, 22, 24 to 26, 28 to 29.

§ 1562. Forgery of public securities

Every person who, with intent to defraud, forges, counterfeits, or falsely alters:

1st. Any certificate or other public security, issued or purporting to have been issued under the authority of this nation, by virtue of any law thereof, by which certificate or other public security, the payment of any money absolutely or upon any contingency is promised, or the receipt of any money or property acknowledged; or

2nd. Any certificate of any share, right or interest in any public stock created by virtue of any law of this nation, issued or purporting to have been issued by any public officer, or any other evidence of any debt or liability, of the people of this nation, either absolute or contingent, issued or purporting to have been issued by any public officer; or

3rd. Any endorsement or other instrument transferring or purporting to transfer the right or interest of any holder of any such certificate, public security, certificate of stock, evidence of debt or liability, or of any person entitled to such right or interest;

is guilty of forgery in the first degree.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery O7(1).
Westlaw Topic No. 181.

C.J.S. Forgery §§ 3, 14 to 19, 22, 24 to 26, 28 to 29.

FORGERY IN SECOND DEGREE

§ 1571. Public and corporate seals, forgery of

Every person who, with intent to defraud, forges, or counterfeits the great or privy seal of this nation, the seal of any public office authorized by law, the seal of any court of record, including judge of county seals, or the seal of any corporation created by the laws of this Nation, or of any other nation, government or country, or any other public seal authorized or recognized by the laws of this Nation, or of any other nation, government or country, or who falsely makes, forges or counterfeits any impression purporting to be the impression of any such seal, is guilty of forgery in the second degree.

History

Source. LA 10–90, eff. November 13, 1990.

Forgery O7(1).
Westlaw Topic No. 181.

Library References

C.J.S. Forgery §§ 3, 14 to 19, 22, 24 to 26, 28
to 29.

§ 1572. Records, forgery of

Every person who, with intent to defraud, falsely alters, destroys, corrupts or falsifies:

1. Any record of any will, codicil, conveyance or other instrument, the record of which is, by law, evidence; or
2. Any record of any judgment in a court of record, or any enrollment of any decree of a court of equity; or
3. The return of any officer, court or tribunal to any process of any court;

is guilty of forgery in the second degree.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery O7(1), 15.
Westlaw Topic No. 181.

C.J.S. Forgery §§ 3, 14 to 19, 22, 24 to 26, 28
to 29.

§ 1573. Making false entries in record

Every person who, with intent to defraud, falsely makes, forges or alters, any entry in any book of records, or any instrument purporting to be any record or return specified in 21 CNCA § 1572, and any abstractor, his officer, agent or employee, who, with intent to defraud, falsely makes or alters any abstract entry or copy thereof in any material matter, is guilty of forgery in the second degree.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery O15.
Westlaw Topic No. 181.
C.J.S. Forgery § 26.

§ 1585. Forging process of court or title to property, etc.

Every person who, with intent to defraud, falsely marks, alters, forges or counterfeits:

1. Any instrument in writing, being or purporting to be any process issued by any competent court, magistrate, or officer of being or purporting to be any pleading, proceeding, bond or undertaking filed or entered in any court, or being or purporting to be any license or authority authorized by any statute; or
2. Any instrument of writing, being or purporting to be the act of another by which any pecuniary demand or obligation is, or purports to be created, increased, discharged or diminished, or by which any rights or property whatever, are, or purport to be, transferred, conveyed, discharged, dimin-

ished, or in any manner affected, the punishment of which is not hereinbefore prescribed, by which false marking, altering, forging or counterfeiting, any person may be affected, bound or in any way injured in his person or property;

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is guilty of a forgery in the second degree.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery O7(1), 9.
Westlaw Topic No. 181.

C.J.S. Forgery §§ 3, 10, 14 to 19, 22, 24 to 26,
28 to 29.

§ 1586. Making false entries in public book

Every person who, with intent to defraud, makes any false entry or falsely alters any entry made in any book of accounts kept in the office of the State Auditor and Inspector, or in the office of the Treasurer of this Nation or of any county treasurer, by which any demand or obligation, claim, right or interest either against or in favor of the people of this Nation, or any county or town, or any individual, is or purports to be discharged, diminished, increased, created, or in any manner affected, is guilty of forgery in the second degree.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery O15.
Westlaw Topic No. 181.
C.J.S. Forgery § 26.

§ 1593. Falsely obtaining signature

Every person who, by any false representation, artifice or deceit, procures from another his signature to any instrument, the false making of which would be forgery, and which the party signing would not have executed had he known the facts and effect of the instrument, is guilty of forgery in the second degree.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery O8.
Westlaw Topic No. 181.
C.J.S. Forgery §§ 3, 8, 12 to 14.

GENERAL PROVISIONS

§ 1621. Punishment for forgery

Forgery is punishable by imprisonment in the penal institution as follows:

Forgery in the first degree or second degree is a crime.

Source. LA 10–90, eff. November 13, 1990.

History

Library References

Indians O624.
Westlaw Topic No.209.
C.J.S. Indians §§ 151 to 179.

§ 1622. Fraudulently uttering one's signature as that of another of same name

Every person who, with intent to defraud, makes or subscribes any instrument in his own name, intended to create, increase, discharge, defeat or diminish any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and utters or passes such instrument, under the pretense that it is the act of another who bears the same name, is guilty of forgery in the same degree as if he had forged the instrument of a person bearing a different name from his own.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery O16.
Westlaw Topic No. 181.
C.J.S. Forgery §§ 30 to 34.

§ 1623. Fraudulently uttering one's endorsement as another's

Every person who, with intent to defraud, endorses any negotiable instrument in his own name, and utters or passes such instrument, under the fraudulent pretense that it is endorsed by another person who bears the same name, is guilty of forgery in the same degree as if he had forged the endorsement of a person bearing a different name from his own.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery O16.
Westlaw Topic No. 181.
C.J.S. Forgery §§ 30 to 34.

§ 1624. Erasure and obliterations

The total or partial erasure or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property is or is intended to be created, increased, discharged, diminished or in any manner affected, is forgery in the same degree as the false alteration of any part of such instrument or writing.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery **O**10.

Westlaw Topic No. 181.

C.J.S. Forgery §§ 3, 9, 14.

§ 1625. Writing and written defined

Every instrument partly printed and partly written, or wholly printed with a written signature thereto, and every signature of an individual, firm or corporation, or of any officer of such body, and every writing purporting to be such signature, is a writing or a written instrument, within the meaning of the provisions of this chapter.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1627. False or bogus order directing payment of money

Every person who, with intent to cheat or defraud, shall obtain or attempt to obtain from any person any labor or personal services, or the postponement of actual payment due for labor or personal services theretofore performed, by means or use of any false or bogus written, printed or engraved order directing the payment of money, shall be guilty of a crime, and upon conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00), or by imprisonment in the penal institution for not more than six (6) months, or by both such fine and imprisonment.

The term “**false or bogus written, printed or engraved order directing the payment of money,**” in addition to its common meaning, also shall include any check, draft or order on any bank or trust company which is not honored on presentation on account of insufficient funds to the credit of the maker or drawer thereof with which to pay same. The word “**credit,**” as used herein, shall mean any arrangement or understanding with a bank or trust company for the payment by it of any check, draft or money payment order.

As against the maker or drawer of any false or bogus written, printed or engraved order directing the payment of money, and as against any officer or employee of the maker or drawer thereof, who shall authorize or direct the making, drawing, uttering or delivering, or who shall make, draw, utter or deliver any such false or bogus written, printed or engraved order directing the payment of money, to obtain or to attempt to obtain from any person any labor or personal services, or the postponement of actual payment due for labor or personal services, the fact of dishonor or refusal to pay the amount of money specified in said false or bogus order shall be prima facie evidence of intent to cheat or defraud, and of knowledge of insufficient funds to the credit of the maker or drawer, with the drawer specified therein, to pay the same; provided, said fact shall not constitute prima facie evidence as above set forth if the maker or drawer shall pay the amount of such false or bogus order, together with protest fees, within five (5) days from the date the same shall have been presented to the drawer for payment; and provided further, that said fact shall not constitute prima facie evidence as above set forth unless the said false or bogus order be presented to the drawer within thirty (30) days after the same shall have been uttered or delivered.

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CRIMES AND PUNISHMENTS

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Forgery O7(3).
Westlaw Topic No. 181.

C.J.S. Forgery §§ 3, 14 to 19, 21 to 26, 28 to 29.

§ 1627.1. False or bogus orders as payment for labor—Penalties

In addition to the criminal penalties imposed pursuant to the provisions of 21 CNCA § 1627, any person who obtains or attempts to obtain from any person,

with the intent to cheat or defraud, any labor or personal services, or the postponement of actual payment due for labor or personal services performed, by means or use of any false or bogus written, printed or engraved order directing the payment of money, shall also be liable to the payee, in addition to the amount owing upon such order, for damages of double the amount so owing, but in no case shall the amount of damages awarded be less than Two Hundred Dollars (\$200.00), plus reasonable attorney fees and court costs. Said damages shall be recoverable in a civil action.

History

Source. LA 10–90, eff. November 13, 1990.

**CHAPTER 67
INJURIES TO ANIMALS**

- 1682. Instigating fights between animals
- 1683. Keeping places for fighting animals
- 1685. Cruelty to animals
- 1686. Abandoned animals—Destroyed how
- 1688. Animals in transit
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DOG-FIGHTING

- 1693. Definitions
- 1694. Instigating or encouraging dogfight—Crime
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§ 1681. Poisoning cattle

Every person who willfully administers poison to any animal, the property of another, and every person who maliciously exposes any poisonous substance with intent that the same shall be taken by any such animal, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.
Westlaw Topic No. 28.
C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1682. Instigating fights between animals

Every person who maliciously, or for any bet, stake or reward, instigates or

encourages any fight between animals or fowls with the exception of dogs, or instigates or encourages any animal with the exception of dogs to attack, bite, wound or worry another, upon conviction, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.

Westlaw Topic No. 28.

C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1683. Keeping places for fighting animals

Every person who keeps any house, pit or other place, to be used in permitting any fight between animals or fowl with the exception of dogs or in any other violation of 21 CNCA § 1682, upon conviction, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.

Westlaw Topic No. 28.

C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1685. Cruelty to animals

Any person who shall willfully or maliciously overdrive, overload, torture, destroy or kill, or cruelly beat or injure, maim or mutilate, any animal in subjugation or captivity, whether wild or tame, and whether belonging to himself or to another, or deprive any such animal of necessary food, drink or shelter; or who shall cause, procure or permit any such animal to be so overdriven, overloaded, tortured, destroyed or killed, or cruelly beaten or injured, maimed or mutilated, or deprived of necessary food, drink or shelter; or who shall willfully set on foot, instigate, engage in, or in any way further any act of cruelty to any animal, or any act tending to produce such cruelty, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.

Westlaw Topic No. 28.

C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1686. Abandoned animals – Destroyed how

A. Any person owning or having charge or custody of a maimed, diseased, disabled, or infirm animal who abandons said animal or who allows said animal to lie in a public street, road, or public place one (1) hour after said person receives notice by a duly constituted authority that the animal is disabled or dead, upon conviction, shall be guilty of a crime.

B. Any peace officer, animal control officer, or agent or officer of the Society for the Prevention of Cruelty to Animals or of any humane society duly incorporated for the purpose of the prevention of cruelty to animals may destroy or cause to be destroyed any animal found abandoned and for which no proper care has been given.

C. When any person who is arrested, and who is at the time of such arrest in charge of any animal or of any vehicle drawn by or containing any animal, any peace officer, animal control officer, or agent or officer of said humane societies

may take custody of the animal or of the vehicle and its contents, or deliver the animal or the vehicle and its contents into the possession of the

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police or sheriff of the county or place where such arrest was made, who shall assume the custody thereof. All necessary expenses incurred in taking custody of the animal or of the vehicle and its contents shall be a lien on such property.

D. For the purpose of the provisions of this section and 21 CNCA § 1691, the term abandon means the voluntary relinquishment of an animal with no intention to retain possession and shall include but shall not be limited to vacating a premises and leaving the animal in or at the premises, or failing to feed the animal or allowing it to stray or wander onto private or public property with the intention of surrendering ownership or custody over said animal.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.
Westlaw Topic No. 28.

C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1688. Animals in transit

Any person who carries or causes to be carried in or upon any vessel or vehicle, or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.
Westlaw Topic No. 28.

C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1689. Poisonous drugs, unjustifiable administration of

Any person who unjustifiably administers any poisonous or noxious drug or substance to any animal, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal, whether such animal be the property of himself or another, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.
Westlaw Topic No. 28.
C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1691. Abandoning of domestic animals along streets or highways or in

any public place prohibited

Any person who deposits any live dog, cat, or other domestic animal along any private or public roadway, or in any other private or public place with the

intention of abandoning the domestic animal upon conviction, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.
Westlaw Topic No. 28.

C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1692. Penalty

Any person found guilty of violating the provisions of this act shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or be imprisoned in the penal institution for not more than one (1) year, or both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Library References

Indians O623.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

DOGFIGHTING

§ 1693. Definitions

As used in this act:

1. **“Equipment used for training or handling a fighting dog”** includes harnesses, treadmills, cages, decoys, pens, houses, feeding apparatuses, training pens and other related devices and equipment.
2. **“Equipment used for transporting a fighting dog”** includes any automobile, or other vehicle, and its appurtenances which are intended to be used as a vehicle for transporting a fighting dog to a fight.
3. **“Equipment used to promote or advertise a dogfight”** includes any printing presses or similar equipment, any paper, ink, photography equipment, and related items and equipment intended to be used to transport same.
4. **“Equipment used to stage a dogfight”** includes, but is not limited to, dogfighting arenas, bleachers, or spectators’ stands or other seating, tents, canopies, buildings, fences, cages, speakers, public address systems, portable toilet facilities and related equipment.
5. **“Fighting dog”** includes any dog trained, being trained, intended to be

used for training, or intended to be used to attack, bite, wound or worry another dog.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1694. Instigating or encouraging dogfight—Crime

Every person who willfully or for any bet, stake or reward, instigates or encourages any fight between dogs, or instigates or encourages any dog to attack, bite, wound or worry another dog, except in the course of protection of life and property, upon conviction, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.
Westlaw Topic No. 28.
C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1695. Keeping place, equipment or facilities for dogfighting—Crime

Every person who keeps any house, pit or other place, or provides any equipment or facilities to be used in permitting any fight between dogs or in furtherance of any activity described in 21 CNCA § 1693, upon conviction, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.
Westlaw Topic No. 28.

C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1696. Servicing or facilitating dogfight—Crime

Every person who does any act or performs any service in the furtherance of or to facilitate any dogfight, upon conviction, is guilty of a crime. Such activities and services specifically prohibited by this section include, but are not limited to: promotion, refereeing, handling of dogs at a fight, transportation of spectators to or from a dogfight, providing concessions at a dogfight, advertising a dogfight, or serving as a stakes holder of any money wagered on any dogfight.

History

Source. LA 10–90, eff. November 13, 1990.

Animals O45.
Westlaw Topic No. 28.

