

**TITLE 4 – CRIMINAL CODE
CHAPTER 1 – OFFENSES**

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TITLE 4 – CRIMINAL CODE
CHAPTER 1 – OFFENSES

Legislative History:

Established on July 28, 1982 a Law & Order Code by Resolution No. C-31-82 & Ordinance No. 5.

Amended on January 10, 1990 by Resolution No. C1-67-90.

Adopted Revision on May 24, 1990 by resolution no. C5-103-90.

Amended on October 4, 1990 by Resolution No. C10-2-90.

Adopted on May 26, 1992 tribal codes & rescinded all other conflicting codes by Resolution No. C5-42-92.

Amended January 6, 1994 by Tribal Council Resolution C1-02-94.

Adopted on January 28, 2003 Pascua Yaqui Code & rescinded all prior codes by Resolution No. C01-04-03.

Recodified on August. 9, 2006 by Resolution No. C08-313-06.

Amended on April 9, 2008 by Resolution No. C04-66-08 and Ordinance No 08-08.

Amended June 26, 2008 by Resolution No. C06-128-08 and Ordinance No. 22-08.

Amended on June 9, 2010 by Resolution No. C06-92-10 and Ordinance No. 15-10.

Amended on August 4, 2010 by Resolution No. C08-124-10 and Ordinance No. 17-10.

Amended on October 26, 2011 by Resolution No. C10-307-11 and Ordinance No. 29-11.

Amended on June 25, 2014 by Resolution No. C06-96-14 and Ordinance No. 04-14.

Adopted on July 27, 2022, by Resolution No. C07-xx-22 and Ordinance No. 22-xx. Resolution No. C07-xx-22 and Ordinance No. 22-xx also repealed the previous version of Title 4, Chapters 1, 2, 3 and 4.

SUBCHAPTER A GENERAL PROVISIONS

Section 10 Purpose

It is declared that the public policy of Pascua Yaqui Tribe and the general purposes of the provisions of this title are:

- (A) To proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual, public or Cultural interests;
- (B) To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
- (C) To define the act or omission and the accompanying mental state which constitute each offense and limit the condemnation of conduct as criminal when it does not fall within the purposes set forth;
- (D) To differentiate on reasonable grounds between serious and minor offenses and to prescribe appropriate and proportionate penalties for each;
- (E) To ensure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized;
- (F) To impose just and deserved punishment on those whose conduct threatens the public peace; and
- (G) To promote truth and accountability in sentencing.

Section 20 Definitions

In this title, unless the context otherwise requires:

- (A) “Accomplice” means, unless the context otherwise requires, a person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, who with the intent to promote or facilitate the commission of an offense:
 - (1) Solicits or commands another person to commit the offense; or
 - (2) Aids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense.
 - (3) Provides means or opportunity to another person to commit the offense.
- (B) “Accused” means a person who has been arrested and/or charged for committing a criminal offense and who is held for an initial appearance or other proceeding before trial.
- (C) “Appellate proceeding” means a contested oral argument that is held in open court before the tribal court of appeals.

- (D) “Arrest” means the actual custodial restraint of a person or the person's submission to custody.
- (E) “Criminal offense” means conduct that gives a peace officer or prosecutor probable cause to believe that a crime involving physical injury or the threat of physical injury, a sexual offense or a crime against property has occurred.
- (F) “Criminal proceeding” means any hearing, argument or other matter that is scheduled by and held before tribal court but does not include any deposition, lineup, proceeding or other matter that is not held in the presence of the court.
- (G) “Criminal street gang” means an ongoing formal or informal association of persons in which members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony act and that has at least one individual who is a criminal street gang member.
- (H) “Criminal street gang member” means an individual to whom at least three of the following seven criteria that indicate criminal street gang membership apply:
 - (1) Self-proclamation.
 - (2) Witness testimony or official statement.
 - (3) Written or electronic correspondence.
 - (4) Paraphernalia or photographs.
 - (5) Tattoos.
 - (6) Clothing or colors.
 - (7) Any other indicia of street gang membership.
- (I) “Culpable Mental States” means intentionally, knowingly, recklessly or with criminal negligence as those terms are thusly defined:
 - (1) “Intentionally or with the intent to” means, with respect to a result or to conduct described by a statute defining an offense that a person’s objective is to cause that result or to engage in that conduct.
 - (2) “Knowingly” means with respect to conduct or to a circumstance described by a statute defining an offense that a person is aware or believes that his or her conduct is of that nature or that the circumstances exists. It does not require any knowledge of the unlawfulness of the act or omission.
 - (3) “Recklessly” means with respect to a result or to a circumstance described by a statute defining an offense that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance

exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

- (4) “Criminal negligence” means with respect to a result or to a circumstance described by a statute defining an offense that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstances exist. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
- (J) “Dangerous Instrument” means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.
- (K) “Deadly Weapon” means anything designed for lethal use, including a firearm.
- (L) “Defendant” means a person or entity that is formally charged by complaint, indictment or information with committing a criminal offense.
- (M) “Physical Injury” means the impairment of physical condition and includes but shall not be limited to any skin bruising, bleeding, failure to thrive, malnutrition, burns, fracture or any bond, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition which imperils a person’s health or welfare.
- (N) “Serious Physical Injury” means physical injury which creates a reasonable risk of death, or which causes serious or permanent disfigurement, or serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.
- (O) “Tribal Official” shall be defined as any person who works for the Pascua Yaqui Tribe, including Tribal Council Members, employees of the Tribe and its various departments and enterprises while performing official duties, Tribal and BIA Police Officers, Tribal Security officers, Housing Authority personnel while performing official duties, and shall include personnel of outside police and fire agencies who are assisting Tribal officials in the performance of their duties.

Section 30 Jurisdiction [RESERVED]

Section 35 Restored Tribal Criminal Jurisdiction; Covered Crimes; Definitions

The term “special Tribal criminal jurisdiction” refers to the Pascua Yaqui Tribe’s exercise of the restored inherent authority of criminal jurisdiction over all lands within the boundaries of the Pascua Yaqui Indian Reservation as proclaimed by Article II of the Constitution of the Pascua Yaqui Tribe. Beginning October 1, 2022, the Pascua Yaqui Tribe may exercise special Tribal criminal jurisdiction over a defendant for a covered crime that occurs within the exterior boundaries of the Pascua Yaqui Tribe.

(A) Definitions:

- (1) **Child.** The term “child” means a person who has not attained the lesser of--
 - (a) the age of 18; and
 - (b) except in the case of sexual abuse, the age specified by the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs.
- (2) **Coercion.** The term “coercion” means—
 - (a) threats of serious harm to or physical restraint against any person;
 - (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
 - (c) the abuse or threatened abuse of law or the legal process.
- (3) **Commercial sex act.** The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person
- (4) **Covered crimes.** The term “covered crime” means—
 - (a) **Assault of Tribal justice personnel.** The term “assault of Tribal justice personnel” means any violation of 4 PYTC § 1-410 where the violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the Pascua Yaqui Tribe or serving the Pascua Yaqui Tribe during, or because of, the performance or duties of that individual in—
 - (i) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;
 - (ii) adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;
 - (iii) detaining, providing supervision for, or providing services for persons charged with a covered crime; or
 - (iv) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.
 - (b) **Child violence.** The term “child violence” means the use, threatened use, or attempted use of violence against a child proscribed by the Pascua Yaqui Tribal law.

- (c) **Dating violence.** The term “dating violence” means any violation of Pascua Yaqui Tribal law where the violation occurs that is committed by dating partners as defined in 4 PYTC § 1-1305.
- (d) **Domestic violence.** The term “domestic violence” means any violation of 4 PYTC § 1-1305 where the violation occurs that is committed by—
 - (i) a current or former spouse or intimate partner of the victim;
 - (ii) a person with whom the victim shares a child in common;
 - (iii) a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
 - (iv) a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of the Indian tribe that has jurisdiction over the Indian country where the violation occurs.
- (e) **Obstruction of justice.** The term “obstruction of justice” means any violation 4 PYTC §§ 1-1120, 1140 or any other criminal law of the Pascua Yaqui Tribe where the violation involves interfering with the administration or due process of the laws of the Pascua Yaqui Tribe, including any Tribal criminal proceeding or investigation of a crime.
- (f) **Sexual Violence.** The term “sexual violence” means any nonconsensual sexual act or contact proscribed in Subchapter H, in Chapter 1 of Title 4, including in any case in which the victim lacks the capacity to consent to the act.
- (g) **Sex Trafficking.** The term “sex trafficking” has the same meaning as 4 PYTC § 1-595.
- (h) **Stalking.** The term “stalking” means engaging in a course of conduct directed at a specific person proscribed in 4 PYTC § 1-460 where the violation occurs that would cause a reasonable person—
 - (i) to fear for the person's safety or the safety of others; or
 - (ii) to suffer substantial emotional distress.
- (i) **A violation of a protection order.** The term “violation of a protection order” means an act that--
 - (i) occurs within the exterior boundaries of the Pascua Yaqui Tribe; and
 - (ii) violates a provision of a protection order that--

1. prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
2. was issued against the defendant;
3. is enforceable by the participating tribe; and
4. is consistent with section 18 U.S.C. 2265(b).

(5) **Protection order.** The term “protection order”—

- (a) means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
- (b) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(6) **Spouse or intimate partner.** The term “spouse or intimate partner” includes—

(a) for purposes of--

(i) sections other than 4 PYTC § 1-35(A)(4)(h)—

1. a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or
2. a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and

(ii) for 4 PYTC § 1-35(A)(4)(h)—

1. a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or
2. a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined

by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

- (b) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

(B) **Applicability.** Nothing in this section--

- (1) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or
- (2) affects the authority of the United States or any State government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.

