



# Council of the Cherokee Nation

Cherokee Nation Tribal  
Council  
17763 S. Muskogee Ave.  
Tahlequah, OK 74464

## Legislation Details (With Text)

<b>File #:</b>	21-007	<b>Version:</b>	1	<b>Name:</b>	CNCA 21 AMENDMENT TO MODERNIZE THE CN CRIMINAL CODE
<b>Type:</b>	Legislative Act	<b>Status:</b>	Passed		
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<b>On agenda:</b>	1/28/2021	<b>Final action:</b>	3/1/2021		
<b>Enactment date:</b>	2/22/2021	<b>Enactment #:</b>	LA-07-21		
<b>Title:</b>	AN ACT AMENDING TITLE 21 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY				
<b>Sponsors:</b>	Mike Shambaugh, Canaan Duncan, Janees Taylor, Joe Deere				
<b>Indexes:</b>	Criminal Law, Criminal Procedure				
<b>Code sections:</b>	Title 21 - Crimes and Punishments				
<b>Attachments:</b>	1. LA-07-21.PDF				

Date	Ver.	Action By	Action	Result
3/1/2021	1	OFFICE OF THE CHIEF	Signed	
2/22/2021	1	TRIBAL COUNCIL	Approved	Pass
1/28/2021	1	RULES COMMITTEE	Approved and Forwarded to Council	Pass

AN ACT AMENDING TITLE 21 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

### Section 1. Title and Codification

This act amends Title 21 of the Cherokee Nation Code Annotated and shall be codified at the sections referenced herein of the Cherokee Nation Code Annotated.

### Section 2. Purpose

The purpose of this Act is to modernize the Nation's criminal code.

### Section 3. Legislative History

LA-10-90      LA-32-03      LA-20-08

LA-13-91	LA-36-03	LA-22-08
LA-24-02	LA-08-06	LA-08-12
LA-25-02	LA-10-06	LA-09-12
LA-39-02	LA-18-06	LA-35-12
LA-40-02	LA-29-06	LA-10-13
LA-41-02	LA-31-06	LA-09-16
LA-42-02	LA-34-06	LA-12-18
LA-31-03	LA-09-07	

#### Section 4. Amendments

Title 21 shall be amended as follows:

### **§ 142.13. Revolving Fund Established**

There is hereby established a revolving fund to be designated the “Crime Victims Compensation Revolving Fund” (“Fund”) which shall be held and administered by the Treasurer in accordance with the purposes of this Act. The Fund shall be authorized by the Tribal Council as a continuing fund, which shall initially receive a direct appropriation to begin the Fund and thereafter, shall receive a direct continuing appropriation from all monies accruing to the credit of said Fund. Such monies are hereby appropriated and may be budgeted and expended by the Treasurer for the purpose of implementing the provisions of the Wilma P. Mankiller Victim’s Act, including the provisions set forth in Section 142.1 et seq. of this title.

Expenditures from said fund shall be made by the Treasurer against claims filed as prescribed by policies created pursuant to § 142.12. The fund shall be maintained as authorized by law for investments by the Treasurer. The interest earned by any investment of monies from the fund shall be credited to the fund for expenditure as provided by herein.

### **§ 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.  
**Reserved**

### **§ 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. **Reserved**

**§ 851. Desertion of children under age of ten-Penalty a felony**

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 **felony punishable by a term of imprisonment not to exceed three (3) years and a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or both.**

**§ 852. Omission to provide for a child---Penalties** <#co\_anchor\_IEA2307F0295711EBB0C3FEB220030>

A. Unless otherwise provided for by law, any parent, guardian, or person having custody or control over of a child as defined in 10 CNCA § 1101 **Section 1-1-105 of Title 10A of the Oklahoma Statutes**

**<<http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT10AS1-1->**

**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, payment of court-ordered day care or payment of court-ordered medical insurance costs for such child which is imposed by law, upon conviction, is guilty of a crime. misdemeanor. Any subsequent conviction pursuant to this section shall be a felony, punishable by imprisonment for not more than three (3) years or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.** As used in this section, the "duty to furnish medical **attention**" **attendance** 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.

B. 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. **shall be guilty of a felony punishable by imprisonment for not more than three (3) years or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.**

C. 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.

D. Nothing contained herein **in this section** shall prevent a Court **court** from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his **the** health or welfare **of the child.**

E. Psychiatric and psychological testing and counseling are exempt from the provisions of this section.

H. 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. **Section 3-403 of Title 43A of the Oklahoma Statutes**

[<http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT43AS3-403&originatingDoc=N8771E210C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT43AS3-403&originatingDoc=N8771E210C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)), to provide for the treatment, as such term is defined by [<http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT43AS3-403&originatingDoc=N8771E210C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT43AS3-403&originatingDoc=N8771E210C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)), 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 [<http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT43AS3-403&originatingDoc=N8771E210C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT43AS3-403&originatingDoc=N8771E210C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)). 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.

### **§ 853. Desertion of wife or child under fifteen-Penalty15 a felony**

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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 [felony punishable by a term of imprisonment not to exceed three \(3\) years and a fine not to exceed Fifteen Thousand Dollars \(\\$15,000.00\), or both.](#)

### **§ 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.

## **CHAPTER 31A**

### **CONTRIBUTING TO DELINQUENCY OF MINORS**

### **§ 856. Contributing to delinquency of minor or in commission of crime-Punishment**

### **§ 856. Causing, aiding, abetting or encouraging minor to be delinquent or runaway child, to commit felony or to become involved with criminal street gang**

A. 1. 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 [or a runaway child](#), upon conviction, shall, [for the first offense](#), be guilty of a crime [misdemeanor punishable by imprisonment for a term not to exceed one \(1\) year, or by a fine not to exceed One Thousand Dollars \(\\$1,000.00\), or by both such fine](#)

and imprisonment.

2. For purposes of prosecution under this subsection, a “runaway child” means an unemancipated minor who is voluntarily absent from the home without a compelling reason, without the consent of a custodial parent or other custodial adult and without the parent or other custodial adult’s knowledge as to the child’s whereabouts. “Compelling reason” means imminent danger from incest, a life-threatening situation, or equally traumatizing circumstance. A person aiding a child based upon a reasonable belief that the child is in physical, mental or emotional danger and with notice to the appropriate authority of the location of the child within twelve (12) hours of aiding the child shall not be subject to prosecution under this section.

B. Every person convicted of a second or any subsequent violation of this section shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

A. C. 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 **felony** if committed by an adult shall, upon conviction, be guilty of a crime **felony** 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.

D. Every person who shall knowingly or willfully cause, aid, abet, encourage, solicit, or recruit a minor to participate, join, or associate with any criminal street gang, as defined by subsection F of this section, or any gang member for the purpose of committing any criminal act shall, upon conviction, be guilty of a felony punishable by imprisonment for a term of not more than three (3) years, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

E. Every person convicted of a second or subsequent violation of subsection D of this section shall be guilty of a felony punishable by imprisonment for a term not more than three (3) years nor more than ten (10) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

F. “Criminal street gang” means any ongoing organization, association, or group of five or more persons that specifically either promotes, sponsors, or assists in, or participates in, and requires as a condition of membership or continued membership, the commission of one or more of the following criminal acts:

1. Assault, battery, or assault and battery with a deadly weapon, as defined in Section 645

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[findType=L&pubNum=1000165&cite=OKSTT21S645&originatingDoc=Nf35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S645&originatingDoc=Nf35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> of this title;

2. Aggravated assault and battery as defined by Section 646

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[findType=L&pubNum=1000165&cite=OKSTT21S646&originatingDoc=Nf35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S646&originatingDoc=Nf35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> of this title;

3. Robbery by force or fear, as defined in Sections 791 <[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S791&originatingDoc=Nf35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))

[findType=L&pubNum=1000165&cite=OKSTT21S791&originatingDoc=Nf35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S791&originatingDoc=Nf35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> of this title;

contextData=(sc.Default)> through 797 <[4. Robbery or attempted robbery with a dangerous weapon or imitation firearm, as defined by Section 801 <\[5. Unlawful homicide or manslaughter, as defined in Sections 691 <\]\(http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S801&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)> of this title;</a></p></div><div data-bbox=\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S797&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)> of this title;</a></p></div><div data-bbox=)

6. The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled dangerous substances, as defined in Section 2-101 et seq. <[7. Trafficking in illegal drugs, as provided for in the Trafficking in Illegal Drugs Act, Section 2-414 et seq.;](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT63S2-101&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)> ;</a></p></div><div data-bbox=)

8. Arson, as defined in Sections 1401 <

9. The influence or intimidation of witnesses and jurors, as defined in Sections 388 <[10. Theft of any vehicle, as described in Section 1720 <<http://www.westlaw.com/Link/Document/FullText?>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S545&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)> of this title;</a></p></div><div data-bbox=)



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11. Rape, as defined in Section 1111 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1111&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1111&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title;

12. Extortion, as defined in Section 1481 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1481&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1481&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title;

13. Transporting a loaded firearm in a motor vehicle, in violation of Section 1289.13 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1289.13&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1289.13&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title;

14. Possession of a concealed weapon, as defined by Section 1289.8 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1289.8&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1289.8&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title;

15. Shooting or discharging a firearm, as defined by Section 652 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S652&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S652&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title;

16. Soliciting, inducing or enticing another to commit an act of prostitution, as defined by Section 1030 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1030&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1030&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title;

17. Human trafficking, as defined by Section 748 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S748&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S748&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title; or

18. Possession of a firearm after former conviction of a felony, as defined by Section 1283 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1283&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1283&originatingDoc=NF35E9120C4B011E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title.

### § 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 shall be guilty of a felony punishable by imprisonment not to exceed three (3) years and a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or both.

### § 856.2. Harboring endangered runaway child

It shall be unlawful for any person to knowingly and willfully harbor an endangered runaway child. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment for a term not exceeding one (1) year, or by both such fine and imprisonment. Every person convicted of a second or any subsequent violation shall, upon conviction, be guilty of a felony punishable by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by imprisonment not exceeding three (3) years, or by both such fine and imprisonment. For purposes of this section, an “endangered runaway child” means an unemancipated minor who is voluntarily absent from the home for seventy-two (72) hours or more without a compelling reason and without the consent of a custodial parent or other custodial adult or an unemancipated minor who is voluntarily absent from the home without a compelling reason and without the consent of a custodial parent or other custodial adult and the child needs medication or other special services. For purposes of this section, “compelling reason” shall be defined as provided in Section 856 of Title 21 of the Oklahoma Statutes

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### § 856.3. Gang related offenses--Condition of membership

Any person who attempts or commits a gang-related offense as a condition of membership in a criminal street gang or while in association with any criminal street gang or gang member shall be guilty of a felony offense. For purposes of this section, “criminal street gang” is defined subsection F of Section 856 of this chapter and “gang-related offense” means those offenses enumerated in paragraphs 1

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## § 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.
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.

### § 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 **deprived** ; or
2. shall by any act or omission to act have caused, encouraged or contributed to the deprivation, or the need of supervision of the minor, or to such minor becoming deprived, or in need of supervision; shall be deemed guilty of a shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined a sum not to exceed Five Hundred Dollars (\$500.00), or imprisonment for a period not to exceed one (1) year, or by both such fine and imprisonment.

B. Upon a second or succeeding conviction for a violation of this section, the defendant shall be fined not more than One Thousand Dollars (\$1,000.00), or imprisoned for a term not to exceed one (1) year, or punished by both such fine and imprisonment.

### **§ 858.2. Neglect of minor adjudicated delinquent, in need of supervision or dependent and neglected and placed in parents' or others' care **deprived****

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In all cases where a minor has been adjudged delinquent, in need of supervision or dependent and neglected **deprived** 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, **stepparent or other adult person living in the home**, 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 **misdemeanor and upon conviction thereof shall, as applicable, be punished as provided in Section 856** <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S856&originatingDoc=N8B5EACA0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S856&originatingDoc=N8B5EACA0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) or 858.1 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S858.1&originatingDoc=N8B5EACA0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S858.1&originatingDoc=N8B5EACA0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title.

### **§ 858.3. Causing, aiding, abetting or encouraging minor to become delinquent, in need of supervision, or dependent and neglected--Penalty**

Any person who knowingly and willfully:

1. Causes, aids, abets or encourages a minor to be, to remain or to become delinquent, in need of supervision or deprived, or
2. Omits the performance of any duty, which act or omission causes or tends to cause, aid, abet, or encourage any minor to be delinquent, in need of supervision or deprived, within the purview of the laws of this Nation, upon conviction, shall be guilty of a misdemeanor and, as applicable, shall be punished pursuant to the provisions of Section 856 <<http://www.westlaw.com/Link/Document/FullText?>

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findType=L&pubNum=1000165&cite=OKSTT21S858.1&originatingDoc=N8BA7EAA0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)> or 858.2 of this title.

## CHAPTER 32

### CONCEALING DEATH OF CHILDREN

#### § 863. Concealing stillbirth or death of child

Every person who endeavors either by himself [themselves](#) or by the aid of others to conceal the stillbirth of an issue of a woman's body, or the death of any child [such issue under the age of two \(2\) years](#), is guilty of a crime [misdemeanor punishable by imprisonment for a term not exceeding one \(1\) year, or by a fine not exceeding One Thousand Dollars \(\\$1,000.00\), or both.](#)

#### § 864. Reserved

## CHAPTER 32A

### TRAFFICKING IN CHILDREN

#### § 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. [“Advertising” or “Advertisement” means any communication that originates within this state by newspaper, periodical, telephone book listing, outdoor advertising sign, radio, television or any communication that is disseminated through the use of a computer or related electronic device including, but not limited to, electronic mail, websites, weblogs, search engines, banner messages, pop-up messages, chat rooms, list servers, instant messaging or other Internet presences, and any attachments or links related thereto;](#)
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. ["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.](#)

["Child" means an unmarried or unemancipated person under the age of eighteen \(18\) years.](#)

["Child-placing agency" means any child welfare agency licensed by any government and authorized to place minors for adoption.](#)

5. "Person" means any natural person, corporation, association, organization, institution or partnership;
6. **"Department"** means the Cherokee Nation Department of Children, Youth and Family Services.
7. **"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.

**"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.

**"Person"** means any natural person, corporation, association, organization, institution, or partnership.

#### **§ 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 he 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 **felony** punishable **by imprisonment for a term not to exceed three (3) years or a fine of up to Ten Thousand Dollars (\$10,000.00) per violation or by both such fine and imprisonment.** pursuant to 21 CNCA § 10.

b. Prospective adoptive parents who violate subparagraph a of paragraph 1 of this subsection, upon conviction thereof, **shall be guilty of a misdemeanor and** 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, **shall be guilty of a misdemeanor and shall** 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 **be guilty of a misdemeanor and** punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

### **§ 867. Punishment**

- A. The offense of trafficking in children by any person shall be a **felony punishable by imprisonment for a term not to exceed three (3) years or by a fine not to exceed Fifteen Thousand Dollars, or by both such fine and imprisonment.**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. **No suspension of judgment or sentence shall be permitted.**
- 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.

### **§ 868. Partial invalidity**

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If any provision or section of this act **<#co\_footnote\_IF90637E0FFA311DEAE9ED9137ED>** 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.

### **§ 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 **<#co\_footnote\_IF91A5C20FFA311DEBD51FE081B9>** shall be cumulative to existing law.

### **§ 870. Reporting requirements**

A. Every person having reason to believe that a person or child-placing agency is engaging in the crime of trafficking in children as described in Section 866 of this title shall report the matter promptly to the Cherokee Nation Marshal Service. The Marshal Service shall notify the Office of the Attorney General no later than



seven (7) days after receiving a report.

1. No privilege or contract shall relieve any person from the reporting requirements in this subsection.
2. The reporting requirements in this subsection are individual, and no employer, supervisor or administrator shall interfere with the reporting requirement of any employee or other person or in any manner discriminate or retaliate against the employee or other person who in good faith reports suspected trafficking in children, or who provides testimony in any proceeding involving trafficking in children. Any employer, supervisor or administrator who discharges, discriminates or retaliates against the employee or other person shall be liable for damages, costs and attorney fees.

B. Any person who knowingly and willfully fails to promptly report suspected trafficking in children or who interferes with the prompt reporting of trafficking in children and who is licensed by a state entity shall be reported to the licensing entity and may be subject to discipline, including license revocation or suspension.

## CHAPTER 34

### BIGAMY, INCEST AND SODOMY

#### § 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.

#### § 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.

#### § 883. Punishment of bigamy **Bigamy a felony**

Every **Any** person convicted **guilty** of bigamy is guilty of a crime **felony punishable by imprisonment for a term not to exceed three (3) years or by a fine of an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment.**

## § 884. Person marrying bigamist

Every Any 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 shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

## § 885. Incest

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 shall be guilty of a felony punishable pursuant to 21 CNCA § 10 by imprisonment for a term not to exceed three (3) years or a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment, 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.

## § 886. Crime against nature

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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 punishable by imprisonment. Any for a term for a term not to exceed three (3) years or a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and 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.

## § 887. Crime against nature, what penetration necessary

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Any sexual penetration, however slight, is sufficient to complete the crime against nature.

## § 888. Forcible sodomy

A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 <<http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S886&originatingDoc=N4CF04200B4BE11E88D32F3D9C0>>

291EFB&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)> of this title, upon conviction, is guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a period of not more than twenty (20) years. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes

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Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 <[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1114&originatingDoc=N4CF04200B4BE11E88D32F3D9C0291EFB&refType=SP&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_12f40000b0d36)

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B. The crime of forcible sodomy shall include:

1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age;
2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime;
3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime;
4. Sodomy committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state, or the subcontractor or employee of a subcontractor of the contractor of the

state or federal government, a county, a municipality or a political subdivision of this state;

5. Sodomy committed upon a person who is at least sixteen (16) years of age but less than twenty (20) years of age and is a student of any public or private secondary school, junior high or high school, or public vocational school, with a person who is eighteen (18) years of age or older and is employed by the same school system;

6. Sodomy committed upon a person who is at the time unconscious of the nature of the act, and this fact should be known to the accused;

7. Sodomy committed upon a person where the person is intoxicated by a narcotic or anesthetic agent administered by or with the privity of the accused as a means of forcing the person to submit; or

8. Sodomy committed upon a person who is at least sixteen (16) years of age but less than eighteen (18) years of age by a person responsible for the child's health, safety or welfare. "Person responsible for a child's health, safety or welfare" shall include, but not be limited to:

a. a parent,

b. a legal guardian,

c. custodian,

d. a foster parent,

e. a person eighteen (18) years of age or older with whom the child's parent cohabitates,

f. any other adult residing in the home of the child,

g. an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes  
<<http://www.westlaw.com/Link/Document/FullText?>

h. an owner, operator or employee of a child care facility, as defined by Section 402 of Title 10 of the Oklahoma Statutes <<http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT10S402&originatingDoc=>

## CHAPTER 35

### CHILD STEALING

## § 891. Child stealing-Punishment--Penalty

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Whoever maliciously, forcibly or fraudulently takes or entices away any child under the age of eighteen(18 sixteen (16) years, with intent to detain andor 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 felony punishable by imprisonment for a term not to exceed three (3) years or a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000) 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.

## CHAPTER 36

### CRIMES AGAINST RELIGION AND CONSCIENCE

#### § 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 crimemisdemeanor.

#### § 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 misdemeanor.

#### § 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 crimemisdemeanor.

#### §916. Definition of disturbance

The following are the acts deemed to constitute disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting.
2. Exhibiting, within one (1) mile, any shows or plays without a license by the proper authority.
3. Engaging in, or aiding or promoting within the like distance, any racing of animals or gaming of any

description.

4. Obstructing in any manner, without authority of law, within the like distance, the free passage along any highway to the place of such meeting.

## **CHAPTER 38**

### **GAMBLING**

#### **§ 940. Defined Term.**

A. In General.- Subject to subsection (b), in this Chapter 38, the term "person" means any individual, natural person, company, limited liability company, corporation, joint venture, business trust, organization, partnership, association, club, firm, estate, or any other body corporate or politic or group acting as a unit, or any other entity to which this Chapter 38 can be applied, including any Indian tribe (including an office, agency, authority, or instrumentality of an Indian tribe), or the officer, manager, lessee, agent, servant, partner, member, director, or employee of any of them, including an executor, administrator, trustee, receiver, or other representative appointed according to law.

B. Limitation.-Notwithstanding subsection (a), in this Chapter 38, the term “person” does not include-

1. the Cherokee Nation or any entity wholly owned by the Cherokee Nation engaging in activities regulated or operated by the Cherokee Nation pursuant to Title 4 of this Code; or
2. any natural person who, while acting pursuant to and within the scope of such person’s employment or official duties as an employee or officer of the Cherokee Nation or an entity wholly owned by Cherokee Nation , is engaging in activities regulated or operated by the Cherokee Nation under Title 4 of the Code.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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.

## **§ 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.

## **§ 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.

## **§ 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.

## **§ 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.

## **§ 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.

## **§ 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.

## **§ 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.

## **§ 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.

### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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.
- 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.

### **§ 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.

### **§ 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.

### **§ 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 receptacle 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 996. Operation of Gambling Establishments-Nuisance-Penalty**

Any building, structure, place, establishment, house, room, tent, vehicle or water vessel, including ships, boats, ferries, or any other type of vehicle capable of navigating waterways, or location where any game or activity prohibited by any provision of this Chapter 38 are opened, conducted or carried on, or where persons engage in such activity or congregate to play at any such game, is a public nuisance, and the persons who are owners,

operators, keepers or managers of any such nuisance, and persons aiding or assisting any such owners, operators, keepers or managers in operating, keeping, maintaining, or managing any such nuisance shall be guilty of a crime. In addition to pursuing any criminal charges for violations of the provisions of this Chapter, the Attorney General may bring an action in District Court in the name of the Cherokee Nation to enjoin and abate the nuisance.

### **§ 997. Bingo and regulated gaming and activities not prohibited**

None of the provisions of this Chapter 38, except 21 CNCA §§ 995.11 and 940(b), shall apply to bingo, gambling, or other activities regulated or operated by Cherokee Nation under Title 4 of the Code.

### **§ 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 or her 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 kindtype of sound recording of any obscene material or child pornography shall be guilty, upon conviction, of a crime felony punishable by a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000) or by imprisonment for a term not the exceed three (3) years, or by both such fine and imprisonmentpursuant to 21 CNCA § 10, provided that upon a second conviction for a violation of subparagraph 1 or 2 of subsection (A), such sentence must shall 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 felony punishable by a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000) or by imprisonment for a term not the exceed three (3) years, or by both such fine and imprisonmentpursuant to 21 CNCA § 10, provided that such sentence must shall 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.

#### § 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 **prescribed** 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.

#### § 1021.2. Minors-Child **Procuring for participation in 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 **or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any child pornography** shall be guilty, upon conviction, of a crime **felony** punishable **by a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000) or by imprisonment for a term not the exceed three (3) years, or by both such fine and imprisonment** 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.

#### § 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 **felony** punishable **by a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000) or by imprisonment for a term not the exceed three (3) years, or by both such fine and imprisonment** 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.

#### § 1021.4. Duty to report **Disclosure of obscene or pornographic materials depicting containing 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 [or the law enforcement agency having jurisdiction over the case](#) 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 [but shall not include a person who develops film or makes prints for a public agency](#); 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 [misdemeanor punishable pursuant to 21 CNCA § 10 by a fine not to exceed Five Hundred Dollars \(\\$500.00\) or by imprisonment for a term not to exceed one \(1\) year, or by both such fine and imprisonment](#), 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.

**§ 1022. Obscene [Seizure of obscene material or child pornography, by whom seized and--Delivery to whom delivered](#) magistrate**

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.

**§ 1023. Child [Finding by magistrate that material is obscene or child pornography or obscene material, how disposed--Issuance of factual and legal basis--Delivery to district attorney](#)**

[<#co\\_anchor\\_I623E31B0240D11EB94ADA523B6102>](#)

The magistrate to whom any child pornography, or any obscene material, is delivered pursuant to the 21 CNCA

§ 1022Section 1022 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1022&originatingDoc=NA60F4140C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1022&originatingDoc=NA60F4140C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title, 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.

#### § 1024. **Repealed**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.

#### § 1024.1 Definitions

A. As used in 21 CNCA §§ 1021, 1021.1 through 1021.43, 1022 through 1024, and 1040.8 through 1040.24 of this title, "child pornography" means and includes any **visual depiction or individual image stored or contained in any format on any medium including, but not limited to,** 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, **buttocks or, if such minor is female, the breast,** 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. **Each visual depiction or individual image shall constitute a separate item and multiple copies of the same identical material shall each be counted as a separate item.**

B. As used in 21 CNCA §§ 1021 through 1024.4 of this title and 1040.8 through 1040.24:

"Explicit child pornography" means material which a law enforcement officer can immediately identify upon first viewing without hesitation as child pornography.

1. "Obscene material" means and includes any representation, performance, depiction or description of sexual conduct, whether in any form or **on any** medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, CD-ROM**optical**, magnetic disk memory, magnetic tape memory or **solid-state storage, CD or DVD, or** a purely photographic product or a reproduction of such

product in any book, pamphlet, magazine, or other publication or electronic or photo-optical format, 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.

2. "Performance" means and includes any display, live or recorded, in any form or medium.

3. "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.

4. Each visual depiction or individual image shall constitute a separate item and multiple copies of the same identical material shall each be counted as a separate item.

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.

## **§ 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 felony punishable pursuant to



21 CNCA § 10by a term of imprisonment not to exceed three (3) years or by a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such imprisonment and fine, provided that such sentence must shall 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.

**§ 1024.3. Power to arrest and seizure Seizure of evidentiary copy of obscene material or all copies of explicit child pornography**

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.

**§ 1024.4. Destruction of obscene material or child pornography upon conviction**

Upon final conviction of the accused, and any codefendant, the magistrate judge or the Attorney General shall cause any obscene material or child pornography, in respect whereof the accused and any codefendant stands convicted and which remains in the possession or control of such magistratejudge or, law enforcement agency or district attorney, to be destroyed including, but not limited to, the destruction of any computer, hard drive or other electronic storage media of the accused or codefendant on which such obscene material or child pornography was located.

**§ 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 crimemisdemeanor punishable by a fine in an amount not to exceed One Thousand Dollars (\$1,000) for each offense.

**§ 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 crimemisdemeanor.

**§ 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 crimemisdemeanor.

**§ 1028. Setting up or operating place of prostitution-Ownership-Renting-Procuring- Receiving person for forbidden purpose-Transportation-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 **with the intent of committing an act** 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 **with the intent of committing an act** 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 **with the intent of having such person commit an act** 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 **with the intent of committing an act** of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose **with such intent**;
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 **intent** 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.
7. **To knowingly abet the crime of prostitution by allowing a house, place, building, or parking lot to be used or occupied by a person who is soliciting, inducing, enticing, or procuring another to commit an act of lewdness, assignation, or prostitution or who is engaging in prostitution, lewdness, or assignation on the premises of the house, place, building, or parking lot.**

**§ 1029. Engaging in prostitution, etc.-Soliciting or procuring-Residing or being in place for prohibited purpose-Aiding, abetting or participating-**Child prostitution-Presumption of coercion****

A. 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 **with the intent of committing an act** of prostitution, lewdness, or assignation; **or**
4. To aid, abet, or participate in the doing of any of the acts herein prohibited.

**B. Any prohibited act described in paragraph 1, 2, 3 or 4 of subsection A of this section committed with a person under eighteen (18) years of age shall be deemed child prostitution, as defined in Section 1030 of this title, and shall be punishable as provided in Section 1031 of this title.**

C. In any prosecution of a person sixteen (16) or seventeen (17) years of age for an offense described in subsection A of this section, there shall be a presumption that the actor was coerced into committing such offense by another person in violation of this title.

### **§ 1030. Prostitution defined-Lewdness definedDefinitions**

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.

1. "Prostitution" means:

a. 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, fellatio, cunnilingus, masturbation, anal intercourse without hire. The term "or lewdness" shall be construed to include with any person not his or her spouse, in exchange for money or any other thing of value, or

b. the making of any appointment or engagement for prostitutionsexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse or lewdness orwith any person not his or her spouse, in exchange for money or any other thing of value;

2. "Child prostitution" means prostitution or lewdness as defined in this section with a person under eighteen (18) years of age, in exchange for money or any other thing of value;

3. "Anal intercourse" means contact between human beings of the genital organs of one and the anus of another;

4. "Cunnilingus" means any act of oral stimulation of the vulva or clitoris;

5. "Fellatio" means any act of oral stimulation of the penis;

6. "Lewdness" means:

a. any lascivious, lustful or licentious conduct,

b. the giving or receiving of the body for indiscriminate sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse, or lascivious, lustful or licentious conduct with any person not his or her spouse, or

c. any act in furtherance of such conduct or any appointment or engagement. for prostitution; and

7. "Masturbation" means stimulation of the genital organs by manual or other bodily contact exclusive of sexual intercourse.

### **§ 1031. Punishment for violations--Fines--Knowingly engaging in prostitution while infected with HIV--Violations within certain distance from school or church**

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.

A. Except as provided in subsection B or C of this section, any person violating any of the provisions of Section 1028, 1029 or 1030 of this title shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for a term not to exceed one (1) year or by a fine in an amount not to exceed Five Thousand Dollars (\$5,000), or by both such imprisonment and fine. In addition, the court may require a term of community service of not less than forty (40) nor more than eighty (80) hours.

B. Any person who engages in an act of prostitution with knowledge that they are infected with the human immunodeficiency virus shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years.

C. Any person who engages in an act of child prostitution, as defined in Section 1030 of this title, shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years and by a fine in an amount not the exceed Three Thousand Dollars (\$3,000.00).

D. Any person violating any of the provisions of Section 1028, 1029 or 1030 of this title within one thousand (1,000) feet of a school or church shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by a fine in an amount not to exceed Five Thousand Dollars (\$5,000), or by both such imprisonment and fine. In addition, the court may require a term of community service of not less than forty (40) nor more than eighty (80) hours.

**§ 1040.8. Publication, distribution or participation in preparation of any obscene material or presentation--child pornography--Unsolicited mailings--Penalty**

A. 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.

B. Any person who violates any provision of this section involving obscene materials, upon conviction, shall be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine of not less than Two Thousand Dollars (\$2,000.00), or by both such fine and imprisonment.

C. Any person who violates any provision of this section involving child pornography, upon conviction, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine

or not less than Ten Thousand Dollars (\$10,000), or by both such fine and imprisonment.

#### **§ 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.

#### **§ 1040.12a. Aggravated possession of child pornography--Penalties--Definitions**

A. Any person who, with knowledge of its contents, possesses one hundred (100) or more separate materials depicting child pornography shall be, upon conviction, guilty of aggravated possession of child pornography. The violator shall be punished by imprisonment for a term not to exceed three (3) years and by a fine in an amount not more than Fifteen Thousand Dollars (\$15,000.00). The violator, upon conviction, shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq.

B. For purposes of this section:

1. Multiple copies of the same identical material shall each be counted as a separate item;
2. The term "material" means the same definition provided by Section 1040.75 of Title 21 of the Cherokee Nation Code Annotated and, in addition, includes all digital and computerized images and depictions; and
3. The term "child pornography" means the same definition provided by Section 1040.80 of Title 21 of the Cherokee Nation Code Annotated and, in addition, includes sexual conduct, sexual excitement, sadomasochistic abuse, and performance of material harmful to minors where a minor is present or depicted as such terms are defined in Section 1040.75 of Title 21 of the Cherokee Nation Code Annotated.

#### **§ 1040.13. Acts prohibited--Felony**

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 **felony** punishable pursuant to 21 CNCA § 10 by imprisonment for a term not to exceed three (3) years or by a fine of not more than Fifteen Thousand Dollars (\$15,000), or by both such imprisonment and fine, 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.

#### **§ 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 **felony punishable by imprisonment for a term not to exceed three (3) years or by a fine of not more than Fifteen Thousand Dollars (\$15,000), or by both such imprisonment and fine** 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.

#### **§ 1040.13b. Nonconsensual dissemination of private sexual images**

##### **A. As used in this section:**

- 1. "Image" includes a photograph, film, videotape, digital recording or other depiction or portrayal of an object, including a human body;
- 2. "Intimate parts" means the fully unclothed, partially unclothed or transparently clothed genitals, pubic area or female adult nipple; and
- 3. "Sexual act" means sexual intercourse including genital, anal or oral sex.

##### **B. A person commits nonconsensual dissemination of private sexual images when he or she:**

- 1. Intentionally disseminates an image of another person:

- a. who is at least eighteen (18) years of age,
- b. who is identifiable from the image itself or information displayed in connection with the image, and
- c. who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part;

2. Disseminates the image with the intent to harass, intimidate or coerce the person, or under circumstances in which a reasonable person would know or understand that dissemination of the image would harass, intimidate or coerce the person;

3. Obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and

4. Knows or a reasonable person should have known that the person in the image has not consented to the dissemination.

C. The provisions of this section shall not apply to the intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when:

- 1. The dissemination is made for the purpose of a criminal investigation that is otherwise lawful;
- 2. The dissemination is for the purpose of, or in connection with, the reporting of unlawful conduct;
- 3. The images involve voluntary exposure in public or commercial settings; or
- 4. The dissemination serves a lawful purpose.