Library References

C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1697. Owning, possessing, keeping or training dog for fighting—Crime

Every person who owns, possesses, keeps or trains any dog with the intent that such dog shall be engaged in an exhibition of fighting with another dog, upon conviction, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.
Westlaw Topic No. 28.
C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1698. Spectators

Every person who is knowingly present as a spectator at any place, building or other site where preparations are being made for an exhibition of dogfighting with the intent to be present at such preparation or fight, or is knowingly present at such exhibition, upon conviction, shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.
Westlaw Topic No. 28.
C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

§ 1699. Seizure, destruction or forfeiture of dogfighting equipment and facilities

Following the conviction of a person for the offense of keeping a place for fighting dogs, providing facilities for fighting dogs, performing services in the furtherance of dogfighting, training, owning, possessing, handling fighting dogs, the Court entering the judgment shall order that the machine, device, gambling equipment, training or handling instruments or equipment, transportation equipment, concession equipment, dogfighting equipment and instruments, and fighting dogs used in violation of this act be destroyed or forfeited to the Nation.

History

Source. LA 10–90, eff. November 13, 1990.

Animals O45.
Indians O627.
Westlaw Topic Nos. 28, 209.

§ 1699.2. Exemptions

Library References

C.J.S. Animals §§

198 to 225, 486, 507 to 531.

C.J.S. Indians §§ 151 to 179.

Nothing in this act shall prohibit any of the following:

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1. The use of dogs in hunting as permitted by the Game and Fish Code and by the rules and regulations adopted by the Oklahoma Wildlife Conservation Commission;
2. The use of dogs in the management of livestock by the owner of such livestock or his employees or agents or other persons in lawful custody thereof;
3. The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law; or
4. The raising, breeding, keeping or training of dogs or the use of equipment for the raising, breeding, keeping or training of dogs for sale or show purposes.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Animals O45.
Westlaw Topic No. 28.

C.J.S. Animals §§ 198 to 225, 486, 507 to 531.

CHAPTER 68

LARCENY

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§ 1701. Larceny defined

Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny ○1.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 1 to 9, 15, 71 to 72.

§ 1702. Larceny of lost property

One who finds lost property under circumstances which gives him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made such effort to find the owner and restore the property to him as the circumstances render reasonable and just, is guilty of larceny.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny O10.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 18 to 19, 46, 69.

§ 1703. Degrees of larceny

Larceny is divided into two degrees; the first of which is termed grand larceny, the second petit larceny.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny O23.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 79 to 87.

§ 1704. Grand and petit larceny defined

Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of value exceeding Five Hundred Dollars (\$500.00);
2. When such property, although not of value exceeding Five Hundred Dollars (\$500.00) in value, is taken from the person of another.

Larceny in other cases is petit larceny.

History

Source. LA 10–90, eff. November 13, 1990.
Amended. LA 10–13, eff. April 13, 2013.

Library References

Larceny O23.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 79 to 87.

§ 1705. Punishment for grand larceny

Grand larceny is punishable as a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.	C.J.S. Indians §§ 151 to 179.
Larceny O23.	C.J.S. Larceny §§ 79 to 87.
Westlaw Topic Nos. 209, 234.	

§ 1706. Punishment for petit larceny

Petit larceny shall be punishable by a fine of not less than Ten Dollars (\$10.00)

or more than Five Hundred Dollars (\$500.00), or imprisonment in the penal institution not to exceed six (6) months, or by both such fine and imprisonment, at the discretion of the Court.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Library References

Indians O620.
Larceny O23.
Westlaw Topic Nos. 209, 234.

C.J.S. Indians §§ 151 to 179.
C.J.S. Larceny §§ 79 to 87.

§ 1707. Grand larceny in house or vessel – Punishment

When it appears upon a trial for grand larceny that the larceny alleged was committed in any dwelling house or vessel, the offender shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.
Larceny O23.
Westlaw Topic Nos. 209, 234.

C.J.S. Indians §§ 151 to 179.
C.J.S. Larceny §§ 79 to 87.

§ 1708. Grand larceny in night time from person – Punishment

When it appears upon such trial, that such larceny was committed by stealing in the night time, from the person of another, the offender shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O620.
Larceny O23.
Westlaw Topic Nos. 209, 234.

C.J.S. Indians §§ 151 to 179.
C.J.S. Larceny §§ 79 to 87.

§ 1709. Larceny of written instrument – Value

If the thing stolen consists of any evidence of debt or other written instrument, the amount of money due thereon or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum of which might be recovered in the absence thereof, as the case may be, shall be deemed the value of the thing stolen.

Source. LA 10–90, eff. November 13, 1990. **History**

Library References

Larceny **O**6.

Westlaw Topic No. 234.

C.J.S. Larceny §§ 18 to 19.

§ 1712. Severed fixture, larceny of

Any fixture or part of realty, the instant it is severed from the realty becomes personal property, and the subject of larceny within the meaning of this article.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny O5.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 18 to 31.

§ 1713. Receiving stolen property – Presumption

Every person who buys or receives, in any manner, upon any consideration, any personal property of any value whatsoever that has been stolen, embezzled, obtained by false pretense or robbery, knowing or having reasonable cause to believe the same to have been stolen, embezzled, obtained by false pretense, or robbery, or who conceals, withholds, or aids in concealing or withholding such property from the owner, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Community service sentencing program, eligible offenders, presentence investigation, recommendation and imposition of sentence, earned credits, notice of completion, immunity from tort liability, see 22 CNCA § 991A–4.

Library References

Receiving Stolen Goods O1 to 4.
Westlaw Topic No. 324.
C.J.S. Receiving or Transferring Stolen Goods
and Related Offenses §§ 1 to 16, 20 to 22.

§ 1714. Fraudulent consumption of gas

Every person who, with intent to defraud, makes or causes to be made, any pipe or other instrument or contrivance, and connects the same, or causes it to be connected, with any pipe laid for conducting illuminating gas, so as to conduct gas to a point where the same may be consumed without its passing through the meter providing for registering the quantity consumed, or in any other manner so as to evade paying therefor, and every person who with like intent injures or alters any gas meter, or obstructs its action, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny O5, 12.
Westlaw Topic No. 234.

C.J.S. Larceny §§ 10, 18 to 35, 37 to 38, 70.

§ 1715. Bringing stolen property into the nation

Every person who steals the property of another in any other nation or state or country, and brings the same into this nation may be convicted and punished in the same manner as if such larceny had been committed in this Nation, and such larceny may be charged to have been committed in any town or city into or through which such stolen property has been brought.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny ○22.
Westlaw Topic No. 234.
C.J.S. Larceny § 90.

§ 1716. Larceny of domestic animals

Any person in this Nation who shall steal any horse, jackass, jennet, mule, cow, or hog, sheep, or goat, shall be guilty of a crime. The word “**horse**” as used in this act, shall include all animals of the equine species and the word “**cow**” shall include all animals of bovine species.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny ○5.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 18 to 31.

§ 1717. Dog as personal property

All animals of the dog kind, whether male or female, shall be considered the personal property of the owner thereof, for all purposes.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny ○5.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 18 to 31.

§ 1718. Larceny of dogs

The taking of personal property of the kind defined in 21 CNCA § 1717, accomplished by fraud or stealth, and with the intent to deprive another thereof, is hereby defined as larceny and punishable in the same manner and to the same degree as in larceny of other descriptions of personal property.

Source. LA 10–90, eff. November 13, 1990.

History

Library References

Larceny O5.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 18 to 31.

§ 1719. Domestic fowls, larceny of – Receiving stolen fowls

Every person who shall take, steal and carry away any domestic fowl, or fowls, and any person purchasing or receiving such domestic fowl, or fowls, knowing them to have been stolen, shall be guilty of larceny.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny O5.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 18 to 31.

§ 1719.1. Larceny of certain fish and game

A. For the purpose of this section:

1. **“Domesticated fish or game”** means all birds, mammals, fish and other aquatic forms and all other animals, regardless of classifications, whether resident, migratory or imported, protected or unprotected, dead or alive, and shall extend to and include every part of any individual species when such domesticated fish or game are not in the wild and are in the possession of a person currently licensed to possess such fish or game; and
2. **“Taking”** means the pursuing, killing, capturing, trapping, snaring and netting of domesticated fish or game or placing, setting, drawing or using any net, trap or other device for taking domesticated fish or game and includes specifically every attempt to take such domesticated fish or game.

B. Any domesticated fish or game shall be considered the personal property of the owner.

C. Any person who shall take any domesticated fish or game, with the intent to deprive the owner of said fish or game, and any person purchasing or receiving such domesticated fish or game knowing them to have been stolen, shall:

1. Upon conviction, if the current market value of said domesticated fish or game is less than Fifty Dollars (\$50.00), be guilty of a crime and shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the penal institution for a period not to exceed sixty (60) days, or by both such fine and imprisonment; or
2. Upon conviction, if the current market value of said domesticated fish or game is more than Fifty Dollars (\$50.00), be guilty of a crime and shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) or imprisonment in the Nation Penitentiary for a term of not more than one (1) year, or by both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny ○5.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 18 to 31.

§ 1720. Automobile, aircraft or other motor vehicle

Any person in this Nation who shall steal an aircraft, automobile or other automotive-driven vehicle shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny ○5.
Westlaw Topic No. 234.
C.J.S. Larceny §§ 18 to 31.

§ 1721. Tapping pipeline

Any person who shall unlawfully make or cause to be made any connection with or in any way tap or cause to be tapped, or drill or cause to be drilled a hole in any pipe or pipeline or tank laid or used for the conduct or storage of crude oil, naphtha, gas or casinghead gas, or any of the manufactured or natural products thereof, with intent to deprive the owner thereof of any of said crude oil, naphtha, gas, casinghead gas or any of the manufactured or natural products thereof, shall be guilty of a crime, and upon conviction shall be punished by forfeiture of the instrumentality of the crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny ○5, 14(1).	C.J.S. Larceny §§ 14, 18 to 32, 35, 44, 60 to
Westlaw Topic No.234.	61, 70.

§ 1722. Taking oil, gas, gasoline or any product thereof – When crime

Any person who shall unlawfully take any crude oil or gasoline, or any product thereof, from any pipe, pipeline, tank, tank car, or other receptacle or container and any person who shall unlawfully take or cause to be taken any machinery, drilling mud, equipment or other materials necessary for the drilling or production of oil or gas wells, with intent to deprive the owner or lessee thereof of said crude oil, gas, gasoline, or any product thereof, machinery, drilling mud, equipment or other materials necessary for the drilling or production of oil or gas

wells shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny O12, 14(1).
Westlaw Topic No.234.

C.J.S. Larceny §§ 10, 14, 32 to 35, 37 to 38,
44, 60 to 61, 70.

§ 1723. Larceny from the house

Any person entering and stealing any money or other thing of value from any house, railroad car, tent, booth or temporary building shall be guilty of larceny from the house. Larceny from the house is declared to be a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Larceny O20.
Westlaw Topic No. 234.
C.J.S. Larceny § 41.

§ 1730. Act as cumulative – Definitions

This act shall be cumulative of all laws of the Nation and any violation hereof may be prosecuted, irrespective of whether or not the acts complained of constitute any or some of the essential elements of other or different offenses against the penal laws of this Nation; and for the purposes of this act the word “**stolen**” or “**steal**” shall mean larceny as defined by 21 CNCA § 1701, and the word “**stolen**” or “**steal**” need not be defined in any indictment, complaint, or information for the prosecution of any offense hereunder.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1738. Seizure and forfeiture proceedings—Vehicles, airplanes, vessels, etc., used in attempt or commission of certain crimes

A. Any commissioned peace officer of this Nation is authorized to seize any vehicle, airplane, vessel, vehicles or parts of vehicles whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of said property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined, or equipment which is used in the attempt or commission of any act of burglary in the first or second degree, larceny of livestock, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by 21 CNCA § 1431, 21 CNCA § 1435, 21 CNCA § 1716, 21 CNCA

§ 1719 and 21 CNCA § 1720 or 47 CNCA §§ 4–104 and 4–107. Said property may be held as evidence until a forfeiture has been declared or are lease ordered.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the Clerk of the District Court for the county wherein such property is seized and shall be given all owners and parties in interest.

C. Notice shall be given according to one (1) of the following methods:

1. Upon each owner or party in interest whose right, title, or interest is of record in the Oklahoma Tax Commission or with the county clerk for filings under the Uniform Commercial Code, served in the manner of service of process in civil cases prescribed by 12 O.S. § 2004;
2. Upon each owner or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by 12 O.S. § 2004; or
3. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the property forfeited to the Nation, if such fact is proven.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At the hearing the Nation shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection (A) of this section with knowledge by the owner of the property.

H. The claimant of any right, title, or interest in the property may prove his lien, mortgage, or conditional sales contract to be bona fide and that his right, title, or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the Court may order the property released to the bona fide or innocent owner, lien holder, mortgagee, or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Nation and shall be sold pursuant to judgment of the Court, as on sale upon execution, except as otherwise provided for by law.

K. Property taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the prosecutor of the county wherein the property was seized. The prosecutor shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the prosecutor may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released

to the lien holder. Property which has not been released by the prosecutor shall be subject to the orders and decrees of the Court or the official having jurisdiction thereof.

L. The prosecutor shall not be held civilly liable for having custody of the seized property or proceeding with a forfeiture action as provided for in this section.

M. Attorney fees shall not be assessed against the Nation or the prosecutor for any actions or proceeding pursuant to 21 CNCA § 1701 et seq.

N. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;
2. To the payment of the actual reasonable expenses of preserving the property;
3. To the victim of the crime to compensate said victim for any loss he may have incurred as a result of the act for which such property was forfeited; and
4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-third (1/3) to the office of the arresting authorities; one-third (1/3) of said fund to be used and maintained as a revolving fund by the prosecutor for the victim-witness fund, a reward fund or the evidence fund; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in whose county the fund is established. Monies from said fund may be used to pay costs for the storage of such property if such property is ordered released to a bona fide or innocent owner, lien holder, mortgagee, or vendor and if such funds are available in said fund.

O. If the Court finds that the property was not used in the attempt or commission of an act specified in subsection (A) of this section, the Court shall order the property released to the owner as his right, title, or interest appears on record in the Oklahoma Tax Commission as of the seizure.

P. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection (A) of this section. No property shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any nation.

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Gambling paraphernalia, disposition, see 21 CNCA § 943.

Oklahoma Statutes

Oklahoma Pleading Code, process, see 12 O.S. § 2004.

Library References

Forfeitures O3 to 5.

Searches and Seizures O59, 83.

Westlaw Topic Nos. 180,349.

C.J.S. Forfeitures §§ 15 to 33, 44, 49 to 78.

C.J.S. RICO (Racketeer Influenced and Corrupt Organizations) §§ 48, 50.

C.J.S. Searches and Seizures §§ 13, 100 to 102, 112 to 113, 115.

§ 1739. Library theft

A. As used in this section:

1. **“Demand”** means either actual notice to the possessor of any library materials or the mailing of written notice to the possessor at the last address of record which the library facility has for said person, demanding the return of designated library materials. If demand is made by mail it shall be deemed to have been given as of the date the notice is mailed by the library facility.
2. **“Library facility”** means any:
 - a. public library; or
 - b. library of an educational, historical or eleemosynary institution, organization, or society; or
 - c. museum; or
 - d. repository of public or institutional records.
3. **“Library material”** means any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, record, microform, sound recording, audiovisual materials in any format, magnetic or other tapes, catalog cards or catalog records, electronic data processing records, computer software, artifacts, or other documentary, written or printed materials regardless of physical form or characteristics, belonging or on loan to, or otherwise in the custody of a library facility.

B. Any person shall be guilty, upon conviction, of library theft who willfully:

1. Removes or attempts to remove any library material from the premises of a library facility without authority; or
2. Mutilates, destroys, alters or otherwise damages, in whole or in part, any library materials; or
3. Fails to return any library materials which have been lent to said person by the library facility, within seven (7) days after demand has been made for the return of the library materials.