Section 40 Statute of Limitations

- (A) A prosecution for any homicide, any conspiracy to commit homicide that results in the death of a person, or an offense involving the sexual or physical abuse of a child under the age of 18, may be commenced at any time.
- (B) Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any felony offense, not capital, unless the prosecution is instituted within seven years of the commission of the offense.
- (C) Except as otherwise provided in this section, prosecutions for other offenses must be commenced within the following periods after actual discovery by the Tribe having jurisdiction of the offense or discovery by the tribe that should have occurred with the exercise of reasonable diligence, whichever first occurs:
 - (1) For a misdemeanor, one year.
 - (2) For a petty offense, six months.
- (D) The time limitations do not include time spent outside of the jurisdiction of the Pascua Yaqui Tribal Court for the purpose of avoiding prosecution. The burden of proving the reason for absence from jurisdiction shall be upon the accused.
- (E) If a prosecution commences before the period of limitation has expired AND is dismissed for any reason, a new prosecution may be commenced within six months after the dismissal becomes final even if the period of limitation has expired at the time of the dismissal or will expire within six months of the dismissal.

Section 50 Statutory Construction

- (A) If proof of a certain culpable mental state is required to establish commission of any particular offense, then proof of that required culpable mental state shall apply to each element unless otherwise clearly stated.
- (B) If proof of a certain culpable mental state is not required to establish commission of any particular offense, then the offense is one of strict liability. If the offense is one of strict liability, proof of any culpable mental state will suffice to establish criminal responsibility. The exception to strict liability is if the proscribed conduct, by definition, involves a culpable mental state.
- (C) If criminal negligence is sufficient to establish an element of the offense, then criminal negligence is also established if the person acts intentionally, knowingly, or recklessly. If recklessness is sufficient to establish an element, then recklessness is also established if the person acted intentionally or knowingly. A person's intentional action is sufficient to establish that the person acted knowingly.

Section 60 Criminal and Civil Offense Saving Clause

- (A) The repeal of Chapter 2-2, Part II or Title 3 and Chapters 1, 2, 3, and 4, of Title 4, does not apply to an offense committed under that section, the applicable rule of criminal procedure or the possible sentence before the effective date of this Ordinance. An offense committed before the effective date of this Ordinance is governed by that section, rule of procedure and sentencing as it existed on the date the offense was committed, and the former law is continued in effect for that purpose. An offense is committed if all elements of the offense occurred before the effective date of this Ordinance.
- (B) The effective date of this Ordinance is October 1, 2022.
- (C) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.
- (D) The repeal of Chapter 2-2, Part II or Title 3 and Chapters 1, 2, 3, and 4, of Title 4, shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

Section 61 Severability

- (A) It is hereby declared to be the intention of the Tribal Council that the sections, paragraphs, sentences, clauses, title, subsection, subpart and words of this Tribal Code are severable; and if any word, clause, sentence, paragraph, section, title, subsection, or subpart of this Code shall be declared unconstitutional by a valid judgment or decree of any Pascua Yaqui Tribal Court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining words, clauses, sentences, paragraphs, sections, titles, subsections, or subparts of this Tribal Code, since the same would have been enacted by the Tribal Council without the incorporation in this Tribal Code of any such unconstitutional word, clause, sentence, paragraph, section, title, subsection, or subpart. the remainder of this Ordinance not deemed unlawful, invalid or preempted, shall continue in full force and effect.

SUBCHAPTER B

GENERAL CRIMINAL PRINCIPALS

Section 100 Parties to offenses

- (A) A person may be guilty of an offense committed by such person's own conduct or by the conduct of another for which such person is criminally accountable as provided by law, or both. In any prosecution, testimony of an accomplice need not be corroborated.
- (B) Liability based upon conduct of another; Accomplice:
- (1) A person is criminally accountable for the conduct of another if:
- (a) The person is made accountable for such conduct by the statute defining the offense; or
 - (b) Acting with the culpable mental state sufficient for the commission of the offense, such person causes another person, whether or not such other person is capable of forming the culpable mental state, to engage in such conduct; or
 - (c) The person is an accomplice of such other person in the commission of an offense including any offense that is a natural and probable or reasonably foreseeable consequence of the offense for which the person was an accomplice.
- (2) If causing a particular result is an element of an offense, a person who acts with the kind of culpability with respect to the result that is sufficient for the commission of the offense is guilty of that offense if:
- (a) The person solicits or commands another person to engage in the conduct causing such result; or
 - (b) The person aids, counsels, agrees to aid or attempts to aid another person in planning or engaging in the conduct causing such result.
- (C) In any prosecution for an offense in which the criminal liability of the accused is based upon the conduct of another under Section 1-100(B) or pursuant to Section 1-150, it is no defense that:
- (1) The other person has not been prosecuted for or convicted of such offense, or has been acquitted of such offense, or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction for such offense; or
 - (2) The accused belongs to a class of persons who by definition of the offense are legally incapable of committing the offense in an individual capacity

Section 101 Responsibility; Accountability

- (A) Temporary intoxication resulting from the voluntary ingestion, consumption, inhalation or injection of alcohol, an illegal substance under Subchapter O of this Chapter, or other psychoactive substance or the abuse of prescribed medication does not constitute insanity and is not a defense for any criminal act or requisite state of mind.
- (B) Ignorance or mistake as to a matter of law does not relieve a person of criminal responsibility.
- (C) Ignorance or a mistaken belief as to a matter of fact does not relieve a person of criminal liability unless:
 - (1) It negates the culpable mental state required for commission of the offense; or
 - (2) It supports a defense of justification as defined in Subchapter C of this title.
- (D) The tribal prosecutor may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:
 - (1) First degree murder in violation of section 210.
 - (2) Second degree murder in violation of section 220.
 - (3) Forcible sexual assault in violation of section 525.
 - (4) Armed robbery in violation of section 830.
 - (5) Aggravated Assault in violation of section 410.
 - (6) Any offense that is properly joined to an offense listed in this subsection.

Section 102 Former Jeopardy or acquittal as bar to same or lesser offenses

When the defendant is convicted or acquitted, or has once been placed in jeopardy in Tribal Court, the conviction, acquittal or jeopardy is bar to another prosecution for the offense charged, or for an attempt to commit the offense, or for any offense necessarily included therein, of which he or she might have been convicted under the charging document.

Section 103 Double Punishment

An act or omission which is made punishable in different ways by different sections of the laws may be punished under both, but in no event may sentences be other than concurrent. An acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other, to the extent the Constitution of the Pascua Yaqui Tribe requires.

Section 104 Requirements for criminal liability

The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which the person is physically capable of performing.

Section 105 Causal relationship between conduct and result; relationship to mental culpability

- (A) Where an intentional, reckless or negligent mental state is required to establish an element of any offense, the element is established even though the actual result differs from that intended or contemplated, or otherwise from the probable result, when:
- (1) The actual result differs only in the respect that a different person or property is injured or affected.
 - (2) The actual injury or harm is less serious or extensive than that intended or probable.
 - (3) The actual result involves similar injury or harm as that intended or probable, and occurs in a manner which the person knows or should know is rendered substantially more probable by such person's conduct.

SUBCHAPTER C JUSTIFICATIONS

Section 110 Justification; use of physical force

- (A) Except as otherwise provided by law, a defendant shall prove any affirmative defense raised by a preponderance of the evidence. Justification defenses under this subchapter of this title are not affirmative defenses. Justification defenses describe conduct that, if not justified, would constitute an offense but, if justified, does not constitute criminal or wrongful conduct.
- (B) Even though a person is justified under this subchapter in threatening or using physical force or deadly physical force against another, if in doing so such person recklessly injures or kills an innocent third person, the justification afforded by this chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.
- (C) This section shall not affect any specifically enumerated presumptions contained in any applicable section to an offense.

Section 111 Justification; use of physical force

- (A) The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:
- (1) A parent or guardian and a teacher or other person entrusted with the care and supervision of a minor or incompetent person may use reasonable and appropriate

physical force upon the minor or incompetent person when and to the extent reasonably necessary and appropriate to maintain discipline.

- (2) A superintendent or other entrusted official of a jail, prison or correctional institution may use physical force for the preservation of peace, to maintain order or discipline, or to prevent the commission of any felony or misdemeanor.
- (3) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious injury upon himself may use physical force upon that person to the extent reasonably necessary to thwart the result.
- (4) A duly licensed physician or a registered nurse or a person acting under his direction, or any other person who renders emergency care at the scene of an emergency occurrence, may use reasonable physical force for the purpose of administering a recognized and lawful form of treatment which is reasonably adapted to promoting the physical or mental health of the patient if:
 - (a) The treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent, guardian, or other person entrusted with his care and supervision except as otherwise provided by law; or
 - (b) The treatment is administered in an emergency when the person administering such treatment reasonably believes that no one competent to consent can be consulted and that a reasonable person wishing to safeguard the welfare of the patient would consent.
- (5) A person may otherwise use physical force upon another person as further provided in this Title.

Section 112 Justification; self-defense

- (A) Except as provided in subsection B of this section, a person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force.
- (B) The threat or use of physical force against another is not justified:
 - (1) In response to verbal provocation alone; or
 - (2) To resist an arrest that the person knows or should know is being made by a peace officer or by a person acting in a peace officer's presence and at his direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law; or
 - (3) If the person provoked the other's use or attempted use of unlawful physical force, unless:

- (a) The person withdraws from the encounter or clearly communicates to the other his intent to do so reasonably believing he cannot safely withdraw from the encounter; and
- (b) The other nevertheless continues or attempts to use unlawful physical force against the person.