D. Nothing in this section shall be construed to impose liability upon the following entities solely as a result of content or information provided by another person:

- 1. An interactive computer service, as defined in 47 U.S.C., Section 230(f)(2);
- 2. A wireless service provider, as defined in Section 332(d) of the Telecommunications Act of 1996, 47 U.S.C., Section 151 et seq., Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66; or
- 3. A telecommunications network or broadband provider.

E. A person convicted under this section is subject to the forfeiture provisions in Section 1040.54 of this title.

F. Any person who violates the provisions of this section shall be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or both such fine and imprisonment.

G. Any person who violates the provisions of this section and who gains or attempts to gain financially or who gains or attempts to gain anything of value as a result of the nonconsensual dissemination of private sexual images shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years. A



second or subsequent violation of this subsection shall be a felony punishable by imprisonment for a term not to exceed three (3) years and the offender shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq.

H. The court shall have the authority to order the defendant to remove the disseminated image should the court find it is in the power of the defendant to do so.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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 [misdemeanor punishable pursuant to 21 CNCA § 10](#)[by a term of imprisonment not to exceed one \(1\) year or by a fine in an amount not to exceed One Thousand Dollars \(\\$1,000\), or by both such fine and imprisonment.](#)

#### **§ 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.

### **§ 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.

### **§ 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.

### **§ 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 [misdemeanor](#) 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 **misdemeanor** punishable by a term of imprisonment not to exceed one (1) year or by a fine in an amount not to exceed Three Thousand Dollars (\$3,000), or by both such fine and imprisonment, pursuant to 21 CNCA § 10.

#### **§ 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.

#### **§ 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.

#### **§ 1040.55. Adult cabaret and sexually oriented business exterior advertising signs--Requirements**

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A. As used in this section:

1. “Adult cabaret” means a nightclub, bar, restaurant, or similar establishment in which persons appear in a state of nudity in the performance of their duties;
2. “Sexually oriented business” means any business which offers its patrons goods of which a substantial portion are sexually oriented materials. Any business where more than ten percent (10%) of display space is used for sexually oriented materials shall be presumed to be a sexually oriented business;
3. “Sexually oriented materials” means any textual, pictorial, or three-dimensional material that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way that is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and
4. “State of nudity” means the showing of either:
  - a. the human male or female genitals or pubic area with less than a fully opaque covering, or
  - b. the female breast with less than a fully opaque covering or any part of the nipple.

B. Except as otherwise provided in this subsection, no billboard or other exterior advertising sign for an adult cabaret or sexually oriented business shall be located within one (1) mile of any state highway. If such a business is located within one (1) mile of a state highway, the business may display a maximum of two exterior signs on the premises of the business, consisting of one identification sign and one sign solely giving notice that minors are not permitted on the premises. The identification sign shall be no more than forty (40) square feet in

size and shall include no more than the following information: name, street address, telephone number, and operating hours of the business.

C. Signs existing at the time of the adoption of this section, which do not conform to the requirements of this section, may be allowed to continue as a nonconforming use, but shall be made to conform not later than November 1, 2009.

D. The Attorney General shall represent the state in all actions and proceedings arising from this section. In addition, all costs incurred by the Attorney General to defend or prosecute this section, including payment of all court costs, civil judgments, and, if necessary, any attorney fees, shall be paid from the General Revenue Fund.

E. Any owner of a business who violates the provisions of this section shall be guilty of a misdemeanor.

### **§ 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. "Minor" means any unmarried person under the age of eighteen (18) years;

2. "Harmful to minors" means:

a. that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement, 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.

"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:

the character and content of any material or performance which is reasonably susceptible of examination by the defendant; and

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.

"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.

"Magnetic tape memory" means a memory system that stores and retrieves binary data on magnetic recording tape.

"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.

"Minor" means any unmarried person under the age of eighteen (18) years.

4. "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.

5. "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;
6. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;
7. "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;
8. "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, video tape, computer software or video game;
9. "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;
10. "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;
11. "Magnetic Tape Memory" means a memory system that stores and retrieves binary data on magnetic recording tape;
12. "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.

13. "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

14. "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.

"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.

"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.

"Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

## **§ 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 "displayed" 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.

### **§ 1040.77. Violations-Penalties**

Any person convicted of violating any provision of 21 CNCA § 1040.76 shall be guilty of a misdemeanor and 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 guilty of a misdemeanor and 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.

### **§ 1040.80. Interactive computer service providers--Removal of child pornography--Court orders--Notice and hearing--Violations--Penalties--Petition for relief**

A. As used in this section, the term:

1. "Interactive computer service provider" means any provider to the public of computer access via the Internet to a computer server or similar device used for the storage of graphic, video or images;
2. "Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks;
3. "Controlled or owned by" with respect to a server or other storage device means a server or other such device that is entirely owned by the interactive computer service provider or is subject to exclusive management by the interactive computer service provider by agreement or otherwise; and
4. "Child pornography" means explicit child pornography as defined in Section 1024.1 of Title 21 of the Oklahoma Statutes <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1024.1&originatingDoc=NAF1B8A00C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1024.1&originatingDoc=NAF1B8A00C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>).

B. The Attorney General or a law enforcement officer who receives information that an item of alleged child pornography resides on a server or other storage device controlled or owned by an interactive computer service provider shall:

1. Contact the interactive computer service provider that controls or owns the server or other storage device where the item of alleged child pornography is located;
2. Inform the interactive computer service provider of the provisions of this section; and
3. Request that the interactive computer service provider voluntarily comply with this section and remove the item of alleged child pornography from its server or other storage device expeditiously.

C. 1. If an interactive computer service does not voluntarily remove the item of alleged child pornography in a timely manner, the Attorney General or law enforcement officer shall apply for a court order of authorization to remove the item of alleged child pornography under this section. The obligation to remove the item of alleged child pornography shall not apply to the transmitting or routing of, or the intermediate, temporary storage or caching of an image, information or data that is otherwise subject to this section.

2. The application for a court order shall include:

- a. the authority of the applicant to make such an application,
- b. the identity and qualifications of the investigative or law enforcement officer or agency that, in the official scope of that officer's duties or agency's authority, discovered the images, information, or data,
- c. a particular statement of the facts relied upon by the applicant, including:
  - (1) the identity of the interactive computer service,
  - (2) identification of the item of alleged child pornography discovered on the server or other storage device controlled or owned by an interactive computer service provider,
  - (3) the particular images, information, or data to be removed or to which access is to be disabled identified by uniform resource locator (URL) or Internet protocol (IP) address, a statement certifying that such content resides on a server or storage device controlled or owned by such interactive computer service provider, and
  - (4) the steps taken to obtain voluntary compliance by such interactive computer service provider with the requirements of this act prior to filing the application,
- d. such additional testimony and documentary evidence in support of the application as the judge may require, and
- e. a showing that there is probable cause to believe that the child pornography items constitutes a violation of this section.

D. The Attorney General shall notify the interactive computer service provider which is identified in the court's order in accordance with the provisions of this section. The Attorney General shall notify an interactive computer service provider upon the issuance of an order authorizing the removal of the items of alleged child

pornography.

1. The notice by the Attorney General shall include:

- a. a copy of the application made pursuant to subsection C of this section,
- b. a copy of the court order issued pursuant to subsection K of this section,
- c. notification that the interactive computer service shall remove the item of alleged child pornography contained in the order which resides on a server or other storage device controlled or owned by such interactive service provider and which are accessible to persons located within this state expeditiously after receipt of the notification,
- d. notification of the criminal penalties for failure to remove the item of child pornography,
- e. notification of the right to appeal the court's order, and
- f. contact information for the Attorney General's Office.

2. An interactive computer service may designate an agent within the state to receive notification pursuant to this section.

E. The interactive computer service provider has the right to request a hearing before the court imposes any penalty under this section.

F. Nothing in this section may be construed as imposing a duty on an interactive computer service provider to actively monitor its service or affirmatively seek evidence of illegal activity on its service.

G. Notwithstanding any other provision of law to the contrary, any interactive computer service provider that intentionally violates subsection L of this section commits:

1. A misdemeanor for a first or second offense punishable by a fine of One Thousand Dollars (\$1,000.00); and
2. A felony for a third or subsequent offense punishable by a fine of Fifteen Thousand Dollars (\$15,000.00) and imprisonment for a maximum of three (3) years.

H. The Attorney General shall have concurrent prosecutorial jurisdiction for violation of this section.

I. The removal of the alleged item of child pornography which resides on a server or other storage device, shall not, to the extent possible, interfere with any request of a law enforcement agency to preserve records or other evidence, which may be kept by the interactive computer service provider in the normal course of business.

J. Upon consideration of an application for authorization to remove the item of alleged child pornography that resides on a server or other storage device controlled or owned by an interactive computer service provider as set forth in subsection C of this section, the judge may enter an ex parte order, as requested or as modified, authorizing the removal of the item of alleged child pornography, if the court determines on the basis of the facts submitted by the applicant that there is or was probable cause for belief that:

1. The item of alleged child pornography constitutes evidence of an act in violation of this section;

2. The investigative or law enforcement officer or agency acted within the official scope of that officer's duties or agency's authority, in discovering the images, information, or data and has complied with the requirements of subsection I and subsection K of this section;

3. An item of alleged child pornography resides on the server or other storage device controlled or owned by the interactive computer service provider and is accessible to persons located in the state; and

4. In the case of an application, other than a renewal or extension, for an order removing the item of alleged child pornography which was the subject of a previous order authorizing the removal or disabling of access, the application is based upon new evidence or information different from and in addition to the evidence or information offered to support the prior order.

K. Each order authorizing the removal or disabling of access to an alleged item of child pornography shall contain:

1. The name of the judge authorized to issue the order;

2. A particular description of the images, information, or data to be removed or access to such disabled, identified by a URL or IP address, and a statement of the particular violation of the section to which the images, information, or data relate;

3. The identity of the investigative or law enforcement officer or agency who discovered the images, information, or data and the identity of whoever authorized the application; and

4. Such additional information or instruction as the court deems necessary to execute the order.

L. The court shall review the application and testimony, if offered, and, upon a finding of probable cause, issue an order that:

1. An item of child pornography resides on a server or other storage device controlled by the interactive computer service provider and is accessible to persons located in the state;

2. The interactive computer service provider shall remove the item residing on a server or other storage device controlled or owned by the interactive computer service provider expeditiously after receiving the order, if practical;

3. The order shall specify that removal of any item covered by the order shall be accomplished in a fashion that prevents or minimizes the removal of, or restriction of access to, images, information, or data that are not subject to the order;

4. Failure of the interactive computer service provider to comply with the court's order is a violation of this section;

5. The removal of the item on the server or other storage device controlled or owned by the interactive computer service provider may not unreasonably interfere with a request by a law enforcement agency to preserve records for a reasonable period and in accordance with law; and

6. Provides the interactive computer service provider notice and opportunity for a hearing before the court

imposes any penalty under this subsection.

M. An interactive computer service provider who is served with a court order under subsection L of this section shall remove the item of child pornography that is the subject of the order expeditiously after receiving the court order, if practicable.

N. 1. An interactive service provider may petition the court for relief for cause from an order issued under subsection L of this section.

2. The petition may be based on considerations of:

- a. the cost or technical feasibility of compliance with the order, or
- b. the inability of the interactive computer service provider to comply with the order without also removing data, images or information that are not subject to this section.

## CHAPTER 40

### JUNK DEALERS

#### **§ 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.

## CHAPTER 42

### PANDERING

#### **§ 1081. Offense defined-Punishment**

Any person who shall procure an inmate **any other person** 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 **another** to become an inmate of a house of prostitution **a prositute**; 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 **a prostitute**, 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 [other](#) person, who has not previously practiced prostitution to become an inmate of a house of ill-fame [prostitute](#) 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 [felony punishable by imprisonment for a term not to exceed three \(3\) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars \(\\$15,000\), or by both such fine and imprisonment.](#)

#### **§ 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.

#### **§ 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.

#### **§ 1084. Marriage no defense**

The act or state of marriage shall not be a defense to any violation of this chapter.

#### **§ 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 [felony punishable by imprisonment for a term not to exceed three \(3\) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars \(\\$15,000\), or by both such fine and imprisonment..](#)

#### **§ 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 [chapter](#), in any house, building, room, tent, lot or premises under his control or of which he has possession, [upon first conviction](#), shall be guilty of a crime [misdemeanor punishable by imprisonment for a term not to exceed one \(1\) year or by imposition of a fine in an amount not to exceed Five Thousand Dollars \(\\$5,000\), or by both such fine and imprisonment.](#) Upon conviction of a subsequent offense, a person in violation of any provision of this chapter shall be guilty of a [felony punishable by imprisonment for a term not to exceed three \(3\) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars \(\\$15,000\), or by both such fine and imprisonment.](#)

**§ 1087. Offering or transporting child****Child under 18 years of age-Procuring for purpose of prostitution**  
**-Penalty, lewdness or other indecent act-Punishment**

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 to 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 to 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 **felony** punishable pursuant to 21 CNCA § 10**by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment,** 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 **misdemeanor punishable by imprisonment for a term not to exceed one (1) year or by imposition of a fine in an amount not to exceed Five Thousand Dollars (\$5,000), or by both such fine and imprisonment**pursuant to 21 CNCA § 10. Upon conviction for a subsequent offense pursuant to this subsection such person shall be guilty of a crime **felony** punishable pursuant to 21 CNCA § 10**by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment,** 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.

**§ 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 **felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment,** 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 conviction for the offense, **upon conviction for the first offense, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year or by imposition of a fine in an amount not to exceed Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. Upon conviction for a subsequent offense pursuant to this subsection such person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment, provided that such sentence must include a term of imprisonment.** 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.

## **CHAPTER 43**

### **PAWNBROKERS**

#### **§ 1092. Refusing to exhibit stolen goods**

Any pawnbroker or person carrying on the business of a pawnbroker, and every junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, or any peace officer, shall be guilty of a felony.

#### **§ 1093. Selling pledge before default**

Every pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, and every pawnbroker who willfully refuses to disclose the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, is guilty of a misdemeanor.

## **CHAPTER 45**

## RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN AND SEDUCTION

### § 1111. Rape defined

- A. A person commits the offense of rape Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished under any of the following circumstances 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 Where the victim is under sixteen (16) years of age;
  2. causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, or giving legal 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 Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person; 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 Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; 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 Where the victim is unconscious of the nature of the act and this fact is known to the accused; or
  6. engages in any of the activities listed in paragraphs 1 through 5 of this subsection with an animal 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 that 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.
  7. Where the victim is under the legal custody or supervision of the 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 that exercises authority over the victim;
  8. Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system;
  9. Where the victim is nineteen (19) years of age or younger and is in the legal custody of a state agency, federal agency or tribal court and engages in sexual intercourse with a foster parent or foster parent applicant; or
  10. Where the victim is at least sixteen (16) years of age but less than eighteen (18) years of age and the

perpetrator of the crime is a person responsible for the child's health, safety or welfare. "Person responsible for a child's health, safety or welfare" shall include, but not be limited to:

- a. a parent,
- b. a legal guardian,
- c. custodian,
- d. a foster parent,
- e. a person eighteen (18) years of age or older with whom the child's parent cohabitates,
- f. any other adult residing in the home of the child,
- g. an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, or
- h. an owner, operator or employee of a child care facility.

B. Rape is an act of sexual intercourse accomplished if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

A. A rape under subsection (A) of this section is without the consent of the other person:

- A.
- A. Where the victim is under the age of fourteen (14) years of age; or
- A.
- A. 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
- A.
- A. the accused is not required to register as a sex offender; and
- A.
- A. the accused is less than nineteen (19) years of age or the accused is married to the victim; or
- A.
- A. 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
- A.
- A. Where force or violence is used accompanied by apparent power of execution to the victim or to another person; or
- A.
- A. 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
- A.
- A. 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
- A.

A. Where the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; or

A.

A. Where the other person has not consented and the actor knows the other person is unaware that the rape is occurring; or

A.

A. 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

A.

A. 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

A.

A. 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

A.

A. Where the actor is a public servant who coerces the other person to submit or participate; or

A.

A. 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

A.

A. 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

A.

A. 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.

A.

A. For purposes of this section:

A.

A. **"Health care services provider"** means:

A.

A. a physician licensed by any government;

A.

A. a chiropractor licensed by any government;

A.

A. a physical therapist licensed by any government;

A.

A. a physician assistant licensed by any government; or

A.

A. a licensed practical nurse, a registered nurse, a vocational nurse, or an advanced practice nurse licensed by any government.

A.

A. **"Mental health services provider"** means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including:

A.

A. a social worker;

A.

A. a chemical dependency counselor;

A.

A. any counselor;

A.

A. any marriage and family therapist;

A.

A. a member of the clergy; or

A.

A. a psychologist or psychiatrist offering psychological services.

A. 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.

A.

A. Any person convicted of committing rape is guilty of a crime punishable pursuant to 21 CNCA

A. § 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.

A.

B. All references in current statutes to rape in either the first or second degree are hereby deemed references to the crime of rape.

### § 1111.1. Rape by instrumentation

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A. Rape by instrumentation is an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person.

B. Provided, further, that at least one of the circumstances specified in Section 1111

<[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1111&originatingDoc=N8DC23F20C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>)

[findType=L&pubNum=1000165&cite=OKSTT21S1111&originatingDoc=N8DC23F20C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1111&originatingDoc=N8DC23F20C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title has been met; further, where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in conduct prohibited by this section of law with a person who is eighteen (18) years of age or older and is an employee of the same school system, or where the victim is under the legal custody or supervision of a state or federal agency, county, municipal or a political subdivision and engages in conduct prohibited by this section of law with a federal, state, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises



authority over the victim, consent shall not be an element of the crime.

C. Provided, further, that at least one of the circumstances specified in [Section 1111](#)

[<http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1111&originatingDoc=N8DC23F20C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1t1.0&transitionType=DocumentItem&contextData=(sc.Default))

[>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1111&originatingDoc=N8DC23F20C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1t1.0&transitionType=DocumentItem&contextData=(sc.Default)) of this title has been met; further, where the victim is nineteen (19) years of age or younger and in the legal custody of a state agency, federal agency or tribal court and engages in conduct prohibited by this section of law with a foster parent or foster parent applicant.

D. Any person in violation of the 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.

### **§ 1112. Age limitations on conviction for rape**

No person can be convicted of rape or rape by instrumentation on account of an act of sexual intercourse with anyone over the age of fourteen (14) years, with his or her consent, unless such person was over the age of eighteen (18) years at the time of such act.

### **§ 1113. Slight penetration is sufficient to complete crime**

The essential guilt of rape or rape by instrumentation, except with the consent of a male or female over fourteen (14) years of age, consists in the outrage to the person and feelings of the victim. Any sexual penetration, however slight, is sufficient to complete the crime of rape.

### **§ 1114. Rape in first degree--Second degree**

[<#co\\_anchor\\_I243C3B00295811EBB0C3FEB220030>](#)

A. Rape or rape by instrumentation in the first degree shall include:

1. Rape committed by a person over eighteen (18) years of age upon a person under fourteen (14) years of age;
2. Rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime;
3. Rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;
4. Rape accomplished where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;
5. Rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or
6. Rape by instrumentation regardless of the age of the victim or the age of the person committing the crime.

B. In all other cases, rape is rape in the second degree.

### § 1115 Punishment for rape in first degree or second degree

Rape in the first degree is a felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not the exceed Fifteen Thousand Dollars (\$15,000), or by both such fine an imprisonment, provided that any sentence shall include a term of imprisonment. Any person in violation of the chapter 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.

### § 1117. Compelling woman **person** to marry

Every **Any** person who takes any woman **person** against **his or** her will, and by force, menace or duress, compels **him or** her to marry **him or her** or to marry any other person, is guilty of a crimea **felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not the exceed Fifteen Thousand Dollars (\$15,000), or by both such fine an imprisonment.**

### § 1118. Intent to compel woman to marry

Every **Any** 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 crimea **felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not the exceed Fifteen Thousand Dollars (\$15,000), or by both such fine an imprisonment.**

### § 1119. Abduction of person under **eighteenfifteen**

<#co\_anchor\_I6C82B110295711EBB0C3FEB220030>

Every person who takes away or induces to leave any person under the age of eighteen (**18fifteen (15)**) 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**shall be guilty of a felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not the exceed Fifteen Thousand Dollars (\$15,000), or by both such fine an imprisonment.**

### § 1123. Lewd or indecent proposals or acts as to child under eighteen

A. It is a crime **felony** 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 **sixteen (1816)** years of age, or other individual the person believes to be a child under eighteen **sixteen (1816)** 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 **sixteen (1816)** 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 **sixteen** (1816) years of age, or other individual the person believes to be a child under eighteen **sixteen** (1816) 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 **sixteen** (1816) 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 **sixteen** (1816) years of age, **or force or require a child to defecate or urinate upon the body or private parts of another, or for the purpose of sexual gratification;**

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 **sixteen** (1816) years of age or other individual the person believes to be a child under eighteen **sixteen** (1816) 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. 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 of any person sixteen (16) years of age or older, in a lewd and lascivious manner:**

**1. Without the consent of that person;**

**2. When committed by a Cherokee Nation, state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the Cherokee Nation, state, a county, a municipality or political subdivision upon a person who is under the legal custody, supervision or authority of a Cherokee Nation or state agency, a county, a municipality or a political subdivision of this state, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision of this state;**

**3. When committed upon a person who is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or in the legal custody or supervision of any public or private elementary or secondary**

school, or technology center school, by a person who is eighteen (18) years of age or older and is an employee of the same school system that the victim attends; or

4. When committed upon a person who is nineteen (19) years of age or younger and is in the legal custody of a Cherokee Nation agency, federal agency or a tribal court, by a foster parent or foster parent applicant.

As used in this subsection, “employee of the same school system” means a teacher, principal or other duly appointed person employed by a school system or an employee of a firm contracting with a school system who exercises authority over the victim.

C. No person shall in any manner lewdly or lasciviously:

1. Look upon, touch, maul, or feel the body or private parts of any human corpse in any indecent manner relating to sexual matters or sexual interest; or

2. Urinate, defecate or ejaculate upon any human corpse.

D. Any person convicted of a violation of subsection B or C of this section shall be deemed guilty of a felony.

E. 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.

F. Any person in violation of the 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.

G. Any parent or person responsible for the child's health, safety or welfare who violates subsection A, B or C of this section when the victim is at least sixteen (16) years of age but less than eighteen (18) years of age, upon conviction, shall be guilty of a felony. For purposes of this section, “person responsible for a child's health, safety or welfare” shall include, but not be limited to:

a. a parent,

b. a legal guardian,

c. custodian,

d. a foster parent,

e. a person eighteen (18) years of age or older with whom the child's parent cohabitates,

f. any other adult residing in the home of the child,

g. an agent or employee of a public or private residential home, institution, facility or day treatment program, or

h. an owner, operator or employee of a child care facility.

The provisions of this section shall apply:

Where the victim is under the age of fourteen (14) years of age; or

Where the victim is age fourteen (14) or older but has not yet attained the age of sixteen (16), except when:

the victim otherwise consents; and

the accused is not required to register as a sex offender; and

the accused is less than nineteen (19) years of age or the accused is married to the victim; or

To any person without the victim's consent when the victim is between age sixteen (16) and eighteen (18) years.

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.

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.

### **§ 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.

#### **§ 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 **misdemeanor** punishable pursuant to 21 CNCA § 10 **by imprisonment for a term not to exceed one (1) year or by imposition of a fine in an amount no the exceed Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.**

#### **§ 1125. Zone of safety--Schools, child care centers, playgrounds, parks, and residences of victims--Restrictions on convicted sex offenders--Exemptions**

A. A zone of safety is hereby created around elementary, junior high, and high schools, licensed child care centers, playgrounds, and parks, **or the residence of a victim of a sex crime.**

1. A person is prohibited from loitering within three**five** hundred (300**500**) feet of any elementary, junior high, or high school, licensed child care facility**center**, 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 **the** 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**sixteen (16)** years.

2. A person is prohibited from entering any park if:

- a. the person has been designated as a habitual or aggravated sex offender as provided in 57 CNCA § 1 et seq., or
- b. the person has been convicted of an offense in another jurisdiction, which offense, if committed or attempted in this state, would designate the person as a habitual or aggravated sex offender as provided in 57 CNCA § 1 et seq.

3. A person is prohibited from loitering within one thousand (1,000) feet of the residence of his or her victim if:

- a. the person who committed a sex crime against the victim has been convicted of said crime, and
- b. the person is required to register pursuant to the Sex Offenders Registration Act.

B. A person convicted of a violation of subsection (A) of this section shall be guilty of a crime**felony**

punishable pursuant to 21 CNCA § 10 by a fine not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), or by imprisonment for a term not to exceed three (3) years, or by both such fine and imprisonment. Any person convicted of a second or subsequent violation of subsection A of this section shall be punished by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by imprisonment for a term not to exceed three (3) years, or by both such fine and imprisonment. 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 or permitted child care facility only under the following circumstances and limited to a reasonable amount of time to complete such tasks:

- 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 licensed or permitted child care facility center during regular school or facility hours or for school-sanctioned or licensed-or-permitted-child-care-center-sanctioned extracurricular activities.

Prior to entering the zone of safety for the purposes listed in this paragraph, the person shall inform school or child care center administrators of his or her status as a registered sex offender. The person shall update monthly, or as often as required by the school or center, information about the specific times the person will be within the zone of safety as established by this section.

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 medical treatment at a hospital or other facility certified or licensed by any government to provide medical services. As used in this subsection, “medical treatment” shall not include any form of psychological, social or rehabilitative counseling services or treatment programs for sex offenders.

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.

F. As used in this section, “park” means any outdoor public area specifically designated as being used for recreational purposes that is operated or supported in whole or in part by a homeowners’ association or a city, town, county, state, federal or tribal governmental authority.

## CHAPTER 46 DOMESTIC ABUSE

### § 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.

### **§ 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.

## **§ 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.

## **§ 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.

## § 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 unwanted 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.

## CHAPTER 47

### VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD

#### *HUMAN SKELETAL REMAINS AND BURIAL FURNITURE*

##### § 1151. Disposal of one's own body

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A. AnyEvery person has the right to direct the manner in which his or her body shall be disposed of after his death, and to direct the manner in which any part of his or her body which becomes separated therefrom during his or her lifetime shall be disposed of. The provisions of [Section 1151 et seq.](#) of this chapter do not apply where such person has given directions for the disposal of his or her body or any part thereof inconsistent with

these provisions.

B. A person may assign the right to direct the manner in which his or her body shall be disposed of after death by executing a sworn affidavit stating the assignment of the right and the name of the person or persons to whom the right has been assigned.

C. If the decedent died while serving in any branch of the United States Armed Forces, the United States Reserve Forces or the National Guard, and completed a United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, the person authorized by the decedent pursuant to that form shall have the right to bury the decedent or to provide other funeral and disposition arrangements, including but not limited to cremation.

D. Any person who knowingly fails to follow the directions as to the manner in which the body of a person shall be disposed of pursuant to subsection A, B or C of this section, upon conviction thereof, shall be guilty of a misdemeanor punishable by a fine of not more than Five Thousand Dollars (\$5,000.00).

#### **§ 1151a. Forfeiture of right to dispose of body of decedent**

Any person entitled by law to the right to dispose of the body of the decedent shall forfeit that right, and the right shall be passed on to the next qualifying person as listed in Section 1158 of Title 21 of the Oklahoma Statutes <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1158&originatingDoc=N765428C0BF0A11E09EB7D49CD7C7A6AE&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1158&originatingDoc=N765428C0BF0A11E09EB7D49CD7C7A6AE&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>)>, in the following circumstances:

1. Any person charged with first or second degree murder or voluntary manslaughter in connection with the death of the decedent, and whose charges are known to the funeral director; provided, however that if the charges against such person are dropped, or if such person is acquitted of the charges, the right of disposition shall be returned to the person;
2. Any person who does not exercise the right of disposition within three (3) days of notification of the death of the decedent or within five (5) days of the death of the decedent, whichever is earlier; or
3. If the district court, pursuant to Title 58 of the Oklahoma Statutes, determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this paragraph, “estranged” means a physical and emotional separation from the decedent at the time of death that clearly demonstrates an absence of due affection, trust and regard for the decedent.

#### **§ 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.

### § 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.

### § 1154. Autopsy---Definition---When allowed--Retention of tissue and specimens

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

1. In cases authorized by positive enactment of the Council;

2nd

2. 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; or

3rd

3. 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 (2) or more such persons assume custody of the body, the consent of one (1) of them shall be deemed sufficient.

C. 1. Any physician or hospital authorized to perform an autopsy pursuant to this section, whether by statutory authority or by consent from a person entitled to assume custody of the body for burial, shall be and is authorized to retain such tissue and specimens as the examining physician deems proper. Such tissue and specimens may be retained for examination, dissection or study in furtherance of determining the cause of death, or for evidentiary, diagnostic, or scientific purposes. Except with regard to medical examiners and the Office of the Chief Medical Examiner, this provision shall not apply if a person entitled to assume custody of the body for burial notifies the physician or hospital performing the autopsy prior to said autopsy of any objection to the retention of tissue and specimens obtained from the autopsy.

2. No physician or hospital authorized to perform an autopsy pursuant to this section shall be subject to criminal or civil liability for the retention, examination, dissection, or study of tissue and specimens obtained from said autopsy under existing laws regarding the prevention of mutilation of dead bodies.

### § 1155. Unlawful dissection is a crimemisdemeanor

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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 crimemisdemeanor.

### § 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.

### § 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.

### § 1158. **Duty** **Right to control disposition** of burial devolves upon whom

The duty of burying the body **remains** 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.

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The right to control the disposition of the remains of a deceased person, the location, manner and conditions of disposition, and arrangements for funeral goods and services vests in the following order, provided the person is eighteen (18) years of age or older and of sound mind:

1. The decedent, provided the decedent has entered into a pre-need funeral services contract or executed a written document that meets the requirements of the State of Oklahoma;
2. A representative appointed by the decedent by means of an executed and witnessed written document meeting the requirements of the State of Oklahoma;
3. The surviving spouse;
4. The sole surviving adult child of the decedent whose whereabouts is reasonably ascertained or if there is more than one adult child of the decedent, the majority of the surviving adult children whose whereabouts are reasonably ascertained;
5. The surviving parent or parents of the decedent, whose whereabouts are reasonably ascertained;
6. The surviving adult brother or sister of the decedent whose whereabouts is reasonably ascertained, or if there is more than one adult sibling of the decedent, the majority of the adult surviving siblings, whose whereabouts



are reasonably ascertained;

7. The guardian of the person of the decedent at the time of the death of the decedent, if one had been appointed;

8. The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition;

9. If the decedent was an indigent person or other person the final disposition of whose body is the financial responsibility of the state or a political subdivision of the state, the public officer or employee responsible for arranging the final disposition of the remains of the decedent; and

10. In the absence of any person under paragraphs 1 through 9 of this section, any other person willing to assume the responsibilities to act and arrange the final disposition of the remains of the decedent, including the personal representative of the estate of the decedent or the funeral director with custody of the body, after attesting in writing that a good-faith effort has been made to no avail to contact the individuals under paragraphs 1 through 9 of this section.

#### **§ 1158a. Court authority to award the right of disposition of body of decedent**

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The district court may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition, and may make decisions regarding the remains of the decedent if those sharing the right of disposition cannot agree. The following provisions shall apply to the determination of the court under this section:

1. If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and cannot, by majority vote, make a decision regarding the disposition of the remains of the decedent, any of the persons or a funeral director with custody of the remains may file a petition asking the district court to make a determination in the matter;

2. In making a determination under this section, the district court shall consider the following:

- a. the reasonableness and practicality of the proposed funeral arrangements and disposition,
- b. the degree of the personal relationship between the decedent and each person claiming the right of disposition,
- c. the desires of the person or persons who are ready, willing and able to pay the cost of the funeral arrangements and disposition,
- d. the convenience and needs of other families and friends wishing to pay respects,
- e. the desires of the decedent, and
- f. the degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;

3. In the event of a dispute regarding the right of disposition, a funeral director shall not be liable for refusing to

accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral director receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains. If the funeral director retains the remains for final disposition while the parties are in disagreement, the funeral director may embalm, refrigerate, or shelter the body in order to preserve it while awaiting the final decision of the district court and may add the cost of embalming, refrigeration or sheltering to the final disposition costs. If a funeral director brings an action under this section, the funeral director may add the legal fees and court costs associated with a petition under this section to the cost of final disposition. This section shall not be construed to require or to impose a duty on a funeral director to bring an action under this section. A funeral director shall not be held criminally or civilly liable for choosing not to bring an action under this section; and

4. Except to the degree it may be considered by the district court under subparagraph c of paragraph 2 of this section, the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater right to the right of disposition than the person would otherwise have. The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

#### **§ 1158b. Funeral service agreements--Instructions**

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Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the authority of the person to order such disposition. A funeral establishment shall have the right to rely on such funeral service contract or authorization and shall have the authority to carry out the instructions of the person or persons who the funeral director reasonably believes holds the right of disposition. The funeral director shall have no responsibility to contact or to independently investigate the existence of any next of kin or relative of the decedent. If there is more than one person in a class who are equal in priority and the funeral director has no knowledge of any objection by other members of such class, the funeral director shall be entitled to rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements; provided that no other person in such class provides written notice of objections to the funeral director.