C. A person convicted of library theft shall be guilty of a crime and shall be subject to the fine and restitution provisions of this subsection but shall not be

subject to imprisonment. The punishment for conviction of library theft shall be:

1. If the aggregate value of the library material is Five Hundred Dollars (\$500.00) or less, by fine not exceeding One Thousand Dollars (\$1,000.00), or the offender shall make restitution to the library facility, including payment of all related expenses incurred by the library facility as a result of the actions of the offender, or both such fine and restitution; or
2. If the aggregate value of the library material is greater than Five Hundred Dollars (\$500.00), by fine not exceeding Five Thousand Dollars (\$5,000.00), or the offender shall make restitution to the library facility, including payment of all expenses incurred by the library facility as a result of the actions of the offender, or both such fine and restitution.

D. Copies of the provisions of this section shall be posted on the premises of each library facility.

History

Source. LA 10-90, eff. November 13, 1990.

CHAPTER 69

MALICIOUS MISCHIEF

Section

- 1753. Highways, injuries to
- 1753.3. Throwing, dropping, depositing, or otherwise placing litter upon highways, roads, or public property—Penalties
- 1753.4. Erection of signs and markers along state and federal highways
- 1753.5. Erection of signs and markers along county roads
- 1753.6. Enforcement
- 1753.7. Exceptions
- 1753.8. Defacing, stealing or possessing road signs or markers—Penalties
- 1754. Obstructing highways—Punishment—Damages
- 1757. Telephone and telegraph lines—Injuries—Removal or obstruction—Interception of messages
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- 1759. Penalty
- 1760. Malicious injury or destruction of property generally—Punishment—Damages
- 1761. Following sections do not restrict 21 CNCA § 1760
- 1761.1. Dumping, etc. of trash on public or private property prohibited—Penalties
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- 1779. Injuring written instruments the false making of which would be forgery
- 1782. Messages—Disclosing contents of
- 1784. Works of art or ornamental improvements, injuring
- 1785. Works of literature or art in public place, injuring
- 1786. Injuries to pipes and wires
- 1787. Automobile or motor vehicle, loitering in, injuring or molesting
- 1788. Penalty
- 1789. Caves or caverns, injuring
- 1790. Penalties

§ 1753. Highways, injuries to

Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such way, is guilty of a crime.

MALICIOUS MISCHIEF

21 CNCA § 1753.4

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O**1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1753.3. Throwing, dropping, depositing, or otherwise placing litter upon highways, roads, or public property – Penalties

A. The operator of a vehicle shall be liable pursuant to subsection (B) of this section for any act of throwing, dropping, depositing, or otherwise placing any litter from his vehicle upon highways, roads, or public property unless any other person in the vehicle admits to or is identified as having committed said act. Any person who admits to or is identified as having committed said act shall be liable for said act.

B. Any person convicted of violating the provisions of subsection (A) of this section shall be subject to the provisions of 21 CNCA § 1761.1.

C. As used in this section, **“litter”** means any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, any substance which may cause a fire, any bottles, cans, trash, garbage, or debris of any kind. As used in this section, **“litter”** shall not include trash, garbage, or debris placed beside a public road for collection by a garbage or collection agency, or deposited upon or within public property designated by the nation or by any of its agencies or political subdivisions as an appropriate place for such deposits if the person making the deposit is authorized to use the property for such purpose.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O**1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1753.4. Erection of signs and markers along state and federal highways

The State Highway Department is hereby authorized and directed to cause to be erected upon the property of or rights-of-way of state and federal highways, at locations most appropriate for carrying out the purposes and intent of this act, signs or markers for each prohibited act enumerated herein, of a size not less than thirty (30) inches square with plainly visible wording to inform users of said highways that the acts enumerated herein do constitute a crime and the maximum penalty for violations, and such additional wording as the State Highway Department deems desirable to assist in carrying out the

purposes and intent of this act. Any sign or marker so erected or placed shall be placed at a right angle to the roadbed. The location of signs or markers upon the right-of-way shall in no manner interfere with the signs or markers used to designate route numbers or traffic control markers, signs, signals or devices.

21 CNCA § 1753.4

CRIMES AND

PUNISHMENTS

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O**1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1753.5. Erection of signs and markers along county roads

The boards of county commissioners are hereby authorized to erect signs or markers, as provided herein, upon the property of or right-of-way of county roads within their respective jurisdictions.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O**1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1753.6. Enforcement

The State Highway Patrol, the sheriffs of the several counties, and all other peace officers in this Nation shall have the authority and it shall be their duty to enforce the provisions of 21 CNCA § 1753.3.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O**1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1753.7. Exceptions

The provisions of this act shall not apply to:

1. Flaming or glowing substances which by law may be placed upon highway rights-of-way for the purposes of highway safety; or
2. Trash, garbage or debris placed beside a public road for collection by an established garbage or collection agency.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O**1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1753.8. Defacing, stealing or possessing road signs or markers – Penalties

Any person who defaces, steals or possesses any road sign or marker posted by any city, state, county, or Cherokee Nation shall be deemed guilty of a crime

and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars (\$100.00), or by imprisonment in the penal institution for a term of not more than thirty (30) days, or by both such fine and imprisonment.

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History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O623.
Malicious Mischief O1.
Westlaw Topic Nos. 209,248.

C.J.S. Indians §§ 151 to 179.
C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1754. Obstructing highways – Punishment – Damages

Every person who shall knowingly and willfully obstruct or plow up, or cause to be obstructed or plowed up, any public highway or public street of any town, except by order of the road supervisors for the purpose of working the same, or injure any bridge on the public highway, shall be deemed guilty of a crime, and upon conviction shall be punished by fine not exceeding One Thousand Dollars (\$1,000.00), and shall be liable for all damages to person or property by reason of the same.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O535, 623.
Malicious Mischief O1.
Westlaw Topic Nos. 209,248.

C.J.S. Indians §§ 151 to 179.
C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1757. Telephone and telegraph lines – Injuries – Removal or obstruction – Interception of messages

Any person who maliciously, or without legal authority, removes, injures, or obstructs any line of telephone or telegraph, or any part thereof, or apparatus therewith connected, or severs any wires thereof, or fraudulently or without legal authority, intercepts any message, communication or conversation in its passage over such wires, or who fraudulently or without legal authority connects to any telephone or telegraph line or wire any instrument or other apparatus capable of being used in intercepting messages, communications or conversations, is guilty of a crime and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00), or imprisonment in the penal institution not exceeding one (1) year, or by both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief O1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

**§ 1758. Irrigation ditches, canals, water lines or conduits – Interference
with**

It shall be unlawful for any person to divert any of the waters from any irrigation ditch, canal, waterline or conduit, in this Nation, or to interfere in

any manner whatever with any irrigation ditch, canal, water line or conduit, without first having obtained the permission of the owner of such ditch, canal, waterline or conduit, or of the person or persons lawfully in charge thereof.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief O1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1759. Penalty

Any person violating any of the provisions of 21 CNCA § 1758 shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief O1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1760. Malicious injury or destruction of property generally – Punishment – Damages

A. Every person who maliciously injures, defaces or destroys any real or personal property not his own, in cases other than such as are specified in 21 CNCA § 1761 and following sections, is guilty of a crime.

B. In addition to the punishment prescribed in subsection (A) of this section, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property or public officer having charge thereof.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O535.
Malicious Mischief O1.
Westlaw Topic Nos. 209, 248.

C.J.S. Indians §§ 151 to 179.
C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1761. Following sections do not restrict 21 CNCA § 1760

The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of 21 CNCA § 1760.

Source. LA 10–90, eff. November 13, 1990. **History**

Library References

Malicious Mischief **O**1.

Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

**§ 1761.1. Dumping, etc. of trash on public or private property prohibited –
Penalties**

A. Any person who deliberately places, throws, drops, deposits or discards any garbage, trash, waste, rubbish, refuse, debris or other deleterious substance on any public property or on any private property of another without consent shall be guilty of a crime.

B. Any person convicted of violating the provisions of subsection (A) of this section shall be punished by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment in the penal institution for not more than thirty (30) days, or by both such fine and imprisonment.

C. In addition to the penalty prescribed by subsection (B) of this section, the Court may direct the person to make restitution to the property owner affected; to remove and properly dispose of the garbage, trash, waste, refuse or debris from the property; to pick up, remove and properly dispose of garbage, trash, waste, rubbish, refuse, debris and other nonhazardous deleterious substances from public property; or any combination of the foregoing which the Court, in its discretion, deems appropriate. The dates, times and locations of such activities shall be scheduled by the marshal pursuant to the order of the Court in such a manner as not to interfere with the employment or family responsibilities of the person.

D. In addition to the penalty prescribed in subsection (B) and the restitution prescribed in subsection (C), the Court may order the defendant to pay into the reward fund as prescribed in 22 CNCA § 1334 an amount not to exceed One Thousand Dollars (\$1,000.00).

E. Any full-time peace officer in this Nation including but not limited to the Marshal, state highway patrol, county sheriffs and deputies, municipal law enforcement department, and any other employee of this Nation having peace officer authority upon investigation of the disposal of any substance in violation of this section which contains three or more items bearing a common address in a form which tends to identify the latest owner of the items shall create a rebuttable presumption that all competent persons residing at such address committed the unlawful act. The discovery or use of such evidence shall not be sufficient to qualify for the reward provided in 22 CNCA § 1334.

F. Any person convicted of violating the provisions of subsection (A) of this section with any flaming or glowing substance, or any substance which may cause a fire shall be punished by a fine of not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than sixty (60) days, or by both such fine and imprisonment. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded. Any person violating the provisions of this subsection shall be liable for all damages caused by the violation. Damages shall be recoverable in any court of competent jurisdiction.

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G. During a burn ban declared by the Principal Chief, any person convicted of violating the provisions of subsection (A) of this section with any flaming or glowing substances, or any substance which may cause a fire shall be punished by a fine of not less than Four Thousand Dollars (\$4,000.00) nor more than Ten Thousand Dollars (\$10,000.00) or by imprisonment for not more than one hundred twenty (120) days, or by both such fine and imprisonment. The penalties collected from the payment of the citations shall, after deduction of court costs, be paid to the fire department of the district in which the flaming or glowing substance was discarded. Any person violating the provisions of this subsection shall be liable for all damages caused by the violation. Damages shall be recoverable in any court of competent jurisdiction.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Library References

Indians O623.

Malicious Mischief O1.

Westlaw Topic Nos. 209, 248.

C.J.S. Indians §§ 151 to 179.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1761.2. Illegal dumping on tribal land prohibited – Penalties

A. It shall be a crime for any person to dump, deposit, throw or in any manner leave or abandon any liquid or solid waste, including trash, ashes or incinerator residue, street refuse, dead animals, demolition waste, construction waste, solid or semi-solid or semi-solid commercial and industrial waste, hazardous waste, explosives, pathological waste, chemical waste, herbicides, pesticides, or any scrap materials on property owned by or held in trust for Cherokee Nation without the written permission of Cherokee Nation.

B. Any party in violation of this statute shall be subject to any provision for fines and/or other punishment as provided by Cherokee Nation, state or federal law.

History

Source. LA 26–87, eff. November 14, 1987.

Amended. LA 10–90, eff. November 13, 1990.

Library References

Indians O623.

Malicious Mischief O1.

Westlaw Topic Nos. 209, 248.

C.J.S. Indians §§ 151 to 179.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1762. Mining claims – Unlawful to tear down legal notice or deface any record

Any person who shall willfully or maliciously tear down or deface any legal notice posted on any mining claim, or take up or destroy any stakes or monument

used for marking such mining claims, or who shall willfully or maliciously throw or place any dirt, water, brush, stones or other foreign substance into any mining shaft or tunnel belonging to or claimed by another, or who shall willfully or maliciously alter, erase, deface or destroy any record

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kept by any legally-elected mining recorder shall be deemed guilty of a crime and shall upon conviction thereof be punished by a fine of not less than Twenty- five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00), or by imprisonment for not less than ten (10) days nor more than six (6) months or by both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief O1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1765. House of worship or contents, injuring

Every person who willfully breaks, defaces, or otherwise injures any house or place of worship including traditional stomp grounds, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief O1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1767.1. Bombs and explosives – Foul, poisonous, offensive or injurious substances – Telephone threats

A. Any person who shall willfully and maliciously commit any of the following acts shall be deemed guilty of a crime:

1. Any person who places in, upon, under, against, or near to any building, car, aircraft, motor or other vehicle, vessel or structure, any gunpowder, dynamite, bomb, any explosive substance, or incendiary device, with unlawful intent to destroy, throw down, or injure, in whole or in part, such property of another, or conspires, aids, counsels, or procures the destruction of any building or structure, public or private, or any car, aircraft, motor or other vehicle, vessel or structure, shall be guilty of a crime; or
2. Any person who places in, upon, under, against or near to any building, car, aircraft, motor or other vehicle, vessel or structure, any gunpowder, dynamite, bomb, or any explosive substance with intent to destroy, throw down or injure the whole or any part thereof, under circumstances that, if such intent were accomplished, human life or safety would be endangered thereby, shall be guilty of a crime; or
3. Every person who maliciously, by the explosion of gunpowder, dynamite or any explosive substance, destroys, throws down, or injures any

property of another, or by which explosion an injury is caused to the person of another, shall be guilty of a crime; or

4. Any person or group of persons who shall willfully manufacture, sell, transport, or possess a bomb or any explosive including an incendiary device or the component parts of an explosive or incendiary device with knowledge or intent that it will be used to unlawfully kill, injure or intimidate any person, or unlawfully damage any real or personal property, is guilty of a crime; or

5. Any person who shall place in, upon, under, against or near to any building, car, aircraft, motor or other vehicle, vessel or structure, any foul, poisonous, offensive or injurious substance or compound, with intent to wrongfully injure, molest or coerce another or to injure or damage the property of another, shall be guilty of a crime; or

6. Any person or group of persons who maliciously injures, damages or attempts to damage by an explosive, including an incendiary device, any person, persons, or property, whether real or personal, is guilty of a crime; or

7. Any person who uses the telephone or other instrument to willfully make any threat or maliciously convey information known to be false, concerning an attempt or alleged attempt to kill, injure or intimidate any person or unlawfully damage any real or personal property by means of an explosive, including an incendiary device, shall be guilty of a crime.

B. Nothing contained herein shall be construed to apply to, or repeal any laws pertaining to, the acts of mischief of juveniles involving noninjurious firecrackers or devices commonly called “stink bombs.”

History

Source. LA 10–90, eff. November 13, 1990.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Malicious Mischief O1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1767.2. Violations of preceding section

Any person violating any of the provisions of 21 CNCA § 1767.1 shall be deemed guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1767.3. Definitions

As used in 21 CNCA § 1767.1:

1. “**Component parts**” means separate parts which if assembled would form an explosive device. Component parts of an “**incendiary device**” shall consist of an inflammable material, a breakable container and a source of ignition.
2. “**Explosive**” or “**explosives**” means any chemical compound, mixture

or device, the primary or common purpose of which is to function by

explosion, i.e., with substantial instantaneous release of gas and heat, unless such compound, mixture or device is otherwise specifically classified by the United States Department of Transportation. The term **“explosives”** shall include all material which is classified as explosives by the United States Department of Transportation.

3. **“Incendiary device”** means any chemical compound, mixture or device, the primary purpose of which is to ignite on impact or as a result of chemical reaction such as a **“molotov cocktail”** or **“firebomb”** which is ignited on impact, causing a mechanical reaction of the container’s break- ing and permitting the inflammable matter to spread or splatter and is ignited from the burning wick or hyperbolic reaction of chemicals.