Section 113 Justification; use of deadly force

- (A) A person is justified in threatening or using deadly physical force against another:
 - (1) If such person would be justified in threatening or using physical force against the other under section 112, and
 - (2) When and to the degree a reasonable person would believe that deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force.
- (B) A person has no duty to retreat before threatening or using deadly physical force pursuant to this section if the person is in a place where the person may legally be and is not engaged in an unlawful act.

Section 114 Justification; defense of third person

- (A) A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if, under the circumstances as a reasonable person would believe them to be, such person would be justified under sections 112 or 113 in threatening or using physical force or deadly physical force to protect himself against the unlawful physical force or deadly physical force a reasonable person would believe is threatening the third person he seeks to protect

Section 115 Justification; use of physical force in defense of premises; property

- (A) A person or his agent in lawful possession or control of premises is justified in threatening to use deadly physical force or in threatening or using physical force against another when and to the extent that a reasonable person would believe it immediately necessary to prevent or terminate the commission or attempted commission of a criminal trespass by the other person in or upon the premises.
- (B) A person is justified in using physical force against another when and to the extent that a reasonable person would believe it necessary to prevent what a reasonable person would believe is an attempt or commission by the other person of theft or criminal damage involving tangible movable property under his possession or control, but such person may use deadly physical force under these circumstances as provided in sections 113, 114, and 118.
- (C) A person may use deadly physical force under subsection A only in the defense of himself or third persons as described in sections 113 and 114.

- (D) In this section, “premises” means any real property and any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not

Section 116 Justification; use of physical force in law enforcement

- (A) A person is justified in threatening or using physical force against another if in making or assisting in making an arrest or detention or in preventing or assisting in preventing the escape after arrest or detention of that other person, such person uses or threatens to use physical force and all of the following exist:
- (1) A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or prevent the escape.
 - (2) Such person makes known the purpose of the arrest or detention or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested or detained.
 - (3) A reasonable person would believe the arrest or detention to be lawful.

Section 117 Justification; use of deadly physical force in law enforcement

- (A) The threatened use of deadly physical force by a person against another is justified pursuant to section 115 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is:
- (1) Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force; or
 - (2) A felon who has escaped from lawful confinement; or
 - (3) A felon who is fleeing from justice or resisting arrest with physical force.
- (B) The use of deadly physical force by a person other than a peace officer against another is justified pursuant to section 115 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is actually resisting the discharge of a legal duty with physical force or with the apparent capacity to use deadly physical force.
- (C) The use of deadly force by a peace officer against another is justified pursuant to section 115 only when the peace officer reasonably believes that it is necessary:
- (1) To defend himself or a third person from what the peace officer reasonably believes to be the use or imminent use of deadly physical force.
 - (2) To effect an arrest or prevent the escape from custody of a person whom the peace officer reasonably believes:

- (a) Has committed, attempted to commit, is committing or is attempting to commit a felony involving the use or a threatened use of a deadly weapon.
 - (b) Is attempting to escape by use of a deadly weapon.
 - (c) Through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.
 - (d) Is necessary to lawfully suppress a riot if the person or another person participating in the riot is armed with a deadly weapon.
- (D) Notwithstanding any other provisions of this chapter, a peace officer is justified in threatening to use deadly physical force when and to the extent a reasonable officer believes it necessary to protect himself against another's potential use of physical force or deadly physical force.

Section 118 Justification; use of force in crime prevention; applicability

- (A) A person is justified in threatening or using both physical force and deadly physical force against another if and to the extent the person reasonably believes that physical force or deadly physical force is immediately necessary to prevent the other's commission of arson of an occupied structure under section 710, burglary in the second or first degree under section 705(B) or (C), kidnapping under section 435, manslaughter under section 230, second or first degree murder under sections 220 or 210, sexual conduct with a minor under section 520, sexual assault under section 525, child molestation under section 540, armed robbery under section 830 or aggravated assault under section 410.
- (B) There is no duty to retreat before threatening or using physical force or deadly physical force justified by subsection A of this section.
- (C) A person is presumed to be acting reasonably for the purposes of this section if the person is acting to prevent what the person reasonably believes is the imminent or actual commission of any of the offenses listed in subsection A of this section.
- (D) This section includes the use or threatened use of physical force or deadly physical force in a person's home, residence, place of business, land the person owns or leases, conveyance of any kind, or any other place within this reservation where a person has a right to be

Section 119 Affirmative defense; Duress

- (A) Conduct which would otherwise constitute an offense is justified if a reasonable person would believe that he was compelled to engage in the proscribed conduct by the threat or use of immediate physical force against his person or the person of another which resulted or could result in serious physical injury which a reasonable person in the situation would not have resisted.

- (B) The defense provided by subsection A is unavailable if the person intentionally, knowingly or recklessly placed himself in a situation in which it was probable that he would be subjected to duress.
- (C) The defense provided by subsection A is unavailable for offenses involving homicide or serious physical injury

Section 120 Justification; domestic violence

- (A) If there have been past acts of domestic violence as defined in Tribal Code, against the defendant by the victim, the state of mind of a reasonable person under [sections 112, 113](#) and [114](#) shall be determined from the perspective of a reasonable person who has been a victim of those past acts of domestic violence.

Section 121 Affirmative defense; Necessity defense

- (A) Conduct that would otherwise constitute an offense is justified if a reasonable person was compelled to engage in the proscribed conduct and the person had no reasonable alternative to avoid imminent public or private injury greater than the injury that might reasonably result from the person's own conduct.
- (B) An accused person may not assert the defense under subsection A if the person intentionally, knowingly or recklessly placed himself in the situation in which it was probable that the person would have to engage in the proscribed conduct.
- (C) An accused person may not assert the defense under subsection A for offenses involving homicide or serious physical injury.

Section 122 Presumptions; defense of residential structure or occupied vehicle; exceptions; definitions

- (A) A person is presumed to reasonably believe that the threat or use of physical force or deadly force is immediately necessary for the purposes of [sections 112, 113, 114, 115](#), and [119](#) if the person knows or has reason to believe that the person against whom physical force or deadly force is threatened or used is unlawfully or forcefully entering or has unlawfully or forcefully entered and is present in the person's residential structure or occupied vehicle.
- (B) For the purposes of [sections 112, 113, 114, 115](#), and [119](#) a person who is unlawfully or forcefully entering or who has unlawfully or forcefully entered and is present in a residential structure or occupied vehicle is presumed to pose an imminent threat of unlawful deadly harm to any person who is in the residential structure or occupied vehicle.
- (C) The presumptions in subsections A and B of this section do not apply if:
 - (1) The person against whom physical force or deadly physical force was threatened or used has the right to be in or is a lawful resident of the residential structure or occupied vehicle, including an owner, lessee, invitee or titleholder, and an order of protection or injunction against harassment has not been filed against that person.

- (2) The person against whom physical force or deadly physical force was threatened or used is the parent or grandparent, or has legal custody or guardianship, of a child or grandchild sought to be removed from the residential structure or occupied vehicle.
 - (3) The person who threatens or uses physical force or deadly physical force is engaged in an unlawful activity or is using the residential structure or occupied vehicle to further an unlawful activity.
 - (4) The person against whom physical force or deadly physical force was threatened or used is a law enforcement officer who enters or attempts to enter a residential structure or occupied vehicle in the performance of official duties.
- (D) For the purposes of this section:
- (1) “Residential structure” has the same meaning prescribed in Tribal Code.
 - (2) “Vehicle” means a conveyance of any kind, whether or not motorized, that is designed to transport persons or property

SUBCHAPTER D PREPARATORY OFFENSES

Section 130 Attempt

- (A) A person commits attempt if, acting with the kind of culpability otherwise required for commission of an offense, such person:
- (1) Intentionally engages in conduct which would constitute an offense if the attendant circumstances were as such person believes them to be; or
 - (2) Intentionally does or omits to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense; or
 - (3) Engages in conduct intended to aid another to commit an offense, although the offense is not committed or attempted by the other person, provided his conduct would establish his complicity under 4 PYTC § 1-100, if the offense were committed or attempted by the other person.
- (B) It is no defense that it was impossible for the person to aid the other party’s commission of the offense, provided such person could have done so had the circumstances been as he believed them to be.
- (C) Attempt offense classifications. A person found guilty of an attempted offense results in:
- (1) Class 2 felony if the offense attempted is a class 1 felony.
 - (2) Class 3 felony if the offense attempted is a class 2 felony.

- (3) Class 1 misdemeanor if the offense attempted is a class 3 felony.
- (4) Class 2 misdemeanor if the offense attempted is a class 1 misdemeanor.
- (5) Class 3 misdemeanor if the offense attempted is a class 2 misdemeanor.
- (6) Petty offense if the offense attempted is a class 3 misdemeanor or petty offense.

Section 140 Solicitation

- (A) A person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, commits solicitation if, with the intent to promote or facilitate the commission of a felony or misdemeanor, such person commands, encourages, requests or solicits another person to engage in specific conduct which would constitute the felony or misdemeanor or which would establish the other's complicity in its commission.
- (B) Solicitation offense classifications. A person found guilty of soliciting an offense results in is a:
 - (1) Class 3 felony if the offense solicited is a class 1 felony.
 - (2) Class 1 misdemeanor if the offense solicited is a class 2 felony.
 - (3) Class 2 misdemeanor if the offense solicited is a class 3 felony.
 - (4) Class 3 misdemeanor if the offense solicited is a misdemeanor.