#### **§ 1158c. Funeral directors--Final disposition--Collection of charges**

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A funeral director shall have complete authority to control the final disposition and to proceed under this act to recover reasonable charges for the final disposition when both of the following apply:

1. The funeral director has actual knowledge that none of the persons described in paragraphs 1

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[findType=L&pubNum=1000165&cite=OKSTT21S1158&originatingDoc=N02F3C330BF0B11E09EB7D49CD7C7A6AE&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)#co\\_pp\\_2add000034c06](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1158&originatingDoc=N02F3C330BF0B11E09EB7D49CD7C7A6AE&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_2add000034c06)> through 7 of Section 1158 of this

<[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1158&originatingDoc=N02F3C330BF0B11E09EB7D49CD7C7A6AE&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_ab8000003b904)

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2. The appropriate public or court authority fails to assume responsibility for disposition of the remains within thirty-six (36) hours after having been given written notice of the facts. Written notice may be delivered by

hand, United States mail, facsimile transmission or electronic mail.

**§ 1158d. Funeral director--Criminal and civil liability**

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No funeral establishment or funeral director who relies in good faith upon the instructions of an individual claiming the right of disposition shall be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions.

**§ 1159. Neglect of burial**

<#co\_anchor\_I53A18B10240E11EB94ADA523B6102>

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 **misdemeanor**; 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.

**§ 1160. Persons entitled to custody of body**

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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.

**§ 1161. Unlawful removal of dead body---Violation of or damage to casket or burial vault**

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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, **Section 938 of Title 63 of the Oklahoma Statutes**

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[findType=L&pubNum=1000165&cite=OKSTT63S938&originatingDoc=N9819A580C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT63S938&originatingDoc=N9819A580C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))>, 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 **felony** and shall be punished by imprisonment in the State Penitentiary not exceeding five (5) years, or in the county jail not exceeding one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

**§ 1161.1. Desecration of a human corpse--Penalty--Prosecution with other offenses-Definition**

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A. It is unlawful for any person to knowingly and willfully desecrate a human corpse for any purpose of:

1. Tampering with the evidence of a crime.;
2. Camouflaging the death of human being;
3. Disposing of a dead body;
4. Impeding or prohibiting the detection, investigation or prosecution of a crime;
5. Altering, inhibiting or concealing the identification of a dead body, a crime victim, or a criminal offender; or
6. Disrupting, prohibiting or interfering with any law enforcement agency or the Office of the State Medical Examiner in detecting, investigating, examining, determining, identifying or processing a dead body, cause of death, the scene where a dead body is found, or any forensic examination or investigation relating to a dead body or a crime.

B. Upon conviction, the violator of any provision of this section shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not more than seven (7) years, by a fine not exceeding Eight Thousand Dollars (\$8,000.00), or by both such fine and imprisonment.

C. This offense may be prosecuted in addition to any prosecution pursuant to Section 1161 of Title 21 of the Oklahoma Statutes <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1161&originatingDoc=N6E9A5B303C9B11DDA263A2C12D6D55D7&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1161&originatingDoc=N6E9A5B303C9B11DDA263A2C12D6D55D7&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>) for removal of a dead body or any other criminal offense.

D. For purposes of this section, “desecration of a human corpse” means any act committed after the death of a human being including, but not limited to, dismemberment, disfigurement, mutilation, burning, or any act committed to cause the dead body to be devoured, scattered or dissipated; except, those procedures performed by a state agency or licensed authority in due course of its duties and responsibilities for forensic examination, gathering or removing crime scene evidence, presentation or preservation of evidence, dead body identification, cause of death, autopsy, cremation or burial, organ donation, use of a cadaver for medical educational purposes, or other necessary procedures to identify, remove or dispose of a dead body by the proper authority.

## **§ 1162. Purchasing dead body**

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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

Section 1161

<[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1161&originatingDoc=N982FECA0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1161&originatingDoc=N982FECA0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>)

> of this title shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

## **§ 1163. Unlawful interference with places of burial**

Every [Any](#) 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.  
[shall be guilty of a felony punishable by imprisonment for a term not to exceed three \(3\) years, or by a fine not exceeding Two Hundred Fifty Dollars \(\\$250.00\), or by both such fine and imprisonment.](#)

#### § 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.

#### § 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](#)

[misdemeanor.](#)

#### § 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 [misdemeanor](#).

#### § 1167. Injury to [Destruction, mutilation, etc. of cemetery structures, markers, etc.](#) [Sale or tombbarter of veteran markers](#)

[Every person who shall:](#)

Every person who shall:

1. 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, [veteran marker from any war](#), 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.; or

2. Knowingly buys, sells or barter for profit any veteran marker from any war that is placed on a lot within a cemetery or place of burial of any human being, shall be guilty of a misdemeanor if the amount of damage is less than Five Thousand Dollars (\$5,000.00), and shall, upon conviction thereof, be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not less than ninety (90) days, or by both such fine and imprisonment. In addition, the court shall require the person to perform not more than one hundred twenty (120) hours of community service. If the amount of damage exceeds Five Thousand Dollars (\$5,000.00) the person shall be guilty of a felony and shall, upon conviction thereof, be punished by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or by imprisonment in the county jail for not less than six (6) months, or by both such fine and imprisonment. In addition, the court shall require the person to perform not more than two hundred forty (240) hours of community service. The court shall not suspend any portion of the community service requirement set forth in this section.

## **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.

### **§ 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 barter for profit human skeletal remains or associated burial furniture, previously buried within Cherokee Nation, shall be guilty of a crime.

### **§ 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.



### **§ 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.

### **§ 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 [misdemeanor](#).

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 [felony](#).

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 [felony](#).

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.

### **§ 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 of skeletal remains and burial furniture for scientific purposes and burial of human skeleton remains.

#### § 1168.6. Penalties

A. Any person convicted of a misdemeanor pursuant to the provisions of Sections 1168 through 1168.5 of this title shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), by imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

B. Any person convicted of a felony pursuant to the provisions of Sections 1168 through 1168.5 of this title shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), by imprisonment for a term not exceeding three (3) years, or by both such fine and imprisonment.

Any person convicted of an offense pursuant to the provisions of 21 CNCA §§ 1168.1 through 1168.6 shall be guilty of a crime.

### CHAPTER 47A

#### GENERAL AND MISCELLANEOUS PROVISIONS

#### § 1171. Loitering around residence to watch occupantsPeeping Tom-Use of photographic, electronic or video equipment-Offenses and punishment-Definition

- 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 misdemeanor punishable pursuant to 21 CNCA § 10 by a term of imprisonment not to exceed one (1) year or by imposition of a fine in an amount not to exceed Five Thousand Dollars (\$5,000), or by both such fine and imprisonment, 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 felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment pursuant to 21 CNCA § 10, provided that such sentence must include a term of imprisonment.
- C. 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 and capture an image of a private area of a person without the knowledge and consent of such person and knowingly does so under circumstances in which a reasonable person would believe that the private area of the person would not be visible to the public, regardless of whether the person is in a public or private place shall, upon conviction, be guilty of a misdemeanor. The

violator shall be punished by a term of imprisonment not to exceed one (1) year or by imposition of a fine in an amount not to exceed Five Thousand Dollars (\$5,000), or by both such fine and imprisonment.

D. As used in this section, the phrase “private area of the person” means the naked or undergarment-clad genitals, pubic area, buttocks, or any portion of the areola of the female breast of that individual.

E. 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.

## § 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 including text, sound or images 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, including test, sound or images 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 the control of the person 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 including text, sound, or images; and
2. A communication made to a pager.; or

3. A communication including text, sound or images posted to a social media or other public media source.

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. Except as provided in subsection E of this section, Any person who is convicted of the provisions of subsection A of this section, shall be guilty of a crime ~~misdemeanor~~ punishable pursuant to 21 CNCA § 10.

E. Any person who is convicted of a second offense under this section shall be guilty of a felony.

### § 1173. Stalking--Penalties

A. 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 of this section to feel frightened, intimidated, threatened, harassed, or molested; and
2. Actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed, or molested, shall, upon conviction, be guilty of the crime of stalking, which is a misdemeanor punishable by imprisonment for not more than one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

B. Any person who violates the provisions of subsection A of this section when:

1. There is a permanent or temporary restraining order, a protective order, an emergency ex parte protective order, or an injunction in effect prohibiting the behavior described in subsection A of this section against the same party, when the person violating the provisions of subsection A of this section 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 subsection A of this section against the same party or under the conditions of a community or alternative punishment; or
3. Said person, within ten (10) years preceding the violation of subsection A of this section, completed the execution of sentence for a conviction of a crime involving the use or threat of violence against the same party, or against any member of the immediate family of such party, shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or by both such fine and imprisonment.

C. Any person who:

1. Commits a second act of stalking within ten (10) years of the completion of sentence for a prior conviction of stalking; or
2. Has a prior conviction of stalking and, after being served with a protective order that prohibits contact with an individual, knowingly makes unconsented contact with the same individual, shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine of not less than Two Thousand Five Hundred Dollars (\$2,500.00), or by both such fine and

imprisonment.

D. Any person who commits an act of stalking within ten (10) years of the completion of execution of sentence for a prior conviction under subsection B or C of this section shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not exceeding three (3) years, or by a fine of not less than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

E. Evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact, as defined in subsection F of this section, with the victim after having been requested by the victim to discontinue the same or any other 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.

F. For purposes of determining the crime of stalking, the following definitions shall apply:

1. “Harasses” means a pattern or course of conduct directed toward another individual 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 shall include harassing or obscene phone calls as prohibited by Section 1172 of this title and conduct prohibited by Section 850 of this title. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

2. “Course of conduct” means a pattern of conduct composed of a series of two 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”;

3. “Emotional distress” means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling;

4. “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 workplace 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;

5. “Member of the immediate family”, for the purposes of this section, 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 regularly resided in the household within the prior six (6) months; and

6. "Following" shall include the tracking of the movement or location of an individual through the use of a Global Positioning System (GPS) device or other monitoring device by a person, or person who acts on behalf of another, without the consent of the individual whose movement or location is being tracked; provided, this shall not apply to the lawful use of a GPS device or other monitoring device or to the use by a new or used motor vehicle dealer or other motor vehicle creditor of a GPS device or other monitoring device, including a device containing technology used to remotely disable the ignition of a motor vehicle, in connection with lawful action after default of the terms of a motor vehicle credit sale, loan or lease, and with the express written consent of the owner or lessee of the motor vehicle.

#### **§ 1174. Burning cross with intent to intimidate**

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It shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place. Any person who shall violate any provision of this section shall be guilty of a felony.

### **PART V**

## **CRIMES AGAINST PUBLIC HEALTH AND SAFETY**

### **CHAPTER 48**

## **GENERAL AND MISCELLANEOUS PROVISIONS**

#### **§ 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 **misdemeanor**, and may be punishable by imprisonment for not to exceed 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.

F. For purposes of this section:

1. **"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;
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 Section 506 of Title 37 of the Oklahoma Statutes, low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, 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. **"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.

**"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

**"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;

### **§ 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 **misdemeanor**.

### **§ 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 deemed a felon, and, upon conviction thereof, guilty of a felony and shall be punished by imprisonment for not more than three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00).

**§ 1192.1. Engaging ~~Knowingly engaging~~ in activity with intent or causing another person ~~conduct~~ reasonably likely to be infected with human immunodeficiency virus (HIV virus)**

A. It shall be unlawful for any person knowing that he or she has Acquired Immune Deficiency Syndrome (AIDS) or is a carrier of the human immunodeficiency virus (HIV) and with intent to infect another, to engage in conduct reasonably likely to result in the transfer of the person's own blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another, or through the skin or other membranes of another person, except during in utero transmission of blood or bodily fluids, and:

1. The other person did not consent to the transfer of blood, bodily fluids containing blood, semen, or vaginal secretions; or

2. The other person consented to the transfer but at the time of giving consent had not been informed by the person that the person transferring such blood or fluids had AIDS or was a carrier of HIV.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 crimefelony, punishable by imprisonment for a term not to exceed three (3) years.

**§ 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 crimemisdemeanor.

**§ 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 crimemisdemeanor.

**§ 1196. Apothecary liable for negligence--Willful or ignorant acts or omissions**

Every apothecary or every person employed as clerk or salesman by an apothecary, or otherwise carrying on business as a dealer in drugs or medicines, who, in putting up any drugs or medicines, willfully, negligently or ignorantly omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor.



### **§ 1197. Poisons, laying out**

Whosoever shall willfully lay out poison with the intent that the same be taken by any domestic animal, or in such a manner as to endanger human life; or whoever shall, if in open range livestock territory, lay out poisons except in a safe place on his own premises, is guilty of a misdemeanor.

### **§ 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 **misdemeanor**.

### **§ 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 **misdemeanor**.

### **§ 1200. Frauds affecting market price**

Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false and fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

### **§ 1201. Newspapers, false statements in**

Every editor or proprietor of any newspaper who willfully publishes in such newspaper as true, any statement which he has not good reason to believe to be true, with intent to increase thereby the sales of copies of such paper, is guilty of a misdemeanor.

### **§ 1202. Eavesdropping**

Every person guilty of secretly loitering about any building, with intent to overhear discourse therein, and to repeat or publish the same to vex, annoy, or injure others, is guilty of a misdemeanor.

### **§ 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 public nuisance. **Reserved.**

### **§ 1205. Dumping near highway unlawful-Establishment of dumping ground by city or town **Throwing, leaving, or depositing trash near highway, road, or occupied dwelling****

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. **or the occupied dwelling of another, except when the placement of such materials is along a**

collection route for the specific intent and purpose of scheduled collection and transportation to a recycling or disposal facility serving the area. Provided, however, that the Nation or any city or town operating or desiring to operate a dump ground **solid waste disposal site** within the distance above prescribed may establish **said solid waste disposal site** when said solid waste disposal site is approved by the Oklahoma Department of Environmental Quality or operated under a permit issued by the Cherokee Nation. same dump ground when said dump ground is approved by the health officer of the Nation, or by the Oklahoma State Health Commissioner.

#### **§ 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 **less** than One Thousand **Two Hundred** Dollars (\$1,0200.00) **nor more than Five Hundred Dollars (\$500.00)**, or be imprisoned in the penal institution for not more than ninety (90) days, or by both such fine and imprisonment.

#### **§ 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 deemed guilty of a crime. **Reserved**

#### **§ 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 **misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars (\$500.00), or imprisoned not more than one (1) year, or both such fine and imprisonment.**

### **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.

#### **§ 1210. Definitions**

For the purpose of, and when used in this act:

1. The term "disaster area" means the scene or location of a natural or military disaster, an explosion, an aircraft accident, a fire, a railroad accident and a major traffic accident.
2. "Authorized person" shall include all nation, county and municipal police and fire personnel; hospital and

ambulance crews; National Guard and Civil Defense [Emergency Management](#) 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.

"Disaster area" means the scene or location of a natural or military disaster, an explosion, an aircraft accident, a fire, a railroad accident and a major traffic accident.

### **§ 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.

### **§ 1211.1. Disruption or prevention of emergency telephone call--Penalties**

[Any person who intentionally interrupts, disrupts, impedes or interferes with an emergency telephone call or intentionally prevents or hinders another person from placing an emergency telephone call shall be guilty of a misdemeanor. Upon conviction, the person shall be punished by imprisonment for not more than one \(1\) year, or by a fine of not more than Three Thousand Dollars \(\\$3,000.00\), or by both such fine and imprisonment.](#)

### **§ 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.

### **§ 1213. Penalties**

A. It is a crime [misdemeanor](#) for any person to violate any of the provisions of [Section 1209 et seq.](#) this act [title](#).

B. Every person convicted of a crime [misdemeanor](#) for violating any provision of [Section 1209 et seq.](#) of this act [title](#) shall be punished by a fine of not less [more](#) than One Hundred [Three Thousand](#) Dollars (\$1003,000.00) nor more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than ten (10) days [one \(1\) year, or by both such fine and imprisionment.](#)

### **§ 1214. Radio or other electronic units [sets](#) capable of receiving on police frequencies-Illegal use defined [Unlawful uses](#)**

[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 and not otherwise and any person violating the provisions hereof shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than three \(3\) years, or fined by not more than Five Thousand Dollars \(\\$5,000.00\), or by both such imprisonment and fine.](#)

Any person convicted of violating this section shall be guilty of a crime.

### **§ 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.

#### **§ 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 for a term 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.

#### **§ 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 felony and shall be punished therefor by imprisonment for a term not exceeding three (3) years.

#### **§ 1218. Display of names of military dead at demonstrations or protests without consent prohibited**

It shall be unlawful for the names of persons killed in military action to be carried, displayed on cards or placards, or otherwise published for the purpose of any antiwar, antipolice action or antidraft demonstration or protest on the grounds of schools, colleges, universities, state institutions or facilities, county or city institutions or facilities, which are wholly or in part supported by public funds, or on any other public property such as parks and streets dedicated to public use, without the written consent of the surviving spouse of such deceased person, if married at time of death or, if unmarried, the written consent of one or both parents, or if they both be deceased, then the next of kin.

#### **§ 1219. Penalties**

Any person violating the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than (1) year or shall be fined an amount not to exceed Five Hundred Dollars (\$500.00) or by both such imprisonment and fine.

#### **§ 1220. Transporting intoxicating or nonintoxicating beverage except in original unopened container prohibited--or low-point beer-Prohibition-Special Assessment--Exceptions-Penalty**

- A. Except as provided in subsection C of this section, it shall be unlawful for any person operator to knowingly transport or for any passenger to possess in any moving vehicle upon a public highway, street or alley any intoxicating or nonintoxicating beverage or low-point beer, 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 misdemeanor, and upon conviction shall be punished by a fine of not more than Fifty Dollars (\$50.00) as provided in subsection A of Section 566 of Title 37 of the Oklahoma Statutes.
- B. Any person convicted of violating any provision of subsection A of this section shall, in addition to any

fine imposed, pay a special assessment trauma-care fee of One Hundred Dollars (\$100.00) to be deposited into the Trauma Care Assistance Revolving Fund created in Section 1-2522 of Title 63 of the Oklahoma Statutes.

- C. The provisions of subsection A of this section shall not apply to the passenger area of buses and limousines; however, it shall be unlawful for the driver of the bus or limousine to consume or have in the driver's immediate possession any intoxicating beverage or low-point beer.
- D. No city, town, or county may adopt any order, ordinance, rule or regulation concerning the consumption or serving of intoxicating beverages or low-point beer in buses or limousines.
- E. As used in this section:

1. "Bus" means a vehicle as defined in Section 1-105 of Title 47 of the Oklahoma Statutes chartered for transportation of persons for hire. It shall not mean a school bus, as defined by Section 1-160 of Title 47 of the Oklahoma Statutes, transporting children or a vehicle operated pursuant to a franchise with a city or town operating over a regularly scheduled route; and
2. "Limousine" means a chauffeur-driven motor vehicle, other than a bus or taxicab, as defined by Section 1-174 of Title 47 of the Oklahoma Statutes, designed and used for transportation of persons for compensation.

### **§ 1220.1. Prohibition of alcohol inhalation device**

It is unlawful for any person to buy, sell, furnish, manufacture or possess any alcohol inhalation device, alcohol infuser or any other device capable of causing a blood or breath alcohol concentration in the human body by means of fumes, vapors, gases, air particles or matter inhaled directly into the central nervous system by mouth or nasal passages. Any person convicted of any violation of this section shall be guilty of a misdemeanor punishable by a fine of no more than Three Thousand Dollars (\$3,000.00). The Cherokee Nation Tax Commission is prohibited from licensing any establishment for consumption of alcohol from such prohibited devices, and shall permanently revoke any license issued to any person convicted of any violation of this section. Provided, however, that any inhalation device which may contain alcohol and is intended or used for medicinal purposes, whether it is available for over-the-counter or by prescription purchase, shall be exempt from these provisions.

## **CHAPTER 49**

### **ANIMALS AND CARCASSES**

#### **§ 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.

**Reserved**

#### **§ 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.**Reserved**

### **§ 1223. Leaving carcass in certain places unlawful**

A. 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, in any well, spring, pond or stream of water; or leave or deposit the same within one-fourth (1/4) mile of any occupied dwelling or of any public highway, without burying or disposing of the carcass in accordance with the recommendations and requirements of the Oklahoma Department of Agriculture, Food, and Forestry.

B. It shall be the duty of the owner of any domestic animal in this Nation to dispose of any carcass within twenty-four (24) hours after notice of the knowledge of the death. Disposal shall be in accordance with the recommendations and requirements of the Oklahoma Department of Agriculture, Food, and Forestry. It shall be unlawful to bury any carcass in any land along any stream or ravine where it may become exposed through erosion of the soil, or where the land is at any time subject to overflow.

C. "Owner" shall mean and include any person having possession of domestic animals either by reason of ownership, rent, hire, loan, or otherwise.

D. Any person who violates this section shall be guilty of a misdemeanor. 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.

### **§ 1224. Violation of sections regarding carcasses a crime**

Every person who violates the two preceding sections, shall be guilty of a crime.**Reserved**

### **§ 1229. Exhibition livestock--Administration of certain substances or performance of certain surgical procedures to alter appearance**

For livestock utilized for exhibition purposes, it shall be unlawful for any person to inject into the livestock or cause the livestock to ingest any drug, chemical or substance that is not labeled for use on animals, or to administer any chemical or substance used on livestock for the specific purpose of altering the appearance of livestock or to alter the muscle or fat content of the animal's carcass or to perform any surgical procedure to alter the appearance of the livestock. Ordinary and customary veterinarian procedures, including but not limited to dehorning, branding, tagging or notching ears, castrating, deworming, vaccinating or docking the tail of farm animals shall not be prohibited. Surgery of any kind performed to change the natural contour or appearance of the animal's body or hide, shall be prohibited by this section. Any violation of the provisions of this section shall be a misdemeanor, upon conviction, punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment for a term not more than one (1) year, or by both such fine and



imprisonment. A second or subsequent violation of the provisions of this section shall be a felony, upon conviction, punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment for a term not more than three (3) years, or by both such fine and imprisonment.

## CHAPTER 50

### TOBACCO

#### § 1241. Furnishing cigarettes or other tobacco or vapor products to minors-persons under 21--Punishment

- A. Any person who shall furnish to any minor person under the age of twenty-one (21) by gift, sale or otherwise any cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product, or vapor products shall be guilty of a crime misdemeanor and upon conviction thereof shall be sentenced to paypunished by a fine in the amount of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) and be confinedor by imprisonment in the penal institution not less than ten (10) days norfor not more than ninety (90) days for each offense.
- B. For the purposes of this chapter, “vapor product” shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. “Vapor products” shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of a solution, that may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic device. “Vapor products” do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

#### § 1242. Refusal Refusing of minor to disclose place where and person from whom obtained

Any minor person under the age of twenty-one (21) being in possession of cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product, or vapor products 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, or vapor products were obtained, who shall refuse to furnish such information, shall be guilty of a crime misdemeanor 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.the court shall deem proper.

#### § 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 and is hereby prohibited when such possession is in any of the following placesindoor place used by or open to the public, whether indoors or outdoors, public transportation, or any indoor workplace, except where specifically allowed by law. Commercial airport operators may prohibit the use of lighted tobacco or lighted marijuana or the vaping of marijuana in any area that is open to or used by the public whether located



indoors or outdoors, provided that the outdoor area is within one hundred seventy-five (175) feet from an entrance.:

As used in this section, "indoor workplace" means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed.

Elevators;

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; and

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. All buildings and other properties, or portions thereof, owned or operated by this Nation shall be designated as nonsmoking. Smoking tobacco shall only be allowed in designated outdoor smoking areas. 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 tobacco or marijuana smoking or marijuana vaping shall be allowed within twenty-five (25) feet of the entrance or exit of any building specified in subsection B of this section. "NO SMOKING" signs, as required by this act, shall be no smaller than eight inches (8") by ten inches (10") with lettering no smaller than one inch (1"). The letters shall be of contrasting colors to the sign.

The restrictions on tobacco smoking provided in this section shall not apply to the following: Responsibility for posting "NO SMOKING" signs shall be as follows:

1. The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;
2. The room or rooms where bingo, gambling, or other activities licensed, regulated, or operated by the Cherokee Nation under Title 4 of this Code.

3. Up to twenty-five percent (25%) of the guest rooms at a hotel or other lodging establishment;
4. Retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;
5. Workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an employee, present at the business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;
6. Workplaces occupied exclusively by one or more tobacco smokers, if the workplace has only incidental public access;
7. Private offices occupied exclusively by one or more smokers;
8. Workplaces within private residences, except that smoking tobacco or marijuana or vaping marijuana shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;
9. Medical research or treatment centers, if tobacco smoking is integral to the research or treatment. Furthermore, the restrictions on smoking or vaping of marijuana provided in this section shall not apply to medical research or treatment centers, if marijuana smoking or vaping is integral to the research or treatment;
10. A facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Section 501(c)(8), 501(c)(10) or 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public; and
11. Any outdoor seating area of a restaurant; provided, smoking tobacco or smoking or vaping marijuana shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of a restaurant.

In privately-owned facilities, the owner or lessee, if a lessee is in possession of the facilities, shall be responsible.

In corporately-owned facilities, the manager and/or supervisor of the facility involved shall be responsible.

In publicly-owned facilities, the manager and/or supervisor of the facility shall be responsible.

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).

E. An employer not otherwise restricted from doing so may elect to provide tobacco smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for tobacco

smoking, provided each tobacco smoking room is fully enclosed and exhausted directly to the outside in such a manner that no tobacco smoke can drift or circulate into a nonsmoking area. No exhaust from a tobacco smoking room shall be located within fifteen (15) feet of any entrance, exit or air intake.

F. If tobacco smoking is to be permitted in any space exempted in this section of this section or in a tobacco smoking room pursuant to subsection H of this section, such tobacco smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the tobacco smoking space shall be fully enclosed, exhausted directly to the outside with no air from the tobacco smoking space circulated to any nonsmoking area, and under negative air pressure so that no tobacco smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a tobacco smoking room shall not be exhausted within fifteen (15) feet of any entrance, exit or air intake. Any employer may choose a more restrictive tobacco smoking policy, including being totally tobacco smoke free.

G. Notwithstanding any other provision of this section, until March 1, 2006, restaurants may have designated tobacco smoking and nonsmoking areas or may be designated as being a totally nonsmoking area. Beginning March 1, 2006, restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated tobacco smoking rooms. Food and beverage may be served in such designated tobacco smoking rooms which shall be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so tobacco smoke cannot escape when a door is opened, and no air is recirculated to nonsmoking areas of the building. No exhaust from such room shall be located within twenty-five (25) feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of this subsection by the State Department of Health.

H. The person who owns or operates a place where tobacco smoking or use is prohibited by law shall be responsible for posting a sign or decal, at least four (4) inches by two (2) inches in size, at each entrance to the building indicating that the place is smoke-free or tobacco-free.

I. Responsibility for posting signs or decals 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; and
3. In publicly owned facilities, the manager and/or supervisor of the facility shall be responsible.

J. Any person who knowingly violates the provisions of this section shall be punished by a citation and fine of not more than One Hundred Dollars (\$100.00).

#### **§ 1253. Failure to ring bell of locomotive**

Every person in charge, as engineer of a locomotive engine, who omits to cause a bell to ring or a steam whistle to sound at the distance of at least eighty (80) rods from the place where the track crosses, on the same level, any traveled public way, is punishable by a fine not exceeding Fifty Dollars (\$50.00), or by imprisonment for a term not exceeding sixty (60) days.

#### **§ 1254. Drunken engineer or conductor or driver**

Every person who, while in charge, as engineer, of a locomotive engine, or while acting as conductor or driver upon a railroad train or car, whether propelled by steam or drawn by horses, is intoxicated, is guilty of a misdemeanor.

#### **§ 1255. Railroad officers, servants and agents, neglect of duty**

Every engineer, conductor, brakeman, switch-tender or other officer, agent or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent or servant, by which human life or safety is endangered or property is injured or destroyed, the punishment for which is not otherwise prescribed, is guilty of a misdemeanor.

### **PART VI**

### **CRIMES AGAINST PUBLIC PEACE**

### **CHAPTER 54**

#### **§ 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.

### **§ 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.

### **§ 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.

## **CHAPTER 55**

### **OTHER CRIMES AGAINST PUBLIC PEACE**

### **§ 1311. Riot defined**

<#co\_anchor\_IDA668EE0295711EBB0C3FEB220030>

Any use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot.

### **§ 1312. Punishment for riot**

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Every person guilty of participating in any riot is punishable as follows:

1. If any murder, maiming, robbery, rape or arson was committed in the course of such riot, such person is punishable in the same manner as a principal in such crime;
2. If the purpose of the riotous assembly was to resist the execution of any statute of this Nation or of the United States, or to obstruct any public officer of this Nation or of the United States, in the performance of any legal duty, or in serving or executing any legal process, such person shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years;
3. If such person carried at the time of such riot any species of firearms, or other deadly or dangerous weapon, or was disguised, such person shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years;

4. If such person directed, advised, encouraged or solicited other persons, who participated in the riot to acts of force or violence, such person shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years;

5. In all other cases such person is punishable as for a misdemeanor.

### **§ 1313. Rout defined**

<#co\_anchor\_I95EAB560295811EBB0C3FEB220030>

Whenever three or more persons, acting together, make any attempt to do any act toward the commission of an act which would be riot if actually committed, such assembly is a rout.

### **§ 1314. Unlawful assembly defined**

<#co\_anchor\_I0B2B88D0295A11EBB0C3FEB220030>

Wherever three or more persons assemble with intent or with means and preparations to do an unlawful act which would be riot if actually committed, but do not act toward the commission thereof, or whenever such persons assemble without authority of law, and in such a manner as is adapted to disturb the public peace, or excite public alarm, such assembly is an unlawful assembly.

### **§ 1315. Punishment for rout or unlawful assembly**

<#co\_anchor\_I54CCFDA0240C11EB94ADA523B6102>

Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

### **§ 1316. Warning to disperse, remaining after**

<#co\_anchor\_I8A6C8240295811EBB0C3FEB220030>

Every person remaining present at the place of any riot, rout or unlawful assembly after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

### **§ 1317. Presence after unlawful purpose becomes known**

<#co\_anchor\_I5C12B730240C11EB94ADA523B6102>

Where three or more persons assemble for a lawful purpose and afterwards proceed to commit an act that would amount to riot if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

### **§ 1318. One refusing to aid in arrest deemed rioter**

<#co\_anchor\_I41DFCC20240E11EB94ADA523B6102>

Every person present at any riot, and lawfully commanded to aid the magistrate or officers in arresting any rioter, who neglects or refuses to obey such command, is deemed one of the rioters, and punishable accordingly.

### **§ 1319. Combination to resist process**

Every person who resists, or enters into a combination with any other person to resist the execution of any legal process, under circumstances not amounting to a riot, is punishable by imprisonment for a term not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or both.

### **§ 1320.1. Riot**

<#co\_anchor\_I4FCCEE50240C11EB94ADA523B6102>

For the purposes of this chapter, “riot” means that crime defined in 21 CNCA § 1311

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### **§ 1320.2. Incitement to riot**

<#co\_anchor\_I5E6FA240295711EBB0C3FEB220030>

It shall be unlawful and shall constitute incitement to riot for a person or persons, intending to cause, aid, or abet the institution or maintenance of a riot, to do an act or engage in conduct that urges other persons to commit acts of unlawful force or violence, or the unlawful burning or destroying of property, or the unlawful interference with a police officer, peace officer, fireman or a member of the Oklahoma National Guard or any unit of the armed services officially assigned to riot duty in the lawful performance of his duty.

### **§ 1320.3. Unlawful assembly <#co\_anchor\_I5F65AB60240F11EB94ADA523B6102>**



It shall be unlawful and shall constitute an unlawful assembly for a person to assemble or act in concert with four or more persons for the purpose of engaging in conduct constituting the crime of riot, or to remain at the scene of a riot after being instructed to disperse by law authorities.