2. **“Person”** means any individual, firm, copartnership, corporation, company, association, joint stock association, and includes any trustee, receiver, assignee or personal representative thereof.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1767.4. Tracing of telephone calls—Immunity

Any telephone company, its officers, agents or employees, when acting upon any request by the state or any governing body of a political subdivision thereof, which shall expressly include school districts, shall make reasonable effort to identify the telephone from which any telephone communication claimed to be prohibited by this act is being or has been made. If identification of such telephone is made, the telephone company, its officers, agents or employees shall provide to state law enforcement officials the location of such telephone. Any telephone company, its officers, agents or employees, in acting pursuant to this section of this act, shall be immune from any civil or criminal action or liability under this or any other state or local act, rule, regulation or ordinance.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1768. Malicious injury to freehold—Carrying away earth, soil or stone

Every person who willfully commits any trespass by either:

1. Cutting down or destroying any kind of wood or timber, standing or growing upon the lands of another; or, driving or riding through, into, or across any cultivated hedge or tree row, or any grove of ornamental trees or orchard of fruit trees growing upon the land of another, or in any other manner injuring the same; or
2. Carrying away any kind of wood or timber that has been cut down, and is lying on such lands; or
3. Maliciously severing from the freehold any produce thereof, or any- thing attached thereto; or
4. Digging, taking, or carrying away from any lot situated within the bounds of any incorporated city, without the license of the owner, or legal occupant thereof, any earth, soil or stone, being a part of the freehold, or severed therefrom at some previous time, under such circumstances as

would render the trespass a larceny, if the thing so severed or carried away were personal property; or

5. Digging, taking, or carrying away from any land in any incorporated city or town of this state, laid down on the map or plan of said city or town as a street or avenue, or otherwise established or recognized as a street or avenue, without the license of the mayor and common council or other governing body of such city or town, or owner of the fee thereof, any earth, soil or stone under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property; is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief O1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1770. Standing crops, injuring

Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this chapter or by some other statute, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief O1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1771. Injuring fruit, melons or flowers in the day time

Every person who maliciously or mischievously enters in the day time, the enclosure, or goes upon the premises of another, with the intent to knock off, pick, destroy, or carry away, or having lawfully entered or gone upon does afterward wrongfully knock off, pick, destroy, or carry away any apples, peaches, pears, plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, shall be punished by a fine not exceeding One Hundred Dollars (\$100.00) and not less than Five Dollars (\$5.00), or by imprisonment in the penal institution not exceeding thirty (30) days.

Source. LA 10–90, eff. November 13, 1990.

History

Malicious Mischief O1.
Westlaw Topic No. 248.

Library References

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1772. Injuring fruit, melons or flowers in the night time

Every person who shall maliciously or mischievously enter the enclosure, or go upon the premises of another in the night time, and knock off, pick, destroy, or carry away, any apples, peaches, pears, plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, or having entered the enclosure or gone upon the premises of another, in the night time, with the intent to knock off, pick, destroy, or carry away any fruit or flowers, as aforesaid, be actually found thereon, shall, on conviction thereof, be punished by fine not exceeding One Hundred (\$100.00) and not less than Ten Dollars (\$10.00), or by imprisonment in the penal institution not exceeding thirty (30) days.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1773. Injuring fruit or ornamental trees

Every person who shall maliciously or mischievously, bruise, break or pull up, cut down, carry away, destroy, or in anywise injure any fruit or ornamental tree, shrub, vine or material for hedge, being, growing, or standing on the land of another, shall be punished by fine not exceeding One Hundred (\$100.00) and not less than Ten Dollars (\$10.00), or by imprisonment in the penal institution not exceeding thirty (30) days.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1774. Removing or altering landmarks

Every person who either:

1. Maliciously removes any monuments of stone, wood, or other material, erected for the purpose of designating any point in the boundary of any lot or tract of land; or
2. Maliciously defaces or alters the marks upon any tree, post or other monument, made for the purpose of designating any point, course, or line in any such boundary; or
3. Maliciously cuts down or removes any tree upon which any such marks

History

Source. LA 10–90, eff. November 13, 1990.

have been made for such purpose, with intent to destroy such marks;
is guilty of a crime.

History

Source. LA 10-90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1775. Piers or dams, interfering with

Every person who, without authority of law, interferes with any pier, booms or dams, lawfully erected or maintained upon any waters within this Nation, or hoists any gate in or about said dams, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1776. Destroying dam

Every person who maliciously destroys any dam or structure erected to create hydraulic power, or any embankment necessary for the support thereof, or maliciously makes, or causes to be made, any aperture in such dam or embankment, with intent to destroy the same, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1777. Piles, removing or injuring

Every person who maliciously draws up or removes or cuts or otherwise injures any piles fixed in the ground and used for securing any bank or dam of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, dock, quay, jetty or lock, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1778. Train signal light, removing or masking—False light or signal

Every person who unlawfully masks, alters or removes any light or signal, or willfully exhibits any false light or signal, with intent to bring any locomotive or any railway car or train of cars into danger, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1779. Injuring written instruments the false making of which would be forgery

Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument being the property of another, the false making of which would be forgery, is punishable in the same manner as the forgery of such instrument is made punishable.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1782. Messages – Disclosing contents of

Any person who shall disclose the contents of any telegraphic dispatch or telephone message or communication, or any part thereof, addressed to or which he knows to be intended for another person without the permission of such person, except upon the lawful order of a Court, or the Judge thereof, with intent to cause injury, damage or disgrace to such other person, or which does in fact cause injury, damage or disgrace to such other person, shall be guilty of a crime, and upon conviction thereof shall be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the penal institution not less than thirty (30) days, nor more than one (1) year, or by both such imprisonment and fine. Provided, that nothing herein shall apply to public officers in the discharge of their duties.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1784. Works of art or ornamental improvements, injuring

Every person who willfully injures, disfigures or destroys, not being the owner thereof, any monument work of art, or useful or ornamental improvement, or any shade tree or ornamental plant, growing therein, whether situated upon private ground, or on any street, sidewalk or public park or place, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

**Library
References** ○
Malicious
Mischief 1.
W
estlaw Topic No. 248.

21 CNCA § 1784

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1785. Works of literature or art in public place, injuring

Every person who maliciously cuts, tears, disfigures, soils, obliterates, breaks or destroys any book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen or other work of literature or art, or object of curiosity deposited in any public library, gallery, museum, collection, fair or exhibition, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1786. Injuries to pipes and wires

Every person who willfully breaks, digs up or obstructs any pipes or mains for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, or injures, cuts, breaks down or destroys any electric light wires, poles or appurtenances, or any telephone or telegraph wires, cable or appurtenances, is guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief ○1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1787. Automobile or motor vehicle, loitering in, injuring or molesting

From and after the passage of this act, it shall be unlawful for any person or persons to loiter in or upon any automobile or motor vehicle, or to deface or injure such automobile or motor vehicle, or to molest, drive, or attempt to drive any automobile, for joyriding or any other purpose, or to manipulate or meddle with

any machinery or appliances thereof without the consent of the owner of such automobile or motor vehicle.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O1**.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1788. Penalty

Any person violating 21 CNCA § 1787 shall be deemed guilty of a crime.

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History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O**1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1789. Caves or caverns, injuring

A. It shall be unlawful for any person to willfully or knowingly break, break off, crack, carve upon, write or otherwise mark upon, or in any manner destroy, mutilate, deface, mar or harm any natural material found in any cave or cavern located on any public lands or other lands owned by the United States, Cherokee Nation or, on private property without the prior written consent of the owner; to kill, harm or disturb any plant or animal life found in any cave or cavern, and, whether inside or outside a cave, any fish of the genera chologaster, typhlichthys or amblyopsis (commonly known as cavefish, springfish or blindfish), any salamander of the genus typhlotriton (commonly known as the Ozark blind, grotto or spring grotto salamander), or the species eurycea lucifuga (commonly known as cave salamander); provided, nothing in this chapter shall be construed as prohibiting the commercial mining of bat guano or the destruction of any predatory terrestrial mammal or poisonous snake seeking shelter within a cave if such destruction is not otherwise unlawful.

B. Any person who deliberately places, throws, drops, deposits or discards any garbage, trash, waste, rubbish, refuse, debris or other deleterious substance in or near any cave, cavern or natural subterranean drainage system shall be subject to the provisions of 21 CNCA § 1751.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Malicious Mischief **O**1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 1790. Penalties

Any person violating any provision of this act shall be punished by a fine not exceeding Five Thousand Dollars (\$5,000.00) or by imprisonment for not exceeding twelve (12) months, or by both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Amended. LA 10–13, eff. April 13, 2013.

Library References

Indians **O**623, 624.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

CHAPTER 70

OTHER OFFENSES AGAINST PROPERTY RIGHTS

Section

1835. Trespass on posted property after being forbidden or without permission—
Exemptions—Penalty—Entry into pecan grove without consent
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REPORTING OF FIRES

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from another jurisdiction—Bringing of action
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certain purposes—Penalty

§ 1835. Trespass on posted property after being forbidden or without permission—Exemptions—Penalty—Entry into pecan grove without consent

A. Whoever shall willfully or maliciously enter the garden, yard, pasture or field of another after being expressly forbidden to do so or without permission by the owner or lawful occupant thereof when such property is posted shall be deemed guilty of trespass and upon conviction thereof shall be fined in any sum not to exceed Two Hundred Fifty Dollars (\$250.00); provided, that this provision shall not apply to registered land surveyors and registered professional engineers for the purpose of land surveying in the performance of their professional services; and, provided further, that anyone who willfully or maliciously enters any such garden, yard, pasture or field, and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of a crime and upon conviction thereof shall be fined in any sum not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by confinement in the penal institution for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment. For purposes of this section,

“posted” means exhibiting signs to read as follows: “PROPERTY RESTRICTED”; “POSTED–KEEP OUT”; “KEEP OUT”; “NO TRESPASSING”; or similar signs which are displayed. Property that is fenced or not fenced must have such signs placed conspicuously and at all places where entry to the property is normally expected.

B. Whoever shall willfully enter the pecan grove of another without the prior consent of the owner or occupant thereof to so do shall be deemed guilty of trespass and upon conviction thereof shall be fined in any sum not to exceed Twenty-five Dollars (\$25.00); provided, that anyone who willfully enters any such pecan grove and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of a crime and upon conviction thereof shall be fined in any sum not more than Five Hundred Dollars (\$500.00), or by confinement in the penal institution for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Trespass O81.
Westlaw Topic No.386.
C.J.S. Trespass § 162.

§ 1835.1. Entry or presence upon premises of place of business of persons convicted of certain crimes

A. Every person, partnership, corporation or other legal entity engaged in any public business, trade, or profession of any kind wherein merchandise, goods or services are offered for sale may forbid the entry or presence of any person upon the premises of the place of business, if the person has been convicted of a crime involving entry only or criminal acts occurring upon any real property owned, leased, or under the control of such person, partnership, corporation or other legal entity. Such crimes shall include, but are not limited to, shoplifting, vandalism, and disturbing the peace while upon the premises of any place of business of the person, partnership, corporation, or other legal entity.

B. In order to exercise the authority conferred by subsection (A) of this section, the owner or an agent of the owner of a public business, trade, or profession must notify the person whom the owner or agent desires to prohibit from such owner’s place of business.

C. No person shall willfully enter or remain upon the premises after being expressly forbidden to do so in the manner provided for in this section. Any person convicted of violating the provisions of this section, upon conviction, shall be guilty of trespass and shall be punished by a fine of not more than Two Hundred Fifty Dollars (\$250.00) or by confinement in the penal institution for a term of not more than thirty (30) days, or by both such fine and imprisonment.

D. The provisions of this section shall not preclude any other remedy allowed by law.

History

Source. LA 10–90, eff. November 13, 1990.

SERIAL NUMBERS ON FARM MACHINERY**§ 1841. Destruction, removal, altering, covering or defacing**

No person, firm, association or corporation shall destroy, remove, alter, cover or deface the manufacturer's serial number from any tractor, combine, corn picker, corn sheller or hay baler, or any other piece of farm machinery having a retail value of more than Twenty-five Dollars (\$25.00) upon which the manufacturer has placed a serial number; nor shall any person, firm, corporation or association, sell, offer for sale, or lease, or otherwise dispose of any such equipment on which the serial numbers have been destroyed, removed, altered, covered or defaced.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1842. Exception to application of act

The provisions of 21 CNCA § 1841 shall not apply to any machine or part thereof now owned and used by a bona fide farmer who has had such equipment in his possession prior to the effective date of this act.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1843. Violations—Punishment

Any person violating the provisions of 21 CNCA § 1841, shall, upon conviction thereof, be fined not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned for not less than thirty (30) days nor more than one (1) year, or both, for each offense.

History

Source. LA 10–90, eff. November 13, 1990.

REPORTING OF FIRES**§ 1851. False reporting**

It shall be unlawful for any person to report, or cause to be reported, directly or indirectly, the existence of a fire to a fire department, fire station or other agency charged with the responsibility of extinguishing fires, unless such person knows

or reasonably believes that such fire is in existence.

Source. LA 10–90, eff. November 13, 1990.

OFFENSES AGAINST PROPERTY RIGHTS

21 CNCA § 1861

§ 1852. Posting of act

The fire chief or principal officer of every fire department shall post, or cause to be posted, a copy of this act at every fire alarm box or place specially designed for the reporting of fires in his jurisdiction.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1853. Penalty

Any person violating any of the provisions of this section or 21 CNCA § 1851 or 1852 shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

TELEPHONE SOLICITATION

§ 1861. Information to be furnished by solicitor – Calls exempt – Penalties

A. The name and organizational or business affiliation of every person who by telephone engages in the solicitation or sale of any item, tangible or intangible, shall, by such person, be given to the person answering such telephone call. Such information shall be given immediately and prior to any solicitation or sales presentation. The telephone number of the person placing the call must be given upon request of the party being called. The person in whose name the telephone is registered is responsible for his agents and employees conforming with the provisions of this section and 21 CNCA § 1862. This section and 21 CNCA § 1862 do not apply to calls between persons known to each other and to religious groups, or nonprofit organizations within their own membership, and political activities.

B. No person may solicit contributions by telephone for a charitable nonprofit organization unless that organization has complied with the provisions of the Oklahoma Solicitation of Charitable Contributions Act, 18 O.S. § 552.1 et seq. Such person may charge a reasonable fee for his services, which shall not exceed ten percent (10%) of the net receipts of the solicitation; provided, however, that in the event the fee charged is based upon a predetermined flat fee, then this provision shall not apply. Provided, further, that all sums shall be paid directly to the nonprofit organization.

C. Violation of this act by a person, business or organization shall constitute a crime. A third and subsequent conviction under this act shall constitute a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Oklahoma Statutes

Oklahoma solicitation of charitable contributions act, see 18 O.S. § 552.1 et seq.

ELECTRONIC SOLICITATION

§ 1862. Commercial solicitation by facsimile device – Definitions

As used in this section and 21 CNCA § 1863:

1. **“Commercial solicitation”** means an unsolicited electronic or telephonic transmission to a facsimile device to encourage the purchase of goods, realty, services or to advertise availability of such goods, realty or services. Commercial solicitation shall not include an electronic or telephonic transmission to a facsimile device:
 - a. made in the course of prior negotiations;
 - b. made to a party with whom there was a prior business relationship or an existing relationship;
 - c. made in the course of a follow up to a sales call, sales lead or other business-related contact; or
 - d. made after normal business hours and two pages or less in length.
2. **“Facsimile device”** means a machine capable of receiving and reproducing facsimiles of text or images transmitted electronically or telephonically through telecommunication lines connecting to the machine.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Telecommunications O1012.
Westlaw Topic No. 372.