Section 150 Conspiracy

- (A) A person commits conspiracy if, with the intent to promote or aid the commission of an offense, such person agrees with one or more persons that at least one of them or another person will engage in conduct constituting the offense and one of the parties commits an overt act in furtherance of the offense, except that an overt act shall not be required if the object of the conspiracy was to commit any felony upon the person of another, or to commit an offense under section 1-705 or section 1-710.
- (B) If a person guilty of conspiracy, as defined in subsection A of this section, knows or has reason to know that a person with whom such person conspires to commit an offense has conspired with another person or persons to commit the same offense, such person is guilty of conspiring to commit the offense with such other person or persons, whether or not such person knows their identity.
- (C) A person who conspires to commit a number of offenses is guilty of only one conspiracy if the multiple offenses are the object of the same agreement or relationship and the degree of the conspiracy shall be determined by the most serious offense conspired to.

- (D) Conspiracy is an offense of the same class as the most serious offense which is the object of or result of the conspiracy.

Section 160 Facilitation

- (A) A person commits facilitation if, acting with knowledge that another person is committing or intends to commit an offense, the person knowingly provides the other person with means or opportunity for the commission of the offense.
 - (1) Facilitation offense classifications. A person found guilty of facilitating an offense results in is a:
 - (a) Class 1 misdemeanor if the offense facilitated is a class 1 felony.
 - (b) Class 2 misdemeanor if the offense facilitated is a class 2 or class 3 felony.
- (B) This section does not apply to peace officers who act in their official capacity within the scope of their authority and in the line of duty.

Section 170 Aiding & Abetting (Formerly 4 PYTC § 1-840)

Any person who:

- (A) Engages in conduct intended to aid another to commit an offense or aiding in the commission of any act, in furtherance of said offense, or;
- (B) Acts with knowledge that another person is committing or intends to commit an offense, knowingly provides such other person with means or opportunity for the commission of the offense, or;
- (C) Aids another person to escape or attempt to escape from lawful custody shall be deemed guilty of an offense.

Section 180 Renunciation of attempt, solicitation, conspiracy or facilitation; defenses

- (A) In a prosecution for attempt, conspiracy or facilitation, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the attempt, conspiracy or facilitation.
- (B) In a prosecution for solicitation, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent completed both of the following acts:
 - (1) Notified the person solicited
 - (2) Gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result solicited.

- (C) A renunciation is not voluntary and complete within the meaning of this section if it is motivated in whole or in part by:
 - (1) A belief that circumstances exist which increase the probability of immediate detection or apprehension of the accused or another participant in the criminal enterprise or which render more difficult the accomplishment of the criminal purpose; or
 - (2) A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim, place or another but similar objective.
- (D) A warning to law enforcement authorities is not timely within the meaning of this section unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the conduct or result. An effort is not reasonable within the meaning of this section unless the defendant makes a substantial effort to prevent the conduct or result

SUBCHAPTER E HOMICIDE (Formerly § 1-230)

Section 200 Definitions

In this chapter, unless the context otherwise requires:

- (A) “Premeditation” means that the defendant acts with either the intention or the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection. Proof of actual reflection is not required, but an act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.
- (B) “Homicide” means first degree murder, second degree murder, manslaughter or negligent homicide.
- (C) “Person” means a human being.
- (D) “Adequate provocation” means conduct or circumstances sufficient to deprive a reasonable person of self-control.

Section 210 First Degree Murder

- (A) A person commits first degree murder if:
 - (1) Intending or knowing that the person’s conduct will cause death, the person causes the death of another person, including an unborn child, with premeditation or, as a result of causing the death of another person with premeditation, causes the death of an unborn child
 - (2) Acting either alone or with one or more other persons,
 - (a) The person commits or attempts to commit;

- (i) sexual conduct with a minor under section 520,
 - (ii) sexual assault under section 525,
 - (iii) molestation of a child under section 540,
 - (iv) marijuana offenses under section 1205(C)(3)(d),
 - (v) dangerous drug offenses under section 1205,
 - (vi) narcotics offenses under section 1205,
 - (vii) involving or using minors in drug offenses under section 1225,
 - (viii) kidnapping under section 435,
 - (ix) burglary under section 705,
 - (x) arson under section 710,
 - (xi) robbery under section 810,
 - (xii) escape under section 1100,
 - (xiii) child abuse under section 320, or
 - (xiv) unlawful flight from a pursuing law enforcement vehicle under section A.R.S. 28-622.01, pursuant to 8 PYTC § 6-4-10, and
- (b) in the course of and in furtherance of the offense or immediate flight from the offense, the person or another person causes the death of any person.
- (3) Intending or knowing that the person's conduct will cause death to a law enforcement officer, the person causes the death of a law enforcement officer who is in the line of duty.

(B) Homicide, as prescribed in subsection A, paragraph 2 of this section, requires no specific mental state other than what is required for the commission of any of the enumerated felonies.

(C) First degree murder is a class 1 felony.

Section 220 Second Degree Murder

(A) A person commits second degree murder if without premeditation:

- (1) The person intentionally causes the death of another person, including an unborn child or, as a result of intentionally causing the death of another person, causes the death of an unborn child; or

- (2) Knowing that the person's conduct will cause death or serious physical injury, the person causes the death of another person, including an unborn child or, as a result of knowingly causing the death of another person, causes the death of an unborn child; or
- (3) Under circumstances manifesting extreme indifference to human life, the person recklessly engages in conduct that creates a grave risk of death and thereby causes the death of another person, including an unborn child or, as a result of recklessly causing the death of another person, causes the death of an unborn child.

(B) Second degree murder is a class 1 felony.

Section 230 Manslaughter

(A) A person commits manslaughter by:

- (1) Recklessly causing the death of another person; or
- (2) Committing second degree murder as prescribed in section 220, subsection A upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim; or
- (3) Intentionally providing the physical means that another person uses to commit suicide, with the knowledge that the person intends to commit suicide; or
- (4) Committing second degree murder as prescribed in section 220, subsection A, paragraph 3, while being coerced to do so by the use or threatened immediate use of unlawful deadly physical force upon such person or a third person which a reasonable person in his situation would have been unable to resist; or
- (5) Knowingly or recklessly causing the death of an unborn child by any physical injury to the mother.

(B) Manslaughter is a class 1 felony.

Section 240 Negligent Homicide

(A) A person commits negligent homicide if with criminal negligence, as defined in 4 PYTC 1-20, the person causes the death of another person, including an unborn child.

(B) Negligent homicide is a class 1 felony.

SUBCHAPTER F

CRIMES AGAINST CHILDREN AND ELDERS (Formerly subchapter B)

Section 300 Definitions

For purposes of this subchapter, unless the context otherwise requires:

- (A) “Delinquency” means any act that tends to debase or injure the morals, health or welfare of a child.
- (B) “Delinquent person” includes any person under the age of eighteen years who violates a law of this Tribe, state, or an ordinance of a county, city or town defining crime.
- (C) “Dependent person” means a person under the age of eighteen years:
 - (1) Who is found begging, receiving or gathering alms, whether actually begging or under the pretext of selling or offering anything for sale.
 - (2) Who is found in a street, road or public place with the intent of begging, gathering or receiving alms.
 - (3) Who is a vagrant.
 - (4) Who is found wandering and who does not have a home, or a settled place of abode, or a guardian or any visible means of subsistence.
 - (5) Who has no parent or guardian willing to exercise, or capable of exercising, proper parental control over the dependent person.
 - (6) Who is destitute.
 - (7) Whose home, by reason of neglect, cruelty or depravity of the dependent person's parents, or either of them, or on the part of the dependent person's guardian, or on the part of the person in whose custody or care the dependent person may be, is an unfit place for such person.
 - (8) Who frequents the company of reputed criminals, vagrants or prostitutes.
 - (9) Who is found living or being in a house of prostitution or assignation.
 - (10) Who habitually visits, without a parent or guardian, a saloon or place where spirituous, vinous or malt liquors are sold, bartered or given away.
 - (11) Who persistently refuses to obey the reasonable orders or directions of the dependent person's parent or guardian.
 - (12) Who is incorrigible and who is beyond the control and power of the dependent person's parents, guardian or custodian by reason of the vicious conduct or nature of the person.

- (13) Whose father or mother is dead, or has abandoned the family, or is an habitual drunkard, or whose father or mother does not provide for the person, and it appears that the person is destitute of a suitable home or adequate means of obtaining an honest living, or who is in danger of being brought up to lead an idle, dissolute and immoral life, or when both parents are dead, or the mother or father, if living, is unable to provide proper support and care of the person.
- (14) Who habitually uses intoxicating liquor as a beverage, habitually smokes cigarettes or uses opium, cocaine, morphine or other similar drugs without direction of a competent physician or a qualified registered nurse practitioner.
- (15) Who from any cause is in danger of growing up to lead an idle, dissolute or immoral life.

Section 310 Abandonment of Child (Formerly § 1-50)

- (A) Any parent, guardian, or any person who has been entrusted with, or who has assumed the care of a child under the age of 18 years, who neglects or intentionally leaves such child without care or abandons him under any circumstances, whereby the child may suffer from neglect, or who shall neglect the child in any manner or who shall cause such child to be exposed to bodily injuries shall be deemed guilty of a class 3 felony.
- (B) A person who has been employed to provide care, or who has assumed a legal duty to provide care, or who has been appointed by a court to provide care to an incapacitated adult or elderly and who causes or permits the life of the adult or elderly to be endangered, his health to be injured or to be imperiled by neglect, is guilty of a class 3 felony.