#### **§ 1320.4. Penalty for riot or incitement to riot**

Any person guilty of the crime, as set forth in Section 1320.2

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[findType=L&pubNum=1000165&cite=OKSTT21S1320.2&originatingDoc=NBFCDD1170C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1320.2&originatingDoc=NBFCDD1170C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title, shall be deemed guilty of a felony, punishable by not more than three (3) years in prison, or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

#### **§ 1320.5. Penalty for unlawful assembly**

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Any person guilty of the crime, as set forth in Section 1320.3

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#### **§ 1320.6. Labor disputes**

<#co\_anchor\_I4627E560295911EBB0C3FEB220030>

The provisions of this chapter shall not apply to employer-employee disputes in any manner or to employees engaged in a labor dispute.

#### **§ 1320.7. Insurance policies**

The provisions of this chapter shall not, in any way, be construed to have any bearing on any insurance policy now in effect, or those to be issued in the future.

#### **§ 1320.10. Teaching, demonstrating or training in the use of firearms, explosives or incendiary devices**

## **in furtherance of riot or civil disorder**

No person, except those specifically authorized by the Nation, state or federal government, shall:

1. Teach or demonstrate to any group of persons the use, application or making of any firearm, explosive or incendiary device or application of physical force capable of causing injury or death to a person knowing or intending that such firearm, explosive or incendiary device or application of physical force will be employed for use in, or in furtherance of, a riot or civil disorder; or
2. Assemble with one or more persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device or application of physical force capable of causing injury or death to a person, intending to employ such firearm, explosive or incendiary device or application of physical force for use in, or in furtherance of, a riot or civil disorder. Any violation of this section shall be a felony.

### **§ 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 **misdemeanor**.

### **§ 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 **misdemeanor**.

### **§ 1353. Unlawful intrusion upon lands**

Every person who intrudes or squats upon any lot or piece of land within the bounds of any incorporated city or town without license or authority from the owner thereof, or who erects or occupies thereon any hut, hovel, shanty, or other structure whatever without such license or authority; and every person who places, erects or occupies within the bounds of any street or avenue of such city or town, any hut, hovel, shanty or other structure whatever, is guilty of a **misdemeanor**.

## **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 **misdemeanor**.

### **§ 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 ~~One~~ Hundred Dollars (\$500~~100~~.00), or by imprisonment in the penal institution ~~for a term~~ not to exceed thirty (30) days, or by both such fine and imprisonment, at the discretion of the Court or jury trying the same.

### **§ 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 acceptance, 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.

### **§ 1364. Discharging firearms in public place**

Every person who willfully discharges any species of firearm ~~pistol~~, ~~shotgun~~, 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 ~~misdemeanor~~.

### **§ 1365. Trespassing on railway trains a misdemeanor**

Any person, other than a railway employee in the discharge of his duty, who, without authority from the conductor of the train, rides, or attempts to ride, on top of any car, coach, engine or tender, on any railroad in this state, or on the drawheads between the cars, or under cars or truss rods or trucks, or in any freight car, or on the platform of any baggage car, express car, or mail car, or any train in this state, shall be guilty of a misdemeanor.

### **§ 1368. Possession of explosives by convicted felons-Penalty**

Any person who has been convicted of a crime under the laws of this ~~Nation~~ or any other state or the laws of the United States who, with an unlawful intent, is in possession of any explosives, ~~upon conviction, shall is~~ be guilty of a crime ~~felony punishable by imposition of a fine in an amount not to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment for a term not to exceed third (3) years.~~

For the purposes of this section, “explosive” means any chemical compound or mechanical mixture that is commonly used or which is intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, by chemical reaction, or by detonation of any part of the compound or mixture may cause gaseous pressures capable of producing destructive effects on contiguous objects or of destroying life or limb. Provided, that dynamite, nitroglycerin, gunpowder, blasting powder and trinitrotoluene shall be deemed explosives without further proof of their explosive nature. The term “explosive” shall also include all material which is classified as explosive by the United States

Department of Transportation. The term “explosive” shall not include explosives in the forms prescribed in the official UNITED STATES PHARMACOPOEIA; fireworks as defined by Section 1622 of Title 68 of the Oklahoma Statutes; or small arms ammunition and components therefor, which are subject to the Gun Control Act of 1968 (Title 18, Chapter 44, U.S. Code) and regulations promulgated thereunder;

### **§ 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 **misdemeanor punishable by a fine not exceeding One Hundred Dollars (\$100.00).**

The provisions of this section shall not apply to the participants in the athletic or other public entertainment event.

### **§ 1378. Attempting, conspiring or endeavoring to perform act of violence involving serious bodily harm or death--Threats--Devising plan, scheme or program of action to cause serious bodily harm or death**

A. Any person who shall attempt, conspire or endeavor to perform an act of violence involving or intended to involve serious bodily harm or death of another person shall be guilty of a felony, punishable upon conviction thereof by imprisonment for a period of not more than three (3) years.

B. Any person who shall threaten to perform an act of violence involving or intended to involve serious bodily harm or death of another person shall be guilty of a misdemeanor, punishable upon conviction thereof by imprisonment in the county jail for a period of not more than six (6) months.

C. Any person who shall devise any plan, scheme or program of action to cause serious bodily harm or death of another person with intent to perform such malicious act of violence, whether alone or by conspiring with others, shall be guilty of a felony, punishable upon conviction thereof by imprisonment for a period of not more than three (3) years.

## **PART VII**

### **CRIMES AGAINST PROPERTY**

#### **CHAPTER 56**

#### **ARSON**

### **§ 1401. Arson in the first degree-Punishment**

A. Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device, **accelerant, ignition device, heat-producing 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 that person or another, or who willfully and maliciously sets fire to or burns, or by the use of any explosive device, accelerant, ignition device, heat producing device or substance causes a person to be burned, or aids, counsels or procures the burning of a person, shall, upon conviction, be guilty of a crime be guilty of arson in the first degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment.

- B. Any person who, while manufacturing, attempting to manufacture or endeavoring to manufacture a controlled dangerous substance in violation of 21 CNCA § 2101, et seq., 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 contents thereof, inhabited or occupied by one or more persons whether the property of that person or another, or who while manufacturing or attempting to manufacture a controlled dangerous substance in violation of 21 CNCA § 2101, et seq. causes a person to be burned, or aids, counsels or procures the burning of a person shall, upon conviction, be guilty of arson in the first degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment.

#### § 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 or while manufacturing or attempting to manufacture a controlled dangerous substance in violation of 21 CNCA § 2101 et. seq. in whole or in part, or causes 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 arson in the second degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment.

#### § 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 arson in the third degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment.
- 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 arson in the third degree, which is a felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000), or by both such fine and imprisonment.

C. Arson in the third degree is a felony.

#### **§ 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 [arson in the fourth degree, which is a felony punishable by imprisonment for a term not to exceed three \(3\) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars \(\\$15,000\), or by both such fine and imprisonment.](#)
- 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 [arson in the fourth degree, which is a felony punishable by imprisonment for a term not to exceed three \(3\) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars \(\\$15,000\), or by both such fine and imprisonment.](#)
- C. Arson in the fourth degree is a felony.

#### **§ 1405. Endangering or causing personal injury to human life during commission of arson**

[Any person violating any of the provisions of Sections 1401, 1402, 1403 or 1404 of this title who during such violation endangers any human life, including all emergency service personnel, shall be guilty of a felony punishable by imprisonment for a term not to exceed three \(3\) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars \(\\$15,000\), or by both such fine and imprisonment. If personal injury results, the person shall be punished by imprisonment for a term not to exceed three \(3\) years.](#)

#### **§ 1411. Fraudulent bill of lading**

[Any person being the master, owner or agent of any vessel, or officer or agent of any railroad, express or transportation company, or otherwise being or representing any carrier who delivers any bill of lading, receipt or other voucher, or by which it appears that any merchandise of any description has been shipped on board of any vessel, or delivered to any railroad, express or transportation company or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher, shall be guilty of a felony punishable by imprisonment for a term not to exceed three \(3\) years, or by a fine not exceeding One Thousand Dollars \(\\$1,000.00\), or both.](#)

#### **§ 1412. Fraudulent warehouse receipt**

[Any person carrying on the business of a warehouseman, wharfinger or other depositary of property, who issues any receipt, bill of lading or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, shall be guilty of a felony punishable by imprisonment for a term not to exceed three \(3\) years, or by a fine not exceeding One Thousand Dollars \(\\$1,000.00\), or both.](#)

### **§ 1413. Correspondence between instrument and merchandise received**

No person can be convicted of any offense under the last two sections<sup>1</sup> by reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue.

### **§ 1414. Duplicate receipts or vouchers**

Any person mentioned in Section 1411 or 1412 of this title, who issued any second or duplicate receipt or voucher of a kind specified in those two sections, at a time while any former receipt or voucher for the merchandise specified in the second receipt is outstanding and uncanceled, without writing across the face of the same the word "Duplicate," in a plain and legible manner, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or both.

### **§ 1415. Selling goods without consent of holder of bill of lading**

Any person mentioned in Section 1411 or 1412 of this title, who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt or voucher has been issued by him without the consent in writing thereto of the person holding such bill, receipt or voucher, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or both.

### **§ 1416. Unlawful delivery of goods**

Any person mentioned in Section 1412 of this title, who delivers to another any merchandise for which any bill of lading, receipt or voucher has been issued, unless such receipt or voucher bore upon its face the words "Not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of delivery or unless, in the case of partial delivery, a memorandum thereof is endorsed upon such receipt or voucher, shall be punishable as follows:

1. If the value of the property is less than One Thousand Dollars (\$1,000.00), the person shall be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
2. If the value of the property is One Thousand Dollars (\$1,000.00) or more but less than Two Thousand Five Hundred Dollars (\$2,500.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
3. If the value of the property is Two Thousand Five Hundred Dollars (\$2,500.00) or more but less than Fifteen Thousand Dollars (\$15,000.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine; and



4. If the value of the property is Fifteen Thousand Dollars (\$15,000.00) or more, the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

#### § 1417. When law does not apply

The last two sections do not apply where property is demanded by virtue of process of law.

### CHAPTER 58

## BURGLARY AND HOUSE BREAKING

#### § 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.

#### § 1435. Burglary in second degree and third degree-Acts constituting

- A. Every person who breaks and enters any the dwelling house of another, in which there is at the time no human being present, or any commercial 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 crimefelony, is guilty of burglary in the second degree.
- B. Every person who breaks and enters any automobile, truck, trailer or vessel of another, in which any property is kept, with intent to steal any property therein or to commit any felony, is guilty of burglary in the third degree.

#### § 1436. Punishment of burglary

Burglary is a crime.

Burglary is a felony punishable by imprisonment as follows:

1. Burglary in the first degree for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such imprisonment and fine;

2. Burglary in the second degree for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such imprisonment and fine; and

3. Burglary in the third degree for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such imprisonment and fine.

#### **§ 1437. Possession of burglar's implements**

Every person who, under circumstances not amounting to a crime **felony** 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 **felony** therein, is guilty of a crime **misdemeanor**.

#### **§ 1438. Entering buildings **building** or structures **other structure** with certain intent to commit felony, larceny or malicious mischief-Breaking and entering dwelling without permission**

- A. 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 **misdemeanor**.
- B. Every person who, without the intention to commit any crime therein, shall willfully and intentionally break and enter into any building, trailer, vessel or other premises used as a dwelling without the permission of the owner or occupant thereof, except in the cases and manner allowed by law, shall be guilty of a misdemeanor.

#### **§ 1439. Dwelling **and dwelling** house defined**

- A. The term "dwelling house," as used in 21 CNCA § 1431 **et seq.**, 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.
- B. The term "dwelling" as used in Section 1438 of this title includes every house, trailer, vessel, apartment or other premises, any part of which has usually been occupied by a person lodging therein at night and any structure joined to and immediately connected with such house, trailer or apartment.

#### **§ 1440. "Night time" defined**

The words "night time" in this chapter include the period between sunset and sunrise.

#### **§ 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 crimefelony punishable by imprisonment as follows for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such imprisonment and fine.

#### **§ 1442. Possession of certain tools by persons previously convicted of burglary**

Any person who has been previously convicted of the crime of burglary who has in his possession, custody or concealed about his person, or transports or causes to be transported, any combination of three (3) or more of the following tools: Sledge hammer, pry bar, punches, chisel, bolt cutters, with the intent to use or employ, or allow the same to be used or employed, in the commission of a crime, or knowing that the tools are to be used in the commission of a crime, shall be guilty of a felony.

### **CHAPTER 59**

#### **EMBEZZLEMENT**

#### **§ 1451. "Embezzlement" defined**

- A. "Embezzlement" is the fraudulent appropriation of property by a person to whom it has been entrusted. of any person or legal entity, legally obtained, to any use or purpose not intended or authorized by its owner, or the secretion of the property with the fraudulent intent to appropriate it to such use or purpose, under any of the following circumstances:
1. Where the property was obtained by being entrusted. to that person for a specific purpose, use, or disposition and shall include, but not be limited to, any funds "held in trust" for any purpose;
  2. Where the property was obtained by virtue of a power of attorney being granted for the sale or transfer of the property;
  3. Where the property is possessed or controlled for the use of another person;
  4. Where the property is to be used for a public or benevolent purpose;
  5. Where any person diverts any money appropriated by law from the purpose and object of the appropriation;
  6. Where any person fails or refuses to pay over to the Nation, or appropriate authority, any tax or other monies collected in accordance with relevant law, and who appropriates the tax or monies to the use of that person, or to the use of any other person not entitled to the tax or monies;
  7. Where the property is possessed for the purpose of transportation, without regard to whether packages containing the property have been broken;

8. Where any person removes crops from any leased or rented premises with the intent to deprive the owner or landlord interested in the land of any of the rent due from that land, or who fraudulently appropriates the rent to that person or any other person; or

9. Where the property is possessed or controlled by virtue of a lease or rental agreement, and the property is willfully or intentionally not returned within ten (10) days after the expiration of the agreement.

Embezzlement does not require a distinct act of taking, but only a fraudulent appropriation, conversion or use of property.

B. Except as provided in subsection C of this section, embezzlement shall be punished as follows:

1. If the value of the property embezzled is less than Five Hundred Dollars (\$500.00), any person convicted shall be punished by a fine not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment for a term not to exceed one (1) year, or by both such fine and imprisonment;

2. If the value of the property embezzled is Five Hundred Dollars (\$500.00), or more but less than One Thousand Dollars (\$1,000.00), any person convicted shall be guilty of a misdemeanor and shall be punished by imprisonment for a term not to exceed one (1) year or by imposition of a fine not exceeding Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment, and ordered to pay restitution to the victim as provided under the laws of this Nation;

3. If the value of the property embezzled is One Thousand Dollars (\$1,000.00) or more but less than Twenty-five Thousand Dollars (\$25,000.00), any person convicted shall be guilty of a felony and shall be punished by imprisonment for a term not to exceed three (3) years, or by imposition of a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment, and ordered to pay restitution to the victim as provided under the laws of this Nation; or

4. If the value of the property embezzled is Twenty-five Thousand Dollars (\$25,000.00) or more, any person convicted shall be guilty of a felony and shall be punished by imprisonment for a term not to exceed three (3) years, or by imposition of a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment, and ordered to pay restitution to the victim as provided under the laws of this Nation.

For purposes of this subsection, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the party's intent to commit a continuing crime.

C. Any Cherokee Nation officer, deputy or employee of such officer, who shall divert any money appropriated by law from the purpose and object of the appropriation, shall, upon conviction, be guilty of a felony

punishable by imprisonment for a term not to exceed three (3) years, and a fine equal to triple the amount of money so embezzled and ordered to pay restitution to the victim as provided under the laws of this Nation.

#### **§ 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.

**Reserved**

#### **§ 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 the packages in which such property is contained, or has otherwise separated the items thereof, or not. **Reserved**

#### **§ 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. **Reserved**

#### **§ 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. **Reserved**

#### **§ 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. **Reserved**

#### **§ 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. **Reserved**

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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. **Reserved**

#### **§ 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. **Reserved**

#### **§ 1464. Reserved**

#### **§ 1465. Property or goods under control of carrier or other person for purpose of interstate transportation--Abandonment without notice to owner**

**A.** No carrier or other person having property or goods under its control for the purpose of interstate transportation for hire shall abandon the property or goods contained therein without notice to the owner of the property or goods.

**B.** Any person convicted of violating the provisions of subsection A of this section may be guilty of a misdemeanor and punished by imprisonment for a term not to exceed one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

## CHAPTER 60

### EXTORTION AND 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.

#### § 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.

#### § 1483. Punishment for **e**Extortion or attempted extortion

Every person who extorts or attempts to extort 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 **felony punishable by imprisonment for a term not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00). A conviction for attempted extortion is a felony punishable by imprisonment for a term not to exceed two (2) years.**

#### § 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 **misdemeanor**.

#### § 1485. Obtaining signature by extortion

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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.

#### § 1486. Letters, threatening



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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.

#### **§ 1487. Attempting to extort money**

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.

#### **§ 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:

Accusing or threatening to accuse any person of a crime or conduct which would tend to degrade and disgrace the person accused; or

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. **Reserved**

### **CHAPTER 61**

#### **FALSE PRETENSES, FALSE PERSONATIONS, CHEATS AND FRAUDS**

##### **§ 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 **misdemeanor and upon convictions shall be fined not more than One Thousand Dollars (\$1,000.00) or shall be imprisoned for not more than one (1) year, or both.**

##### **§ 1501. Securing credit fraudulently-Penalty**

Any person who shall:

1. 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

2. 2nd. Knowing **With knowledge** 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
3. 3rd. Knowing **With knowledge** that a statement in writing has been made, respecting the financial condition or means or ability to pay for himself, **or of such person, or any other person**, firm or corporation, in which he **the person** is interested, or for whom he **the person** is acting, represents on a later date in writing, that such **the** statement theretofore made, if then again made on said day, would be then true, when in fact, said **the** statement if then made would be false, and procures upon the faith thereof, for the benefit **of** either of himself **such person** or of such **any other** person, firm or corporation, either or any of the things of benefit mentioned in paragraph 1st of this section; **or**
4. **Knowingly with intent to defraud, make any false statement or report or willfully falsify the value of any land, property or security for the purpose of influencing in any way the action taken or decision made on any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release or substitution of security;**

shall be, deemed **upon conviction**, guilty of a crime and punished **misdemeanor punishable** 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.

## **§ 1502. Fraudulent advertising prohibited--Punishment**

Any person, firm, corporation or association who, with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates or places before the public, or causes directly or indirectly to be made, published, disseminated, circulated or placed before the public in this state, in a newspaper or publication or in form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than Fifty Dollars (\$50.00) or by imprisonment for a term not exceeding twenty (20) days, or both such fine and imprisonment.

## **§ 1503. Defrauding hotels, inns, restaurants, etc. Value of Five Hundred Dollars or less--Value of more**

**than Five Hundred Dollars but less than One Thousand Dollars--Value of One Thousand Dollars or more**

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. less than One Thousand Dollars (\$1,000.00), shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding Five Hundred Dollars (\$500.00), or be imprisoned for a term not exceeding three (3) months, or punished by both such fine and imprisonment, and if the value of such food, lodging, services or accommodations is valued at One Thousand Dollars (\$1,000.00) or more, any person convicted hereunder shall be deemed guilty of a felony and shall be punished by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00) or imprisonment for a term not exceeding three (3) years, or by both such fine and imprisonment. Any person who shall obtain shelter, lodging, or any other services at any apartment house, apartment, rental unit, rental house, or trailer camp, with intent to defraud the owner or keeper thereof, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding One Hundred Dollars (\$100.00), or be imprisoned for a term not exceeding three (3) months, or be punished by both fine and imprisonment. Proof that such lodging, food, services or other accommodations were obtained by false pretense 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, apartment house, apartment, rental unit or rental house, 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 section shall not apply where there has been an agreement in writing for delay in payment.

**§ 1505. False increase of weight**

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Every person who puts or conceals in any bag, bale, box, barrel or other package of goods usually sold by weight any other thing whatever for the purpose of increasing the weight of such package shall be punished by a fine of Twenty-five Dollars (\$25.00) for each offense.

**§ 1506. Mock auction**

<#co\_anchor\_IF9E3D720240F11EB94ADA523B6102>

Any person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding three (3) years or in a county jail not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment; and, in addition, the person forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state.

**§ 1507. Fraud by auctioneer**

<#co\_anchor\_IF39E4F80240F11EB94ADA523B6102>

Every person carrying on, or employed about the business of selling property or goods by auction, who sells any goods or property in a damaged condition which he offers as sound or in a good condition, is guilty of a misdemeanor.

**§ 1508. Fictitious copartnership**

<#co\_anchor\_IF08A31B0240F11EB94ADA523B6102>

Every person transacting business in the name of a person as a partner who is not interested in his firm, or transacting business under a firm name in which the designation “and company” or “& Co.” is used without representing an actual partner except in the cases in which the continued use of a copartnership name is authorized by law, is guilty of a misdemeanor.

**§ 1509. Animals, false pedigree of**

<#co\_anchor\_IE93758C0240F11EB94ADA523B6102>

Every person who by any false pretense shall obtain from any club, association, society or company, for improving the breed of cattle, horses, sheep, swine, or other domestic animals, the registration of any animal in the herd register of any such club, association, society, or company, or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a misdemeanor.

**§ 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 crimemisdemeanor.

**§ 1511. Fraud in limited partnership**

Every member of a limited partnership who is guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor.

**§ 1512. Misrepresentations in sale of nursery stock**

It shall be unlawful for any person, firm or corporation, acting either as principal or agent to sell to any person, firm or corporation any fruit tree or fruit trees, plants or shrubs representing same to be thrifty or of a certain kind, variety or description and thereafter to deliver to such purchaser in filling such order and in completing such sale any fruit trees, plants or shrubs of a different kind, variety or description than the kind, variety or description of such fruit trees, plants or shrubs so ordered and sold.

**§ 1513. Penalty--Time for prosecution** <#co\_anchor\_IEFBFDCD0240F11EB94ADA523B6102>

Any person, firm, or corporation, acting either as principal or agent, violating any provisions of the preceding section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) or by imprisonment for a term not to exceed more than six (6) months, or by both fine and imprisonment: Provided, that prosecutions under said section may be commenced at any time within seven (7) years from the time of the delivery to the purchaser of the fruit trees, plants or shrubs therein mentioned.

**§ 1514. Insignia, badge or pin calculated to deceive, wearing of--Name of society, order or organization calculated to deceive, using--Punishment**

Any person who shall wear the badge, pin, or insignia, or shall use the name of any society, order or organization of ten (10) years' standing or existence in this Nation, either in the identical form or in any such near resemblance thereto as might be calculated to deceive, or shall use the same to obtain aid or assistance within this Nation, unless entitled to use or wear the same under the constitution and bylaws, rules and regulations of such order or society, shall be guilty of a misdemeanor and upon conviction thereof, shall be

fined in any sum not less than Twenty-five Dollars (\$25.00), nor more than One Hundred Dollars (\$100.00), and in addition thereto, may be imprisoned for a period of time not exceeding thirty (30) days.

**§ 1515. Telecommunication services--Unlawful procurement--Penalty**

<#co\_anchor\_IE8CAB440240F11EB94ADA523B6102>

Any individual, corporation, or other person, who, with intent to defraud or to aid and abet another to defraud any individual, corporation, or other person, of the lawful charge, in whole or in part, for any telecommunications service, shall avoid or attempt to avoid or shall cause or assist another to avoid or attempt to avoid any such charge for such service:

- (a) by charging such service to an existing account, or using such services from an existing account, telephone number or credit card number without the authority of the subscriber thereto or the legitimate holder thereof; or
- (b) by charging such service to a nonexistent, false, fictitious, or counterfeit account, telephone number or credit card number or to a suspended, terminated, expired, cancelled or revoked telephone number or credit card number; or
- (c) by use of a code, prearranged scheme, or other similar stratagem or device whereby said person in effect sends or receives information; or
- (d) by rearranging, tampering with or making connection with any facilities or equipment of a telephone or other communications company, whether physically, inductively, acoustically, or electrically, or by utilizing such service, having reason to believe that such rearrangement, connection, or tampering existed or occurred;

shall be guilty of a misdemeanor, and shall, upon conviction thereof, be imprisoned not exceeding one (1) year or fined not exceeding One Thousand Dollars (\$1,000.00), or both, in the discretion of the court.

**§ 1516. Devices or plans to procure services--Making, possessing, etc., prohibited--Penalty**

Any individual, corporation or other person who:

- (a) makes or possesses any instrument, apparatus, equipment, or device designed, adapted or which can be used
  - (1) to fraudulently avoid the lawful charge for any telecommunication service in violation of Section 1 of this act; or
  - (2) to conceal, or to assist another to conceal, from any supplier of telecommunication service or from any lawful authority the existence or place of origin or of destination of any telecommunication; or
- (b) sells, gives or otherwise transfers to another, or offers or advertises to sell, give or otherwise transfer, any instrument, apparatus, equipment, or device, described in (a) above, or plans or instructions for making or assembling the same; under circumstances evidencing an intent to use or employ such instrument, apparatus, equipment, or device, or to allow the same to be used or employed, for a purpose described in (a)(1) or (a)(2), above, or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling

such instrument, apparatus, equipment, or device;

shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be imprisoned not exceeding one (1) year or fined not exceeding One Thousand Dollars (\$1,000.00), or both, in the discretion of the court.

#### **§ 1517. Amateur radio operators exempt**

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Nothing herein shall apply to public service and emergency communications performed by holders of valid Federal Communications Commission radio amateur licenses without charge on the part of such licensees; provided that nothing herein shall excuse any person from compliance with lawful tariffs of any telecommunications company.

#### **§ 1518. Misrepresentation of age by false document**

<#co\_anchor\_IEF6EAF90240F11EB94ADA523B6102>

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.

#### **§ 1519. Penalties**

Any person violating the provisions of 21 CNCA § 1518 shall be deemed guilty of a crime **misdemeanor** 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 **imprisoned** for a period of not to exceed thirty (30) days, or by both such fine and confinement.

#### **§ 1520. Provisions as cumulative**

<#co\_anchor\_IE99B98D0240F11EB94ADA523B6102>

The provisions of this act shall be cumulative to existing laws.

#### **§ 1522. Publication of telephone credit card information for fraudulent purposes**

Any person who publishes or causes to be published the number or code of an existing, canceled, revoked, expired or nonexistent telephone credit card, or the numbering or coding system which is employed in the issuance of telephone credit cards, with the intent that it be used to fraudulently avoid the payment of any lawful toll charge, is guilty of a misdemeanor.

As used in this section, “published” means the communication of information to any one or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article or book.

#### **§ 1523. Penalties--Civil action for damages**

Any person convicted of violating a prohibition contained in this act <sup><#co\_footnote\_IB77F02C0FFA311DEAE9ED9137ED></sup> shall be imprisoned for a term not exceeding one (1) year or fined not more than One Thousand Dollars (\$1,000.00),

or both. Such person also shall be liable for the amount of the damages, loss and expense, including attorney fees and expenses of investigation incurred by any transmission company by reason of or resulting from the unlawful publication, directly or indirectly, such damages to be recovered in a civil action.

#### **§ 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.

### **FALSE PERSONATION**

#### **§ 1531. Marriage by impersonator-Becoming bail or surety-Execution of instrument- Creating liability or benefit**

Every [Any](#) 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 [shall be guilty of a crimefelony punishable by imprisonment for a term not to exceed three \(3\) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars \(\\$15,000.00\).](#)

#### **§ 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.

#### **§ 1533. Falsely personating officers and others [Penalties--Definitions--Certain defenses excluded](#)**

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.

A. Except as provided in subsection B of this section, every person who falsely personates any public officer, civil or military, any firefighter, any law enforcement officer, 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 who assumes, without authority, any uniform or badge by which such officers or persons are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, harassed, vexed or annoyed, upon conviction, is guilty of a misdemeanor punishable by imprisonment for a term not exceeding six (6) months, or by a fine not exceeding Two Thousand Dollars (\$2,000.00), or by both such fine and imprisonment.

B. Every person who falsely personates any public officer or any law enforcement officer in connection with or relating to any sham legal process shall, upon conviction, be guilty of a felony, punishable by imprisonment for not more than three (3) years, or a fine not exceeding Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

C. Every person who falsely asserts authority of law not provided for by federal or state law in connection with any sham legal process shall, upon conviction, be guilty of a felony, punishable by imprisonment for not more than three (3) years, or a fine not exceeding Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

D. Every person who, while acting falsely in asserting authority of law, attempts to intimidate or hinder a public official or law enforcement officer in the discharge of official duties by means of threats, harassment, physical abuse, or use of sham legal process shall, upon conviction, be guilty of a felony punishable by imprisonment for not more than three (3) years, or a fine not exceeding Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

E. Any person who, without authority under federal or state law, acts as a supreme court justice, a district court judge, an associate district judge, a special judge, a magistrate, a clerk of the court or deputy, a notary public, a juror or other official holding authority to determine a controversy or adjudicate the rights or interests of others, or signs a document in such capacity, shall, upon conviction, be guilty of a felony punishable by imprisonment for not more than three (3) years, or a fine not exceeding Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

F. Every person who uses any motor vehicle or motor-driven cycle usually distinguished as a law enforcement vehicle or equips any motor vehicle or motor-driven cycle with any spot lamps, audible sirens, or flashing lights, in violation of Section 12-217, 12-218 or 12-227 of Title 47 of the Cherokee Nation Code Annotated, or in any other manner uses any motor vehicle or motor-driven cycle:

1. Which, by markings that conform to or imitate the markings required or authorized in subsection B of Section 151 of Title 47 of the Cherokee Nation Code Annotated and used by the Oklahoma Highway Patrol Division of the Department of Public Safety, conveys to any person the impression or appearance that it is a vehicle of the Oklahoma Highway Patrol shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or by a fine not exceeding Five Hundred Dollars (\$500.00), or both fine and imprisonment; provided, nothing in this paragraph shall be construed to prohibit the use of such a vehicle for exhibitions, club activities, parades, and other functions of public interest and which is not used on the public roads, streets, and highways for regular transportation; or

2. For the purpose of falsely personating a law enforcement officer and who in such assumed character commits any act whereby another person is injured, defrauded, harassed, vexed or annoyed shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

G. 1. Any person who displays or causes to be displayed words alone or in conjunction with any other word or words on any motor vehicle, badge, clothing, identification card, or any other object or document with the intent to communicate peace officer or investigating authority shall, upon conviction, be guilty of a misdemeanor punishable by a fine not exceeding One Thousand Dollars (\$1,000.00). This paragraph shall not apply to any officer with the appropriate investigatory or law enforcement authority within the Nation.

2. Any person who displays or causes to display such words as provided in this subsection for the purpose of falsely personating a law enforcement officer and as such commits any act whereby another person is injured, defrauded, harassed, vexed or annoyed shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

H. As used in this section:

1. “Sham legal process” means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, and purports to do any of the following:

a. to be a summons, subpoena, judgment, arrest warrant, search warrant, or other order of a court recognized by the laws of this state, a law enforcement officer commissioned pursuant to state or federal law or the law of a federally recognized Indian tribe, or a legislative, executive, or administrative agency established by state or federal law or the law of a federally recognized Indian tribe,

b. to assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of any person or property, or

c. to require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property; and

2. “Lawfully issued” means adopted, issued, or rendered in accordance with the applicable statutes, rules, regulations, and ordinances of the United States, this Nation, a state, or a political subdivision of a state.

I. It shall not be a defense to a prosecution under subsection B, C, D or E of this section that:

1. The recipient of the sham legal process did not accept or believe in the authority falsely asserted in the sham legal process;

2. The person violating subsection B, C, D or E of this section does not believe in the jurisdiction or authority of this state or of the United States government; or

3. The office the person violating subsection B, C, D or E of this section purports to hold does not exist or is not an official office recognized by tribal, state, or federal law.

### **§ 1533.1. Identity theft--Penalties--Civil action**

A. It is unlawful for any person to willfully and with fraudulent intent obtain the name, address, Social Security number, date of birth, place of business or employment, debit, credit or account numbers, driver license number, or any other personal identifying information of another person, living or dead, with intent to use, sell, or allow any other person to use or sell such personal identifying information to obtain or attempt to obtain money, credit, goods, property, or service in the name of the other person without the consent of that person.

B. It is unlawful for any person to use with fraudulent intent the personal identity of another person, living or dead, or any information relating to the personal identity of another person, living or dead, to obtain or attempt to obtain credit or anything of value.

C. It is unlawful for any person with fraudulent intent to lend, sell, or otherwise offer the use of such person's own name, address, Social Security number, date of birth, or any other personal identifying information or document to any other person with the intent to allow such other person to use the personal identifying information or document to obtain or attempt to obtain any identifying document in the name of such other person.

D. It is unlawful for any person to willfully create, modify, alter or change any personal identifying information of another person with fraudulent intent to obtain any money, credit, goods, property, service or any benefit or thing of value, or to control, use, waste, hinder or encumber another person's credit, accounts, goods, property, title, interests, benefits or entitlements without the consent of that person.