C.J.S. Telecommunications §§ 123, 125 to
127.

§ 1863. Commercial solicitation by facsimile device – Penalties

A. A person shall not intentionally make an electronic or telephonic transmission to a facsimile device located in this nation by means of any connection with a telephone network for the purpose of transmitting a commercial solicitation, as defined by 21 CNCA § 1862. Each commercial solicitation prohibited by this act shall be a separate violation.

B. Any person violating the provisions of this act shall upon conviction be guilty of a crime punishable by a fine of not less than Five Hundred Dollars (\$500.00) or more than One Thousand Dollars (\$1,000.00) for each separate violation.

C. A person violating the provisions of this act shall be deemed to have committed the violation either at the place where the electronic or telephonic transmission is made or at the place where the transmission is received.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Telecommunications O1012.
Westlaw Topic No. 372.

C.J.S. Telecommunications §§ 123, 125 to
127.

COMPUTER CRIMES ACT

§ 1951. Short title

This act shall be known and may be cited as the Cherokee Nation Computer Crimes Act.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Telecommunications O1347.
Westlaw Topic No. 372.

§ 1952. Definitions

As used in the Cherokee Nation Computer Crimes Act:

1. **“Access”** means to approach, gain entry to, instruct, communicate with, store data in, retrieve data from or otherwise use the logical, arithmetical, memory or other resources of a computer, computer system or computer network;
2. **“Computer”** means an electronic device which performs work using programmed instruction having one or more of the capabilities of storage, logic, arithmetic or communication. The term includes input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network;
3. **“Computer network”** means the interconnection of terminals by communication modes with a computer, or a complex consisting of two or more interconnected computers;
4. **“Computer program”** means a set or series of instructions or statements and related data which when executed in actual or modified form directs or is intended to direct the functioning of a computer system in a manner designed to perform certain operations;
5. **“Computer software”** means one or more computer programs, procedures and associated documentation used in the operation of a computer system;
6. **“Computer system”** means a set of related, connected or unconnected, computer equipment, devices including support devices, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control and software. **“Computer system”** does not include calculators which are not programmable and are not capable of being connected to or used to access other computers, computer networks, computer systems or support devices;
7. **“Data”** means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer

or in transit or presented on a display device;

8. **“Property”** means any tangible or intangible item of value and includes, but is not limited to, financial instruments, geophysical data or the interpretation of that data, information, computer software, computer programs, electronically-produced data and computer-produced or stored data, supporting documentation, computer software in either machine or human readable form, electronic impulses, confidential, copyrighted or proprietary information, private identification codes or numbers which permit access to a computer by authorized computer users or generate billings to consumers for purchase of goods and services, including but not limited to credit card transactions and telecommunications services or permit electronic fund transfers and any other tangible or intangible item of value;
9. **“Services”** includes, but is not limited to, computer time, data processing and storage functions and other uses of a computer, computer system or computer network to perform useful work;
10. **“Supporting documentation”** includes, but is not limited to, all documentation in any form used in the construction, design, classification, implementation, use or modification of computer software, computer programs or data; and
11. **“Victim expenditure”** means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program or data was or was not altered, deleted, disrupted, damaged or destroyed by the access.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1953. Prohibited acts

A. It shall be unlawful to:

1. Willfully, and without authorization, gain or attempt to gain access to and damage, modify, alter, delete, destroy, copy, make use of, disclose or take possession of a computer, computer system, computer network or any other property;
2. Use a computer, computer system, computer network or any other property as hereinbefore defined for the purpose of devising or executing a scheme or artifice with the intent to defraud, deceive, extort or for the purpose of controlling or obtaining money, property, services or other thing of value by means of a false or fraudulent pretense or representation;
3. Willfully exceed the limits of authorization and damage, modify, alter, destroy, copy, delete, disclose or take possession of a computer, computer system, computer network or any other property;
4. Willfully and without authorization, gain or attempt to gain access to a computer, computer system, computer network or any other property;
5. Willfully and without authorization use or cause to be used computer services;
6. Willfully and without authorization disrupt or cause the disruption of computer services or deny or cause the denial of access or other computer

services to an authorized user of a computer, computer system or computer network;

7. Willfully and without authorization provide or assist in providing a means of accessing a computer, computer system or computer network in violation of this section;

B. Any person convicted of violating paragraphs 1, 2, 3, 6 or 7 of subsection (A) of this section shall be guilty of a crime.

C. Any person convicted of violating paragraphs 4 or 5 of subsection (A) of this section shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Telecommunications O1348.
Westlaw Topic No. 372.

§ 1954. Certain acts as prima facie evidence of violation of act

Proof that any person has accessed, damaged, disrupted, deleted, modified, altered, destroyed, caused to be accessed, copied, disclosed or taken possession of a computer, computer system, computer network or any other property, or has attempted to perform any of these enumerated acts without authorization or exceeding the limits of authorization, shall be prima facie evidence of the willful violation of the Cherokee Nation Computer Crimes Act.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O613.
Telecommunications O1348.

Westlaw Topic Nos. 209, 372.
C.J.S. Indians §§ 151 to 179.

§ 1955. Penalties—Civil actions

In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program or data may bring a civil action against any person convicted of a violation of the Cherokee Nation Computer Crimes Act for compensatory damages, including any victim expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program or data was or was not altered, damaged, deleted, disrupted or destroyed by the access. In any action brought pursuant to this subsection the Court may award reasonable attorneys fees to the prevailing party.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Indians O507, 533.
Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1957. Access of computer, computer system or computer network in one jurisdiction from another jurisdiction – Bringing of action

For purposes of bringing a civil or a criminal action under the Cherokee Nation Computer Crimes Act, a person who causes, by any means, the access of a computer, computer system or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system or computer network in each jurisdiction.

History

Source. LA 10–90, eff. November 13, 1990.

§ 1958. Access to computers, computer systems and computer networks prohibited for certain purposes – Penalty

No person shall communicate with, store data in, or retrieve data from a computer system or computer network for the purpose of using such access to violate any of the provisions of the Cherokee Nation Code.

Any person convicted of violating the provisions of this section shall be guilty of a crime.

History

Source. LA 10–90, eff. November 13, 1990.

Library References

Telecommunications O1348.
Westlaw Topic No. 372.

PART VIII
CONTROLLED DANGEROUS SUBSTANCES
CHAPTER 75

UNIFORM CONTROLLED DANGEROUS SUBSTANCES ACT

Article

- I. Definitions
- II. Standards and Schedules
- IV. Offenses and Penalties
- V. Enforcement and Administrative Provisions
- VI. Miscellaneous

Oklahoma Statutes

Uniform controlled dangerous substances act, see 63 O.S. § 2–101 et seq.

ARTICLE I. DEFINITIONS

Section

- 2101. Definitions
- 2101.1. Drug paraphernalia—Factors used in determining
- 2103.1. Investigations—Subpoena power
- 2107. Narcotics Revolving Fund

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.
Causing, aiding, abetting or encouraging minor to participate in certain drug-related crimes, see 21 CNCA § 856.1.
Child endangerment, knowingly permitting physical or sexual abuse, good faith reliance on spiritual healing, penalties, see 21 CNCA § 852.1.
Child under 18 years of age, inducing, keeping, detaining or restraining for prostitution, punishment, see 21 CNCA § 1088.
Delinquency of minor, definitions, see 21 CNCA § 857.
Murder in the first degree, see 21 CNCA § 701.7.
Persons under the influence of alcohol or other intoxicating substance or combination thereof, see 47 CNCA § 11–902.

§ 2101. Definitions

As used in the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq.:

1. **“Administer”** means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient, animal or research subject by:
 - a. A practitioner (or, in his presence, by his authorized agent); or
 - b. The patient or research subject at the direction and in the presence of the practitioner.
2. **“Agent”** means a peace officer appointed by and who acts in behalf of Cherokee Nation or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances

but does not include a common or contract carrier, public warehouseman or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act.

3. **“Bureau of Narcotics and Dangerous Drugs”** means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice.

4. **“Coca leaves”** includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine.

5. **“Commissioner”** or **“Director”** means the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

6. **“Control”** means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act.

7. **“Controlled dangerous substance”** means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act.

8. **“Counterfeit substance”** means a controlled substance which, or the container or labeling of which without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

9. **“Deliver”** or “delivery” means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance whether or not there is an agency relationship.

10. **“Dispense”** means to deliver a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding, necessary to prepare the substance for such distribution. **“Dispenser”** is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject.

11. **“Distribute”** means to deliver other than by administering or dispensing a controlled dangerous substance.

12. **“Distributor”** means a person who distributes.

13. **“Drug”** means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and articles intended for use as a component of any article specified in the paragraph; but does not include devices or their components, parts or accessories.

14. **“Drug-dependent person”** means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or

to avoid the discomfort of its absence.

15. **“Drug paraphernalia”** means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act. It includes, but is not limited to:

- a. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived;
- b. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances;
- c. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance;
- d. Testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances;
- e. Scales and balances used or intended for use in weighing or measuring controlled dangerous substances;
- f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances;
- g. Separation gins and sifters used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining, marihuana;
- h. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances;
- i. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances;
- j. Containers and other objects used or intended for use in parenterally injecting controlled substances into the human body;
- k. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body;
- l. Objects used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:
 - i. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls,
 - ii. Water pipes,
 - iii. Carburetion tubes and devices,
 - iv. Smoking and carburetion masks,

- v. Roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand,
- vi. Miniature cocaine spoons and cocaine vials,
- vii. Chamber pipes,
- viii8. Carburetor pipes,
- ix. Electric pipes,
- x. Air-driven pipes,
- xi. Chillums,
- xii. Bongs,
- xiii. Ice pipes or chillers.

Provided however, drug paraphernalia shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco.

16. **“Hazardous material”** means materials, whether solid, liquid or gas; which are toxic to human, animal, aquatic or plant life, and the disposal of which materials is controlled by Nation or federal guidelines.

17. **“Imitation controlled substance”** means a substance that is not a controlled dangerous substance, which by dosage unit appearance, color, shape, size, markings or by representations made would lead a reasonable person to believe that the substance is a controlled dangerous substance. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an “imitation controlled substance”, the court or authority concerned should consider, in addition to all other factors, the following factors as related to “representations made” in determining whether the substance is an imitation controlled substance:

- a. Statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect;
- b. Statements made to the recipient that the substance may be resold for inordinate profit;
- c. Whether the substance is packaged in a manner normally used for illicit controlled substances;
- d. Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;
- e. Prior convictions, if any, of an owner, or any other person in control of the object, under Nation, state, or federal law related to controlled substances or fraud;
- f. The proximity of the substance to controlled dangerous substances.

18. **“Immediate precursor”** means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a

controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture.

19. **“Indian”** means any person who is a citizen or is eligible for citizenship in a federally-recognized Indian tribe, band or nation.

20. **“Indian country”** means that area defined by 18 U.S.C. § 1151.

21. **“Isomer”** means the optical isomer, except as used in 21 CNCA § 2204(C) and 21 CNCA § 2206(A)(4), **“isomer”** means the optical, positional or geometric isomer. As used in 21 CNCA § 2206(A)(4), the term **“isomer”** means the optical or geometric isomer.

22. **“Laboratory”** means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances for scientific and medical purposes and for purposes of instruction.

23. **“Manufacture”** means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis. **“Manufacturer”** includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

24. **“Marihuana”** means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

25. **“Medical purposes”** means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition not in violation of any state or federal law and not for the purpose of physiological or psychological dependence or other abuse.

26. **“Narcotic drug”** means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- a. Opium, coca leaves and opiates;
- b. A compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates;
- c. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- d. Ecgonine, its derivatives, their salts, isomers and salts of isomers;
- e. A substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically identical with any of the substances referred to in subparagraphs a through d of this paragraph, except that the words “narcotic drug” as used in this act shall not

include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

27. **“Nation”** means Cherokee Nation.
28. **“Opiate”** means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (detromethorphan). It does include its racemic and levorotatory forms.
29. **“Opium poppy”** means the plant of the species *Papaver somniferum* L., except the seeds thereof.
30. **“Peace officer”** means a police officer, marshal, deputy marshal, sheriff, deputy sheriff, prosecuting attorney’s investigator, investigator from the Office of the Attorney General, or any other person elected or appointed by law to enforce any of the criminal laws of this Nation or of the United States.
31. **“Person”** means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
32. **“Poppy straw”** means all parts, except the seeds, of the opium poppy, after mowing.
33. **“Practitioner”** means:
 - a. A physician, dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this Nation; or
 - b. A pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this Nation.
34. **“Production”** includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance.
35. **“Synthetic controlled substance”** means a substance that is not a controlled dangerous substance, but a substance that produces a like or similar physiological or psychological effect on the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse. The court or authority concerned with establishing that the substance is a synthetic controlled substance should consider, in addition to all other factors, the following factors as related to **“representations made”** in determining whether the substance is a synthetic controlled substance:
 - a. Statements made by an owner or by any other person in control of

the substance concerning the nature of the substance, its use or effects;

- b. Statements made to the recipient that the substance may be resold for an inordinate profit;
 - c. Prior convictions, if any, of an owner or any person in control of the substance, under Nation or federal law related to controlled dangerous substances;
 - d. The proximity of the substance to any controlled dangerous substance.
36. **“Tetrahydrocannabinols”** means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marihuana.
37. **“Tribal citizen”** means any person who is a citizen or is eligible for citizenship in Cherokee Nation.
38. **“Ultimate user”** means a person who lawfully possesses a controlled dangerous substance for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–101.

Cross References

Arrest without warrant by officer, see 22 CNCA § 196.
Endeavor and conspiracy, see 21 CNCA § 2408.
Prohibited acts A—Penalties, see 21 CNCA § 2401.
Prohibited acts B—Penalties, see 21 CNCA § 2402.
Prohibited acts C—Penalties, see 21 CNCA § 2403.
Prohibited acts E—Penalties, see 21 CNCA § 2405.
Property subject to forfeiture, see 21 CNCA § 2503.
School property—Distribution, dispensing or possession of controlled dangerous substance or
Imitation with intent to distribute, see 21 CNCA § 2401A.
Specific enforcement and seizure, see 27 CNCA § 709.

United States Code

Indian country defined, see 18 U.S.C. § 1151.

§ 2101.1. Drug paraphernalia—Factors used in determining

In determining whether an object is “drug paraphernalia”, a court shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use.
2. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Dangerous Substances Act.
3. The proximity of the object to controlled dangerous substances.
4. The existence of any residue of controlled dangerous substances on the object.
5. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who intend to use the object to facilitate a violation of the Uniform Controlled Dangerous Substances Act; the innocence of an owner, or of anyone in control of the

object, as to a direct violation of this act shall not prevent a finding that the object is drug paraphernalia.

6. Instructions, oral or written, provided with the object which either state directly or imply that the object is to be used for the consumption of controlled substances.

7. Descriptive materials accompanying the object which explain or depict its use as an object for the consumption of controlled substances.

8. The manner in which the object is displayed for sale.

9. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

10. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.

11. The existence and scope of legitimate uses for the object in the community.

12. Expert testimony concerning its use.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-101.1.

Library References

Controlled Substances O42.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 221 to 224,
323.