Section 320 Abuse of a Minor (Formerly § 1-60)

Any parent(s), guardian or temporary custodian who has been entrusted with or who has assumed the care of a minor under the age of 18 years of age who abuses a minor as these terms are defined in the Juvenile Code, shall be deemed guilty of a class 2 felony, unless the minor is under 13 years of age then the offense is a class 1 felony.

Section 330 Care of Dependent Persons (Formerly § 1-70)

Any person who shall, because of intemperance, or of gambling or for any other reason, refuse or neglect to furnish food, shelter or care to those dependent upon him or her, including any children born out of wedlock, disabled adult or mentally incompetent adult, shall be deemed guilty of a class 3 felony.

Section 340 Contributing to the Delinquency of a Minor (Formerly § 1-80)

- (A) A person who by any act causes, encourages or contributes to the delinquency of a child, as defined by this subchapter or who for any cause is responsible therefore may be found guilty of a class 1 misdemeanor.
- (B) The procedure and prosecution shall be the same as in other criminal cases.

- (C) When the charge concerns the delinquency of a child or children, the offense for convenience may be termed contributory delinquency.
- (D) In order to find a person guilty of violating the provisions of this section, it is not necessary to prove that the child has actually become delinquent if it appears from evidence that through any act, neglect or omission of duty or by any improper act or conduct on the part of such person, the delinquency of a child has been caused or encouraged.

Section 350 Custodial Interference (Formerly § 1-90)

- (A) A person commits custodial interference if, knowing or having reason to know that he or she has no legal right to do so, such person knowingly takes, entices or keeps from lawful custody any child less than 18 years of age or incompetent, entrusted by authority of law to the custody of another person or institution.
- (B) If a child is born out of wedlock, the mother is the legal custodian of the child for the purposes of this section until paternity is established and custody is determined by a Court
- (C) A violation of this section is:
 - (1) A class 3 felony if committed by a person other than the parent or agent of the parent or custodian or agent of the custodian.
 - (2) Notwithstanding paragraph 3 of this section, a class 2 felony if the child or incompetent person is taken, enticed or kept from lawful custody out of this Tribe by the parent or agent of the parent or custodian or the agent of the custodian.
 - (3) A class 3 felony if committed by a parent or agent of the parent or custodian or agent of the custodian.
 - (4) A class 1 misdemeanor if the child or incompetent person is voluntarily returned without physical injury by the parent or defendant or the agent of the parent or defendant no later than forty-eight hours after the parent or defendant takes, entices or keeps from lawful custody the child or incompetent person.

Section 360 Exploitation of Elderly (Formerly § 1-100)

Any person who uses the funds, benefits, or property of a person over the age of 55, for their personal benefit, profit or gain through illegal or improper utilization, is guilty of a class 3 felony.

SUBCHAPTER G CRIMES AGAINST PERSONS (Formerly subchapter C)

Section 400 Abduction (Formerly § 1-120)

Any person who shall willfully take away or detain another person against his will or without consent of the parent, or other person having lawful care or charge of him or her shall be deemed guilty of a class 3 felony, unless the victim is released voluntarily by the defendant without physical injury in a safe place before arrest in which case it is a class 1 misdemeanor.

Section 405 Assault (Formerly § 1-130)

- (A) A person commits assault by:
- (1) Intentionally, knowingly or recklessly causing any physical injury to another person, or
 - (2) Intentionally placing another person in reasonable apprehension of imminent physical injury; or
 - (3) Knowingly touching another person with the intent to injure, insult or provoke such person.
- (B) Assault committed pursuant to subsection A, paragraph 1 is a class 1 misdemeanor. Assault committed pursuant to subsection A, paragraph 2 is a class 2 misdemeanor. Assault committed pursuant to subsection A, paragraph 3 is a class 3 misdemeanor.

Section 410 Aggravated Assault (Formerly §§ 130 & 140)

- (A) A person commits aggravated assault if such person commits assault as prescribed by section 405 under any of the following circumstances:
- (1) If such person causes serious physical injury to another.
 - (2) If such person uses a deadly weapon or dangerous instrument.
 - (3) If such person is eighteen years of age or older and commits the assault on a minor under fifteen years of age.
 - (4) If such person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.
 - (5) If such person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.
 - (6) If such person commits assault as prescribed by section 405 and the person is in violation of an order of protection issued against the person pursuant to sections 1330 & 1335.
 - (7) If the person commits the assault knowing or having reason to know that the victim is any of the following:
 - (a) A law enforcement officer, police officer, peace officer or tribal official, or a person summoned and directed by the officer while engaged in the execution of any official duties.
 - (b) A firefighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person

summoned and directed by such individual while engaged in the execution of any official duties.

- (c) A teacher or other person employed by any school and the teacher or other employee is on the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.
- (d) A licensed health care practitioner, or a person summoned and directed by the licensed health care practitioner while engaged in the person's professional duties. This subdivision does not apply if the person who commits the assault is seriously mentally ill, or is afflicted with Alzheimer's disease or related dementia.
- (e) A prosecutor or lay advocate with the prosecutor's office, while engaged in the execution of any official duties or if the assault results from the execution of the prosecutor's official duties.
- (f) A public defender or a lay advocate with the public defender's office or court appointed counsel, while engaged in the execution of any official duties or if the assault results from the execution of the public defender or a lay advocate with the public defender's office or court appointed council's official duties.
- (g) A Tribal Court judge or bailiff, while engaged in the execution of any official duties or if the assault results from the execution of the Judge or bailiff's official duties.
- (h) A Tribal Council member, while engaged in the execution of any official duties or if the assault results from the execution of the Tribal Council's official duties.
- (i) If the person meets both of the following conditions:
 - (i) Is imprisoned or otherwise subject to the custody of any of the following:
 1. tribal, state or federal department of corrections or detention.
 2. A tribal, state or federal department of juvenile corrections or juvenile detention.
 3. A law enforcement agency.
 4. Any other entity that is contracting with the tribal, state or federal department of corrections or detention, the tribal,

state or federal department of juvenile corrections or detention, a law enforcement agency, another tribe or state, any private correctional facility, a county, a city or the federal bureau of prisons or other federal agency that has responsibility for sentenced or unsentenced prisoners.

- (ii) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities listed in subdivision (1) of this paragraph.
- (B) A person commits aggravated assault if the person commits assault by either intentionally, knowingly or recklessly causing any physical injury to another person, intentionally placing another person in reasonable apprehension of imminent physical injury or knowingly touching another person with the intent to injure the person, and both of the following occur:
- (1) The person intentionally or knowingly impedes the normal breathing or circulation of blood of another person by applying pressure to the throat or neck or by obstructing the nose and mouth either manually or through the use of an instrument.
 - (2) Any of the circumstances exists that are set forth in section 1305(A).
- (C) Aggravated assault pursuant to:
- (1) Subsection A, paragraph 1 or 2 of this section shall be guilty of a class 3 felony, except if the victim is under fifteen years of age in which case it is a class 1 felony.
 - (2) Subsection A, paragraph 4 or 7, or subsection B of this section shall be guilty of a class 2 felony.
 - (3) Subsection A, paragraph 3, 5, or 6 of this section shall be guilty of a class 3 felony.
- (D) A person who is convicted of intentionally or knowingly committing aggravated assault on a peace officer while the officer is engaged in the execution of any official duties pursuant to subsection A, paragraph 1 or 2 of this section shall be sentenced to imprisonment for not less than the presumptive sentence authorized under Chapter 2 of this Title and is not eligible for suspension of sentence, commutation or release on any basis until the sentence imposed is served.

Section 415 Mutilation or Disinterment of Dead Body (Formerly § 1-160)

Any person, who mutilates, disinters or removes the dead body or ashes of a human being from its sepulcher, without authority of law or order of court shall be guilty of a class 2 felony.

Section 420 Removal of Dead Body with Certain Intentions (Formerly § 1-170)

An person who removes the dead body or any part of the dead body of a human being from its sepulcher, grave or other place where the dead body is buried, or from the place where the dead

body is deposited while awaiting burial with intent to sell or dissect the body without authority of law or order of the court shall be guilty of a class 2 felony.

Section 425 Endangerment (Formerly § 1-180)

- (A) A person who recklessly endangers another person with a substantial risk of imminent death or physical injury; or creates such a risk but is unaware of such risk solely by reason of voluntary intoxication shall be deemed guilty of an offense.
- (B) Endangerment involving a substantial risk of imminent death is a class 3 felony. In all other cases, it is a class 1 misdemeanor.

Section 430 False Arrest (Formerly § 1-190)

Any person who shall willfully and knowingly make or cause to be made the unlawful arrest, detention, or imprisonment of another person shall be deemed guilty of a class 1 misdemeanor.

Section 435 Kidnapping (Formerly § 1-200)

- (A) A person commits kidnapping by knowingly restraining another person with the intent to:
 - (1) Hold the victim for ransom, as a shield or hostage; or
 - (2) Hold the victim for involuntary servitude; or
 - (3) Inflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a felony; or
 - (4) Place the victim or a third person in reasonable apprehension of imminent physical injury to the victim or such third person.
- (B) Kidnapping is a class 1 felony unless the victim is released voluntarily by the defendant without physical injury in a safe place before arrest and before accomplishing any of the further enumerated offenses in subsection A of this section in which case it is a class 2 felony. If the victim is released pursuant to an agreement and without any physical injury, it is a class 2 felony. If the victim is under fifteen years of age kidnapping is a class 2 felony Dangerous crime against children, subject to 4 PYTC § 2-205. The sentence for kidnapping of a victim under fifteen years of age shall run consecutively to any other sentence imposed on the defendant and to any undischarged term of imprisonment of the defendant.