E. Any person convicted of violating any provision of this section shall be guilty of identity theft. Any person who violates the provisions of subsection A, B or D of this section shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment. Any person who violates the provisions of subsection C of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Restitution to the victim may be ordered in addition to any criminal penalty imposed by the court. The victim of identity theft may bring a civil action for damages against any person participating in furthering the crime or attempted crime of identity theft.

### **§ 1533.2. Fraudulently obtaining another person's information of financial institution--Presenting false or fraudulent information to officer, employee, agent or another customer of financial institution**

A. It is unlawful for any person to willfully and knowingly obtain, or attempt to obtain, another person's personal, financial or other information of a financial institution by means of any false or fraudulent statement made to any officer, employee, agent or customer of such financial institution.

B. It is unlawful for any person to willfully and knowingly present any false or fraudulent document or information, or any document or information obtained or used without lawful consent or authority, to any officer, employee, agent or another customer of such financial institution to obtain, or attempt to obtain, another person's personal, financial or other information from a financial institution or to commit any crime.

C. Any person violating any provision of this section shall, upon conviction, be guilty of a felony punishable by imprisonment for a term of not more than three (3) years. In addition, the court may order restitution to be paid by the defendant to every customer whose information was obtained or otherwise utilized in violation of this

provision.

### **§ 1533.3. Identity theft incident report--Preparation and filing by local law enforcement--Reports not considered open cases**

A. Notwithstanding that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, victims of identity theft have the right to contact the local law enforcement agency where the victim is domiciled and have an incident report about the identity theft prepared and filed. The local law enforcement agency that prepares and files the incident report shall, upon request, provide the victim with a copy of the incident report. The law enforcement agency may share the incident report with law enforcement agencies located in other jurisdictions. For purposes of this section, "incident report" means a loss or other similar report prepared and filed by a local law enforcement agency.

B. Nothing in this section shall interfere with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. An incident report prepared and filed pursuant to this section shall not be an open case for purposes of compiling open case statistics.

### **§ 1541.1. False or bogus checks**

Any **Every** 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. **of a value less than One Thousand Dollars (\$1,000.00), by means or by use of any trick or deception, or false or fraudulent representation or statement or pretense, or by any other means or instruments or device commonly called the "confidence game", or by means or use of any false or bogus checks, or by any other written or printed or engraved instrument or spurious coin, shall, upon conviction, be guilty of a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.**

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.

The requirement of notice shall also be satisfied for written communications which are tendered to the defendant and which the defendant refuses to accept.

### **§ 1541.2. False or bogus check; notice of complaint; procedureValue of money, property or valuable thing-Penalty**

A. If the value of the money, property or valuable thing referred to in Section 1541.1

<[<http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1541.1&originatingDoc=N47999B00B62E11E88EE7C443E672F7AD&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default))

[> of this title is:](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1541.1&originatingDoc=N47999B00B62E11E88EE7C443E672F7AD&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default))

1. One Thousand Dollars (\$1,000.00) or more but less than Two Thousand Five Hundred Dollars (\$2,500.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed

two (2) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment;

2. Two Thousand Five Hundred Dollars (\$2,500.00) or more but less than Fifteen Thousand Dollars (\$15,000.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such imprisonment and fine; or

3. Fifteen Thousand Dollars (\$15,000.00) or more, the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such imprisonment and fine.

B. Any person convicted pursuant to this section shall also be ordered to pay restitution to the victim as provided [under the laws of this Nation](#).

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.

The notice shall contain:

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;

The amount of any fees charged by any financial institution as a result of the check not being honored;

The amount of any administrative fees or costs assessed in the collection of said checks;

The name of the payee;

The name of the drawee/bank;

The date before which the defendant must contact the Office of the Prosecuting Attorney concerning the complaint; and

A statement of the penalty for obtaining money, merchandise or services by means of a false and bogus check.

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.

### **§ 1541.3. Value of bogus checks, drafts or orders--Penalty**

Any person making, drawing, uttering or delivering two or more false or bogus checks, drafts or orders, as defined by Section 1541.4 of this title, the total sum of which is Two Thousand Dollars (\$2,000.00) or more,

even though each separate instrument is written for less than One Thousand Dollars (\$1,000.00), all in pursuance of a common scheme or plan to cheat and defraud, shall be deemed guilty of a felony and shall be punished by imprisonment for a term not more than three (3) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. If the total sum of two or more false or bogus checks, drafts or orders is Five Hundred Dollars (\$500.00) or more, but less than Two Thousand Dollars (\$2,000.00), the person shall, upon conviction, be guilty of a misdemeanor and shall be punished by incarceration in the county jail for not more than one (1) year, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) and ordered to provide restitution to the victim as provided under the laws of this Nation. Repealed by LA 25-02, eff. August 22, 2002

#### § 1541.4. "False or bogus check or checks" defined

- A. The term "false or bogus check or checks" shall include checks or orders, including those converted to electronic fund transfer, 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
1. In exchange for money or property or in;
  2. exchangeIn exchange for any benefit or thing of value, ;
  3. As a down payment for the purchase of any item of which the purchaser is taking immediate possession, as against the maker or drawer thereof; or
  4. As payment made to a landlord under a lease or rental agreement.
- B. , tThe 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 the check or order is presented for payment within thirty (30) days after same is delivered and accepted.
- C. A check offered for the purchase of goods or livestock that is refused by a drawee shall not be considered to be an extension of credit by the seller of goods or livestock to the maker or drawer of the check.
- D. A check or order offered to a merchant in payment on an open account of the maker with the merchant shall mean "a check or order given in exchange for a benefit or thing of value", notwithstanding that the merchant may debit the account of the maker or impose other charges pursuant to applicable law in the event the check or order is not honored.

#### § 1541.5. "Credit" defined

The word "credit," as used hereinin Section 1541.1 through 1541.4 of this title, shall be construed to mean an arrangement or understanding with the bank or , depository, or seller of goods or livestock for the payment of such check, draft or order.

### **§ 1541.6. Refund fraud--Penalties**

A. No person shall give a false or fictitious name or address as his own, or give the name or address of any other person without the knowledge and consent of that person, for the purpose of obtaining or attempting to obtain a refund for merchandise from a business establishment.

B. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor punishable by the imposition of a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or by both said fine and imprisonment.

### **§ 1541.7. Revolving Fund Established**

There is hereby established a revolving fund to be designated the “Bogus Check Restitution Revolving Fund” (“Fund”) which shall be held and administered by the Treasurer in accordance with the purposes stated herein. The Fund shall be authorized by the Tribal Council as a continuing fund, which shall initially receive a direct appropriation to begin the Fund and thereafter, shall receive a direct continuing appropriation from all monies accruing to the credit of said Fund. Such monies are hereby appropriated and may be budgeted and expended by the Treasurer for the purpose of providing restitution to victims of bogus checks.

Expenditures from said fund shall be made by the Treasurer against claims filed as prescribed by policies created by the Cherokee Nation Attorney General for approval and payment. Such policies shall be subject to approval by the Chief/Council. The fund shall be maintained as authorized by law for investments by the Treasurer. The interest earned by any investment of monies from the fund shall be credited to the fund for expenditure as provided by herein.

### **§ 1542. Obtaining property or signature under false pretenses--Use of retail sales receipt or Universal Price Code Label to cheat or defraud**

A. 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 is, upon conviction, guilty of a felony punishable by imprisonment for a term not exceeding three (3) years or in a county jail not exceeding one (1) year if the value is One Thousand Dollars (\$1,000.00) or more, or by a fine not exceeding three times the value of the money or property so obtained, or by both such fine and imprisonment. If the value is less than One Thousand Dollars (\$1,000.00), the person is, upon conviction, guilty of a misdemeanor punishable by imprisonment for a term not



exceeding one (1) year, or by a fine not exceeding three times the value of the money or property so obtained, or by both such fine and imprisonment.

B. Every person who, with intent to cheat or defraud another, possesses, uses, utters, transfers, makes, manufactures, counterfeits, or reproduces a retail sales receipt or a Universal Price Code Label is, upon conviction, guilty of a felony punishable by imprisonment for a term not exceeding three (3) years or in a county jail not exceeding one (1) year if the value is One Thousand Dollars (\$1,000.00) or more, or by a fine not exceeding three times the value represented on the retail sales receipt or the Universal Price Code Label, or by both such fine and imprisonment. If the value is less than One Thousand Dollars (\$1,000.00), the person is, upon conviction, guilty of a misdemeanor punishable by imprisonment for a term not exceeding one (1) year, or by a fine not exceeding three times the value represented on the retail sales receipt or the Universal Price Code Label, or by both such fine and imprisonment. For purposes of this subsection, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

#### **§ 1543. Obtaining signature or property for charitable purposes by false pretenses**

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AnyEvery 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 crimeshall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine not exceeding the value of the money or property so obtained, or by both such fine and imprisonment.

#### **§ 1544. False negotiable paper**

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If the false token by which any money or property is obtained in violation of the first and second preceding sections of this article, is a promissory note or negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years, or by a fine not exceeding the value of the money or property so obtained, or by both such fine and imprisonment.

#### **§ 1545. Using false check--False token**

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The use of a matured check or other order for the payment of money, as a means of obtaining any signature, money or property, such as is specified in the last two sections, by a person who knows that a drawer thereof is

not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections although no representation is made in respect thereto.

#### **§ 1546. Removing, defacing, altering or obliterating--Subsequent sale**

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Any person, firm or corporation who removes, defaces, alters, changes, destroys, covers, obliterates or makes a substitution of any trademark, distinguishing or identification number, serial number or mark, on or from any machine or electrical or mechanical device or apparatus, and thereafter sells or resells or offers for sale or resale the same in such condition, is guilty of a misdemeanor.

#### **§ 1547. Person acquiring machine or device with mark removed, altered, etc.**

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Any person, firm or corporation who acquires, for the purpose of sale or resale and possesses any machine or electrical or mechanical device or apparatus, or any of the parts thereof, from or on which any trademark, distinguishing or identification number, serial number or mark has been removed, covered, altered, changed, defaced, destroyed, obliterated or substituted for, is guilty of a misdemeanor, unless within ten (10) days after such machine or electrical or mechanical device or apparatus, or any such part thereof, shall have come into his or its possession, said person, firm or corporation files with the chief law enforcement officer of the municipality in which the machine or electrical or mechanical device or apparatus or any such part thereof is located, or to the county sheriff of the county wherein said property is located if not within a municipality, a verified statement showing: The source of his or its title, identification or distinguishing number or serial number or mark, if known, and, if known, the manner of and reason for such mutilation, change, alteration, concealment, defacement or substitution, the length of time such machine or electrical or mechanical device or apparatus or part has been held, and the price paid therefor, and provided further, that any and all such verified statements shall be available for inspection by any interested person.

#### **§ 1548. Vehicles excepted**

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The provisions of this act shall not apply to motor vehicles and other vehicles as defined in Section 1102 of Title 47 of the Cherokee <[#### \*\*§ 1549. Changes of serial numbers by original manufacturer\*\*](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT47S1102&originatingDoc=NAACE28E0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)> Nation Code Annotated.</a></p></div><div data-bbox=)

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The provisions of this act shall not apply to changes of serial numbers authorized and made by the original manufacturer.

**§ 1550. Person committing crimefelony 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 **felony punishable by imprisonment for a term not exceeding three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.**

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 **misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine of not to exceed One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.**

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.

**§ 1550.1. Definitions** <#co\_anchor\_IE5A63CF0295811EBB0C3FEB220030>

1. The term “credit card” means an identification card or device issued to a person, firm or corporation by a business organization which permits such person, firm or corporation to purchase or obtain goods, property or services on the credit of such organization.

2. “Debit card” means an identification card or device issued to a person, firm or corporation by a business organization which permits such person, firm or corporation to obtain access to or activate a consumer banking electronic facility.

## **§ 1550.2. Value of Five Hundred Dollars or less--Value of more than Five Hundred Dollars**

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Any person who knowingly uses or attempts to use in person, by telephone or by the Internet, for the purpose of obtaining credit, or for the purchase of goods, property or services, or for the purpose of obtaining cash advances in lieu of these items, or to deposit, obtain or transfer funds, either a credit card or a debit card which has not been issued to such person or which is not used with the consent of the person to whom issued or a credit card or a debit card which has been revoked or cancelled by the issuer of such card and actual notice thereof has been given to such person, or a credit card or a debit card which is false, counterfeit or nonexistent is guilty of a misdemeanor and punishable by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment if the amount of the credit or purchase or funds deposited, obtained or transferred by such use does not exceed Five Hundred Dollars (\$500.00); or, by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment if the amount of the credit or purchase or funds deposited, obtained or transferred by such use exceeds Five Hundred Dollars (\$500.00).

## **§ 1550.3. Actual notice**

The words “actual notice” as used herein shall be construed to include either notice given to the purchaser in person or notice given to him in writing. Such actual notice in writing shall be presumed to have been given when deposited as registered or certified mail, in the United States mail, addressed to such person at his last-known address.

## **§ 1550.21. Definitions**

As used in this act:

1. “Cardholder” means the person or organization named on the face of a credit card or a debit card to whom or for whose benefit the credit card or debit card is issued;
2. “Credit card” means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit and all such credit cards lawfully issued shall be considered the property of the cardholder or the issuer for all purposes;
3. “Debit card” means any instrument or device, whether known as a debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds from a consumer banking electronic facility;
4. “Issuer” means any person, firm, corporation, financial institution or its duly authorized agent which issues a credit card or a debit card;
5. “Receives” or “receiving” means acquiring possession or control or accepting as security for a loan;

6. "Reencoder" means an electronic device that places encoded information from the computer chip, magnetic strip or stripe or other storage mechanism of a credit card or debit card onto the computer chip, magnetic strip or stripe or other storage mechanism of a different card;
7. "Revoked card" means a credit card or a debit card which is no longer valid because permission to use it has been suspended or terminated by the issuer;
8. "Scanning device" means a scanner, reader or any other electronic device that may be used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip, magnetic strip or stripe or other storage mechanism of a credit card or debit card or from another device that directly reads the information from a credit card or debit card; and
9. "Skimming device" means a self-contained device that:
  - a. is designed to read and store in the internal memory of the device information encoded on the computer chip, magnetic strip or stripe or other storage mechanism of a credit card or debit card or from another device that directly reads the information from a credit card or debit card, and
  - b. is incapable of processing the credit card or debit card information for the purpose of obtaining, purchasing or receiving goods, services, money or anything else of value from a person or organization.

#### **§ 1550.22. Taking credit card or debit card--Receiving taken credit or debit card**

(a) A person who takes a credit card or debit card from the person, possession, custody or control of another without the cardholder's consent, or who, with knowledge that it has been so taken, receives the credit card or debit card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder, is guilty of card theft and is subject to the penalties set forth in [Section 1550.33\(a\)](#)

[https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NABCF4530C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=\(sc.Document\)>](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NABCF4530C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Document)>) of this title.

(b) Taking a credit card or a debit card without consent includes obtaining it by the crime of larceny, larceny by trick, larceny by the bailee, embezzlement or obtaining property by false pretense, false promise, extortion or in any manner taking without the consent of the cardholder or issuer.

(c) A person who has in his possession or under his control any credit card or debit card obtained under subsection (b) of this section is presumed to have violated this section.

#### **§ 1550.23. Receiving, holding or concealing lost or mislaid card**

[<#co\\_anchor\\_I26146B80295A11EBB0C3FEB220030>](#)

A person who receives, holds or conceals a credit card or a debit card which has been lost or mislaid under circumstances which give him knowledge or cause to inquire as to the true owner and appropriates it to his use or the use of another not entitled thereto is subject to the penalties set forth in [Section 1550.33\(a\)](#) of this

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3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)> title.

#### § 1550.24. Selling or buying credit card or debit card

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A person other than the issuer who sells a credit card or debit card or a person who buys a credit card or a debit card from a person other than the issuer is guilty of theft and is subject to the penalties set forth in Section 1550.33(a) <[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NAC7AA060C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>)

[findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NAC7AA060C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NAC7AA060C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title.

#### § 1550.25. Controlling credit or debit card as security for debt

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A person with intent to defraud (a) the issuer, (b) a person or organization providing money, goods, services or anything else of value, or (c) any other person, who obtains control over a credit card or debit card as security for debt is guilty of theft and is subject to the penalties set forth in Section 1550.33(a)

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#### § 1550.26. Receiving taken or retained card upon giving consideration

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A person, other than the issuer, who receives, on giving of any consideration, credit cards or debit cards issued to any other person, which he has reason to know were taken or retained under circumstances which constitute card theft, is guilty of card theft and is subject to the penalties set forth in Section 1550.33(a) of this

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#### § 1550.27. False making or embossing of credit or debit card

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A. A person, with intent to defraud:

1. A purported issuer;

2. A person or organization providing money, goods, services or anything else of value; or

3. Any other person,

who falsely makes or falsely embosses a purported credit card or debit card or utters such a credit card or debit card is guilty of forgery in the third degree and is subject to the penalties set forth in subsection A of Section 1550.33 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NACC34220C76A11DB8F04FB3E68C8F4C5&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)#co\\_pp\\_12f40000b0d36](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NACC34220C76A11DB8F04FB3E68C8F4C5&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_12f40000b0d36)>

of this title.

B. A person other than the purported issuer who possesses any credit card or debit card which is falsely made or falsely embossed is presumed to have violated this section.

C. A person “falsely makes” a credit card or debit card when the person makes or draws, in whole or in part, a device or instrument which purports to be the credit card or debit card of a named issuer but which is not such a credit card or debit card because the issuer did not authorize the making or drawing, or when the person alters a credit card or debit card which was validly issued.

D. A person “falsely embosses” a credit card or debit card when, without the authorization of the named issuer, the person completes a credit card or debit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card or debit card before it can be used by a cardholder.

#### **§ 1550.28. Signing of card--Possession of signed or unsigned card**

(a) A person other than the cardholder or a person authorized by him who, with intent to defraud (1) the issuer, (2) a person or organization providing money, goods, services or anything else of value, or (3) any other person, signs a credit card or debit card violates this subsection and is subject to the penalties set forth in Section 1550.33(a) of Title 21 of this title <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NADA5B2E0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NADA5B2E0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>)>.

(b) When a person, other than the cardholder or a person authorized by him, possesses any credit card or debit card which is signed or not signed, such possession shall be a crime and subject to the penalties set forth in Section 1550.33 of Title 21 of this <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NADA5B2E0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NADA5B2E0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>)> title.

#### **§ 1550.29. Forged or revoked card**



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A person who, with intent to defraud (a) the issuer, (b) a person or organization providing money, goods, services or anything else of value, or (c) any other person, uses for the purpose of obtaining money, goods, services or anything else of value a credit card or debit card obtained or retained in violation of any provision of Sections 1550.22 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.22&originatingDoc=NADCEBEB0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.22&originatingDoc=NADCEBEB0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> through 1550.28 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.28&originatingDoc=NADCEBEB0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.28&originatingDoc=NADCEBEB0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> of this title or a credit card or debit card which he knows is forged or revoked,

or obtains money, goods, services or anything else of value by representing, without the consent of the cardholder, that he is the holder of a specified card or by representing that he is the holder of a card and such card has in fact not been issued, has violated this subsection and is guilty of an offense and is subject to the penalties set forth in Section 1550.33(a) <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NADCEBEB0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NADCEBEB0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> of this title. Knowledge of revocation shall be presumed to have been received

by a cardholder fourteen (14) days after it has been mailed to him at the address in this state set forth on the credit card application or at his last-known address by registered or certified mail, return receipt requested.

of this title. Knowledge of revocation shall be presumed to have been received by a cardholder fourteen (14) days after it has been mailed to him at the address in this state set forth on the credit card application or at his last-known address by registered or certified mail, return receipt requested.

of this title. Knowledge of revocation shall be presumed to have been received by a cardholder fourteen (14) days after it has been mailed to him at the address in this state set forth on the credit card application or at his last-known address by registered or certified mail, return receipt requested.

### **§ 1550.30. Failure to furnish money, goods or services represented to have been furnished**

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A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card or debit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer or cardholder, fails to furnish money, goods, services or anything else of value which he represents in writing to the issuer that he has furnished violates this subsection and is subject to the penalties set forth in Section 1550.33(a) <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NADE68C70C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NADE68C70C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> of this title.

of this title. Knowledge of revocation shall be presumed to have been received by a cardholder fourteen (14) days after it has been mailed to him at the address in this state set forth on the credit card application or at his last-known address by registered or certified mail, return receipt requested.

### **§ 1550.31. Possessing incomplete cards**

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(a) A person other than the cardholder possessing one or more incomplete credit cards or debit cards, with intent to complete them without the consent of the issuer, or a person possessing, with knowledge of its character, machinery, plates or any other contrivance designed to reproduce instruments purporting to be the credit cards or debit cards of an issuer who has not consented to the preparation of such credit cards or debit cards, is guilty of an offense and is subject to the penalties set forth in Section 1550.33(b) <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NAE007D10C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NAE007D10C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> of this title.

of this title. Knowledge of revocation shall be presumed to have been received by a cardholder fourteen (14) days after it has been mailed to him at the address in this state set forth on the credit card application or at his last-known address by registered or certified mail, return receipt requested.

(b) A credit card or debit card is “incomplete” if part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card or debit card before it can be used by a cardholder has not yet been stamped, embossed, imprinted, or written on it.

### § 1550.32. Receiving of money, goods, or services in violation of Section 1550.29

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A person who receives money, goods, services or anything else of value obtained in violation of Section 1550.29 <[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.29&originatingDoc=NAE1A1F90C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>)

[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.29&originatingDoc=NAE1A1F90C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.29&originatingDoc=NAE1A1F90C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title, with the knowledge or belief that it was so obtained, is guilty of an offense and is subject to the penalties set forth in subsection C of Section 1550.33

<[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NAE1A1F90C76A11DB8F04FB3E68C8F4C5&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_769e000062c66>)

[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NAE1A1F90C76A11DB8F04FB3E68C8F4C5&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)#co\\_pp\\_769e000062c66>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NAE1A1F90C76A11DB8F04FB3E68C8F4C5&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_769e000062c66>) of this title.

### § 1550.33. Penalties

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A. A person who is subject to the penalties of this subsection shall be guilty of a misdemeanor and fined not more than One Thousand Dollars (\$1,000.00) or imprisoned for a term not to exceed one (1) year, or both fined and imprisoned.

B. A person who is subject to the penalties of this subsection shall be guilty of a felony and shall be punished by imprisonment for not more than three (3) years.

C. A person subject to the penalties of this subsection who received goods or services or any other item which has a value of One Thousand Dollars (\$1,000.00) or more shall be guilty of a felony and fined not more than Three Thousand Dollars (\$3,000.00), imprisoned for not more than three (3) years, or both fined and imprisoned. If the value is less than One Thousand Dollars (\$1,000.00), the person shall be guilty of a misdemeanor and fined not more than One Thousand Dollars (\$1,000.00), imprisoned for not more than one (1) year, or both fined and imprisoned. For purposes of this subsection, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

**§ 1550.34. Other criminal law not precluded--Exception**

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This act shall not be construed to preclude the applicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates this act, unless such provision is inconsistent with the terms of this act.

**§ 1550.39. Use of scanning or skimming device on credit or debit cards--Use of reencoder on credit or debit cards--Possession of skimming device**

A. Every person who:

1. Uses a scanning device or skimming device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip, magnetic strip or stripe or other storage mechanism of a credit card or debit card without the permission of the authorized user of the credit card or debit card and with the intent to defraud the authorized user or the issuer of the credit card or debit card or a person or organization providing money, goods, services or anything else of value;
2. Uses a reencoder to place information encoded on the computer chip, magnetic strip or stripe or other storage mechanism of a credit card or debit card onto the computer chip, magnetic strip or stripe or other storage mechanism of a different card without the permission of the authorized user of the credit card or debit card from which the information is being reencoded and with the intent to defraud the authorized user or the issuer of the credit card or debit card or a person or organization providing money, goods, services or anything else of value; or
3. Possesses with the intent to sell, deliver or use a skimming device,

is, upon conviction, guilty of an offense and is subject to the penalties set forth in subsection B of Section 1550.33 of Title 21 of the Oklahoma Statutes <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NF9C2AA80C86411E9AE9F96B7C1187AA1&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)#co\\_pp\\_23c9000031d36](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.33&originatingDoc=NF9C2AA80C86411E9AE9F96B7C1187AA1&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_23c9000031d36)>.

B. The provisions of paragraph 3 of subsection A of this section shall not apply to the following individuals while acting within the scope of their official duties:

1. An employee, officer or agent of:

- a. a law enforcement agency or criminal prosecuting authority for the state or federal government,
- b. the state court system or federal court system, or
- c. an executive branch agency in this state; or

2. A financial or retail security investigator employed by a person or organization providing money, goods, services or anything else of value.

**§ 1550.41. Definitions--Offenses--Penalties** <#co\_anchor\_IB882FE00295A11EBB0C3FEB220030>

A. As used in this section and Section 1550.42 <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.42&originatingDoc=NE968BB70C49F11E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.42&originatingDoc=NE968BB70C49F11E9AB71DB2D18571BAB&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title, “identification document”, “identification card”, or “identification certificate” means any printed form which contains:

1. The name and photograph of a person;
2. The name and any physical description of a person;
3. The name and social security number of a person; or
4. Any combination of information provided for in paragraphs 1 through 3 of this subsection; and

which by its format, is capable of leading a person to believe said document, card, or certificate has been issued for the purpose of identifying the person named thereon, but shall not include any printed form which, on its face, conspicuously bears the term “NOT FOR IDENTIFICATION” in not less than six-point type.

B. It is a misdemeanor for any person:

1. To purchase an identification document, identification card, or identification certificate which bears altered or fictitious information concerning the date of birth, sex, height, eye color, weight, a fictitious or forged name or signature or a photograph of any person, other than the person named thereon;
2. To display or cause or permit to be displayed or to knowingly possess an identification document, identification card or identification certificate which bears altered or fictitious information concerning the date of birth, sex, height, eye color, weight, or fictitious or forged name or signature or a photograph of any person, other than the person named thereon;

3. To display or cause or permit to be displayed or to knowingly possess any counterfeit or fictitious identification document, identification card, or identification certificate; or

4. To use the Seal of the Cherokee Nation or facsimile thereof, on any identification document, identification card, or identification certificate which is not issued by an entity of this state or political subdivision thereof, or by the United States. Provided, nothing in this paragraph shall be construed to prohibit the use of the Seal of the Cherokee Nation for authorized advertising, including, but not limited to, business cards, calling cards and stationery.

C. It is a felony for any person:

1. To create, publish or otherwise manufacture an identification document, identification card or identification certificate or facsimile thereof, or to create, manufacture or possess an engraved plate or other such device for the printing of an identification document, identification card or identification certificate or facsimile thereof, which purports to identify the bearer of such document, card, or certificate whether or not intended for use as identification, and includes, but is not limited to, documents, cards, and certificates purporting to be driver licenses, nondriver identification cards, birth certificates, social security cards, and employee identification cards, except as authorized by state or federal law;

2. To sell or offer for sale an identification document, identification card, or identification certificate or facsimile thereof, which purports to identify the bearer of such document, card, or certificate whether or not intended for use as identification, and includes, but is not limited to, documents, cards, and certificates purporting to be driver licenses, nondriver identification cards, birth certificates, social security cards, and employee identification cards, except as authorized by tribal, state, or federal law; or

3. To display or present an identification document, identification card or identification certificate which bears altered, false or fictitious information for the purpose of:

a. committing or aiding in the commission of a felony in any commercial or financial transaction,

b. misleading a peace officer in the performance of duties, or

c. avoiding prosecution.

D. 1. The violation of any of the provisions of subsection B of this section shall constitute a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00), nor more than Two Hundred Dollars (\$200.00).

2. The violation of any of the provisions of subsection C of this section shall constitute a felony and, upon conviction thereof, shall be punishable by a fine not exceeding Ten Thousand Dollars (\$10,000.00) or a term of imprisonment for a term not to exceed three (3) years, or by both such fine and imprisonment.

E. Notwithstanding any provision of this section, the chief administrator of a federal or state law enforcement, military, or intelligence agency may request the Commissioner of the Department of Public Safety or State Commissioner of Health to authorize the issuance of an identification document, identification card, or identification certificate within the scope of their authority which would otherwise be a violation of this section, to identify a law enforcement officer or agent as another person for the sole purpose of aiding in a criminal investigation or a military or intelligence operation. A person displaying or possessing such identification shall not be prosecuted for a violation of this section. Upon termination of the investigation or operation, the person to whom such identification document, identification card or identification certificate was issued shall return such identification to the Department of Public Safety or State Department of Health, as appropriate.

**§ 1550.42. Entities authorized to print identification documents, cards and certificates--Issuance of certain documents limited to citizens, nationals and legal permanent resident aliens**

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A. The following entities may create, publish or otherwise manufacture an identification document, identification card, or identification certificate and may possess an engraved plate or other such device for the printing of such identification; provided, the name of the issuing entity shall be clearly printed upon the face of the identification:

1. Businesses, companies, corporations, service organizations and federal, state and local governmental agencies for employee identification which is designed to identify the bearer as an employee;
2. Businesses, companies, corporations and service organizations for customer identification which is designed to identify the bearer as a customer or member;
3. Federal, tribal, state and local government agencies for purposes authorized or required by law or any legitimate purpose consistent with the duties of such an agency, including, but not limited to, voter identification cards, driver licenses, nondriver identification cards, passports, birth certificates and social security cards;
4. Any public school or state or private educational institution, as defined by Sections 1-106  
<<http://www.westlaw.com/Link/Document/FullText?>
5. Any professional organization or labor union to identify the bearer as a member of the professional organization or labor union; and

6. Businesses, companies or corporations which manufacture medical-alert identification for the wearer thereof.

B. All identification documents as provided for in paragraph 3 or 4 of subsection A of this section shall be issued only to United States citizens, nationals and legal permanent resident aliens.

C. The provisions of subsection B of this section shall not apply when an applicant presents, in person, valid documentary evidence of:

1. A valid, unexpired immigrant or nonimmigrant visa status for admission into the United States;

2. A pending or approved application for asylum in the United States;

3. Admission into the United States in refugee status;

4. A pending or approved application for temporary protected status in the United States;

5. Approved deferred action status; or

6. A pending application for adjustment of status to legal permanent residence status or conditional resident status. Upon approval, the applicant may be issued an identification document provided for in paragraph 3 or 4 of subsection A of this section. Such identification document shall be valid only during the period of time of the authorized stay of the applicant in the United States or, if there is no definite end to the period of authorized stay, a period of one (1) year. Any identification document issued pursuant to the provisions of this subsection shall clearly indicate that it is temporary and shall state the date that the identification document expires. Such identification document may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the identification document has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

D. The provisions of subsection B of this section shall not apply to an identification document described in paragraph 4 of subsection A of this section that is only valid for use on the campus or facility of that educational institution and includes a statement of such restricted validity clearly and conspicuously printed upon the face of the identification document.

E. Any driver license issued to a person who is not a United States citizen, national or legal permanent resident alien for which an application has been made for renewal, duplication or reissuance shall be presumed to have been issued in accordance with the provisions of subsection C of this section; provided that, at the time the application is made, the driver license has not expired, or been cancelled, suspended or revoked. The requirements of subsection C of this section shall apply, however, to a renewal, duplication or reissuance if the Department of Public Safety is notified by a local, state or federal government agency of information in the



possession of the agency indicating a reasonable suspicion that the individual seeking such renewal, duplication or reissuance is present in the United States in violation of law. The provisions of this subsection shall not apply to United States citizens, nationals or legal permanent resident aliens.

**§ 1550.43. False or fraudulent identification cards, etc.--Seizure and forfeiture of cards and equipment--Service of notice--Hearing--Claim for equipment--Liability--Expenses--Proceeds--Definitions**

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A. Any false or fraudulent identification document, card or certification in violation of Section 1550.41 of this <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.41&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.41&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> title or any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT47S6-301&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT47S6-301&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> that is possessed, transferred, sold or offered for sale in violation of law shall be seized and summarily forfeited when no longer needed as evidence.

B. Any peace officer of this state 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 any identification document, card, or certificate in violation of Section 1550.41 of this <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.41&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.41&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))> title or of any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT47S6-301&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT47S6-301&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default))>. 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 district attorney in the proper county of venue as petitioner; provided, in the event the district attorney 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.

C. 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.

D. 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.

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 equipment forfeited to the state, 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 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 any identification document, card, or certificate in violation of Section 1550.41 of Title 21 of the Oklahoma Statutes <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.41&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.41&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>) or of any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT47S6-301&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT47S6-301&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>) with knowledge by the owner of the equipment.

H. 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.

I. 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.

J. 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 the state and shall be sold pursuant to the judgment of the court.