§ 2103.1. Investigations – Subpoena power

A. In the investigation by any Cherokee Nation peace officer pursuant to the provisions of the Uniform Controlled Dangerous Substances Act with respect to controlled substances, the officer, if recommended and approved by the Prosecuting Attorney of Cherokee Nation District Court, may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records, including books, papers, documents, and other tangible things which are determined to be relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in the Nation to a designated location at the seat of government. Witnesses summoned pursuant to this section shall be paid the same fees and mileage that are paid witnesses in the courts of this Nation.

B. The witness shall have the option of complying with said subpoena by:

1. Appearing and/or producing documents, as requested; or
2. Notifying the Marshal office, in writing, of refusal to appear or produce documents, within ten (10) days of the date of service.

A subpoena issued pursuant to this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

C. In the case of contumacy by or refusal to obey a subpoena issued to any person, the aid of the District Court of Cherokee Nation may be invoked. The court may issue an order requiring the subpoenaed person to appear and to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the Court may be punished by the Court as an indirect contempt thereof.

D. The District Court of Cherokee Nation wherein the subpoena is served may quash a subpoena issued pursuant to this section, upon a motion to quash the subpoena filed with the Court by the party to whom the subpoena is issued.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-103.1.

Library References

Indians O600, 604.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 179.

§ 2107. Narcotics Revolving Fund

There is hereby created in the National Treasury a revolving fund for the control of narcotics and dangerous drugs to be designated the ‘Narcotics Revolving Fund’. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies received from the sale of surplus and confiscated

property, fees and receipts collected pursuant to the Oklahoma Open Records Act, gifts, bequests, devises, contributions or grants, public or private, including federal law or regulation, registration fees and receipts relating to prescription pads and receipts from any other source. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended for the control of narcotics and dangerous drugs.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–107.

Library References

Indians O210.

Westlaw Topic No.209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

Cross References

Appointment of fines, see 21 CNCA § 2416.

Prohibited acts A—Penalties, see 21 CNCA § 2401.

Property subject to forfeiture, see 21 CNCA § 2503.

ARTICLE II. STANDARDS AND SCHEDULES

Section

- 2201. Future “controlled dangerous substances” included
- 2202. Nomenclature in schedules
- 2203. Schedule I characteristics
- 2204. Schedule I
- 2205. Schedule II characteristics
- 2206. Schedule II
- 2207. Schedule III characteristics
- 2208. Schedule III
- 2209. Schedule IV characteristics
- 2210. Schedule IV
- 2211. Schedule V characteristics
- 2212. Schedule V

§ 2201. Future “controlled dangerous substances” included

Any substances, not listed in the following schedules, which are subsequently determined to be “controlled dangerous substances” and included in 63 O.S. § 2–201 et seq. are included as controlled dangerous substances in this title.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–201.

Oklahoma Statutes

Authority to control, recommendations, see 63 O.S. § 2–201 et seq.

Library References

Controlled Substances ○9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to
227, 304 to 305.

§ 2202. Nomenclature in schedules

The schedules provided by this act include the controlled dangerous substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–202.

Library References

Controlled Substances ○9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to
227, 304 to 305.

§ 2203. Schedule I characteristics

Schedule I includes substances with the following characteristics:

1. High potential for abuse;
2. No accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–203.

Cross References

Willfully poisoning food, drink, medicine, or patent or proprietary medicine, see 21 CNCA § 832.

Library References

Controlled Substances O9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to
227, 304 to 305.

§ 2204. Schedule I

The controlled substances listed in this section are included in Schedule I.

1. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- a. Acetylmethadol,
- b. Allylprodine,
- c. Alphacetylmethadol,
- d. Alphameprodine,
- e. Alphamethadol,
- f. Benzethidine,
- g. Betacetylmethadol,
- h. Betameprodine,
- i. Betamethadol,
- j. Betaprodine,
- k. Clonitazene,
- l. Dextromoramide,
- m. Dextrorphan (except its methyl ether),
- n. Diampromide,
- o. Diethylthiambutene,
- p. Dimenoxadol,
- q. Dimepheptanol,
- r. Dimethylthiambutene,
- s. Dioxaphetyl butyrate,
- t. Dipipanone,
- u. Ethylmethylthiambutene,
- v. Etonitazene,
- w. Etoxeridine,
- x. Furethidine,
- y. Hydroxypethidine,
- z. Ketobemidone,
- aa. Levomoramide,
- bb. Levophenacymorphan,

cc. Morpheridine,

- dd. Noracymethadol,
- ee. Norlevorphanol,
- ff. Normethadone,
- gg. Norpipanone,
- hh. Phenadoxone,
- ii. Phenampromide,
- jj. Phenomorphan,
- kk. Phenoperidine,
- ll. Piritramide,
- mm. Proheptazine,
- nn. Properidine,
- oo. Racemoramide,
- pp. Trimeperidine.

2. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- a. Acetorphine,
- b. Acetyldihydrocodeine,
- c. Benzylmorphine,
- d. Codeine methylbromide,
- e. Codeine-N-Oxide,
- f. Cyprenorphine,
- g. Desomorphine,
- h. Dihydromorphine,
- i. Etorphine,
- j. Heroin,
- k. Hydromorphenol,
- l. Methyldesorphine,
- m. Methylhydromorphine,
- n. Morphine methylbromide,
- o. Morphine methylsulfonate,
- p. Morphine-N-oxide,
- q. Myrophine,
- r. Nicocodeine,
- s. Nicomorphine,
- t. Normorphine,
- u. Phoclodine,
- v. Thebacon.

3. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. 3,4-methylenedioxy amphetamine,

- b. 5-methoxy-3,4-methylenedioxy amphetamine,
 - c. 3, 4, 5-trimethoxy amphetamine,
 - d. Bufotenine,
 - e. Diethyltryptamine,
 - f. Dimethyltryptamine,
 - g. 4-methyl-2, 5-dimethoxyamphetamine,
 - h. Ibogaine,
 - i. Lysergic acid diethylamide,
 - j. Marihuana,
 - k. Mescaline,
 - l. N-ethyl-3-piperidyl benzilate,
 - m. N-methyl-3-piperidyl benzilate,
 - n. Psilocybin,
 - o. Psilocyn,
 - p. 2, 5 dimethoxyamphetamine,
 - q. 4 bromo-2, 5-dimethoxyamphetamine,
 - r. 4 methoxyamphetamine,
 - s. Cyclohexamine,
 - t. Thiphen analog of phencyclidine, also known as 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-thienyl analog of phencyclidine; TPCP, TCP,
 - u. Phencyclidine (PCP),
 - v. Pyrrolidine analog for phencyclidine, also known as 1-(1-phenylcyclohexyl)—pyrrolidine, PCPy, PHP.
4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:
- a. Fenethylline,
 - b. Mecloqualone,
 - c. N-ethylamphetamine,
 - d. Methaqualone.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-204.

Cross References

Controlled dangerous substances, definitions, see 21 CNCA § 2101.

Library References

Controlled Substances O9.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to
227, 304 to 305.

§ 2205. Schedule II characteristics

Schedule II includes substances with the following characteristics:

1. High potential for abuse;

2. Currently accepted medical use in the United States, or currently accepted medical use with severe restrictions;
3. The abuse of the substance may lead to severe psychic or physical dependence.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–205.

Library References

Controlled Substances O9.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to
227, 304 to 305.

§ 2206. Schedule II

The controlled substances listed in this section are included in Schedule II.

1. Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
 - a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1, but not including the isoquinoline alkaloids of opium;
 - c. Opium poppy and poppy straw;
 - d. Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers and salts of isomers; or any compound, mixture or preparation which contains any quantity of any of the substances referred to in this paragraph.
2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:
 - a. Alphaprodine,
 - b. Anileridine,
 - c. Bezitramide,
 - d. Dihydrocodeine,
 - e. Diphenoxylate,
 - f. Fentanyl,
 - g. Isomethadone,
 - h. Levomethorphan,
 - i. Levorphanol,
 - j. Metazocine,

- k. Methadone,
 - l. Methadone–Intermediate, 4–cyano–2–dimethylamino–4, 4–diphenyl butane,
 - m. Moramide–Intermediate, 2–methyl–3–morpholino–1,1–diphenyl–propane–carboxylic acid,
 - n. Pethidine. Meperidine,
 - o. Pethidine–Intermediate–A, 4–cyano–1–methyl–4–phenylpiperidine,
 - p. Pethidine–Intermediate–B, ethyl–4–phenylpiperidine–4–carboxylate,
 - q. Pethidine–Intermediate–C,1–methyl–4–phenylpiperidine–4–carboxylic acid,
 - r. Phenazocine,
 - s. Piminodine,
 - t. Racemethorphan,
 - u. Racemorphan,
 - v. Etorphine hydrochloride salt only,
 - w. Alfentanil hydrochloride.
3. Any substance which contains any quantity of:
- a. Methamphetamine, including its salts, isomers, and salts of isomers,
 - b. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:
- a. Phenmetrazine and its salts,
 - b. Methylphenidate,
 - c. Amobarbital,
 - d. Pentobarbital,
 - e. Secobarbital,
 - f. Tetrahydrocannabinols.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–206.

Cross References

Controlled dangerous substances, definitions, see 21 CNCA § 2101.

Prohibited acts B—Penalties, see 21 CNCA § 2402.

Library References

Controlled Substances ○9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

§ 2207. Schedule III characteristics

Schedule III includes substances with the following characteristics:

1. A potential for abuse less than the substances listed in Schedules I and II;
2. Currently accepted medical use in treatment in the United States; and
3. Abuse may lead to moderate or low physical dependence or high psychological dependence.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–207.

Library References

Controlled Substances O9.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to
227, 304 to 305.

§ 2208. Schedule III

The controlled substances listed in this section are included in Schedule III.

1. Unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances or any other substance having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:
 - a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid unless specifically excepted or unless listed in another schedule,
 - b. Chlorhexadol,
 - c. Glutethimide,
 - d. Lysergic acid,
 - e. Lysergic acid amide,
 - f. Methyprylon,
 - g. Sulfondiethylmethane,
 - h. Sulfonethylmethane,
 - i. Sulfonmethane,
 - j. Benzphetamine and its salts,
 - k. Chlorphentermine and its salts,
 - l. Clortermine,
 - m. Mazindol,
 - n. Phendimetrazine,
 - o. Phenylacetone (P2P),
 - p. 1-Phenylcyclohexylamine,
 - q. 1-Piperidinocyclohexanecarbonitrile (PCC).
2. Nalorphine.
3. Unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic

drugs, or any salts thereof:

- a. Not more than one and eight-tenths (1.8) grams of codeine or any of its salts, per one hundred (100) milliliters or not more than ninety

(90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium,

b. Not more than one and eight-tenths (1.8) grams of codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

c. Not more than three hundred (300) milligrams of dihydrocodein- one or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium,

d. Not more than three hundred (300) milligrams of dihydrocodein- one or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

e. Not more than one and eight-tenths (1.8) grams of dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

f. Not more than three hundred (300) milligrams of ethylmorphine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts,

g. Not more than five hundred (500) milligrams of opium per one hundred (100)milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts,

h. Not more than fifty (50) milligrams of morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-208.

Library References

Controlled Substances O9.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to
227, 304 to 305.

§ 2209. Schedule IV characteristics

Schedule IV includes substances with the following characteristics:

1. Low potential for abuse relative to substances listed in Schedule III;
2. Currently accepted medical use in treatment in use in the United States; and

3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule III.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–209.

Library References

Controlled Substances ○9.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to
227, 304 to 305.

§ 2210. Schedule IV

The controlled substances listed in this section are included in Schedule IV.

1. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

- a. Chloral betaine,
- b. Chloral hydrate,
- c. Ethchlorvynol,
- d. Ethinamate,
- e. Meprobamate,
- f. Paraldehyde,
- g. Petrichloral,
- h. Diethylpropion,
- i. Phentermine,
- j. Pemoline,
- k. Chlordiazepoxide,
- l. Chlordiazepoxide and its salts, but not including chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and water-soluble esterified estrogens,
- m. Diazepam,
- n. Oxazepam,
- o. Clorazepate,
- p. Flurazepam and its salts,
- q. Clonazepam,
- r. Barbitol,
- s. Mebutamate,
- t. Methohexital,
- u. Methylphenobarbital,
- v. Phenobarbital,
- w. Fenfluramine,
- x. Pentazocine,
- y. Dextropropoxyphene,
- z. Butorphanol,
- aa. Alprazolam,
- bb. Halazepam,

cc. Lorazepam,
dd. Prazepam,
cc. Temazepam,

- ff. Triazolam,
- gg. Methandrostenolone,
- hh. Stanozolol,
- ii. Ethylestrenol,
- jj. Nandrolene phenpropionate,
- kk. Nandrolone deconoate,
- ll. Testosterone propionate,
- mm. Chorionic gonadotropin.

2. In addition to the anabolic steroids listed in paragraphs gg through mm of subdivision 1 of this section, “anabolic steroids” shall include any salt, optical and geometric isomers, and salts of isomers, compound, or derivative which is a chemical analog to any of the substances listed in paragraphs gg through mm of subdivision 1 of this section.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–210.

Library References

Controlled Substances O9.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to
227, 304 to 305.

§ 2211. Schedule V characteristics

Schedule V includes substances with the following characteristics:

1. Low potential for abuse relative to the controlled substances listed in Schedule IV;
2. Currently accepted medical use in treatment in the United States; and
3. Limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–211.

Library References

Controlled Substances O9.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to
227, 304 to 305.

§ 2212. Schedule V

The controlled substances listed in this section are included in Schedule V.

Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,
2. Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,
3. Not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams,
4. Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit,
5. Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–212.

Library References

Controlled Substances ○9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

ARTICLE IV. OFFENSES AND PENALTIES

Section

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§ 2401. Prohibited acts A – Penalties

A. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person:

1. To distribute, dispense, or solicit the use of or use the services of a person less than eighteen (18) years of age to distribute or dispense a controlled dangerous substance or possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance;
2. To create, distribute, or possess with intent to distribute, a counterfeit controlled dangerous substance; or
3. To distribute any imitation controlled substance as defined by 21 CNCA § 2101, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services.

B. Any person who violates the provisions of this section with respect to:

1. A substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a crime;
2. Any other controlled dangerous substance classified in Schedule I, II, III, or IV, upon conviction, shall be guilty of a crime;
3. A substance classified in Schedule V, upon conviction, shall be guilty of a crime;
4. An imitation controlled substance as defined by 21 CNCA § 2101, upon conviction, shall be guilty of a crime and shall be sentenced to a term of imprisonment for a period of not more than one (1) year and a fine of not more than One Thousand Dollars (\$1,000.00). A person convicted of a second or subsequent violation of the provisions of this paragraph shall be sentenced to a term of imprisonment for not more than three (3) years and a fine of not more than Five Thousand Dollars (\$5,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment; or
5. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance. Any person convicted of violating the provisions of this paragraph is guilty of a crime.

C. Any person who is at least eighteen (18) years of age and who violates the provisions of this section by using or soliciting the use of services of a person less than eighteen (18) years of age to distribute or dispense a controlled dangerous substance or by distributing a controlled dangerous substance to a person under eighteen (18) years of age is punishable by twice the fine and by twice the imprisonment otherwise authorized.

D. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled dangerous substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, upon conviction, is guilty of a crime.

E. Any person convicted of any offense described in this section may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed. Such assessment shall be paid into a revolving fund

21 CNCA § 2401

CRIMES AND PUNISHMENTS

for enforcement of controlled dangerous substances created pursuant to 21 CNCA § 2107.