Section 445 Harassment (Formerly § 1-220)

- (A) A person commits harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:
 - (1) Anonymously or otherwise contacts, communicates or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses.

- (2) Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist.
 - (3) Repeatedly commits an act or acts that harass another person.
 - (4) Surveils or causes another person to surveil a person for no legitimate purpose.
 - (5) On more than one occasion makes a false report to a law enforcement, credit or social service agency.
 - (6) Interferes with the delivery of any public or regulated utility to a person.
- (B) This section does not apply to an otherwise lawful demonstration, assembly or picketing.
- (C) For the purposes of this section, “harassment” means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person.
- (D) Harassment under subsection A is a class 1 misdemeanor.

Section 446 Aggravated Harassment (Formerly § 1-220(D))

- (A) A person commits aggravated harassment if the person commits harassment as provided in section 445(A) and any of the following applies:
- (1) A court has issued an order of protection or an injunction against harassment against the person and in favor of the victim of harassment and the order or injunction has been served and is still valid.
 - (2) The person has previously been convicted of an offense included in Subchapter P of this Title.
- (B) The victim of any previous offense shall be the same as in the present offense.
- (C) A person who violates subsection A, paragraph 1 of this section is guilty of a class 3 felony. A person who commits a second or subsequent violation of subsection A, paragraph 1 of this section is guilty of a class 2 felony. A person who violates subsection A, paragraph 2 of this section is guilty of a class 3 felony.
- (D) For the purposes of this section, “convicted” means a person who was convicted of an offense included in section 1305 or who was adjudicated delinquent for conduct that would constitute a felony conviction if the juvenile had been tried as an adult for an offense included in section 1305.

Section 450 Unlawful Imprisonment (Formerly § 1-240)

- (A) A person commits unlawful imprisonment by knowingly restraining another person.

- (B) Unlawful imprisonment is a class 3 felony unless the victim is released voluntarily by the defendant without physical injury in a safe place before arrest in which case it is a class 1 misdemeanor.
- (C) In any prosecution for unlawful imprisonment, it is a defense that:
 - (1) The restraint was accomplished by a peace officer or detention officer acting in good faith in the lawful performance of his duty; or
 - (2) The defendant is a relative of the person restrained and the defendant's sole intent is to assume lawful custody of that person and the restraint was accomplished without physical injury.

Section 455 Slander (Formerly § 1-245)

Any person who shall maliciously speak or utter a false tale or speak falsely, with the intent to hurt or injure the reputation or character of another person, shall be deemed guilty of a class 3 misdemeanor.

Section 460 Stalking (Formerly § 1-250)

- (A) A person commits stalking if the person intentionally or knowingly engages in a course of conduct that is directed toward another person and if that conduct either:
 - (1) Would cause a reasonable person to fear for the person's safety or the safety of that person's immediate family member and that person in fact fears for their safety or the safety of that person's immediate family member.
 - (2) Would cause a reasonable person to fear death of that person or that person's immediate family member and that person in fact fears death of that person or that person's immediate family member.
- (B) Stalking under subsection A, paragraph 1 of this section is a class 3 felony. Stalking under subsection A, paragraph 2 of this section is a class 2 felony.
- (C) For the purposes of this section:
 - (1) "Course of conduct":
 - (a) Means any of the following:
 - (i) Maintaining visual or physical proximity to a specific person or directing verbal, written or other threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short.
 - (ii) Using any electronic, digital or global positioning system device to surveil a specific person or a specific person's internet or wireless

activity continuously for twelve hours or more or on two or more occasions over a period of time, however short, without authorization.

(b) Does not include constitutionally protected activity or other activity authorized by law, the other person, the other person's authorized representative or if the other person is a minor, the minor's parent or guardian.

(2) "Immediate family member" means a spouse, parent, child or sibling or any other person who regularly resides in a person's household or resided in a person's household within the past six months.

Section 465 Threatening or Intimidating (Formerly § 1-255)

(A) A person commits threatening or intimidating if the person threatens or intimidates by word or conduct:

(1) To cause physical injury to another person or serious damage to the property of another; or

(2) To cause, or in reckless disregard to causing, serious public inconvenience including, but not limited to, evacuation of a building, place of assembly or transportation facility; or

(3) To cause physical injury to another person or damage to the property of another in order to promote, further or assist in the interests of or to cause, induce or solicit another person to participate in a criminal street gang, a criminal syndicate or a racketeering enterprise.

(B) Any public official who shall threaten any member of the Judicial Branch or the Tribe's law enforcement program with dismissal or loss of position because such person refuses to accept a bribe or perform other illegal action shall be guilty of a class 2 felony.

(C) Threatening or intimidating pursuant to subsection A, paragraph 1 or 2 is a class 1 misdemeanor, except that it is a class 3 felony if:

(1) The offense is committed in retaliation for a victim's either reporting criminal activity or being involved in an organization, other than a law enforcement agency, that is established for the purpose of reporting or preventing criminal activity; or

(2) The person is a criminal street gang member.

(D) Threatening or intimidating pursuant to subsection A, paragraph 3 is a class 2 felony.

Section 470 Disorderly Conduct (Formerly § 1-300)

- (A) A person commits disorderly conduct if, with the intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:
 - (1) Engages in fighting, violent or seriously disruptive behavior, or
 - (2) Makes unreasonable noise, or
 - (3) Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person, or
 - (4) Recklessly handles, displays or discharges a deadly weapon or dangerous instrument, or
 - (5) Uses any obscene or offensive language or gestures in a public place.
- (B) Disorderly conduct under subsection A, paragraph 4 is a class 3 felony. Disorderly conduct under subsection A, paragraph 1, 2, 3 or 5 is a class 1 misdemeanor.
- (C) A public place shall mean any place which is regularly held open to the public for the use of the general public, is owned by the Tribe or Community, is a public street, or is not private property.

SUBCHAPTER H SEXUAL OFFENSES (Formerly Title 4, Chapter 2, Subchapter A)

Section 500 Definitions (Formerly 4 PYTC § 2-10)

In this subchapter, unless the context otherwise requires:

- (A) “Convicted” means:
 - (1) Adults. An adult sex offender is “convicted” for the purposes of this code if the sex offender has been subject to penal consequences based on the conviction, however the conviction may be styled.
 - (2) A juvenile offender is “convicted” for purposes of this code if the juvenile offender is either:
 - (a) Prosecuted and found guilty as an adult for a sex offense; or
 - (b) Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

- (B) “Criminal Offense” means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note)) or other criminal offense.
- (C) “Employee” means an individual who is self-employed or works for any other entity, whether compensated or not.
- (D) “Immediate” and “Immediately” mean within 3 business days.
- (E) “Imprisonment” refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state “prison” as well as in a local or tribal “jail”. Persons under “house arrest” following conviction of a covered sex offense are required to register pursuant to the provisions of this code during their period of “house arrest”.
- (F) “Jurisdiction” – Refers to the 50 states, the District of Columbia, the five principal U.S. territories i.e., the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the United States Virgin Islands – and Indian tribes that elect to function as registration jurisdictions under 42 U.S.C §16927.
- (G) “Minor” means an individual who has not attained the age of 18 years.
- (H) “Oral Sexual Contact” means oral contact with the penis, vulva or anus.
- (I) “Producing” means financing, directing, manufacturing, issuing, publishing or advertising for pecuniary gain.
- (J) “Resides” means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives.
- (K) “Sexual Act” means
 - (1) Contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
 - (2) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
 - (3) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
 - (4) The intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

- (L) “Sexual Conduct” means actual or simulated:
- (1) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex.
 - (2) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.
 - (3) Sexual bestiality.
 - (4) Masturbation for the purpose of sexual stimulation of the viewer.
 - (5) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.
 - (6) Lewd exhibition of the genitals, pubic or rectal areas of any person.
 - (7) Defecation or urination for the purpose of sexual stimulation of the viewer.
- (M) “Sexual Contact” means any direct or indirect fondling or manipulating any part-of the genitals, anus, groin, inner thigh, buttocks or female breast.
- (N) “Sexual Intercourse” means penetration into the penis, vulva or anus by any part of the body or by any object or manual masturbatory contact with the penis or vulva.
- (O) “Sex Offender” means an individual who was convicted of a sex offense.
- (P) “Sex Offense”
- (1) The term “sex offense” as used in this code includes those offenses contained in 42 U.S.C. §16911(5) and those offenses enumerated in Section 210 of this Chapter or any other covered offense under tribal law.
 - (2) Foreign convictions. A foreign conviction is not a sex offense for the purposes of this title if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established under 42 U.S.C. § 16912.
 - (3) Offenses involving consensual sexual conduct. An offense involving consensual sexual conduct is not a sex offense for the purposes of this title if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.
- (Q) “Sex Offender Registry” means a registry of sex offenders, and a notification program, maintained by the Tribe.
- (R) “SORNA” means the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. §16911 et. seq., as amended.