K. Equipment taken or detained pursuant to this section shall not be replevable, but shall be deemed to be in the custody of the office of the district attorney of the county where the equipment was seized or in the custody of the party seeking the forfeiture. The district attorney 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 district attorney or the party seizing the equipment

shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

L. The district attorney 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.

M. If the court finds that the equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of any identification document, card, or certificate in violation of Section 1550.41 of this

<[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1550.41&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>)

findType=L&pubNum=1000165&cite=OKSTT21S1550.41&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)> title or of any driver license or identification card in violation of Section 6-301 of Title 47 of the Oklahoma Statutes <[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT47S6-301&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>)

findType=L&pubNum=1000165&cite=OKSTT47S6-

301&originatingDoc=NAF3FB3D0C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>, the court shall order the equipment released to the owner.

N. 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.

O. For the purposes of this section, the term “equipment” shall include computers, printers, copy machines, other machines, furniture, supplies, books, records, files, data, currency, or negotiable instruments including, but not limited to, money orders or cashier’s checks but shall not include vehicles or real property.

## CHAPTER 62

### FALSE WEIGHTS AND MEASURES

#### § 1551. Use of false weights and measures

<#co\_anchor\_I48727ED0240D11EB94ADA523B6102>

If any person with intent to defraud, use a false balance, weight or measure, in the weighing or measuring of

anything whatever that is purchased, sold, bartered, shipped or delivered, for sale or barter, or that is pledged, or given in payment, he shall be punished by a fine not exceeding One Hundred Dollars (\$100.00) nor less than Five Dollars (\$5.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment, and shall be liable to the injured party in double the amount of damages.

#### **§ 1552. Retaining same knowingly**

<#co\_anchor\_I56D4E620240D11EB94ADA523B6102>

Every person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, shall be punished as therein provided.

#### **§ 1553. False weights and measures may be seized**

<#co\_anchor\_ID5A8D070240C11EB94ADA523B6102>

Every person who is authorized or enjoined by law to arrest another person for violation of the first two sections of this article, is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the judge before whom the person so arrested is required to be taken.

#### **§ 1554. Testing seized weights and measures--Disposition**

<#co\_anchor\_IBA61D2C0240D11EB94ADA523B6102>

The magistrate to whom any weight or measure is delivered, pursuant to the last section, <#co\_footnote\_I170979F0FFA411DE8506C1B1AB7> shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he shall cause it to be destroyed, or to be delivered to the prosecutor in which the accused is liable to indictment or trial, as the interests of justice in his judgment require.

#### **§ 1555. Destruction of false weights or measures after conviction**

<#co\_anchor\_IA7A1CBC0240F11EB94ADA523B6102>

Upon the conviction of the accused, such prosecutor shall cause any weight or measure in respect whereof the accused stands convicted, and which remains in the possession or under the control of such prosecutor, to be destroyed.

## **§ 1556. Marking false weight or false tare**

<#co\_anchor\_IADE3E2E0240D11EB94ADA523B6102>

Every person who knowingly marks or stamps false or short weight, or false tare on any cask or package or knowingly sells or offers for sale any cask or package so marked is guilty of a misdemeanor.

## **CHAPTER 63**

### **FORGERY OR COUNTERFEITING**

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 1574. Making false certificate of acknowledgment**

<#co\_anchor\_I2D245290295B11EBB0C3FEB220030>

If any officer authorized to take the acknowledgment or proof of any conveyance of real property, or of any other instrument which by law may be recorded, knowingly and falsely certifies that any such conveyance or instrument was acknowledged by any party thereto, or was proved by any subscribing witness, when in truth such conveyance or instrument was not acknowledged or proved as certified, he is guilty of forgery in the second degree.

#### **§ 1575. False bank note plates**

Every person who, makes or engraves, or causes or procures to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposit or other evidence of debt

issued by any banking corporation or association, or individual banker, incorporated or carrying on business under the laws of this nation, or of any other state, government or country, without the authority of such bank, or has or keeps in his custody or possession any such plate, without the authority of such bank, with intent to use or permit the same to be used for the purpose of taking therefrom any impression, to be passed, sold or altered, or has or keeps in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same filled up and completed for the purpose of being passed, sold or altered; or makes or causes to be made, or has in his custody or possession, any plate upon which are engraved any figures, or words, which may be used for the purpose of falsely altering any evidence of debt issued by any such bank, with intent to use the same, or to permit them to be used for such purpose, is guilty of forgery in the second degree.

#### **§ 1576. Imitation of genuine bank note defined**

<#co\_anchor\_IABB92D80295911EBB0C3FEB220030>

Every plate specified in the last section shall be deemed to be in the form and similitude of the genuine instrument imitated, in either of the following cases:

1. When the engraving on such plate resembles and conforms to such parts of the genuine instrument as are engraved; or,
2. When such plate is partly finished, and the part so finished resembles and conforms to similar parts of the genuine instrument.

#### **§ 1577. Notes, checks, bills, drafts--Sale, exchange or delivery**

Every person who sells, exchanges or delivers for any consideration any forged or counterfeited promissory note, check, bill, draft or other evidence of debt, or engagement for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intent to have the same uttered or passed, or who offers any such note or other instrument for sale, exchange or delivery for any consideration, with the like knowledge and intent, or who receives any such note or other instrument upon a sale, exchange or delivery for any consideration with the like knowledge and intent, is guilty of forgery in the second degree if the value of the instrument is One Thousand Dollars (\$1,000.00) or more and forgery in the third degree if the value of the instrument is less than One Thousand Dollars (\$1,000.00).

For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.



## **§ 1577. Notes, checks, bills, drafts--Sale, exchange or delivery**

A. Every person who sells, exchanges or delivers for any consideration any forged or counterfeited promissory note, check, bill, draft, or other evidence of debt, or engagement for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intent to have the same uttered or passed, or who offers any such note or other instrument for sale, exchange or delivery for any consideration, with the like knowledge and intent, or who receives any such note or other instrument upon a sale, exchange or delivery for any consideration with the like knowledge and intent, is punishable as follows:

1. If the value of the instrument is less than One Thousand Dollars (\$1,000.00), the person shall be guilty of misdemeanor forgery punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
2. If the value of the instrument is One Thousand Dollars (\$1,000.00) or more but less than Two Thousand Five Hundred Dollars (\$2,500.00), the person shall be guilty of felony forgery punishable by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
3. If the value of the instrument is Two Thousand Five Hundred Dollars (\$2,500.00) or more but less than Fifteen Thousand Dollars (\$15,000.00), the person shall be guilty of felony forgery punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine; or
4. If the value of the instrument is Fifteen Thousand Dollars (\$15,000.00) or more, the person shall be guilty of felony forgery punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

B. For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

## **§ 1578. Possession of forged evidences of debt**

Every person who, with intent to defraud, has in his or her possession any forged, altered or counterfeit negotiable note, bill, draft or other evidence of debt issued or purporting to have been issued by any corporation or company duly authorized for that purpose by the laws of this state or of any other state, government or country, the forgery of which is hereinbefore declared to be punishable, knowing the same to be forged, altered

or counterfeited, with intent to utter the same as true or as false, or to cause the same to be so uttered, is guilty of forgery in the second degree if the value of the instrument is One Thousand Dollars (\$1,000.00) or more and forgery in the third degree if the value of the instrument is less than One Thousand Dollars (\$1,000.00).

For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

### **§ 1578. Possession of forged evidences of debt**

A. Every person who, with intent to defraud, has in his or her possession any forged, altered or counterfeit negotiable note, bill, draft or other evidence of debt issued or purporting to have been issued by any corporation or company duly authorized for that purpose by the laws of this state or of any other state, government or country, the forgery of which is hereinbefore declared to be punishable, knowing the same to be forged, altered or counterfeited, with intent to utter the same as true or as false, or to cause the same to be so uttered, is punishable as follows:

1. If the value of the instrument is less than One Thousand Dollars (\$1,000.00), the person shall be guilty of misdemeanor forgery punishable by imprisonment in the county jail for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
2. If the value of the instrument is One Thousand Dollars (\$1,000.00) or more but less than Two Thousand Five Hundred Dollars (\$2,500.00), the person shall be guilty of felony forgery punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed two (2) years or in the county jail for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
3. If the value of the instrument is Two Thousand Five Hundred Dollars (\$2,500.00) or more but less than Fifteen Thousand Dollars (\$15,000.00), the person shall be guilty of felony forgery punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed five (5) years or in the county jail for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine; or
4. If the value of the instrument is Fifteen Thousand Dollars (\$15,000.00) or more, the person shall be guilty of felony forgery punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed eight (8) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

B. For purposes of this section, a series of offenses may be aggregated into one offense when they are the result

of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

### **§ 1579. Possession of other forged instruments**

Every person who has in his or her possession any forged or counterfeited instrument, the forgery of which has previously been declared to be punishable, other than such as are enumerated in Section 1578

[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1578&originatingDoc=NB3628280C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>)

[findType=L&pubNum=1000165&cite=OKSTT21S1578&originatingDoc=NB3628280C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1578&originatingDoc=NB3628280C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>) of this title, knowing the same to be forged, counterfeited or falsely altered with intent to injure or defraud by uttering the same to be true, or as false, or by causing the same to be uttered, is guilty of forgery in the second degree if the value of the instrument is One Thousand Dollars (\$1,000.00) or more and forgery in the third degree if the value of the instrument is less than One Thousand Dollars (\$1,000.00).

For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

### **§ 1579. Possession of other forged instruments**

A. Every person who has in his or her possession any forged or counterfeited instrument, the forgery of which is hereinbefore declared to be punishable, other than such as are enumerated in the last section, knowing the same to be forged, counterfeited or falsely altered with intent to injure or defraud by uttering the same to be true, or as false, or by causing the same to be uttered, is punishable as follows:

1. If the value of the instrument is less than One Thousand Dollars (\$1,000.00), the person shall be guilty of misdemeanor forgery punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;

2. If the value of the instrument is One Thousand Dollars (\$1,000.00) or more but less than Two Thousand Five Hundred Dollars (\$2,500.00), the person shall be guilty of felony forgery punishable by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;

3. If the value of the instrument is Two Thousand Five Hundred Dollars (\$2,500.00) or more but less than Fifteen Thousand Dollars (\$15,000.00), the person shall be guilty of felony forgery punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine; or

4. If the value of the instrument is Fifteen Thousand Dollars (\$15,000.00) or more, the person shall be guilty of felony forgery punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

B. For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

#### **§ 1580. Issuing spurious certificates of stock**

<#co\_anchor\_I46F62750295811EBB0C3FEB220030>

Any officer or agent of any corporation or joint-stock association formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully signs or procures to be signed, with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who willfully issues, sells or pledges, or causes to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, whether of full paid shares or otherwise, or of any interest in its property or profits, or of any certificate or other evidence of such ownership, transfer or interest, or any instrument purporting to be a certificate or other evidence of such ownership, transfer or interest, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or other managing body of such corporation or association having authority to issue the same, is guilty of forgery in the second degree.

#### **§ 1581. Reissuing cancelled certificates of stock**

<#co\_anchor\_I08166B80295811EBB0C3FEB220030>

Any officer or agent of any corporation or joint-stock association formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully reissues, sells or pledges, or causes to be reissued, sold or pledged, any surrendered or canceled certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, or of an interest in its property or profits, with intent to defraud, is guilty of forgery in the second degree.

## § 1582. False evidences of debt

<#co\_anchor\_I5620A420295911EBB0C3FEB220030>

Any officer or agent of any corporation, municipal or otherwise, of any joint-stock association formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully signs or procures to be signed with intent to issue, sell or pledge, or cause to be issued, sold or pledged, or who willfully issues, sells or pledges, or causes to be issued, sold or pledged, any false or fraudulent bond or other evidence of debt against such corporation or association of any instrument purporting to be a bond or other evidence of debt against such corporation or association, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or common council or other managing body of officers of such corporation having authority to issue the same, is guilty of forgery in the second degree.

## § 1583. Counterfeiting coin

<#co\_anchor\_I5B064310295811EBB0C3FEB220030>

Every person who counterfeits any gold or silver coin, whether of the United States or any foreign government or country, with intent to sell, utter, use or circulate the same as genuine, within this state, is guilty of forgery in the second degree.

## § 1584. Counterfeiting coin for exportation

<#co\_anchor\_IC81A26B0295811EBB0C3FEB220030>

Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign country or government, with intent to export the same, or permit them to be exported to injure or defraud any foreign government, or the subjects thereof, is guilty of forgery in the second degree.

## § 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, diminished, 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;

is guilty of a forgery in the second degree.

#### **§ 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.

#### **§ 1587. Forging tickets of passage**

<#co\_anchor\_I517C2250295911EBB0C3FEB220030>

Every person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, check or other paper or writing to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance; and every person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery any such ticket, knowing the same to have been forged, counterfeited or falsely altered is guilty of forgery in the second degree.

#### **§ 1588. Postage stamps, forging**

<#co\_anchor\_I5CF49E30295B11EBB0C3FEB220030>

Every person who forges, counterfeits or alters any postage or revenue stamp of the United States, or who sells or offers to keep for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the second degree.

#### **§ 1589. False entries in corporation books**

<#co\_anchor\_I9DE4A3C0295811EBB0C3FEB220030>

Every person who, with intent to defraud, makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this state, or in any book of accounts kept by any such corporation or its officers, and delivered or intended to be delivered to any person dealing with such corporation, by which any pecuniary obligation, claim or credit is, or purports to be, discharged, diminished, increased, created or in any manner affected, is guilty of forgery in the second degree.

#### **§ 1590. Officer or employee of corporation making false entries**

<#co\_anchor\_I63D2D8D0295A11EBB0C3FEB220030>

Every person who being a member or officer or in the employment of any corporation, association or

partnership, falsifies, alters, erases, obliterates or destroys any account or book of accounts or records belonging to such corporation, association or partnership, or appertaining to their business or makes any false entries in such account or book or keeps any false account in such business with intent to defraud his employers, or to conceal any embezzlement of their money, or property, or any defalcation or other misconduct, committed by any person in the management of their business, is guilty of forgery in the second degree.

### **§ 1591. Possession of counterfeit coin**

<#co\_anchor\_I07E7F690295A11EBB0C3FEB220030>

Every person who has in his possession any counterfeit of any gold or silver coin, whether of the United States or any foreign country or government, knowing the same to be counterfeit, with intent to sell or to use, circulate or export the same, as true or as false, or by causing the same to be uttered or passed, is guilty of forgery in the second degree.

### **§ 1592. Uttering forged instruments or coin**

<#co\_anchor\_IA85844B0295811EBB0C3FEB220030>

A. Every person who, with intent to defraud, utters or publishes as true any forged, altered or counterfeited instrument or any counterfeit gold or silver coin, the forging, altering or counterfeiting of which has previously been declared to be punishable, knowing such instrument or coin to be forged, altered or counterfeited, is punishable as follows:

1. If the value of the instrument is less than One Thousand Dollars (\$1,000.00), the person shall be guilty of forgery as a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
2. If the value of the instrument is One Thousand Dollars (\$1,000.00) or more but less than Two Thousand Five Hundred Dollars (\$2,500.00), the person shall be guilty of forgery as a felony punishable by imprisonment for a term not to exceed two (2) years, or in the county jail not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
3. If the value of the instrument is Two Thousand Five Hundred Dollars (\$2,500.00) or more but less than Fifteen Thousand Dollars (\$15,000.00), the person shall be guilty of forgery as a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
4. If the value of the instrument is Fifteen Thousand Dollars (\$15,000.00) or more, the person shall be guilty of forgery as a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

B. For purposes of this section, a series of offenses may be aggregated into one offense when they are the result of the formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis. When all acts result from a continuing



course of conduct, they may be aggregated into one crime. Acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime.

### **§ 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.

## **CHAPTER 63**

### **FORGERY OR COUNTERFEITING**

#### **§ 1621. Punishment for First, second, and third degree forgery--Penalties**

- A. Forgery in the first degree is a felony punishable by imprisonment in for a not more than three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.
- B. the penal institution as follows: Forgery in the first degree or second degree is a crime felony punishable by imprisonment for not more than three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.
- C. Forgery in the third degree is:
  - a. If the value of the forgery is less than One Thousand Dollars (\$1,000.00), a misdemeanor punishable by confinement for not more than one (1) year or by a fine not exceeding One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.
  - b. If the value of the forgery is One Thousand Dollars (\$1,000.00) or more, a felony punishable by imprisonment not exceeding three (3) years, or by both such fine and imprisonment.
  - c. If the total or aggregate value of the forgery is Two Thousand Dollars (\$2,000.00) or more, a felony punishable by imprisonment not exceeding three (3) years.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 1626. Signing fictitious names as officers of corporations**

The false making or forging of an evidence of debt purporting to have been issued by any corporation and bearing the pretended signature of any person as an agent or officer of such corporation, is forgery in the same degree as if such person was at the time an officer or agent of such corporation; notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

#### **§ 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 [misdemeanor](#), 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.

#### **§ 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.

#### **§ 1628. Fraudulently altering, forging, reproducing abstractor's certificate or signature**

Any person who, with intent to defraud, alters, forges, falsely makes, photographs, or by any method reproduces any certificate of authority provided for in Title 1 of the Oklahoma Statutes, or other instrument, document, paper or abstract of title entry signed or executed by any abstractor to whom a certificate of authority has been lawfully issued, shall be guilty of the commission of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than One Thousand Dollars (\$1,000.00) for each reproduction thereof.

### **CHAPTER 64**

#### **FRAUDS AND OFFENSES IN CORPORATION AFFAIRS**

#### **§ 1631. Fraud in subscription for stock**

Any person who signs the name of a fictitious person to any subscription for, or agreement to take stock in any corporation, existing or proposed; and every person who signs, to any subscription or agreement, the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

#### **§ 1632. Fraud in procuring organization of stock company**

Any officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital with intent to deceive such officer or board in respect thereto, shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years or by imposition of a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

### **§ 1633. Unauthorized use of names**

Any person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in any prospectus, circular, or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

### **§ 1634. Omitting to enter receipt**

Any director, officer or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, is guilty of a misdemeanor.

### **§ 1635. Destroying or falsifying books**

Any director, officer, agent or member of any corporation or joint stock association, who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

### **§ 1636. False reports of corporation--Refusal to make report**

Any director, officer or agent of any corporation or joint-stock association, who knowingly concurs in the making, or publishes any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than as are mentioned in Sections 2722 and 2723,1 or willfully refuses or neglects to make or deliver any written report, exhibit or statement required by law, is guilty of a misdemeanor.

### **§ 1637. Inspection of corporate books, refusing to permit**

Any officer or agent of any corporation having or keeping an office within this state, who has in his custody, or control, any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

### **§ 1638. Insolvencies deemed fraudulent**

Every insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

### **§ 1639. Fraudulent insolvency--Penalties**

A. In every case of a fraudulent insolvency of a moneyed corporation not licensed to conduct insurance business in the State of Oklahoma, every director thereof who participated in such fraud is guilty of a

misdemeanor.

B. In every case of a fraudulent insolvency of a moneyed corporation licensed to conduct the business of insurance in the State of Oklahoma, every director thereof who participated in such fraud is guilty of a felony punishable by a term of imprisonment not to exceed three (3) years or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

#### **§ 1640. Violation of duty by officer of corporation**

Any director of any moneyed corporation who willfully does any act, as such director, which is expressly forbidden by law, or willfully omits to perform any duty expressly imposed upon him as such director, by law, the punishment for which act or omission is not otherwise prescribed by this article, or by some of the acts which it specifies as continuing in force, is guilty of a misdemeanor.

#### **§ 1641. Director presumed to have knowledge**

Any director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors, is a violation of this article.

#### **§ 1642. Director presumed to have assented, when**

Any director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding or omission of such directors, in violation of this article occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

#### **§ 1643. Presumption of assent when director was absent from meeting**

Any director of a corporation or joint-stock association, although not present at the meeting of the directors at which any act, proceeding or omission of such directors, in violation of this article, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the same company for six (6) months thereafter, and does not, within that time, cause or in writing require his dissent from such illegality to be entered in the minutes of the directors.

#### **§ 1644. Foreign corporation no defense**

It is no defense to a prosecution for a violation of the provisions of this article, that the corporation was one created by the laws of another state, government or country, if it was one carrying on business, or keeping an officer thereof, within this Nation.

#### **§ 1645. Director defined**

The term director, as used in this article, embraces any of the persons having by law the direction or management of the affairs of a corporation by whatever name such persons are described in its charter, or known by law.

### **CHAPTER 65**

## FRAUDS ON INSURANCE COMPANIES

### § 1662. False claim or proof of loss in insurance

Any person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance, for the payment of any loss, or who prepares, makes or subscribes any account, certificate, survey affidavit, proof of loss, or other book, paper or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding three (3) years, or by a fine not exceeding twice the amount of the aggregated loss sum, or both.

### § 1663. Workers' compensation fraud--Punishment

A. Any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment for a term not exceeding three (3) years or by a fine not exceeding Ten Thousand Dollars (\$10,000.00) or by both such fine and imprisonment.

B. For the purposes of this section, workers' compensation fraud shall include, but not be limited to, any act or omission prohibited by subsection C of this section and committed by a person with the intent to injure, defraud or deceive another with respect to any of the following:

1. A claim for payment or other benefit pursuant to a contract of insurance;
2. An application for the issuance of a contract of insurance;
3. The rating of a contract of insurance or any risk associated with the contract;
4. Premiums paid on any contract of insurance whether or not the contract was actually issued;
5. Payments made in accordance with the terms of a contract of insurance;
6. An application for any license which is required by the Oklahoma Insurance Code, Title 36 of the Oklahoma Statutes;
7. An application for a license which is required for the organization, operation or maintenance of a health maintenance organization pursuant to Section 2501 et seq. of Title 63 of the Oklahoma Statutes;
8. A request for any approval, license, permit or permission required by the Workers' Compensation Act,<sup>1</sup> by the rules of the Workers' Compensation Court or by the rules of the Workers' Compensation Court Administrator necessary to secure compensation as required by Section 61 of Title 85 of the Oklahoma Statutes;
9. The financial condition of an insurer or purported insurer;
10. The acquisition of any insurer; or
11. A contract of insurance or a Certification of Non-Coverage Under the Workers' Compensation Act.

C. A person is guilty of workers' compensation fraud who:

1. Presents, causes to be presented or intends to present to another, any statement as part of or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose for the statement;
2. Assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to, used by or relied upon by another in connection with or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose of the statement;
3. Conceals, attempts to conceal or conspires to conceal any information concerning any fact material to any of the purposes described in subsection B of this section;
4. Solicits, accepts or conspires to solicit or accept new or renewal insurance risks by or for an insolvent insurer;
5. Removes, attempts to remove or conspires to remove the assets or records of the insurer or a material part thereof, from the place of business of the insurer or from a place of safekeeping of the insurer;
6. Conceals, attempts to conceal or conspires to conceal the assets or records of the insurer or a material part thereof;
7. Diverts, attempts to divert, or conspires to divert funds of an insurer or other person in connection with:
  - a. a contract of insurance,
  - b. the business of an insurer, or
  - c. the formation, acquisition or dissolution of an insurer;
8. Solicits, accepts or conspires to solicit or accept any benefit in exchange for violating any provision of this section;
9. Conceals, attempts to conceal, conspires to conceal or fails to disclose any change in any material fact, circumstance or thing for which there is a duty to disclose to another; or
10. Alters, falsifies, forges, distorts, counterfeits or otherwise changes any material statement, form, document, contract, application, certificate, or other writing with the intent to defraud, deceive, or mislead another.

D. It shall not be a defense to an allegation of a violation of this section that the person accused did not have a contractual relationship with the insurer.



E. For the purposes of this section:

1. “Contract of insurance” includes, but is not limited to, workers’ compensation insurance or any other means of securing compensation permitted by the Workers’ Compensation Act or reinsurance for such insurance or other means of securing compensation;
2. “Insurer” includes, but is not limited to, any person who is engaged in the business of making contracts of insurance;
3. “Person” means any individual or entity, whether incorporated or not, and in the case of an entity, includes those persons directly responsible for the fraudulent actions of the entity;
4. “Statement” includes, but is not limited to, any oral, written, computer-generated or otherwise produced notice, proof of loss, bill of lading, receipt for payment, invoice, account, certificate, survey affidavit, book, paper, writing, estimate of property damage, bill for services, diagnosis, prescription, medical record, x-ray, test result or other evidence of loss, injury or expense; and
5. “Work” does not include activities that result in nominal economic gain.

**§ 1671. Fraudulent conveyance**

Every person who being a party to any conveyance or assignment of any real or personal property, or of any interest therein, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, and every person being privy to or knowing of such conveyance, assignment or charge, who willfully puts the same in use as having been made in good faith, is guilty of a misdemeanor.

**§ 1672. Fraudulent removal of property**

Every person who removes any of his property out of any county, with intent to prevent the same from being levied upon by any execution or attachment, or who secretes, assigns, conveys or otherwise disposes of any of his property, with intent to defraud any creditor, or to prevent such property being made liable for the payment of his debts, and every person who receives any such property with such intent, is guilty of a misdemeanor.

**§ 1673. Assignment to creditor with preference**

Every person who, knowing that his property is insufficient for the payment of all his lawful debts, assigns, transfers or delivers any property for the benefit of any creditor or creditors, upon any trusts or condition, that any creditor shall receive a preference or priority over any other, except in the cases in which such preference is expressly allowed to be given by law, or with intent to create such preference or priority, is guilty of a misdemeanor.

**§ 1674. Frauds by insolvent debtor**

Every person who, upon making or prosecuting any application for a discharge as an insolvent debtor, under the provision of any law now in force, or that may hereafter be enacted, either:

1. Fraudulently presents, or authorizes to be presented on his behalf such application, in a case in which it is not authorized by law; or,

2. Makes or presents to any court or officer, in support of such application, any petition, schedule, book, account, voucher or other paper or document, knowing the same to contain any false statement; or,
3. Fraudulently makes or exhibits, or alters, obliterates or destroys any account or voucher relating to the condition of his affairs, or any entry or statement in such account or voucher; or
4. Practices any fraud upon any creditor, with intent to induce him to petition for, or consent to such discharge; or
5. Conspires with or induces any person fraudulently to unite as a creditor in any petition for such discharge, or to practice any fraud in aid thereof, is guilty of a misdemeanor.

## CHAPTER 67

### INJURIES TO ANIMALS

#### § 1681. Poisoning cattleanimals

Every Any 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 crimeshall be guilty of a felony and shall be punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or by both such fine and imprisonment.

#### § 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 crimemisdemeanor.

#### § 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 crimemisdemeanor.

#### § 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.

#### § 1685.1. Greyhounds--Using live animal as lure in training--Penalties

A. No person may knowingly use any live animal as a lure or bait in training a greyhound for entry in any race.

B. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00).

C. The provisions of subsection B of this section shall be the exclusive remedy for any violation of the provisions of subsection A of this section.

#### **§ 1686. Abandoned animals-Destroyed howEuthanasia-Custody of animal following arrest**

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**misdemeanor**.

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 **humanely** destroy or cause to be **humanely** 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, **or** 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 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.

#### **§ 1688. Animals in transit**

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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**misdemeanor**.

#### **§ 1689. Poisonous drugs, unjustifiable administration of**

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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 **misdemeanor**.

## **§ 1691. Abandoning of domestic animals along streets or highways or in any public place prohibited**

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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 **misdemeanor**.

## **§ 1692. Penalty**

Any person found guilty of violating the provisions of this act **Sections 1686, 1688, 1689, and 1691 of this title** shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or **bye** imprisoned **imprisonment** in the penal institution for not more than one (1) year, or both such fine and imprisonment.

### **§ 1692.1. Definitions**

As used in this act:

A. “Cockfight” or “cockfighting” is a fight between birds, whether or not fitted with spurs, knives, or gaffs, and whether or not bets or wagers are made on the outcome of the fight, and includes any training fight in which birds are intended or encouraged to attack or fight with one another.

B. “Equipment used for training or handling a fighting bird” includes knives or gaffs, cages, pens, feeding apparatuses, training pens and other related devices and equipment, and is hereby declared contraband and subject to seizure.

### **§ 1692.2. Instigating or encouraging cockfight**

Every person who willfully instigates or encourages any cockfight, upon conviction, shall be guilty of a felony. The penalty for a violation of this section shall be as provided in Section 1692.8 of this chapter.

### **§ 1692.3. Keeping place, equipment or facilities for cockfighting**

Every person who keeps any pit or other place, or knowingly provides any equipment or facilities to be used in permitting any cockfight, upon conviction, shall be guilty of a felony. The penalty for a violation of this section shall be as provided in Section 1692.8 of this chapter.

### **§ 1692.4. Servicing or facilitating cockfight**

Every person who does any act or performs any service in the furtherance of or to facilitate any cockfight, upon conviction, shall be guilty of a felony. Such activities and services specifically prohibited by this section include, but are not limited to: promoting or refereeing of birds at a cockfight, advertising a cockfight, or serving as a stakes holder of any money wagered on any cockfight. The penalty for a violation of this section shall be as provided in Section 1692.8 of this chapter.

### **§ 1692.5. Owning, possessing, keeping or training bird for fighting**

Every person who owns, possesses, keeps, or trains any bird with the intent that such bird shall be engaged in a cockfight, upon conviction, shall be guilty of a felony. The penalty for a violation of this section shall be as provided in Section 1692.8 of this chapter.

### **§ 1692.6. Spectators**

Every person who is knowingly present as a spectator at any place, building, or other site where preparations are being made for a cockfight with the intent to be present at such preparation or cockfight, or is knowingly present at such cockfight, upon conviction shall be guilty of a misdemeanor.

### **§ 1692.7. Seizure, destruction, or forfeiture of cockfighting equipment or facilities**

Following the conviction of a person for Sections 1692.2, 1692.3, 1692.4, or 1692.5 of this chapter, the court entering the judgment shall order that the birds and knives or gaffs used in violation of this act<sup>2</sup> be forfeited to the state, and may order that any and all equipment described in Section 1 used in violation of this act be forfeited to the state.

### **§ 1692.8. Punishment**

A. Every person who is guilty of a felony under any of the provisions of Sections 1692.2, 1692.3, 1692.4, or 1692.5 of this chapter shall be punished by imprisonment for not less than one (1) year, or shall be fined not more than Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

B. Every person who upon conviction is guilty of any of the provisions of Section 6 of this chapter shall be punished by imprisonment for not more than one (1) year, or shall be fined not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

### **§ 1692.9. Exemption**

Nothing in this chapter shall prohibit any of the following:

A. Hunting birds or fowl in accordance with applicable regulation or statute, including but not limited to the sport of hunting game with trained raptors.

B. Agricultural production of fowl for human consumption.

## **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. "Concession equipment" includes any stands, equipment or devices intended to be used to sell or otherwise to dispense food, drinks, liquor, souvenirs, or spectator comforts.

4. "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.

5. "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.

6. "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.

#### **§ 1694. Instigating or encouraging dogfight-CrimeFelony--Penalty**

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 crimefelony, punishable as provided in Section 1699.1 of this title.

#### **§ 1695. Keeping place, equipment or facilities for dogfighting-CrimeFelony--Penalty**

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, shall be guilty of a felony, punishable as provided in Section 1699.1 of this title.upon conviction, is guilty of a crime.

#### **§ 1696. Servicing or facilitating dogfight-CrimeFelony--Penalty**

Every person who does any act or performs any service in the furtherance of or to facilitate any dogfight, upon conviction, is shall be guilty of a crimefelony. 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, punishable as provided in Section 1699.1 of this title.

#### **§ 1697. Owning, possessing, keeping or training dog for fighting-CrimeFelony--Penalty**

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 felony, punishable as provided in Section 1699.1 of this title..

#### **§ 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 dog-fighting 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 crimemisdemeanor.

## **§ 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.

### **§ 1699.1. Punishment**

A. Every person who is guilty of a felony under any of the provisions of Sections 1694, 1695, 1696 and 1697 of this title shall be punished by imprisonment for not more than three (3) years, or a fine not less than Two Thousand Dollars (\$2,000.00) nor more than Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

B. Every person who upon conviction is guilty of any of the provisions of Section 1698 of this title shall be punished by imprisonment for not more than one (1) year, or shall be fined not more than Five Hundred Dollars (\$500.00).

### **§ 1699.2. Exemptions**

**Nothing in this act shall prohibit any of the following:**

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.

### **§ 1700. Bear wrestling--Horse tripping**

A. It is unlawful for any person to:

1. Promote, engage in, or be employed at a bear wrestling exhibition or horse tripping event;
2. Receive money for the admission of another person to any place where bear wrestling or horse tripping will occur;
3. Sell, purchase, possess, or offer a horse for any horse tripping event;
4. Sell, purchase, possess, or train a bear for any bear wrestling exhibition;



5. Subject a bear to alteration in any form for purposes of bear wrestling including, but not limited to, removal of claws or teeth, or severing tendons; or

6. Give any substance to a bear, inject any substance into a bear, or cause a bear to ingest or inhale any substance for the purposes of bear wrestling.

B. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not exceeding one (1) year, or by a fine of not more than Two Thousand Dollars (\$2,000.00), or by both such fine and imprisonment. In addition, the court may require the violator to make restitution and reimbursements to the state, any of its political subdivisions, or to any society which is incorporated for the prevention of cruelty to animals for housing, feeding, or providing medical treatment to any animals used or intended for use in violation of this section.

C. Upon the arrest of any person pursuant to any provision of this section, the arresting law enforcement agency or animal control office shall have authority to seize and take custody of all animals in the possession of the arrested person which are the basis of an arrest pursuant to the provisions of this section. Upon conviction, the court shall have authority to order the forfeiture of all animals seized which are the basis of the conviction pursuant to the provisions of this section. Any animals ordered forfeited may be placed in the custody of a society which is incorporated for the prevention of cruelty to animals.

D. As used in this section, "horse tripping" means to cause an animal of the equine species to fall or lose its balance with the use of a wire, pole, stick, rope or other object. The term does not include the lawful laying down of a horse for medical purposes or for the purposes of identification.

## CHAPTER 68 LARCENY

### § 1701. Larceny defined

Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof.

### § 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. **punishable as follows:**

1. If the value of the property is less than One Thousand Dollars (\$ 1,000.00), the person shall be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such imprisonment and fine;

2. If the value of the property is One Thousand Dollars (\$1,000.00) or more but less than Two Thousand Five Hundred Dollars (\$2,500.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;

3. If the value of the property is Two Thousand Five Hundred Dollars (\$2,500.00) or more but less than

Fifteen Thousand Dollars (\$15,000.00), the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine; and

4. If the value of the property is Fifteen Thousand Dollars (\$15,000.00) or more, the person shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such imprisonment and fine.

### **§ 1703. Degrees of larceny**

Larceny is divided into two degrees; the first of which is termed grand larceny, the second petit larceny.

### **§ 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 **One Hundred Thousand** Dollars (\$500**1,000.00**); or
2. When such property, although not of value exceeding Five **One Hundred Thousand** Dollars (\$500**1,000.00**) in value, is taken from the person of another.

Larceny in other cases is petit larceny.

### **§ 1705. Punishment for grand larceny**

Grand larceny is a felony punishable as a crime follows:.

#### **A. Grand larceny is a felony punishable as follows:**

1. If the value of the property is less than One Thousand Dollars (\$1,000.00), the person shall be punished by imprisonment for a term not to exceed one (1) year or by incarceration in the county jail for one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Cherokee Nation Code Annotated, at the option of the court, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
2. If the property is one or more firearms, the property is taken from the person of another, or the value of the property is One Thousand Dollars (\$1,000.00) or more but less than Two Thousand Five Hundred Dollars (\$2,500.00), the person shall be punished by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine;
3. In the event the value of the property is Two Thousand Five Hundred Dollars (\$2,500.00) or more but less than Fifteen Thousand Dollars (\$15,000.00), the person shall be punished by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine; or
4. If the value of the property is Fifteen Thousand Dollars (\$15,000.00) or more, the person shall be punished by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

B. The person shall also be ordered to pay restitution to the victim as provided in Section 991f of Title 22 of the Cherokee Nation Code Annotated.

#### **§ 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 for a term not to exceed six (6) months, or by both such fine and imprisonment, at the discretion of the Court.

#### **§ 1707. Grand larceny in house or vessel-Punishment a felony**

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 felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such imprisonment and fine.

#### **§ 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 felony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such imprisonment and fine.

#### **§ 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.

#### **§ 1710. Larceny of passage ticket--Value**

If the thing stolen is any ticket, or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance shall be deemed the value of such ticket.

#### **§ 1711. Securities not yet issued or delivered, larceny of**

All the provisions of this article shall apply where the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed and ready to be issued or delivered, though the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

#### **§ 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. chapter.

### § 1713. Receiving stolen property-Presumption

- A. 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 crimefelony punishable by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such imprisonment and fine. If the personal property that has been stolen, embezzled, obtained by false pretense or robbery has a value of less than One Thousand Dollars (\$1,000.00), the person shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment not to exceed one (1) year.
- B. Every person who, without making reasonable inquiry, buys, receives, conceals, withholds, or aids in concealing or withholding any property which has been stolen, embezzled, obtained by false pretense or robbery, or otherwise feloniously obtained, under such circumstances as should cause such person to make reasonable inquiry to ascertain that the person from whom such property was bought or received had the legal right to sell or deliver it shall be presumed to have bought or received such property knowing it to have been so stolen or wrongfully obtained. This presumption may, however, be rebutted by proof.

### § 1713. Receiving stolen property--Presumption

A. Every person who buys or receives, in any manner, upon any consideration, personal property of a value of One Thousand Dollars (\$1,000.00) or more 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 shall, upon conviction, be guilty of a felony punishable as follows:

1. If the value of the personal property is One Thousand Dollars (\$1,000.00) or more but less than Two Thousand Five Hundred Dollars (\$2,500.00), the person shall be punished by imprisonment for a term not to exceed two (2) years, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such fine and imprisonment;

2. If the value of the personal property is Two Thousand Five Hundred Dollars (\$2,500.00) or more but less than Fifteen Thousand Dollars (\$15,000.00), the person shall be punished by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such fine and imprisonment; or

3. If the value of the personal property is Fifteen Thousand Dollars (\$15,000.00) or more, the person may be punished by imprisonment for a term not to exceed three (3) years, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such imprisonment and fine.

B. If the personal property that has been stolen, embezzled, obtained by false pretense or robbery has a value of less than One Thousand Dollars (\$1,000.00), the person shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed six (6) months.

C. Every person who, without making reasonable inquiry, buys, receives, conceals, withholds, or aids in

concealing or withholding any property which has been stolen, embezzled, obtained by false pretense or robbery, or otherwise feloniously obtained, under such circumstances as should cause such person to make reasonable inquiry to ascertain that the person from whom such property was bought or received had the legal right to sell or deliver it shall be presumed to have bought or received such property knowing it to have been so stolen or wrongfully obtained. This presumption may, however, be rebutted by proof.

#### **§ 1713.1. Purchase or receipt of stolen, etc., construction or farm equipment**

Every person who buys or receives, in any manner, upon any consideration, any construction equipment or farm equipment 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 construction equipment or farm equipment from the owner, shall be guilty of a felony punishable by imprisonment for a term of not more than three (3) years or by a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) or by both such fine and imprisonment and may be ordered to pay restitution pursuant to Section 991f of Title 22 of the Cherokee Nation Code Annotated.

#### **§ 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 **misdemeanor**.

#### **§ 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.

#### **§ 1716. Larceny **Theft** of domestic animals or implements of husbandry**

- A. Any person in this Nation who shall steal any horse, jackass, jennet, mule, cow, or hog, sheep, or goat **hog or implement of husbandry as defined in Section 1-125 of Title 47 of the Cherokee Nation Code Annotated**, shall, upon conviction, be guilty of a crime **felony punishable by imprisonment for a term not to exceed three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment**. Each head of cattle stolen may constitute a separate offense and may be punishable as a separate violation.
- B. Any person in this Nation who shall steal any dog, sheep or goat shall, upon conviction, be guilty of a **felony punishable by imprisonment for a term of not more than three (3) years, or by a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment**.
- C. The word "horse" as used in this act, shall include **section, includes** all animals of the equine species and the word "cow" shall include **includes** all animals of **the** bovine species.

### § 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.

### § 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.

### § 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 **grand larceny, regardless of the value thereof, and upon conviction shall be punished by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.**

#### § 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 **One Thousand Dollars (\$501,000.00)**, be guilty of a crime **misdemeanor** 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 **term** 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 **One Thousand Dollars (\$1,000.00)** or more than Fifty Dollars (\$50.00), be guilty of a crime **felony** and shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) **or** or imprisonment in the Nation Penitentiary for a term of not more than one (1) year, or by both such fine and imprisonment.

#### § 1719.2. Taking, stealing or carrying away exotic livestock--Penalties--Definition

- A. Any person who shall take, steal or carry away any exotic livestock, any person purchasing or receiving such exotic livestock, knowing them to have been stolen, shall be deemed guilty of grand larceny, regardless of the value thereof, and upon conviction thereof shall be punished by imprisonment not exceeding three (3) years, or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00) or by both such fine and imprisonment.
- B. For purposes of this section the term “exotic livestock” means commercially raised exotic livestock including animals of the families bovidae, cervidae and antilocapridae or birds of the ratite group.

#### **§ 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, construction equipment or farm equipment, shall be guilty of a felony, and upon conviction shall be punished by imprisonment for a term not exceeding three (3) years or by a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) or by both such fine and imprisonment and shall be ordered to pay restitution pursuant to Section 991f of Title 22 of the Cherokee Nation Code Annotated.

#### **§ 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 crimefelony, and upon conviction the person shall be punished by forfeiture of the instrumentality of the crime. and by a fine of not less than One Hundred Dollars (\$100.00), and not more than Fifteen Thousand Dollars (\$15,000.00), or confinement for a term of not less than three (3) years, or by both such fine and imprisonment.

#### **§ 1722. Taking oil, gas, gasoline or any product thereof-When crimemisdemeanor or felony**

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.:

1. Be guilty of a misdemeanor if the value of said product so taken is less than One Thousand Dollars (\$1,000.00), and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for a term not to exceed sixty (60) days, or by both such fine and imprisonment;
2. Be guilty of a felony if the value of such product so taken is One Thousand Dollars (\$1,000.00) or more and upon conviction thereof, shall be punished by forfeiture of the instrumentality of the crime and by a fine of not less than One Hundred Dollars (\$100.00), and not more than Fifteen Thousand Dollars (\$15,000.00), or by imprisonment for a term not to exceed three (3) years, or by both such fine and imprisonment.



### **§ 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 ~~felony~~.

### **§ 1724. Larceny from the house a felony**

Any person convicted of larceny from the house shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years.

### **§ 1726. Mercury--Possession of more than one pound without written evidence of title--Penalty--Defenses**

A. Any person who may be found in this state with more than one (1) pound of mercury in his possession, and who does not have valid written evidence of his title to such mercury, shall be guilty of a felony and upon conviction thereof shall be punishable by imprisonment for a term not to exceed three (3) years, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

B. It shall be a defense to any charge under this section that the person so charged (1) is a bona fide miner or processor of mercury or (2) that the mercury possessed by such person is, while in his possession, an integral part of a tool, instrument, or device used for a beneficial purpose. In any complaint, information, or indictment brought under this section, it shall not be necessary to negative any exception, excuse, exemption, or defense provided in this section, and the burden of proof of any such exception, excuse, exemption or defense shall be upon the defendant.

### **§ 1727. Copper--Stealing or removing--Penalties**

Any person who shall enter upon any premises, easement, or right of way with intent to steal or remove without the consent of the owner, or with intent to aid or assist in stealing or removing any copper wire, copper cable, or copper tubing from and off of any appurtenance on such premises, easement, or right of way shall be guilty of a felony and upon conviction shall be punished by confinement for a term not to exceed three (3) years, or shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

### **§ 1728. Possessing, receiving or transporting stolen copper--Penalty**

Any person who shall receive, transport, or possess in this state stolen copper wire, copper cable, or copper tubing under such circumstances that he knew or should have known that the same was stolen shall upon conviction thereof be guilty of a felony and shall be confined for a term not exceeding three (3) years, or shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or both such fine and imprisonment.

### **§ 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.

### **§ 1731. Larceny of merchandise from retailer or wholesaler--Punishment--Recidivists**

A. Larceny of merchandise held for sale in retail or wholesale establishments shall be punishable as follows:

1. For the first conviction, in the event the value of the goods, edible meat or other corporeal property which has been taken is less than One Thousand Dollars (\$1,000.00), the defendant shall be guilty of a misdemeanor and shall be punished by imprisonment for a term not exceeding thirty (30) days, and by a fine not less than Ten Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00); provided, for the first conviction, in the event more than one item of goods, edible meat or other corporeal property has been taken, punishment shall be by imprisonment for a term not to exceed thirty (30) days, and by a fine not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00);

2. If it be shown, in the trial of a case in which the value of the goods, edible meat or other corporeal property is less than One Thousand Dollars (\$1,000.00), that the defendant has been once before convicted of the same offense, the defendant shall, on a second conviction, be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a term not to exceed one (1) year, and by a fine not exceeding One Thousand Dollars (\$1,000.00);

3. If it be shown, upon the trial of a case where the value of the goods, edible meat or other corporeal personal property is less than One Thousand Dollars (\$1,000.00), that the defendant has two or more times before been convicted of the same offense, regardless of the value of the goods, edible meat or other corporeal personal property involved in the first two convictions, upon the third or any subsequent conviction, the defendant shall be guilty of a felony and shall be punished by imprisonment for a term not to exceed three (3) years; and

4. In the event the value of the goods, edible meat or other corporeal property is One Thousand Dollars (\$1,000.00) or more, the defendant shall be guilty of a felony and shall be punished by imprisonment for a term not to exceed three (3) years. The defendant shall also be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Cherokee Nation Code Annotated.

B. When three or more separate offenses under this section are committed within a ninety-day period, the value of the goods, edible meat or other corporeal property involved in each larceny offense may be aggregated to determine the total value for purposes of determining the appropriate punishment under this section.

C. In the event any person engages in conduct that is a violation of this section in concert with at least one other individual, such person shall be liable for the aggregate value of all items taken by all individuals. Such person may also be subject to the penalties set forth in Section 421 of this title, which shall be in addition to any other penalties provided for by law.

D. Any person convicted pursuant to the provisions of this section shall also be ordered to pay restitution to the victim as provided in Section 991f of Title 22 of the Cherokee Nation Code Annotated.

### **§ 1731.1. Shoplifting--Civil liabilities--Public service in lieu of damages--Limitations--Jurisdiction**

A. As used in this section:

1. “Merchant” means an owner or operator of any mercantile establishment, and includes the merchant’s employees, servants, security agents or other agents;
2. “Mercantile establishment” means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale;
3. “Unemancipated minor” means any unmarried person under eighteen (18) years of age under direct supervision and care of the parent or legal guardian of the minor; and
4. “Emancipated minor” means any person under eighteen (18) who is married and/or not under direct supervision and care of the parent or legal guardian of the minor.

B. An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner, seller, or merchant and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be liable in a civil action for the retail price of the merchandise if it is unsalable or the percentage of the diminished value of the merchandise due to the conversion together with attorney fees and court costs.

C. The parent or legal guardian having custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner, seller, or merchant, and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof shall be liable in a civil action for the retail price of the merchandise if it is unsalable or the percentage of the diminished value of the merchandise due to the conversion together with attorney fees and court costs.

D. An adult, emancipated minor or unemancipated minor against whom judgment is rendered for taking possession of any goods, wares or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner, seller or merchant and with the intention of converting such goods, wares or merchandise to his or her own use without having paid the purchase price thereof, may also be required to pay exemplary damages.

E. In lieu of the exemplary damages prescribed by subsection D of this section, any adult, emancipated minor or unemancipated minor against whom a judgment for exemplary damages has been rendered hereunder may be required to perform public services designated by the court; provided, that in no event shall any such person be required to perform less than the number of hours of such public service necessary to satisfy the damages assessed by the court at the federal minimum wage prevailing in the state at the time of judgment, but in no case less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00).

F. The provisions of this section are in addition to criminal penalties and other civil remedies and shall not limit merchants or other persons from electing to pursue criminal penalties and other civil remedies, so long as a double recovery does not result.

G. For the purpose of this section, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the Nation.

H. Notwithstanding any other provision of law, a civil action or proceeding pursuant to this section may be

commenced at any time within two (2) years after the conduct in violation of a provision of this section terminates or the cause of action accrues. If a criminal prosecution is brought by the Nation or by the United States to punish, prevent, or restrain any criminal action contained or described in this section, the running of the period of limitations prescribed by this section shall be suspended during the pendency of such prosecution, action, or proceeding and for one (1) year following its termination or conclusion.

### **§ 1732. Larceny of trade secrets--Applicability of section**

A. Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another:

- (a) steals or embezzles an article representing a trade secret, or,
- (b) without authority makes or causes to be made a copy of an article representing a trade secret,

shall be guilty of larceny under Section 1704 of this title. For purposes of determining whether such larceny is grand larceny or petit larceny under this section, the value of the trade secret and not the value of the article shall be controlling.

B. (a) The word “article” means any object, material, device, customer list, business records, or substance or copy thereof, including any writing, record, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, information stored in any computer-related format, or map.

(b) The word “representing” means describing, depleting, containing, constituting, reflecting or recording.

(c) The term “trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, customer list, business records or process, that:

1. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(d) The word “copy” means any facsimile, replica, photograph or other reproduction of an article, including copying, transferring and e-mailing of computer data, and any note, drawing or sketch made of or from an article.

C. In a prosecution for a violation of this chapter it shall be no defense that the person so charged returned or intended to return the article so stolen, embezzled or copied.

D. The provisions of this section shall not apply if the person acted in accordance with a written agreement with the person’s employer that specified the manner in which disputes involving clients are to be resolved upon termination of the employer-employee relationship.

### **§ 1737. Larceny of cable, information, or telecommunications services**

A. Any person who:

1. Shall knowingly obtain or attempt to obtain cable, information, or telecommunications service of any type or kind including but not limited to cable television, telephony, internet, and data transmission service from another by means, artifice, trick, deception, or device without the payment to the operator of said service of all lawful compensation for each type of service obtained; or
2. Shall knowingly assist or instruct any other person in obtaining or attempting to obtain cable, information, or telecommunications service of any type or kind including but not limited to cable television, telephony, internet, and data transmission service without the payment to the operator of all lawful compensations; or
3. Shall knowingly tamper or otherwise interfere with or connect to by any means, whether mechanical, electrical, acoustical, or other means, any cables, wires, or other devices used for the distribution of cable, information, or telecommunications service of any type or kind including but not limited to cable television, telephony, internet, and data transmission service without authority from the operator of said service; or
4. Shall knowingly manufacture, import into this state, distribute, sell, offer for sale, rental, or use, possess for sale, rental, or use, or advertise for sale, rental, or use any device of any description, or any plan, or kit for a device, designed in whole or in part to facilitate the doing of any of the acts specified in paragraphs 1, 2 and 3 of this subsection;

shall be guilty, upon conviction, of the misdemeanor of larceny of cable television, cable, information, or telecommunications service or tampering with cable television, cable, information, or telecommunications service, which offenses are punishable by imprisonment for not more than six (6) months or by a fine not exceeding One Thousand Dollars (\$1,000.00), or both said fine and imprisonment.

B. In any prosecution as set forth in subsection A of this section, the existence on the property and in the actual possession of the accused, of (1) any connection, wire, conductor, or any device whatsoever, which is connected in such a manner as would appear to permit the use of cable, information, or telecommunications service of any type or kind including but not limited to cable television, telephony, internet, and data transmission service without the same being reported for payment to and specifically authorized by the operator of the cable, information, or telecommunications service of any type or kind including but not limited to cable television, telephony, internet, and data transmission service or (2) the existence on the property and in the actual possession of the accused, in quantities or volumes suggesting possession for resale, of any device designed in whole or in part to facilitate the performance of any of the illegal acts mentioned in subsection A of this section shall be prima facie evidence of intent to violate and of the violation of the provisions of subsection A of this section by the accused.

C. Any person who violates the provisions of this section shall be liable to the franchised or otherwise duly licensed cable television system, information service provider, or other telecommunications service or equipment provider for the greater of the following amounts:

1. Two Thousand Five Hundred Dollars (\$2,500.00); or
2. Three times the amount of actual damages, if any, sustained by the plaintiff, plus reasonable attorneys fees.

D. Any franchised or otherwise duly licensed cable television system, information service provider, or other telecommunications service or equipment provider may bring an action to enjoin and restrain any violation of the provisions of this section or an action of conversion, or both, and may in the same action seek damages as provided for in subsection C of this section.

E. It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

F. The provisions of this section shall not be construed or otherwise interpreted to prohibit an individual from owning or operating a device commonly known as a “satellite receiving dish” for the purpose of receiving and utilizing satellite-relayed television signals for his own use.

**§ 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:

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;

1. 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

2. 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.

Property taken or detained pursuant to this section shall not be replevable, 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.

K. 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.

L. Attorney fees shall not be assessed against the Nation or the prosecutor for any actions or proceeding pursuant to 21 CNCA § 1701 et seq.

M. 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.

N. 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.

O. 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.

### **§ 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

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.

## **CHAPTER 60**

### **MALICIOUS MISCHIEF**

#### **§ 1740. Pump Pirates Act**

Any person who pumps gasoline into the gasoline tank of a vehicle and leaves the premises where the gasoline was pumped without making payment for the gasoline shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or imprisonment for a period of not more than sixty (60) days, or by both such fine and imprisonment.

#### **§ 1740.1. Dimensional stone product--Stealing or removing**

A. It shall be unlawful for any person to enter upon any premises with intent to steal or remove without the consent of the owner, or with intent to aid or assist in stealing or removing any dimensional stone product. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or by a fine of not less than One Thousand Dollars (\$1,000.00) but not more than Two Thousand Dollars (\$2,000.00), or by both such fine and imprisonment.

B. As used in this section, “dimensional stone product” means any natural rock material quarried for the purpose of obtaining blocks or slabs that meet specifications as to size and shape. Varieties of dimensional stone shall include, but not be limited to, granite, limestone, marble, sandstone or slate.

#### **§ 1740.2. Holding, concealing, destroying or taking mail from another person**

A. As used in this section:

1. “Mail” means a letter, postal card, package, bag or any other article or thing contained therein, or other sealed article addressed to a person, that:

- a. is delivered by a common carrier or delivery service and not yet received by the addressee, or
- b. has been left to be collected for delivery by a common carrier or delivery service; and

2. “Person” means an individual, partnership, corporation, limited liability company, association or other legal entity.

B. It shall be unlawful for any person to hold, conceal, destroy or take mail from the mailbox or premises of another person or from a delivery vehicle at any point throughout the delivery route without the effective consent of the addressee and with the intent to deprive the addressee of the mail.

C. Any person who violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

D. When three or more separate offenses under this section are committed within a sixty-day period, the person shall be guilty of a felony punishable by imprisonment for a term of not more than three (3) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

E. Any person convicted pursuant to the provisions of this section shall also be ordered to pay restitution to the victim as provided in Section 991f of Title 22 of the Cherokee Nation Code Annotated.

#### **§ 1741. Unlawful Use of a Recording Device--Definitions--Violations--Penalties--Liability--Exclusions--Other laws**

A. This act shall be known as and may be cited as the “Unlawful Use of a Recording Device Act”.

B. As used in the Unlawful Use of a Recording Device Act:

- 1. “Audiovisual recording function” means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed; and
- 2. “Facility” does not include a personal residence.

C. Any person, where a motion picture is being exhibited, who knowingly operates an audiovisual recording function of a device without the consent of the owner or lessee of the facility and of the licensor of the motion picture being exhibited shall be guilty of unlawful use of a recording device and shall be punished by imprisonment for a term not to exceed one (1) year, by a fine not more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

D. The owner or lessee of a facility where a motion picture is being exhibited, or the authorized agent or employee of said owner or lessee, or the licensor of the motion picture being exhibited or the licensor’s agent or employee, who alerts law enforcement authorities of an alleged violation of this section shall not be liable in any civil action arising out of measures taken in good faith by said owner, lessee, licensor, agent or employee to detain, identify, or collect evidence from a person believed to have violated this section while awaiting the arrival of law enforcement authorities, unless the plaintiff can show by clear and convincing evidence that the measures were manifestly unreasonable or the period of detention was unreasonably long.

E. This act shall not prevent any lawfully authorized investigative, law enforcement protective, or intelligence

gathering employee or agent, of the state or federal government, from operating any audiovisual recording device in any facility where a motion picture is being exhibited, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

F. This act shall not apply to a person who operates an audiovisual recording function of a device in a retail establishment solely to demonstrate the use of that device for sales purposes.

G. Nothing in this section shall be construed to prevent prosecution for any act of recording or transmitting under any other provision of law providing for greater penalty.

### **§ 1742.1. Telephone records--Definitions**

As used in this chapter:

1. "Telephone record" means information retained by a telephone company that relates to the telephone number dialed by the customer or any other person using the telephone of the customer with the permission of the customer, or the incoming number of a call directed to a customer or any other person using the telephone of the customer with the permission of the customer, or other data related to such calls typically contained on a customer telephone bill such as the time the call started and ended, the duration of the call, the time of day the call was made, and any charges applied. For purposes of this act, any information collected and retained by or on behalf of a customer utilizing a Caller I.D. or equivalent service, or other similar technology, does not constitute a telephone record;
2. "Telephone company" means any person that provides commercial telephone services to a customer, irrespective of the communications technology used to provide such service including, but not limited to, traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over Internet telephone service;
3. "Telephone" means any device used by a person for voice communications, in connection with the services of a telephone company, whether such voice communications are transmitted in analog, data, or any other form;
4. "Customer" means the person who subscribes to telephone service from a telephone company or in whose name such telephone service is listed;
5. "Person" means any individual, partnership, corporation, limited liability company, trust, estate, cooperative association, or other entity; and
6. "Procure" in regard to such a telephone record means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration.

### **§ 1742.2. Unauthorized or fraudulent procurement, sale or receipt of telephone records**

A. Whoever:

1. Knowingly procures, attempts to procure, solicits, or conspires with another to procure a telephone record of any resident of this Nation without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means;

2. Knowingly sells or attempts to sell a telephone record of any resident of this state without the authorization of the customer to whom the record pertains; or

3. Receives a telephone record of any resident of this state knowing that the record has been obtained without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means,

shall be punished in accordance with the provisions of subsection B of this section and shall be liable for restitution in accordance with subsection C of this section.

B. An offense under subsection A of this section is a felony and the punishment is:

1. Imprisonment for not more than three (3) years; and

4. In all cases, forfeiture of any personal property used or intended to be used to commit the offense.

C. A person found guilty of an offense under subsection A of this section, in addition to any other punishment, shall be ordered to make restitution for any financial loss sustained by the customer or any other person who suffered financial loss as the direct result of the offense.

D. A prosecution pursuant to subsection A of this section shall not prevent prosecution pursuant to any other provision of law when the conduct also constitutes a violation of some other provision of law.

E. Subsection A of this section shall not apply to any person acting pursuant to a valid court order, warrant, or subpoena.

### **§ 1742.3. Limitation on applicability of act**

No provision of this act shall be construed:

1. So as to prevent any action by a law enforcement agency, or any officer, employee, or agent of a law enforcement agency, to obtain telephone records in connection with the performance of the official duties of the agency;

2. To prohibit a telephone company from obtaining, using, disclosing, or permitting access to any telephone record, either directly or indirectly, through its agents:

a. as otherwise authorized by law,

b. with the lawful consent of the customer or subscriber,

c. as may be reasonably incident to the rendition of the service or to the protection of the rights or property of the telephone company, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to such services,

d. to a governmental entity, if the telephone company reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information, or

e. to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under Section 227 of the Victims of Child Abuse Act of 1990;

3. To apply to or expand upon the obligations and duties of any telephone company to protect telephone records beyond those otherwise established by federal and state law or as set forth in Section 4 of this act; or

4. To create a cause of action against a telephone company, its agents and/or representatives, who reasonably and in good faith act pursuant to this act, notwithstanding any later determination that such action was not in fact authorized.

### **§ 1751. Railroads, injuries to**

Any person who maliciously, wantonly or negligently either:

1. Removes, displaces, injures or destroys any part of any railroad, or railroad equipment, whether for steam or horse cars, or any track of any railroad, or of any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or

2. Places any obstruction upon the rails or tracks of any railroad, or any branch, branchway, or turnout connected with any railroad, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding four (4) years or in a county jail not less than six (6) months.

### **§ 1752. Death from displacing of railroad equipment**

Whenever any offense specified in Section 1751 of this title results in the death of any human being, the offender shall be guilty of a felony punishable by imprisonment for a term not to exceed three (3) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

#### **§ 1752.1. Trespass upon or interference with railroad property**

A. Any person shall be guilty of a misdemeanor if the person:

1. Without consent of the owner or the owner's agent, enters or remains on railroad property, knowing that it is railroad property;

2. Throws an object at a train, or rail-mounted work equipment; or

3. Maliciously or wantonly causes in any manner the derailment of a train, railroad car or rail-mounted work equipment.

B. Any person shall be guilty of a felony if the person commits an offense specified in subsection A of this section which results in a demonstrable monetary loss, damage or destruction of railroad property when said loss is valued at more than One Thousand Five Hundred Dollars (\$1,500.00) or results in bodily injury to a person. Any person shall be guilty of a felony if the person discharges a firearm or weapon at a train, or rail-

mounted work equipment.

C. Any person violating the misdemeanor provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment for a term not exceeding one (1) year or by a fine not exceeding One Thousand Dollars (\$1,000.00), or both such fine and imprisonment. Any person violating the felony provisions of this section shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment for a term not exceeding three (3) years. If personal injury results, such person shall be punished by some term of imprisonment.

D. Subsection A of this section shall not be construed to interfere with the lawful use of a public or private crossing.

E. Nothing in this section shall be construed as limiting a representative of a labor organization which represents or is seeking to represent the employees of the railroad, from conducting such business as provided under the Railway Labor Act, 45 U.S.C., Section 151 et seq.

F. As used in this section “railroad property” includes, but is not limited to, any train, locomotive, railroad car, caboose, rail-mounted work equipment, rolling stock, work equipment, safety device, switch, electronic signal, microwave communication equipment, connection, railroad track, rail, bridge, trestle, right-of-way or other property that is owned, leased, operated or possessed by a railroad.

## § 1753. Highways, injuries to

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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 ~~shall be~~ guilty of a crime ~~felony~~.

### § 1753.3. Throwing, dropping, depositing, or otherwise placing litter upon highways, roads, or public property---Penalties

A. The operator of a vehicle, ~~unless any other person in the vehicle admits to or is identified as having committed the act~~, shall be liable pursuant to subsection (B) of this section for any act of throwing, dropping, depositing, or otherwise placing any litter from his ~~a~~ 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 a Cherokee Nation traffic offense punishable by a fine of not more than One Thousand Dollars (\$1,000.00) and upon conviction shall be sentenced to perform not less than five (5) nor more than twenty (20) hours of community service in a litter abatement work program as approved by the court, or the violator may be subject



to criminal prosecution as provided by the provisions of Section 1761.1

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C. Any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, or any substance which may cause a fire shall be subject to a state traffic offense punishable by a fine of not more than Two Thousand Dollars (\$2,000.00) and, upon conviction, shall be sentenced to perform not less than ten (10) nor more than forty (40) hours of community service in a litter abatement work program as approved by the court, or the violator may be subject to criminal prosecution as provided by the provisions of Section 1761.1

<[findType=L&pubNum=1000165&cite=OKSTT21S1761.1&originatingDoc=ND20B5360C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=\(sc.Default\)> of this title.](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1761.1&originatingDoc=ND20B5360C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)> of this title.</a></p></div><div data-bbox=)

D. During a declared burn ban by the Governor, any person convicted of violating the provisions of subsection A of this section with any flaming or glowing substances except those which by law may be placed upon highway rights-of-way, or any substance which may cause a fire shall be subject to a state traffic offense punishable by a fine of not more than Four Thousand Dollars (\$4,000.00) and, upon conviction, shall be sentenced to perform not less than twenty (20) nor more than eighty (80) hours of community service in a litter abatement work program as approved by the court, or the violator may be subject to criminal prosecution as provided by the provisions of Section 1761.1

<[E. 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 nationstate 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.](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1761.1&originatingDoc=ND20B5360C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)> of this title.</a> 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.</p></div><div data-bbox=)

Any person convicted of violating the provisions of subsection (A) of this section shall be subject to the provisions of 21 CNCA § 1761.1.

#### § 1753.4. Erection of signs and markers along state and federal highways

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The State Highway Department is hereby authorized 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.

#### **§ 1753.5. Erection of signs and markers along county roads**

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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.

#### **§ 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.

#### **§ 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.

#### **§ 1753.8. Defacing, stealing or possessing road signs or markers--Violation resulting in personal injury or death--Penalties**

A. Any person who defaces, steals or possesses any road sign or marker posted by any city, state, or county, or Cherokee Nation shall be deemed guilty of a crime ~~misdemeanor~~ and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars (\$100.00), or ~~restitution which shall be paid to the Nation, or by not more than twenty (20) days of community service, or~~ by imprisonment in the penal institution for a term of not more than thirty (30) days, or by both such fine and, imprisonment, ~~community service, or restitution, as the Court may order.~~

B. ~~If a violation of subsection A of this section results in personal injury to or death of any person, the person committing the violation shall, upon conviction, be guilty of a felony, punishable by imprisonment for not more than two (2) years, or by a fine of not more than One Thousand Dollars (\$1,000.00). In addition, the person may be ordered to pay restitution, which shall be paid to the Nation, or to perform not less than forty (40) days of community service, or to such combination of fine, imprisonment, community service, and/or restitution, as the Court may order.~~

#### **§ 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 [misdemeanor](#), and upon conviction shall be punished by fine not exceeding One Thousand [Hundred](#) Dollars (\$1,000.00), and shall be liable for all damages to person or property by reason of the same.