History

Source. LA 03–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–401.

Amended. LA 10–13, eff. April 13, 2013.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

Library References

Controlled Substances O32.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 265 to 266,

270 to 271, 289 to 295, 304, 311 to 313.

§ 2401A. School property – Distribution, dispensing or possession of controlled dangerous substance or Imitation with intent to distribute

A. It shall be unlawful for any person to distribute, dispense, or possess with intent to distribute a controlled dangerous substance or imitation controlled dangerous substance, as defined by 21 CNCA § 2101, while on any school property used for school purposes which is owned by any private school, public school district, or vocational-technical school district, or within one thousand (1,000) feet of any such school property or while on any school bus owned or operated by any private school, public school district. Any person convicted of violating this section shall be guilty of a crime.

B. It shall be no defense to a prosecution for a violation of this section that the violator of this section was unaware that the prohibited conduct took place while on or within one thousand (1,000) feet of any school property.

C. A conviction arising under this section shall not merge with a conviction pursuant to 21 CNCA § 2401.

History

Source. LA 03–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–401A.

Library References

Controlled Substances O24 to 32, 49.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 265 to 266, 270 to 271, 274 to 295, 300 to 304, 306 to 309, 311 to 314, 316, 335.

§ 2402. Prohibited acts B – Penalties

A. 1. It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by 21 CNCA § 2101 et seq.

2. It shall be unlawful for any person to purchase any preparation excepted from the provisions of 21 CNCA § 2101 et seq. pursuant to 21

CONTROLLED DANGEROUS SUBSTANCES

21 CNCA § 2404

CNCA § 2313 in an amount or within a time interval other than that permitted by 21 CNCA § 2313.

B. Any person who violates this section with respect to:

1. Any Schedule I or II substance, except marihuana or a substance included in subsection (D) of 21 CNCA § 2206, is guilty of a crime.
2. Any Schedule III, IV or V substance, marihuana, a substance included in 21 CNCA § 2206(D), or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act is guilty of a crime.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-402.

Cross References

Powers of enforcement personnel, see 21 CNCA § 2501.

Library References

Controlled Substances O24.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 274 to 287,
304, 306, 308 to 309, 314.

§ 2403. Prohibited acts C – Penalties

A. Any person found guilty of larceny, burglary or theft of controlled dangerous substances is guilty of a crime.

B. Any person found guilty of robbery or attempted robbery of controlled dangerous substances from a practitioner, manufacturer, distributor or agent thereof as defined in 21 CNCA § 2101 is guilty of a crime.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-403.

Library References

Controlled Substances O21.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 270, 273, 319
to 320, 322, 326 to 327, 329 to 331.

§ 2404. Prohibited acts D – Penalties

A. It shall be unlawful for any person:

1. To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or this act;
2. To refuse any entry into any premises or inspection authorized by this act; or,
3. To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled dangerous substances in violation of this act for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this act.

B. Any person who violates this section is punishable by a civil fine of not

more than One Thousand Dollars (\$1,000.00) unless the violation is prosecuted by an information which alleges that the violation was committed knowingly or

intentionally, and the trier of fact specifically finds that the violation was committed knowingly or intentionally.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–404.

§ 2405. Prohibited acts E – Penalties

A. No person shall use tincture of opium, tincture of opium camphorated, or any derivative thereof, by the hypodermic method, either with or without a medical prescription therefor.

B. No person shall use or possess drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance in violation of 21 CNCA § 2101 et seq., except those persons holding an unrevoked license in the professions of podiatry, dentistry, medicine, nursing, optometry, osteopathy, veterinary medicine, or pharmacy.

C. No person shall deliver, possess or manufacture drug paraphernalia knowing it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.

D. Any person eighteen (18) years of age or over who violates subsection (C) of this section by delivering drug paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior shall, upon conviction, be guilty of a crime.

E. Any person who violates subsections (A), (B) or (C) of this section is guilty of a crime.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–405.

Library References

Controlled Substances O38.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 264, 304.

§ 2407. Prohibited acts G – Penalties

A. No person shall obtain or attempt to obtain any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act pursuant to 21 CNCA § 2313 in a manner inconsistent with the provisions of 21 CNCA § 2313(B)(1), or a controlled dangerous substance or procure or attempt

to procure the administration of a controlled dangerous substance:

1. by fraud, deceit, misrepresentation, or subterfuge;
2. by the forgery or alteration of a prescription or of any written order;

3. by the concealment of a material fact; or
4. by the use of a false name or the giving of a false address.

B. Information communicated to a physician in an effort unlawfully to procure a controlled dangerous substance, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

C. Any person who violates this section is guilty of a crime.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-407.

Library References

Controlled Substances O37.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 269, 318.

§ 2407.1. Certain substances causing intoxication, distortion or disturbances of auditory, visual, muscular or mental processes prohibited—Exemptions—Penalties

A. For the purpose of inducing intoxication or distortion or disturbance of the auditory, visual, muscular, or mental process, no person shall ingest, use, or possess any compound, liquid, or chemical which contains butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite, or mixtures containing butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite, or any of their esters, isomers, or analogues, or any other similar compound.

B. No person shall possess, buy, sell, or otherwise transfer any substance specified in subsection (A) of this section for the purpose of inducing or aiding any other person to inhale or ingest such substance or otherwise violate the provisions of this section.

C. The provisions of subsections (A) and (B) of this section shall not apply to:

1. The possession and use of a substance specified in subsection (A) of this section which is used as part of the care or treatment by a licensed physician of a disease, condition or injury or pursuant to a prescription of a licensed physician; and
2. The possession of a substance specified in subsection (A) of this section which is used as part of a known manufacturing process or industrial operation when the possessor has obtained a permit from the Oklahoma State Department of Health or the federal government.

D. Any person convicted of violating any provision of subsection (A) or (B) of this section shall be guilty of a crime punishable by imprisonment of not more than ninety (90) days or by the imposition of a fine not to exceed Five Hundred Dollars (\$500.00), or by both such imprisonment and fine. Each violation shall be considered a separate offense.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–407.1.

Library References

Controlled Substances O38.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 264, 304.

§ 2408. Endeavor and conspiracy

Any person who offers, solicits, attempts, endeavors, or conspires to commit any offense defined in 21 CNCA § 2101 et seq. shall be subject to the penalty prescribed for the offense, the commission of which was the object of the endeavor or conspiracy.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–408.

Library References

Conspiracy O28(3).

Controlled Substances O46.

Westlaw Topic Nos. 91, 96H.

C.J.S. Drugs and Narcotics §§ 296 to 299,
333, 341.

C.J.S. Conspiracy §§ 243 to 256, 273 to 278,
286 to 289, 291.

§ 2409. Additional penalties

Any penalty imposed for violation of this article shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–409.

§ 2410. Conditional discharge for possession as first offense

Whenever any person who has not previously been convicted of any offense under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled dangerous substance under 21 CNCA § 2402, the Court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require including the requirement that such person cooperate in a treatment and rehabilitation program of a state-supported or state-approved facility, if available. Upon violation of a term or condition, the Court may enter an adjudication of guilt

and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the Court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities

imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

Any expunged arrest or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire or any other public or private purpose; provided, that, any such plea of guilty or finding of guilt shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–410.

Library References

Indians O620.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 179.

§ 2411. General penalty clause

Any person who violates any provision of this act not subject to a specific penalty provision is guilty of a crime punishable by confinement for not more than three (3) years, or by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or both.

History

Source. LA 03–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–411.

Amended. LA 10–13, eff. April 13, 2013.

Library References

Indians O624.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 179.

§ 2412. Second or subsequent offenses

An offense shall be considered a second or subsequent offense under this act, if, prior to his conviction of the offense, the offender has at any time been convicted of an offense or offenses under this act, under any statute of the United States, or of any nation or state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs, as defined by this act.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–412.

§ 2413. Bar to prosecution

If a violation of this act is a violation of a federal law or the law of another state

or Indian nation, a conviction or acquittal under federal law or the law of another state or nation for the same act is a bar to prosecution in this Nation.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–413.

§ 2413.1. Gasoline or paint sniffing illegal

A. It shall be a crime for any person to sniff or inhale gasoline or any other motor fuel or any paint, thinner, glue or cleaner or substance which provides and intoxicating vapor with the intent to become intoxicated.

B. It shall be a crime for any person to distribute to any person gasoline or any other motor fuel or any paint, thinner, glue, cleaner or substance which provides and intoxicating vapor knowing or having reasonable cause to believe the person receiving the substance will use the substance for the purpose of inhaling the intoxicating vapor with the intent to become intoxicated.

C. It shall be a crime for any person to fail to report local law enforcement, the act of any person who inhales gasoline or any other motor fuel or any paint, thinner, cleaner, glue or substance which provides an intoxicating vapor for the purpose of intoxication.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–413.1.

Library References

Controlled Substances O38.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 264, 304.

TRAFFICKING IN ILLEGAL DRUGS ACT**§ 2414. Short title**

This act shall be known and may be cited as the Trafficking in Illegal Drugs Act.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–414.

Cross References

Appearance before Magistrate before bail set in certain cases, see 22 CNCA § 1115.5.

§ 2415. Application—Fines and penalties

A. The provisions of the Trafficking in Illegal Drugs Act, 21 CNCA § 2414 et seq., shall apply to persons convicted of violations with respect to the following

substances:

1. Marihuana,
2. Cocaine or coca leaves,
3. Heroin,

4. Amphetamine or methamphetamine,
5. Lysergic acid diethylamide (LSD),
6. Phencyclidine (PCP),
7. Cocaine base, commonly known as “crack” or “rock”.

B. Except as otherwise authorized by the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq., it shall be unlawful for any person to:

1. Knowingly distribute, manufacture, bring into this Nation or possess a controlled substance specified in subsection (A) of this section in the quantities specified in subsection (C) of this section; or
2. Possess any controlled substance with the intent to manufacture a controlled substance specified in subsection (A) of this section in quantities specified in subsection (C) of this section; or
3. Use or solicit the use of services of a person less than eighteen (18) years of age to distribute or manufacture a controlled dangerous substance specified in subsection (A) of this title in quantities specified in subsection (C) of this section.

Violation of this section shall be known as “trafficking in illegal drugs”.

Any person who commits the conduct described in paragraph 1, 2 or 3 of this subsection and represents the quantity of the controlled substance to be an amount described in subsection (C) of this section shall be deemed guilty of a crime.

C. In the case of a violation of the provisions of subsection (B) of this section, involving:

1. Marihuana: twenty-five (25) pounds or more of a mixture or substance containing a detectable amount of marihuana, such violation shall be a crime;
2. Cocaine or coca leaves: twenty-eight (28) grams or more of a mixture or substance containing a detectable amount of cocaine or coca leaves, such violation shall be a crime;
3. Heroin: ten (10) grams or more of a mixture or substance containing a detectable amount of heroin, such violation shall be a crime;
4. Amphetamine or methamphetamine: twenty (20) grams or more of a mixture or substance containing a detectable amount of amphetamines or methamphetamine, such violation shall be a crime;
5. Lysergic acid diethylamide (LSD): one (1) gram or more of a substance containing a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD), such violation shall be a crime;
6. Phencyclidine (PCP): one (1) ounce or more of a substance containing a mixture or substance containing a detectable amount of phencyclidine (PCP), such violation shall be a crime;
7. Cocaine base: five (5) grams or more of a mixture or substance described in paragraph 2 of this subsection which contains cocaine base, such violation shall be a crime.

D. Any person who violates the provisions of this section with respect to a controlled substance specified in subsection (A) of this section in a quantity specified in subsection (C) shall be deemed guilty of a crime.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–415.

Cross References

Property subject to forfeiture, see 21 CNCA § 2503.

Library References

Controlled Substances O9, 22, 24, 32, 38.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 1 to 3, 5 to 13,
19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to

227, 264 to 268, 270 to 271, 274 to 287, 289
to 295, 304 to 306, 308 to 314.

§ 2416. Apportionment of fines

The fines collected pursuant to 21 CNCA § 2415 shall be apportioned as follows:

1. Forty percent (40%) shall be distributed to the revolving fund established pursuant to the provisions of 21 CNCA § 2107 to be used for the enforcement of the Uniform Controlled Dangerous Substances Act;
2. Forty percent (40%) shall be distributed to the Drug Abuse Education Revolving Fund to be used for drug abuse education programs within the Nation;
3. Twenty percent (20%) shall be distributed to the Court Fund.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–416.

Cross References

Property subject to forfeiture, see 21 CNCA § 2503.

Library References

Indians O623.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 2417. Drug Abuse Education Revolving Fund

There is hereby created in the National Treasury a revolving fund to be designated the “Drug Abuse Education Revolving Fund”. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fines collected pursuant to the Trafficking in Illegal Drugs Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the for drug abuse education programs.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–417.

Cross References

Disposition of revenues, see 68 CNCA § 450.7.

Library References

Indians O210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2418. Distributing controlled substance within 1,000 feet of educational facilities, recreation centers or public parks – Penalties

A. Any person who violates 21 CNCA § 2401 by distributing a controlled substance to an individual, in or on, or within one thousand (1,000) feet of the real property comprising a public or private elementary or secondary school, public vocational school, public or private college or university, recreation center or public park, including state parks and recreation areas, shall be guilty of a crime.

B. It shall not be a defense to prosecution for a violation of this section that the violator was unaware that the prohibited conduct took place:

1. While on or within one thousand (1,000) feet of any school property; or
2. While on recreation center grounds or on public park grounds, including state parks and recreation areas.

History

Source. LA 3–91, eff. February 9, 1991.
Renumbered from 63 CNCA § 2–418.

Library References

Controlled Substances O32, 48.
Westlaw Topic No. 96H.
C.J.S. Drugs and Narcotics §§ 265 to 266, 270 to 271, 289 to 295, 300 to 304, 311 to 313, 335.

§ 2419. Use of minors in transportation, sale, etc. of controlled dangerous substances – Penalties

A. It shall be unlawful for any individual eighteen (18) or more years of age to solicit, employ, hire, or use an individual under eighteen (18) years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled dangerous substance.

B. A person who violates subsection (A) of this section shall be guilty of a crime.

C. It shall not be a defense to this section that a person did not know the age of an individual.

History

Source. LA 3–91, eff. February 9, 1991.
Renumbered from 63 CNCA § 2–419.

Library References

Controlled Substances O21, 48.
Westlaw Topic No. 96H.
C.J.S. Drugs and Narcotics §§ 270, 273, 300 to 303, 319 to 320, 322, 326 to 327, 329 to 331, 335.

ARTICLE V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

Section

- 2501. Powers of enforcement personnel
- 2502. Inspections
- 2503. Property subject to forfeiture
- 2503.1. Transactions involving proceeds derived from illegal drug activity prohibited—
Penalties
- 2503.2. Assessment for violation of act
- 2504. Seizure of property
- 2505. Summary forfeiture of certain substances
- 2506. Seizure of property—Notice of seizure and intended forfeiture proceeding—
Verified answer and claim to property—Hearing—Evidence and proof—
Proceeds of sale
- 2507. Itemization and submission for destruction
- 2508. Destruction of seized property
- 2509. Eradication
- 2510. Defenses—Descriptions

§ 2501. Powers of enforcement personnel

Any peace officer may:

1. Carry firearms;
2. Execute search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this Nation;
3. Make an arrest without warrant of any person he has probable cause for believing has committed a crime under this act or a violation of 21 CNCA § 2402;
4. Make seizures of property pursuant to the provisions of this act;
5. Perform such other lawful duties as are required to carry out the provisions of this act.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–501.