- (S) “Specified Offense Against A Minor” to include all offenses by child predators. The term “specified offense against a minor” means an offense against a minor that involves any of the following:
- (1) An offense (unless committed by a parent or guardian) involving kidnapping.
 - (2) An offense (unless committed by a parent or guardian) involving false imprisonment.
 - (3) Solicitation to engage in sexual conduct.
 - (4) Use in a sexual performance.
 - (5) Solicitation to practice prostitution.
 - (6) Video voyeurism as described in 18 U.S.C. § 1801.
 - (7) Possession, production, or distribution of child pornography.
 - (8) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
 - (9) Any conduct that by its nature is a sex offense against a minor.
- (T) “Simulated” means any depicting of the genitals or rectal areas which gives the appearance of sexual conduct or incipient sexual conduct.
- (U) “Spouse” means a person who is legally married and cohabitating.
- (V) “Student” means an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.
- (W) “Tier 1 Sex Offender”. A “tier 1 sex offender”, or a “sex offender” designated as “tier 1”, is one that has been convicted of a “tier 1” sex offense as defined in Section 620.
- (X) “Tier 2 Sex Offender”. A “tier 2 sex offender”, or a “sex offender” designated as “tier 2”, is one that has been either convicted of a “tier 2” sex offense as defined in Section 625, or who is subject to the recidivist provisions of Section 625(B).
- (Y) “Tier 3 Sex Offender”. A “tier 3 sex offender”, or a “sex offender” designated as “tier 3”, is one that has been either convicted of a “tier 3” sex offense as defined in Section 630, or who is subject to the recidivist provisions of Section 630(B).
- (Z) “Visual or Print Medium” means:
- (1) Any film, photograph, videotape, negative, slide electronic and digital devices, compact disks, computers, digital hard drives, digital storage devices; or

- (2) Any book magazine or other form of publication or photographic reproduction containing or incorporating in any manner any film, photograph, videotape, negative or slide, electronic and digital devices, compact disks, computers, digital hard drives, digital storage devices.

(AA) “Without Consent” includes the following:

- (1) The victim is coerced by the immediate use or threatened use of force against a person or property.
- (2) The victim is incapable of consent by reason of mental disorder, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonable been known to the defendant.
- (3) The victim is intentionally deceived as to the nature of the act.
- (4) The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.

Section 505 Indecent Exposure; Classifications (Formerly 4 PYTC § 2-20)

- (A) A person commits indecent exposure if he or she exposes his or her genitals or anus or she exposes the areola or nipple of her breast or breasts and another person is present and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act.
- (B) Indecent exposure is a class 1 misdemeanor, except for any subsequent conviction for this offense shall be a class 3 felony. Indecent exposure to a person under the age of 15 years is a class 3 felony.
- (C) Indecent exposure does not include an act of breast-feeding by a mother.

Section 510 Public Sexual Indecency; Public Sexual Indecency to Minor; Classification (Formerly 4 PYTC § 2-30)

- (A) A person commits public sexual indecency by intentionally or knowingly engaging in any of the following acts, if another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act:
 - (1) An act of sexual contact.
 - (2) An act of oral sexual contact.
 - (3) An act of sexual intercourse.
 - (4) An act involving contact between the person's mouth, vulva or genitals and the anus or genitals of an animal.

- (B) A person commits public sexual indecency to a minor if he intentionally or knowingly engages in any of the acts listed in subsection A and such person is reckless whether a minor under the age of 15 years is present.
- (C) Public sexual indecency is a class 1 misdemeanor. Public sexual indecency to a minor is a class 2 felony.

Section 515 Sexual Abuse; Classifications (Formerly 4 PYTC § 2-40)

- (A) A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person 14 or more years of age without consent of that person or with any person who is under 14 years of age if the sexual contact involves only the female breast.
- (B) Sexual abuse is a class 2 felony unless the victim is under 14 years of age in which case sexual abuse is a class 1 felony.

Section 520 Sexual Conduct with a Minor; Classification (Formerly 4 PYTC § 2-50)

- (A) A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under 18 years of age.
- (B) Sexual conduct with a minor under fourteen years of age is a class 1 felony and is punishable pursuant to 4 PYTC § 2-205. Sexual conduct with a minor 14 years of age or over is a class 1 felony.
- (C) Sexual conduct with a minor who is at least fourteen years of age is a class 1 felony if the person is or was the minor's parent, stepparent, adoptive parent, legal guardian or foster parent or the minor's teacher or clergyman or priest

Section 525 Sexual Assault; Classification; Increased Punishment (Formerly 4 PYTC § 2-60)

- (A) A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.
- (B) Sexual assault is a class 1 felony and the person convicted is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement until the sentence imposed by the Court has been served. If the victim is under 15 years of age, sexual assault is punishable pursuant to 4 PYTC § 2-205.
- (C) Notwithstanding the provisions of 4 PYTC § 1-410, if the sexual assault involved the use or exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has previously been convicted of sexual assault, or any offense committed outside the reservation which if committed on the reservation would constitute sexual assault, the person shall be sentenced to the aggravated term of imprisonment and a \$5,000.00 fine and is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement.

- (D) The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.

Section 530 Sexual Assault of a Spouse; Definition; Violation; Classification (Formerly 4 PYTC § 2-70)

- (A) A person commits sexual assault of a spouse by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with a spouse without consent of the spouse by the immediate or threatened use of force against the spouse or another.
- (B) A first offense sexual assault of a spouse is a class 3 felony. The judge has discretion to enter judgment for conviction of a class 1 misdemeanor only upon completion of mandatory counseling. Any subsequent sexual assault of a spouse is a class 2 felony and the person convicted is not eligible for suspension or commutation or sentence, probation, pardon, parole, work furlough or release from confinement until the sentence imposed by the Court has been served. Convictions for two or more offenses not committed on the same occasion but consolidated for trial purposes shall not be counted as prior convictions for purposes of this section.
- (C) A person convicted under this section may, in the discretion of the Court, be exempt from the registration requirements of Sections 600 & 610 of this chapter.

Section 535 Defenses; Responsibility (Formerly 4 PYTC § 2-80)

- (A) It is a defense to a prosecution pursuant to Sections 515 and 520, involving a minor, if the act was done in furtherance of lawful medical practice.
- (B) It is a defense to a prosecution pursuant to Sections 515 and 520, in which the victim's lack of consent is based on incapacity to consent because the victim was 14, 15, 16 or 17 years of age, if at the time the defendant engaged in conduct constituting the offense, the defendant did not know and could not reasonably have known the age of the victim.
- (C) It is a defense to a prosecution pursuant to Sections 505, 515, 520, and 525, if the act was done by a duly licensed physician or registered nurse or a person acting under his or her direction, or any other person who renders emergency care at the scene of an emergency occurrence, and consisted of administering a recognized and lawful form of treatment which was reasonably adapted to promoting the physical or mental health of the patient and the treatment was administered in an emergency when the duly licensed physician or registered nurse or a person acting under his or her direction, or any other person rendering emergency care at the scene of an emergency occurrence, reasonably believed that no one competent to consent could be consulted and that a reasonable person, wishing to safeguard the welfare of the patient would consent.
- (D) It is a defense to a prosecution pursuant to Sections 515, 520 and 525 that the person was the spouse of the other person at the time of commission of the act. It is not a defense to a prosecution pursuant to Section 530 that the defendant was the spouse of the victim at the time of the commission of the act.

- (E) It is a defense to prosecution pursuant to Sections 515 and 540 if both the defendant and the victim are of the age of 14, 15, 16 or 17 and the conduct is consensual.
- (F) Temporary intoxication resulting from the voluntary ingestion, consumption, inhalation or injection of alcohol and illegal substance under Subchapter O of Chapter 1 of this Title, or other psychoactive substance or the abuse of prescribed medications does not constitute insanity and is not a defense for any criminal act or requisite state of mind.

Section 540 Molestation of Child; Classification (Formerly 4 PYTC § 2-90)

- (A) A person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, with a child who is under fourteen years of age.
- (B) Molestation of a child is a class 1 felony that is punishable pursuant to 4 PYTC § 2-205.

Section 545 Child Abuse; Definitions; Classification (Formerly 4 PYTC § 2-100)

- (A) In this section, unless the context otherwise requires:
 - (1) “Abuse” means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or outward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and which is caused by the acts or omissions of an individual having care custody and control of a child. Abuse shall include inflicting or allowing sexual abuse pursuant to Section 515, sexual conduct with a minor pursuant to Section 520, sexual assault pursuant to Section 525, molestation of a child pursuant to Section 540, commercial sexual exploitation of a minor pursuant to Section 560, sexual exploitation of a minor pursuant to Section 565, incest pursuant to Title 4 Chapter 1 of the Pascua Yaqui Tribal Code or child prostitution.
 - (2) “Child, youth or juvenile” means an individual who is under the age of 18 years of age.
 - (3) “Physical Injury” the impairment of physical condition and includes but shall not be limited to any skin bruising, bleeding, failure to thrive, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition which imperils a child’s health or welfare.
 - (4) “Serious physical injury” means physical injury which creates a reasonable risk of death or which causes serious or permanent disfigurement or serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.
- (B) Under circumstances likely to produce death or serious physical injury, any person who causes a child to suffer physical injury or, having the care or custody of such child, causes or permits the person or health of such child to be injured or causes or permits such child

to be placed in a situation where its person or health is endangered is guilty of an offense as follows:

- (1) If done intentionally or knowingly, the offense is a class 1 felony and if the victim is under 15 years of age, it is punishable pursuant to 4 PYTC § 2-205.
 - (2) If done recklessly, the offense is a class 2 felony.
 - (3) If done with criminal negligence, the offense is a class 2 felony.
- (C) Under circumstances other than those likely to produce death or serious physical injury to a child, any person who causes a child to suffer physical injury or abuse except for those acts in the definition which are declared unlawful by another section of this chapter or, having the care or custody of such child, causes or permits the person or health of such child to be injured or causes or permits such child to be placed in a situation where its person or health is endangered is guilty of an offense as follows:
- (1) If done intentionally or knowingly, the offense is a class 2 felony.
 - (2) If done recklessly, the offense is a class 2 felony.
 - (3) If done with criminal negligence, the offense is a class 3 felony.