#### **§ 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 appurtenances 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. [Reserved](#)

#### **§ 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.

#### **§ 1759. Penalty**

Any person violating any of the provisions of 21 CNCA § 1758 shall be deemed guilty of a crime [misdemeanor](#).

#### **§ 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 [or her](#) own, in cases other than such as are specified in 21 CNCA § 1761 and following sections, is guilty of a crime.:

1. [A misdemeanor, if the damage, defacement or destruction causes a loss which has an aggregate value of less than One Thousand Dollars \(\\$1,000.00\);](#)
2. [A felony, if the damage, defacement or destruction causes a loss which has an aggregate value of One Thousand Dollars \(\\$1,000.00\) or more; or](#)
3. A felony, if the defendant has two or more prior convictions for an offense under this section, notwithstanding the value of loss caused by the damage, defacement or destruction.

B. In addition to the [any other](#) punishment prescribed in [by law for violations of](#) subsection (A) of this section, he [or she](#) 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.

#### **§ 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.

### **§ 1761.1. Dumping, etc. of trash on public or private property prohibited-Penalties**

A. Any person who deliberately places, throws, drops, **dumps**, 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 **of the property owner or on his or her own private property in violation of any county or state zoning or public health regulations** shall, upon conviction, be **deemed** guilty of a crime misdemeanor.

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 **Five** Hundred Dollars (\$200**500**.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. 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.

D. During a burn ban, 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 more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than one hundred twenty (120) days, or by both such fine and imprisonment.

E. Any person convicted of violating the provisions of subsection A of this section with any item of furniture, or item that exceeds fifty (50) pounds, shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$6,500.00) or by imprisonment for not more than sixty (60) days, or by both such fine and imprisonment.

F. In addition to the penalty prescribed by subsection (B) of this section, the Court may **shall** 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 **perform community service 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.

G. 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).

H. **The discovery of two or more items which have been dropped, dumped, deposited, discarded, placed, or thrown at one location which bear** 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 **any** 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.

I. **Any person convicted of violating**~~may report a violation of this section, if committed in his or her presence, to an officer of the State Highway Patrol, a county sheriff or deputy, a municipal law enforcement officer or any other peace officer in this state. The peace officer shall then conduct an investigation into the allegations, if warranted. If a violation of this section has in fact been committed, and the peace officer has reasonable cause to believe a particular person or persons have committed the violation, a report shall be filed with the district attorney for prosecution.~~

J.

**Notwithstanding** the provisions of subsection (A)~~I~~ of this section with any flaming or glowing substance, or any substance which may cause a fire shall be punished by a fine **peace officer of this Nation or of any cross-deputized peace officer may issue a traffic citation to any person committing a violation of subsection A of this section. Such traffic citation shall be in an amount** of not less than Two Thousand**Five Hundred** Dollars (\$2,0**500.00**) 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 he provisions of this subsection shall be liable for all damages caused by the violation. Damages shall be recoverable in any court of competent jurisdiction.

K. The amount of bail for littering offenses specified in Section 1753.3

<http://www.westlaw.com/Link/Document/FullText?>

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.

## § 1762. Mining claims---Unlawful to tear down legal notice or deface any record

[<#co\\_anchor\\_I53965CF0240D11EB94ADA523B6102>](#)

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 kept by any legally-elected mining recorder shall be deemed guilty of a crime**misdemeanor** 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.

### § 1765. House of worship or contents, injuring

Any 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, isshall be guilty of a crimefelony.

### § 1767.1. Bombs and explosives-Foul, poisonous, offensive or injurious substances- Telephone threats Use or threat to use explosive, incendiary device, or simulated bomb to damage or injure persons or property

A. Any person who shall willfully andor maliciously commit any of the following acts shall be deemed guilty of a crimefelony:

Any person who places

1. Place in, upon, under, against, or near to any building, car, truck, aircraft, motor or other vehicle, vessel, railroad, railway car, or locomotive 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,conspire, aid, counsel or procuresprocure the destruction of any building or structure, public or private, or any car, truck, aircraft, motor or other vehicle, vessel, railroad, railway car, or locomotive or structure, shall be guilty of a crime; or

Any person who places

2. Place in, upon, under, against or near to any building, car, truck, aircraft, motor or other vehicle, vessel, railroad, railway car, or locomotive or structure, any gunpowder, dynamite, bomb, or any explosive substance or incendiary device with intent to destroy, throw down, or injure thein whole or anyin 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

Every person who maliciously, by

3. By the explosion of gunpowder, dynamite or any explosive substance, destroys, throwsor the igniting of any incendiary device destroy, throw down, or injuresinjure any property of another person, or by which explosion ancause injury is caused to the person of another, shall be guilty of a crime person; or

Any person or group of persons who shall willfully manufacture



4. Manufacture, sell, transport, or possess a bomb or any explosive including an incendiary device or , the component parts of an explosive or, [an incendiary device, or simulated bomb](#) with knowledge or intent that it [or they](#) 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

[Any person who](#) shall place

5. [Place](#) in, upon, under, against or near to any building, car, [truck](#), aircraft, motor or other vehicle, vessel, railroad, railway car, or locomotive or structure, any foul, poisonous, offensive or injurious substance or compound, [explosive, incendiary device, or simulated bomb](#) with intent to wrongfully injure, molest or coerce another [person](#) or to injure or damage the property of another, shall be guilty of a crime; or

[Any person or group of persons who](#) maliciously injures, damages or attempts

6. [Injure, damage or attempt](#) to damage by an explosive, including an [or incendiary device](#), any person, persons, or property, whether real or personal, is guilty of a crime; or

7. Make

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.[or simulated bomb; or](#)

8. [Manufacture, sell, deliver, mail or send an explosive, incendiary device, or simulated bomb to another person; or](#)

9. [While committing or attempting to commit any felony, possess, display, or threaten to use any explosive, incendiary device, or simulated bomb.](#)

B. Nothing contained herein shall be construed to apply to, or repeal any laws pertaining to, the acts of mischief of juveniles involving noninjurious[no injurious](#) firecrackers or devices commonly called "“stink bombs.””.

## § 1767.2. Violations of preceding section

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Any person violating any of the provisions of Section 1767.1

<[http://www.westlaw.com/Link/Document/FullText?](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1767.1&originatingDoc=ND502E880C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>)

[of this title shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the State Penitentiary for not less than three \(3\) years nor more than ten \(10\) years, or by a fine not to exceed Ten Thousand Dollars \(\\$10,000.00\) or by both. If personal injury results, such person shall be punished by imprisonment in the State Penitentiary for not less than seven \(7\) years or life](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT21S1767.1&originatingDoc=ND502E880C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Default)>)



imprisonment.

**Any person violating any of the provisions of 21 CNCA § 1767.1 shall be deemed guilty of a crime.**

### § 1767.3. Definitions

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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. "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association, and includes any trustee, receiver, assignee or personal representative thereof.
3. "Explosive" or "explosives" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion, i.e., or which, although not its primary or common purpose, has been modified, manipulated, altered, enhanced, or otherwise caused to function by explosion (that is, with substantial instantaneous release of gas and, heat, debris, or concussive pressure or force, or any combination of such actions), unless such compound, mixture or device is otherwise specifically classified by the United States Department of Transportation. The term "explosive" or "explosives" shall include but not be limited to gunpowder, dynamite, any bomb, and all material which is classified as explosives by the United States Department of Transportation;

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" Molotov cocktail" or "firebomb" which is ignited on impact, causing a mechanical reaction of the container's breaking and permitting the inflammable matter to spread or splatter and is ignited from the burning wick or hyperbolic hypergolic 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.
4. "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; and
5. "Simulated bomb" means any device or object that by its design, construction, content, or characteristics appears to be, or to contain, an incendiary device, explosive, or explosives, as defined in this section, but is, in fact, an inoperative facsimile or imitation of such a device or explosive.

#### § 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.

#### § 1767.5. Possession, manufacture, storage, or use of explosive without permit

<#co\_anchor\_IA515C3E0295811EBB0C3FEB220030>

A. Any person who shall possess, manufacture, store, or use any explosive, as defined in Section 121.1 of Title 63 of the Oklahoma Statutes <[http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT63S121.1&originatingDoc=ND602F360C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=\(sc.Default\)>](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000165&cite=OKSTT63S121.1&originatingDoc=ND602F360C76A11DB8F04FB3E68C8F4C5&refType=LQ&originationContext=document&vr=3.0&rs=cb1.0&transitionType=DocumentItem&contextData=(sc.Default)>), without having in the possession of the person a permit, or a copy thereof, issued pursuant to the Oklahoma Explosives and Blasting Regulation Act, shall be deemed guilty of a misdemeanor.

B. This section shall not be construed to:

1. Apply to any person or activity expressly exempted from the Oklahoma Explosives and Blasting Regulation Act;
2. Apply to, or repeal any laws pertaining to, the acts of mischief of juveniles involving noninjurious firecrackers or devices commonly called “stink bombs”;
3. Apply to explosives while in transit in, into, or through this state, if the operator of the vehicle transporting the explosives carries in the vehicle the shipping papers required by 49 C.F.R., Section 172.200 et seq. <<http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=49CFRS172.200&originatingDoc=>
4. Apply to any person who may possess, store or use gunpowder in a quantity reasonably calculated to be necessary for hunting or shooting purposes; or
5. Apply to any certified bomb technician employed by a federally accredited bomb squad of an agency of the federal government, this state, or any political subdivision of this state.

#### § 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 anything 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 [misdemeanor](#).

#### § 1770. Standing crops, injuring

[<#co\\_anchor\\_IF23028D0295A11EBB0C3FEB220030>](#)

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 [misdemeanor](#).

#### § 1771. Injuring fruit, melons or flowers in the day time

[<#co\\_anchor\\_I4D69DB90240D11EB94ADA523B6102>](#)

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 [for a term](#) not exceeding thirty (30) days.

#### § 1772. Injuring fruit, melons or flowers in the night time

[<#co\\_anchor\\_I516D8980240D11EB94ADA523B6102>](#)

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 Dollars (\$100.00) and not less than Ten Dollars (\$10.00), or by imprisonment in the penal institution for a term not exceeding thirty (30) days.

### **§ 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 for a term not exceeding thirty (30) days.

### **§ 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 have been made for such purpose, with intent to destroy such marks;

is guilty of a crime **misdemeanor**.

### **§ 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 **misdemeanor**.

### **§ 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 **misdemeanor**.

### **§ 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 **felony punishable by imprisonment for a term not exceeding three (3) years, or by imposition of a fine in an amount not to exceed Five Hundred Dollars (\$500.00), or by both such fine and imprisonment**.

### **§ 1778. Train signal light, removing or masking-False light or signal**

Every [Any](#) 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 [felony punishable by imprisonment for a term not exceeding three \(3\) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars \(\\$15,000.00\), or by both such fine and imprisonment.](#)

### **§ 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.**

### **§ 1781. Letters, opening and reading--Publishing letters**

[Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed, and every person who without like authority publishes any letter, knowing it to have been opened in violation of this section or any part thereof, is guilty of a misdemeanor.](#)

### **§ 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 [misdemeanor](#), 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 [for a term not to exceed](#) 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.

### **§ 1783. Secreting telegraphic dispatches**

Every person who, having in his possession any telegraphic dispatch addressed to another, maliciously secretes, conceals or suppresses the same, is guilty of a misdemeanor.

### **§ 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 [misdemeanor](#).

### **§ 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 [felony punishable by imprisonment for a term not exceeding three \(3\) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars \(\\$15,000.00\), or by both such fine and imprisonment.](#)

#### **§ 1786. Injuries to pipes and wires**

Every [Any](#) 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 [felony punishable by imprisonment for a term not exceeding three \(3\) years, or by imposition of a fine in an amount not to exceed Fifteen Thousand Dollars \(\\$15,000.00\), or by both such fine and imprisonment.](#)

#### **§ 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.

#### **§ 1788. Penalty**

Any person violating 21 CNCA § 1787 shall be deemed guilty of a crime.

[Any person violating Section 1787 of this title, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than One Hundred Dollars \(\\$100.00\) and not more than Five Hundred Dollars \(\\$500.00\) or by imprisonment for not more than one \(1\) year, or by both such fine and imprisonment.](#)

#### **§ 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.

#### **§ 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.****Reserved**

#### **§ 1791. Damage to fence--Punishment--Exceptions**

A. Any person violating who, without good cause, maliciously and knowingly cuts or damages a fence used for the production or containment of cattle, bison, horses, sheep, swine, goats, domestic fowl, exotic livestock, exotic poultry or any provision of this act shall be punished by a fine game animals or domesticated game such that there is a loss or damage to the property is guilty of a misdemeanor. Any person convicted of a second or subsequent offense pursuant to this section shall be guilty of a felony punishable by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00)), or by imprisonment for a term not exceeding two (2) years, or by both such fine and imprisonment.

B. The provisions of subsection A of this section shall not apply to any activities:

1. Performed pursuant to the Seismic Exploration Regulation Act;
2. Performed pursuant to Sections 318.2 through 318.9 of Title 52 of the Oklahoma Statutes; or
3. That are subject to the regulation of the Oklahoma Corporation Commission or the Federal Energy Regulatory Commission.

#### **§ 1792. Critical infrastructure facility--Trespass--Damage--Penalties**

- A. Any person who shall willfully trespass or enter property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not less than One Thousand Dollars (\$1,000.00), or by imprisonment for a term of six (6) months, or by both such fine and imprisonment. If it is determined the intent of the trespasser is to willfully damage, destroy, vandalize, deface, tamper with equipment, or impede or inhibit operations of the facility, the person shall, upon conviction, be guilty of a felony punishable by a fine of not less than Ten Thousand Dollars (\$10,000.00), or by imprisonment for a term of one (1) year, or by both such fine and imprisonment.
- B. Any person who shall willfully damage, destroy, vandalize, deface or tamper with equipment in a critical infrastructure facility shall, upon conviction, be guilty of a felony punishable by a fine of Fifteen Thousand Dollars (\$15,000.00), or by imprisonment in the custody of the Department of Corrections for a term of not more than three (3) years, or by both such fine and imprisonment.
- C. If an organization is found to be a conspirator with persons who are found to have committed any of the crimes described in subsection A or B of this section, the conspiring organization shall be punished by a fine that is ten times the amount of said fine authorized by the appropriate provision of this section.
- D. As used in this section, “critical infrastructure facility” means:



1. One of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization:

- a. a petroleum or alumina refinery,
- b. an electrical power generating facility, substation, switching station, electrical control center or electric power lines and associated equipment infrastructure,
- c. a chemical, polymer or rubber manufacturing facility,
- d. a water intake structure, water treatment facility, wastewater treatment plant or pump station,
- e. a natural gas compressor station,
- f. a liquid natural gas terminal or storage facility,
- g. a telecommunications central switching office,
- h. wireless telecommunications infrastructure, including cell towers, telephone poles and lines, including fiber optic lines,
- i. a port, railroad switching yard, railroad tracks, trucking terminal or other freight transportation facility,
- j. a gas processing plant, including a plant used in the processing, treatment or fractionation of natural gas or natural gas liquids,
- k. a transmission facility used by a federally licensed radio or television station,
- l. a steelmaking facility that uses an electric arc furnace to make steel,
- m. a facility identified and regulated by the United States Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS) program,
- n. a dam that is regulated by the state or federal government,
- o. a natural gas distribution utility facility including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, aboveground piping, a regulator station and a natural gas storage facility, or
- p. a crude oil or refined products storage and distribution facility including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, below or aboveground pipeline or piping and truck loading or offloading facility; or

2. Any aboveground portion of an oil, gas, hazardous liquid or chemical pipeline, tank, railroad facility

or other storage facility that is enclosed by a fence, other physical barrier or is clearly marked with signs prohibiting trespassing, that are obviously designed to exclude intruders.

## CHAPTER 70

### OTHER OFFENSES AGAINST PROPOERTY RIGHTS

#### **§ 1834. Chattels encumbered by mortgage, conditional sales contract or security agreement--Removal or destruction**

Any mortgagor, conditional sales contract vendee, pledgor or debtor under a security agreement of personal property, or his or her legal representative, who, while such mortgage, security agreement or conditional sales contract remains in force and unsatisfied, conceals, sells or in any manner disposes of such property, or any part thereof, or removes such property, or any part thereof, beyond the limits of the county, or materially injures or willfully destroys such property, or any part thereof, without the written consent of the holder of such mortgage or conditional sales contract, secured party or pledgee under a security agreement shall, upon conviction, be guilty of a felony if the value of the property is One Thousand Dollars (\$1,000.00) or more and shall be punished by imprisonment in the custody of the Department of Corrections for a period not exceeding three (3) years, or by a fine of not to exceed Five Hundred Dollars (\$500.00). If the value of the property is less than One Thousand Dollars (\$1,000.00), the person shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for a term not exceeding one (1) year, or by a fine not exceeding Five Hundred Dollars (\$500.00). Provided, however, the writing containing the consent of the holder of the mortgage or conditional sales contract, secured party or pledgee under a security agreement, as before specified, shall be the only competent evidence of such consent, unless it appears that such writing has been lost or destroyed.

#### **§ 1834.1. Sale of secured personal property--Debtor as trustee of funds received**

Every debtor owning personal property in this Nation in which a creditor has a security interest who, with the consent of the secured party or his assignee, shall sell such collateral, or any part thereof, while the security agreement remains in force and unsatisfied, shall be deemed and conclusively held to be the trustee of the funds received upon the sale thereof, for the benefit of such secured party, or assignee, to the extent of the indebtedness secured thereby or any balance due thereof.

#### **§ 1835. Trespass on posted property after being forbidden or without permission-Exemptions-Penalty-Entry into pecan grove without consentPenalties--Exceptions**

- 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 **misdemeanor** 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**imprisonment for a term** nor more than**not to exceed** 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 [misdemeanor](#) 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 [imprisonment for a term not exceeding](#) than six (6) months, or by both such fine and imprisonment.

C. Whoever shall willfully or maliciously enter upon property owned or managed by the Grand River Dam Authority without permission when such property is posted shall be deemed guilty of misdemeanor 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 upon property owned or managed by the Grand River Dam Authority without permission and therein commits or attempts to commit waste, theft, or damage shall be deemed guilty of misdemeanor trespass, 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 imprisonment for not 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.

#### **§ 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 [onto](#) 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 [imprisonment](#) 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.

## 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.

### § 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.

### § 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.

## 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.

### § 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.

### § 1853. Penalty

Any person violating any of the provisions of this section or 21 CNCA § 1851 or 1852 shall be guilty of a crime ~~misdemeanor~~.

## 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 non-profit 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 [misdemeanor](#). A third and subsequent conviction under this act shall constitute a crime [felony](#).

## 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.

### § 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 [misdemeanor](#) 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.

## § 1870. Definitions

As used in this act:

1. “Access device” means any telecommunication device including the telephone calling card number, electronic serial number, account number, mobile identification number, or personal identification number that can be used to obtain telephone services;
2. “Clone cellular telephone” or “counterfeit cellular telephone” means a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer;
3. “Cloning paraphernalia” means materials that, when possessed in combination, could be used to create a cloned cellular telephone. These materials include scanners to intercept the electronic serial number and mobile identification number, cellular telephones, cables, EPROM chips, EPROM burners, software for programming the cloned telephone with a false electronic serial number and mobile identification number combination, a computer containing such software, and lists of electronic serial number and mobile identification number combinations;
4. “Electronic serial number” means the unique number that:
  - a. was programmed into a cellular telephone by its manufacturer,
  - b. is transmitted by the cellular telephone, and
  - c. is used by cellular telephone providers to validate radio transmissions to the system as having been made by an authorized device;
5. “EPROM” or “Erasable programmable read-only memory” means an integrated circuit memory that can be programmed from an external source and erased, for reprogramming, by exposure to ultraviolet light;
6. “Intercept” means to electronically capture, record, reveal, or otherwise access the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver, by means of any instrument, device or equipment;
7. “Manufacture of an unlawful telecommunication device” means to produce or assemble an unlawful telecommunication device, or to modify, alter, program, or reprogram a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider;
8. “Mobile identification number” means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier;
9. “Possess” means to have a physical possession or otherwise to exercise control over tangible property;
10. “Sell” means to offer to, agree to offer to, or to sell, exchange, give, or dispose of an unlawful telecommunications device to another;
11. “Telecommunication device” means:

a. any type of instrument, device, machine, or equipment which is capable of transmitting or receiving telephonic, electronic, or radio communications, or

b. any part of an instrument, device, machine, equipment, or other computer circuit, computer chip, electronic mechanism, or other component, which is capable of facilitating the transmission or reception of telephonic or electronic communications within the radio spectrum allocated to cellular radio telephone;

12. “Telecommunication service” means any service provided for a charge or compensation to facilitate the origination, transmission, emission, or receipt of signs, signals, writings, images, and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, television option or other electromagnetic system;

13. “Telecommunication service provider” means any person or entity providing telecommunication service including a cellular telephone or paging company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching officer, or other equipment or telecommunication service; and

14. “Unlawful telecommunication device” means any telecommunication device that is capable of, or has been altered, modified, programmed, or reprogrammed, along or in conjunction with another access device, so as to be capable of acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. Unlawful devices include tumbler phones, counterfeit phones, tumbler microchips, counterfeit microchips, and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider.

#### **§ 1871. Use with intent to avoid payment of service charges**

A. Any person who uses a telecommunication device with the intent to avoid the payment of any lawful charge for telecommunication service or with the knowledge that it was to avoid the payment of any lawful charge for telecommunication service and the value of the telecommunication service is not more than One Thousand Dollars (\$1,000.00) or such value cannot be ascertained shall, upon conviction, be guilty of a misdemeanor.

B. Any person who uses a telecommunication device with the intent to avoid the payment of any lawful charge for telecommunication service or with the knowledge that it was to avoid the payment of any lawful charge for telecommunication service and the value of the telecommunication service exceeds One Thousand Dollars (\$1,000.00) shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years.

C. If the cloned cellular telephone used in violation of this section was used to facilitate the commission of a felony the person, upon conviction, shall be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years.

D. Any person who has been convicted previously of an offense under this section shall be guilty of a felony upon a second and any subsequent conviction punishable by imprisonment for a term not to exceed three (3) years.

#### **§ 1872. Possession of unlawful telecommunication or cloning devices**

A. Any person who knowingly possesses an unlawful telecommunication device shall, upon conviction, be



guilty of a misdemeanor.

B. Any person who knowingly possesses five or more unlawful telecommunication devices at the same time shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years.

C. Any person who:

1. Knowingly possesses an instrument capable of intercepting electronic serial number and mobile identification number combinations under circumstances evidencing an intent to clone; or
2. Knowingly possesses cloning paraphernalia under circumstances evidencing an intent to clone,

shall, upon conviction, be guilty of a schedule F felony, if the offense occurs on or after the effective date of Section 20.1 of this title. If the offense occurs before the effective date of Section 20.1 of this title, the crime shall be punishable by incarceration in the custody of the Department of Corrections for a term not to exceed two (2) years.

### **§ 1873. Sale of unlawful telecommunication devices or material**

A. Any person who intentionally sells an unlawful telecommunication device or material, including hardware, data, computer software, or other information or equipment, knowing that the purchaser or a third person intends to use such material in the manufacture of an unlawful telecommunication device shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years.

B. If the offense under this section involves the intentional sale of five or more unlawful telecommunication devices within a six-month period, the person committing the offense, upon conviction, shall be guilty of a felony punishable by incarceration in the custody of the Department of Corrections for a term not to exceed three (3) years.

### **§ 1874. Manufacture of unlawful telecommunication devices**

A. Any person who intentionally manufacturers an unlawful telecommunication device shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed two (2) years.

B. If the offense under this section involves the intentional manufacture of five or more unlawful telecommunication devices within a six-month period, the person committing the offense shall, upon conviction, be guilty of a felony punishable by imprisonment for a term not to exceed five (5) years.

## **BUS PASSENGER SAFETY ACT**

### **§ 1901. Short title**

This act may be cited as the “Bus Passenger Safety Act”.

### **§ 1902. Definitions**

As used in the Bus Passenger Safety Act:

1. “Bus” means a vehicle designed to carry passengers that is part of a network of passenger vehicles for use by the public, running on a regular schedule of routes, times and fares;
2. “Bus transportation company” or “company” means any person or governmental entity providing for-hire transport to passengers or cargo by bus upon the roads, streets, highways and turnpikes of this state;
3. “Deadly or dangerous weapon” includes all weapons listed in Section 1287  
<<https://1.next.westlaw.com/Link/Document/FullText?>  
of this title, and any other weapon capable of inflicting serious bodily injury, except for a weapon carried for lawful self-defense in compliance under the Cherokee Nation Self Defense Act;
4. “Passenger” means any person served by the bus transportation company; and
5. “Terminal” means a bus station or depot or any facility operated or leased by or operated on behalf of a bus transportation company. This term shall include a reasonable area immediately adjacent to any designated stop along the route traveled by any bus operated by a bus transportation company and parking lots or parking areas adjacent to a terminal.

### **§ 1903. Seizure of bus--Assault or battery--Dangerous or deadly weapon--Discharge of a firearm**

A. No person shall by force or violence, or threat of force or violence, seize or exercise control of any bus. Any person violating this subsection shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not more 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.

B. In addition, no person shall intimidate, threaten, assault or batter any driver, attendant, guard or passenger of any bus with intent to violate subsection A of this section. Any person violating this subsection shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not more than three (3) years, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. In addition, any person violating subsection A or B of this section using a dangerous or deadly weapon shall be guilty of a felony, and shall, upon conviction, be punished by imprisonment for not more 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.

D. It shall be unlawful for any person to discharge any firearm into or within any bus, terminal or other transportation facility, unless such action is determined to have been in defensive force resulting from reasonable fear of imminent peril of death or great bodily harm to himself or herself or another. Such person shall, upon conviction, be guilty of a felony punishable by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than three (3) years, or both.

### **§ 1904. Unauthorized removal of baggage, cargo or other item**

It shall be unlawful to remove any baggage, cargo or other item transported upon a bus or stored in a terminal without consent of the owner of such property or the company, or its duly authorized representative. Any person violating this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment for not more than three (3) years, or by both such fine and imprisonment.

The actual value of an item removed in violation of this section shall not be material to the crime herein defined.

## COMPUTER CRIMES ACT

### § 1951. Short title

This act shall be known and may be cited as the Cherokee Nation Computer Crimes Act.

### § 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.

## § 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;

8. Willfully use a computer, computer system, or computer network to annoy, abuse, threaten, or harass another person; and

9. Willfully use a computer, computer system, or computer network to put another person in fear of physical harm or death.

B. Any person convicted of violating paragraphs 1, 2, 3, 6 or, 7, 8, or 9 of subsection (A) of this section shall be guilty of a crime ~~felony punishable as provided in Section 1955 of this title.~~

C. Any person convicted of violating paragraphs 4, or 5, or 8 of subsection (A) of this section shall be guilty of a crime ~~misdemeanor~~.

D. Nothing in the Oklahoma Computer Crimes Act shall be construed to prohibit the monitoring of computer usage of, or the denial of computer or Internet access to, a child by a parent, legal guardian, legal custodian, or foster parent. As used in this subsection, "child" shall mean any person less than eighteen (18) years of age.

#### **§ 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.

#### **§ 1955. Penalties-Civil actions**

A. Upon conviction of a felony under the provisions of the Cherokee Nation Computer Crimes Act, punishment shall be by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or by imprisonment for a term of not more than three (3) years, or by both such fine and imprisonment.

B. B. Upon conviction of a misdemeanor under the provisions of the Oklahoma Computer Crimes Act, punishment shall be by a fine of not more than Five Thousand Dollars (\$5,000.00), or by imprisonment for a term not to exceed thirty (30) days, or by both such fine and imprisonment.

C. 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.

#### **§ 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.

#### **§ 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 ~~felony~~ punishable by

imprisonment for a term of not more than three (3) years, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such imprisonment and fine.

#### **§ 1959. Subpoenas prior to commencement of proceedings--Noncompliance--Misdemeanor**

A. When any person has engaged in, is engaged in, or is attempting or conspiring to engage in any conduct constituting a violation of any of the provisions of Section 1953 of Title 21 of the Cherokee Nation Code Annotated, the Cherokee Nation Attorney General may conduct an investigation of the activity. On approval of the district judge, the Attorney General, in accordance with the provisions of Section 258 of Title 22 the Cherokee Nation Code Annotated and pursuant to the provisions of the Cherokee Nation Computer Crimes Act, is authorized before the commencement of any civil or criminal proceeding to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any business papers or records by subpoena duces tecum. Evidence collected pursuant to this section shall not be admissible in any civil proceeding.

B. Any business papers and records subpoenaed by the Attorney General shall be available for examination by the person who produced the material or by any duly authorized representative of the person. Transcripts of oral testimony shall be available for examination by the person who produced such testimony and their counsel.

Except as otherwise provided for in this section, no business papers, records, or transcripts or oral testimony, or copies of it, subpoenaed by the Attorney General shall be available for examination by an individual other than another law enforcement official without the consent of the person who produced the business papers, records or transcript.

C. All persons served with a subpoena by the Attorney General pursuant to the provisions of the Cherokee Nation Computer Crimes Act shall be paid the same fees and mileage as paid witnesses in the courts of this state.

D. No person shall, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the Attorney General pursuant to the provisions of this section, knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any business papers or records that are the subject of the subpoena duces tecum.

E. Any person violating the provisions of this section shall be guilty, upon conviction, of a misdemeanor.

#### **§ 1992. Short title--Penalties--Definitions**

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A. This section shall be known and may be cited as the “Laser Safety Act”.

B. Any person who knowingly and maliciously projects a laser, as defined in this section, on or at a law enforcement officer without the consent of the officer while the officer is acting within the scope of the official duties of the officer shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than One Hundred Dollars (\$100.00). Any person who commits a second or subsequent violation of this

section shall be guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), a term of imprisonment for a term of not more than six (6) months, or by both such fine and imprisonment.

C. Anyone who knowingly aims the beam of a laser pointer at an aircraft in flight or at the flight path of an aircraft shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than One Hundred Dollars (\$100.00). Any person who commits a second or subsequent violation of this section shall be guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), a term of imprisonment for a term of not more than six (6) months, or by both such fine and imprisonment.

D. This section does not prohibit aiming a beam of a laser pointer at an aircraft, or the flight path of such an aircraft by:

1. An authorized individual in the conduct of research and development or flight test operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other person authorized by the Federal Aviation Administration to conduct research and development or flight test operations;
2. Members or elements of the Department of Defense or Department of Homeland Security acting in an official capacity for the purpose of research, development, operations, testing or training; or
3. By an individual using a laser emergency signaling device to send an emergency distress signal.

E. As used in this section:

1. "Laser" or "laser pointer" means any device designed or used to amplify electromagnetic radiation by stimulated emission that emits a beam designed to be used by the operator as a pointer or highlighter to indicate, mark or identify a specific position, place, item or object; and
2. "Law enforcement officer" means any police officer, peace officer, sheriff, deputy sheriff, correctional officer, probation or parole officer, emergency management employee, judge, magistrate, or any employee of a governmental agency who is authorized by law to engage in the investigation, arrest, prosecution, or supervision of the incarceration of any person for any violation of law and has statutory powers of arrest.

### **§ 1993. Tampering with or disabling security or surveillance camera or security system**

A. It shall be unlawful for any unauthorized person to refocus, reposition, cover, manipulate, disconnect, or otherwise tamper with or disable a security or surveillance camera or security system. Any person violating the provisions of this subsection shall be guilty, upon conviction, of a misdemeanor punishable by a fine of not more than Five Thousand Dollars (\$5,000.00).

B. It shall be unlawful for any person to use, refocus, reposition, cover, manipulate, disconnect, or otherwise tamper with or disable a security or surveillance camera or security system for the purpose of avoiding



detection when committing, attempting to commit, or aiding another person to commit or attempt to commit any misdemeanor. Any person violating the provisions of this section shall be guilty, upon conviction, of a misdemeanor punishable by imprisonment for not more than one year, or a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such imprisonment and fine.

C. It shall be unlawful for any person to use, refocus, reposition, cover, manipulate, disconnect, or otherwise tamper with or disable a security or surveillance camera or security system for the purpose of avoiding detection when committing, attempting to commit, or aiding another person to commit or attempt to commit any felony. Any person violating the provisions of this section shall be guilty, upon conviction, of a felony, punishable by imprisonment for not more than three (3) years, or a fine of not more than Ten Thousand Dollars (\$10,000.00), or by both such imprisonment and fine.

#### **Section 5. Provisions as cumulative**

The provisions of this act shall be cumulative to existing law.

#### **Section 6. Severability**

A. The provisions of this act are severable and if any part of 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.

#### **Section 7. Effective Date/Emergency Declared**

B. It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

C.

#### **Section 8. Self-Help Contributions**

D. To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

E.