§ 2502. Inspections

A. Prescriptions, orders, and records, required by this act, and stock of substances specified in this act shall be open for inspection only to specifically designated or assigned Nation officers, whose duty it is to enforce the laws of this Nation relating to controlled dangerous substances. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

B. Any peace officer or agency charged with administration of this act is authorized to make administrative inspections of controlled premises in accordance with the following provisions:

1. For purposes of this act only, “**controlled premises**” means:

- a. Places where persons registered or exempted from registration requirements under this act are required to keep records; and
 - b. Places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled dangerous substance.
2. This section shall not be construed to prevent the inspection of books and records pursuant to the provisions of this act; nor shall this section be construed to prevent entries and administrative inspections at reasonable times without a warrant:
- a. With the consent of the owner, operator, or agent in charge of the controlled premises;
 - b. In situations presenting imminent danger to health or safety;
 - c. In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
 - d. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and
 - e. In all other situations where a warrant is not constitutionally required.
3. Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to:
- a. Financial data;
 - b. Sales data other than shipment data; or
 - c. Pricing data.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-502.

Library References

Controlled Substances O101.

Westlaw Topic No. 96H.

§ 2503. Property subject to forfeiture

- A. The following shall be subject to forfeiture:
1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act;
 2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous

Substances Act;

3. All property which is used, or intended for use, as a container for property described in paragraphs 1 and 2 of this subsection;
 4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in 21 CNCA § 2101, or in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection or when such property is unlawfully possessed by an occupant thereof, except that:
 - a. No conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act; and
 - b. No conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state or Indian nation or tribe;
 5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of the Uniform Controlled Dangerous Substances Act;
 6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act;
 7. All moneys, coin and currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under this act. The burden of proof is upon claimants of the property to rebut this presumption;
 8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner.
- B. Any property or thing of value of a person is subject to forfeiture if it is

established by a preponderance of the evidence that such property or thing of

value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.

C. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all or part of a fine imposed pursuant to the provisions of 21 CNCA § 2415.

D. All items forfeited in this section shall be forfeited under the procedures established in 21 CNCA § 2506. Whenever any item is forfeited pursuant to this section the Cherokee Nation District Court shall order that such item, money, or monies derived from the sale of such item be deposited by the law enforcement agency which seized the item in the revolving fund provided for in 21 CNCA § 2107; provided, such item, money or monies derived from the sale of such item forfeited due to nonpayment of a fine imposed pursuant to the provisions of 21 CNCA § 2415 shall be apportioned as provided in 21 CNCA

§ 2416. Items, money or monies seized pursuant to subsections (A) and (B) of this section shall not be applied or considered toward satisfaction of the fine imposed by 21 CNCA § 2415. All raw materials used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act shall be summarily forfeited pursuant to the provisions of 21 CNCA § 2505.

E. All property taken or detained under this section shall not be repleviable, but shall remain in the custody of Cherokee Nation, subject only to the orders and decrees of a court of competent jurisdiction. The Attorney General of Cherokee Nation shall follow the procedures outlined in 21 CNCA § 2506 dealing with notification of seizure, intent of forfeiture, final disposition procedures, and release to innocent claimants with regard to all property included in this section detained by Cherokee Nation.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–503.

Library References

Controlled Substances ○164.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 238 to 244.

§ 2503.1. Transactions involving proceeds derived from illegal drug activity prohibited – Penalties

A. It is unlawful for any person knowingly or intentionally to receive or acquire proceeds and to conceal such proceeds, or engage in transactions involving proceeds, known to be derived from any violation of this act. The subsection does not apply to any transaction between an individual and the counsel of the individual necessary to preserve the right to representation of the individual, as guaranteed by the Cherokee Nation Constitution and by the Sixth

Amendment of the United States Constitution. However, this exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of this act.

B. It is unlawful for any person knowingly or intentionally to give, sell, transfer, trade, invest, conceal, transport, or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any violation of this act.

C. It is unlawful for any person knowingly or intentionally to direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of this act.

D. It is unlawful for any person knowingly or intentionally to conduct a financial transaction involving proceeds derived from a violation of this act, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds known to be derived from a violation of this act, or to avoid a transaction reporting requirement under Nation or federal law.

E. Any person convicted of violating any of the provisions of this section is guilty of a crime.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–503.1.

§ 2503.2. Assessment for violation of act

A. Every person convicted of a violation of this act, must be assessed for each offense a sum of not less than Five Hundred Dollars (\$500.00) nor more than Three Thousand Dollars (\$3,000.00). The assessment is in addition to and not in lieu of any fines, restitution costs, other assessments, or forfeitures authorized or required by law.

B. The assessment provided for in this section must be collected as provided for collection of restitution costs and probation and parole fees and must be forwarded to the Drug Abuse Education Revolving Fund. Expenditures may be made only for drug abuse education and prevention.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–503.2.

Library References

Indians O623.

Westlaw Topic No.209.

C.J.S. Indians §§ 151 to 179.

§ 2504. Seizure of property

Any peace officer of this Nation shall seize property subject to forfeiture under this act when:

1. The seizure is incident to arrest or search warrant;

E.

2. The property has been the subject of a prior judgment in favor of the

- state in an injunction or forfeiture proceeding under this act;
3. Probable cause exists to believe the property is dangerous to health or safety; or
 4. Probable cause exists to believe the property has been used, or will be used, in violation of this act.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–504.

§ 2505. Summary forfeiture of certain substances

A. All controlled substances in Schedule I of this act and all controlled substances in Schedules II, III, IV, and V that are not in properly labeled containers in accordance with this act that are possessed, transferred, sold, or offered for sale in violation of this act are deemed contraband and shall be seized and summarily forfeited.

B. All hazardous materials and all property contaminated with hazardous materials described in 21 CNCA § 2503(A)(2), used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance, shall be summarily forfeited to the Nation and submitted to the Oklahoma State Bureau of Investigation for prompt destruction in accordance with Nation and federal law.

C. Species of plant from which controlled substances in Schedule I or II of this act, may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growth, may be seized by peace officers, summarily forfeited, and, in lieu of the eradication procedures contained in 21 CNCA § 2509, promptly cut and burned where seized.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–505.

Library References

Controlled Substances O 165, 169, 176.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 233, 237 to
244, 249 to 254, 257 to 260.

§ 2506. Seizure of property—Notice of seizure and intended forfeiture proceeding—Verified answer and claim to property—Hearing—Evidence and proof—Proceeds of sale

A. Any peace officer of this Nation shall seize the following property:

1. Any property described in 21 CNCA § 2503(A)(4) or (6). Such property shall be held as evidence until a forfeiture has been declared or release ordered;
2. Any property described in 21 CNCA § 2503(B); or
3. Any property described in 21 CNCA § 2503(C).

B. Notice of seizure and intended forfeiture proceeding shall be filed in the Office of the Court Clerk of the Cherokee Nation District Court and shall be given all owners and parties in interest.

C. Notice shall be given according to one of the following methods:

1. Upon each owner or party in interest whose right, title or interest is of record in the Cherokee Nation Tax Commission, by mailing a copy of the notice by certified mail to the address as given upon the records of the Tax Commission;
2. Upon each owner or party in interest whose name and address is known to the Prosecuting Attorney of the Cherokee Nation District Court, by mailing a copy of the notice by registered mail to the last-known address; or
3. Upon all other owners or interested parties, whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the Nation.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the Court shall hear evidence upon the fact of the unlawful use and shall order the property forfeited to the state, if such fact is proved.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At a hearing in a proceeding against property described in 21 CNCA § 2503(A)(4) or (6) or (B) or (C), the requirements set forth in said paragraph or subsection, respectively, shall be satisfied by the Nation by a preponderance of the evidence.

H. The claimant of any right, title or interest in the property may prove his lien, mortgage or conditional sales contract to be a bona fide or innocent ownership interest and that his right, title or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the Court shall order the property released to the bona fide or innocent owner, lien holder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Nation and sold under judgment of the court, as on sale upon execution, except as otherwise provided for in 21 CNCA § 2503.

K. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Office of the Prosecuting Attorney of the Cherokee Nation District Court, subject only to the orders and decrees of the Court or the official having jurisdiction thereof.

L. The proceeds of the sale of any property not taken or detained by Cherokee Nation shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;
2. To the payment of the actual expenses of preserving the property; and
3. The balance to the Narcotics Revolving Fund.

M. Whenever any vehicle, airplane or vessel is forfeited under this act, the Cherokee Nation District Court may order that the vehicle, airplane or vessel seized may be retained by the law enforcement agency which seized the vehicle, airplane or vessel for its official use.

N. If the Court finds that the Nation failed to satisfy the required showing provided for in subsection (G) of this section, the Court shall order the property released to the owner or owners.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-506.

§ 2507. Itemization and submission for destruction

Any peace officer of this Nation seizing any of the property described in 21 CNCA § 2503(1) or (2) shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted unless such property has been placed in lawful custody of a court or state or federal law enforcement agency. After all legal actions have been exhausted with respect to such property, the property shall be surrendered by the Court, law enforcement agency or person having custody of the same to the Oklahoma State Bureau of Investigation to be destroyed as provided in 21 CNCA § 2508. The property shall be accompanied with a written inventory on forms to be furnished by the Oklahoma State Bureau of Investigation.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-507.

§ 2508. Destruction of seized property

A. Except as otherwise provided, all property described in 21 CNCA § 2503(A)(1) and (2) which is seized or surrendered pursuant to the provisions of the Uniform Controlled Dangerous Substances Act shall be destroyed. The destruction shall be done by or at the direction of the Oklahoma State Bureau of Investigation, who shall have the discretion prior to destruction to preserve samples of the substance for testing. Any such property submitted to the Oklahoma State Bureau of Investigation which it deems to be of use for investigative, training, educational, or analytical purposes may be retained by the Oklahoma State Bureau of Investigation in lieu of destruction.

B. All other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of a Cherokee Nation peace officer or the Prosecuting Attorney of the Cherokee Nation District Court may be disposed of by order of the District Court of Cherokee

Nation when no longer needed in connection with any litigation. If the owner of the property is unknown to the Marshal service or Prosecuting Attorney of the Cherokee Nation District Court, the Marshal service shall hold the property for at least two (2) years prior to filing a petition for disposal with the District Court except for laboratory equipment which may be forfeited when no longer needed in connection with litigation, unless the property is perishable. The Prosecuting Attorney of the Cherokee Nation District Court shall file a petition in the District Court requesting the authority to conduct a sale of the property or to convert title of the property to Cherokee Nation for donation in accordance with subsection (F) of this section. The Prosecuting Attorney shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Marshal service or Prosecuting Attorney, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property, except laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner at least ten (10) days prior to the date of the hearing. Notice of a hearing on a petition for forfeiture or sale of laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the Uniform Controlled Dangerous Substances Act shall not be required. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the Nation, one such place being the Cherokee Nation Courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the Court may enter an order authorizing the Prosecuting Attorney of Cherokee Nation to donate the property pursuant to subsection (F) of this section or to sell the property to the highest bidder after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the Nation. The Prosecuting Attorney shall make a return of the sale and, when confirmed by the Court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be used for the purpose of purchasing controlled dangerous substances to be used as evidence in narcotic cases and fees for informers, or employees and other associated expenses necessary to apprehend and convict violators of the laws of Cherokee Nation regulating controlled dangerous substances. These funds shall be transferred to the Narcotics Revolving Fund. A return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be used for the purpose of purchasing controlled dangerous substances to be used as evidence in narcotic cases and fees for informers, or employees and other associated expenses necessary to apprehend and convict violators of the laws of the Cherokee Nation regulating controlled dangerous substances. These funds shall be transferred to the Narcotics Revolving Fund.

C. Any property, including but not limited to uncontaminated laboratory equipment used in the processing, manufacturing or compounding of con-

trolled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, upon a Court order, may be donated for classroom or laboratory use by the Marshal Service or the Prosecuting Attorney of Cherokee Nation District Court to any public secondary school or vocational-technical school in this Nation or the State of Oklahoma.

History

Source. LA 3-91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2-508.

Library References

Controlled Substances ○188, 190.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 255 to 257,
262.

§ 2509. Eradication

A. All species of plants from which controlled dangerous substances in Schedules I and II may be derived are hereby declared inimical to health and welfare of the public, and the intent of the Council is to control and eradicate these species of the plants in Cherokee Nation.

B. It shall be unlawful for any person to cultivate or produce, or to knowingly permit the cultivation, production, or wild growing of any species of such plants, on any lands owned or controlled by such person, and it is hereby declared the duty of every such person to destroy all such plants found growing on lands owned or controlled by him.

C. 1. Whenever any peace officer of the Nation shall receive information that any species of any such plants has been found growing on any private lands in Cherokee Nation, he shall notify the Marshal office; within five (5) days of receipt of such notice, the Marshal office shall notify the owner or person in possession of such lands that such plants have been found growing on the said lands and that the same must be destroyed within fifteen (15) days; when the fifteen (15) days have elapsed, the reporting peace officer shall cause an investigation to be made of the aforesaid lands, and if any such plants be found growing thereon, the Marshal office shall cause the same to be destroyed by cutting and burning the same.

2. Whenever any such plants are destroyed by order of the Marshals as provided herein, the cost of the same shall, if the work or labor be furnished by the marshals, be taxed against the lands whereon the work was performed, and shall be a lien upon such land in all manner and respects as a lien of judgment.

D. Knowingly violating the provisions of subsection (B) of this section is hereby declared, as to the owner, or person in possession of such lands, to be a crime.

E. In lieu of the eradication procedures provided for in subsections (B) and (C) of this section, all species of plants from which controlled dangerous substances in Schedules I and II of the Uniform Controlled Dangerous Substances Act may be derived, may be disposed of pursuant to the provisions of 21

CNCA § 2505(C).

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–509.

Library References

Controlled Substances ○188.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics § 257.

§ 2510. Defenses – Descriptions

A. An exemption or exception set forth in this act shall constitute an affirmative defense. Such affirmative defense shall be in accordance with the presentation of an alibi defense prescribed in 22 CNCA § 585.

B. In any prosecution for a violation of any of the provisions of this act relating to a controlled dangerous substance named in any of the schedules set out in the act, it shall be sufficient in any information to allege a general description of the controlled dangerous substance and the schedule wherein listed without other specific description. Upon a trial under such information, it shall be sufficient to prove that the controlled dangerous substance is one listed within a particular Schedule without further identification.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–510.

Library References

Controlled Substances ○48.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 300 to 303,
335.

ARTICLE VI. MISCELLANEOUS**Section**

2603. Uniformity of interpretation

2604. Short title

2606. Severability

2608. Headings

§ 2603. Uniformity of interpretation

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states and nations which enact it.

History

Source. LA 3–91, eff. February 9, 1991.

Renumbered from 63 CNCA § 2–603.

§ 2604. Short title

This act shall be known and may be cited as the Uniform Controlled Dangerous Substances Act.

History

Source. LA 3-91, eff. February 9, 1991.
Renumbered from 63 CNCA § 2-604.

§ 2606. Severability

The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this act.

History

Source. LA 3-91, eff. February 9, 1991.
Renumbered from 63 CNCA § 2-606.

§ 2608. Headings

Article and section headings contained in this act shall not affect the interpretation of the meaning or intent of any provisions of this act.

History

Source. LA 3-91, eff. February 9, 1991.
Renumbered from 63 CNCA § 2-608.

Library References

Statutes 1635(6). Westlaw
 Topic No.361.
 C.J.S. Statutes § 124.