Section 550 Justification; Use of Physical Force (Formerly 4 PYTC § 2-110)

- (A) The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under the following circumstance:
- (B) A parent or guardian and a teacher or other person entrusted with the care and supervision of a minor or incompetent person may use reasonable and appropriate physical force upon the minor or incompetent person when and to the extent reasonably necessary and appropriate to maintain discipline, self-defense or to protect the child from injuring itself or others.

Section 555 Duty and Authorization to Report Non-Accidental Injuries; Physical Neglect and Denial or Deprivation of Necessary Medical or Surgical or Nourishment of Minors; Duty to make Medical Records Available; Exception; Violation; Classification (Formerly 4 PYTC § 2-120)

- (A) Any physician, hospital intern or resident, surgeon, dentist, osteopath, chiropractor, podiatrist, medical examiner, nurse, psychologist, school personnel, social worker, peace officer, parent counselor, clergyman or priest or any other person having responsibility for the care or treatment of children whose observation or examination of any minor discloses reasonable grounds to believe that a minor is or has been the victim of injury, sexual abuse, pursuant to Section 515, sexual conduct with a minor pursuant to Section 520, sexual assault pursuant to Section 525, molestation of a child pursuant to Section 540, or commercial sexual exploitation of a minor pursuant to Section 560, abuse or physical neglect which appears to have been inflicted upon such minor by other than accidental

means or which is not explained by the available medical history as being accidental in nature or who has reasonable grounds to believe there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant shall immediately report or cause reports to be made of such information to a peace officer or to the child protective services of the tribal social services.

- (B) A clergyman, priest, traditional medicine man or medicine woman who has received a confidential communication or a confession in his role as a clergyman, priest or a traditional medicine man or medicine woman, in the course of the discipline enjoined by the church to which he or she belongs may withhold reporting of the communication or confession if the clergyman, priest, medicine man or medicine woman determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the clergyman, priest, traditional medicine man or medicine woman may otherwise make of the minor.
- (C) No report is required under this section for conduct prescribed by Sections 515 and 520 if the conduct involves only minors age 14, 15, 16 or 17 and there is nothing to indicate that the conduct is other than consensual. Such reports shall be made forthwith by a written report within 72 hours. Such reports shall contain:
 - (1) The names and addresses of the minor and his parents or person or persons having custody of such minor, if known.
 - (2) The minor's age and the nature and extent of his injuries or physical neglect, including any evidence of previous injuries or physical neglect.
 - (3) Any other information that such person believes might be helpful in establishing the cause of the injury or physical neglect.
- (D) Any person other than one required to report or cause reports to be made in Subsection (A) of this section who has reasonable grounds to believe that a minor is or has been a victim of abuse or neglect may report the information to a peace officer or to the child protective services of the tribal social services department.
- (E) A person having custody or control of medical records of a minor from whom a report is required or authorized under this section shall make such records, or a copy of such records, available to a peace officer or child protective services worker investigating the minor's neglect or abuse on written request for the records signed by the peace officer or child protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.
- (F) When such telephone or in-person reports are received by the peace officer, they shall immediately notify the Tribal Social Services and make such information available to them. Notwithstanding any other statute, when the Tribal Social Services receives these reports by telephone or in person, it shall immediately notify the Pascua Yaqui Tribal Police Department.

- (G) Any person required to receive reports pursuant to Subsection (A) of this section may take or cause to be taken photographs of the child and the vicinity involved. Medical examinations including, but not limited to, radiological examinations of the involved child may be performed.
- (H) A person furnishing a report, information or records required or authorized under this Section or a person participating in a judicial or administrative proceeding or investigation result from a report, information or records required or authorized under this section, shall be immune from any civil or criminal liability by reason of such action unless such person acted with malice or unless such person has been charged with or is suspected of abusing or neglecting the child or children in question. Except as provided in Subsection (G) of this Section, the physician-patient privilege, provided for by professions such as the practice of social, work or nursing covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation or administrative proceeding in which a child's neglect, dependency, abuse or abandonment is an issue nor in any judicial or administrative proceedings resulting from a report, information or records submitted pursuant to this section nor in any investigation of a child's neglect or abuse conducted by a peace officer or the child protective services of the Tribal Social Services Department.
- (I) In any civil or criminal litigation in which a child's neglect, dependency, abuse or abandonment is an issue, a clergyman, priest, traditional medicine man or medicine woman, shall not, without his or her consent, be examined as a witness concerning any confession made to him or her in his or her role as a clergyman, a priest, a traditional medicine man or medicine woman in the course of the discipline enjoined by the church or tradition to which he or she belongs. Nothing in this subsection discharges a clergyman, priest, traditional medicine man or medicine woman from the duty to report pursuant to Subsection (A) of this section.
- (J) If psychiatric records are requested pursuant to Subsection (C) of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:
- (1) Personal information about individuals other than the patient.
 - (2) Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.
- (K) If any portion of a psychiatric record is excised pursuant to Subsection (J) of this section, a Court, upon application of a peace officer or child protective services worker, may order that the entire record or any portion of such record containing information relevant to the reported abuse or neglect be made available to the peace officer or child protective services worker investigating the abuse or neglect.

(L) A person who violates any provision of this section is guilty of a class 1 misdemeanor except if the failure to report involves a reportable offense, the person is guilty of a class 3 felony.

(M) For purposes of this section:

(1) “Reportable offense” means any of the following:

(a) Any offense listed in subchapter H of this title.

(b) Child prostitution pursuant to section 1305.

Section 560 Commercial Sexual Exploitation of a Minor; Classification (formerly 4 PYTC § 2-130)

(A) A person commits commercial sexual exploitation of a minor by knowingly:

(1) Using, employing, persuading, enticing, inducing or coercing a minor to engage in or assist others to engage in sexual conduct for the purpose of producing any visual or print medium or live act depicting such conduct.

(2) Using, employing, persuading, enticing, inducing or coercing a minor to expose the genitals or anus or the areola or nipple of the female breast for financial or commercial gain.

(3) Permitting a minor under such person’s custody or control to engage in or assist others to engage in sexual conduct for the purpose of producing any visual or print medium or live act depicting such conduct.

(4) Transporting or financing the transportation of any minor through or across the Pascua Yaqui Tribe Reservation with the intent that such minor engage in prostitution or sexual conduct for the purpose of producing a visual or print medium or live act depicting such conduct.

(B) Commercial sexual exploitation of a minor is a class 1 felony and if the minor is under 15 years of age, it is punishable pursuant to 4 PYTC § 2-205.

Section 565 Sexual Exploitation of a Minor; Evidence, Classification (Formerly 4 PYTC § 2-140)

(A) A person commits sexual exploitation of a minor by knowingly:

(1) Recording, filming, photographing, developing or duplicating any visual or print medium in which minors are engaged in sexual conduct.

(2) Distributing, transporting, exhibiting, receiving, selling, purchasing, possessing or exchanging any visual or print medium in which minors are engaged in sexual conduct.

- (B) If any visual depiction of sexual exploitation of a minor is admitted into evidence, the court shall seal that evidence at the conclusion of any proceeding, hearing or trial.
- (C) Sexual exploitation of a minor is a class 1 felony and if the minor is under 15 years of age, it is punishable pursuant to 4 PYTC § 2-205.

Section 570 Portraying Adult as Minor; Classification (Formerly 4 PYTC § 2-150)

- (A) It is unlawful for any person depicted in a visual or print medium or live act as a participant in sexual conduct to masquerade as a minor.
- (B) It is unlawful for any person knowingly to produce, record, film, photograph, develop, duplicate, distribute, transport, exhibit, sell, purchase or exchange any visual or print medium whose text, title or visual representation depicts a participant in sexual conduct as a minor even though any such participant is an adult.
- (C) Any person who violates this section is guilty of a class 1 misdemeanor.

Section 575 Permissible Inferences (Formerly 4 PYTC § 2-160)

In a prosecution relating to the sexual exploitation of children, the trier of fact may draw the inference that a participant is a minor if the visual or print medium or live act through its title, text or visual representation depicts the participant as a minor.

Section 580 Admitting Minors to Public Displays of Sexual Conduct; Constructive Knowledge of Age; Classification (Formerly 4 PYTC § 2-170)

- (A) It is unlawful for an owner, operator or employee to admit a person under the age of 18 into any business establishment where persons, in the course of their employment, expose their genitals or anus or the areola or nipple of the female breast.
- (B) An owner, operator or employee who admits a person to an establishment without evidence of the person's age is deemed to have constructive knowledge of the person's age.
- (C) A person who violates this section is guilty of a class 3 felony.

Section 585 Detention for Obtaining Evidence of Identifying Physical Characteristics (Formerly 4 PYTC § 2-180)

- (A) A peace officer who is engaged, within the scope of his authority, in the investigation of an alleged criminal offense under this chapter may make written application upon oath or affirmation to a Tribal Court Judge for an order authorizing the temporary detention, for the purpose of obtaining evidence of identifying physical characteristics, of an identified or particularly described individual residing in or found in the Tribal Court's jurisdiction. The order shall require the presence of the identified or particularly described individual at such time and place as the Court shall direct for obtaining the identifying physical characteristic evidence. Such order may be issued by the Tribal Judge upon a showing of all of the following:

- (1) Reasonable cause for belief that a specifically described criminal offense punishable under this chapter has been committed.
 - (2) Procurement of evidence of identifying physical characteristics from an identified or particularly described individual may contribute to the identification of the individual who committed such offense.
 - (3) Such evidence cannot otherwise be obtained by the investigating officer from either the law enforcement agency employing the affiant or the criminal identification division of the Bureau of Indian Affairs Police, Federal Bureau of Investigation or Tucson Police Department.
- (B) Any order issued pursuant to the provisions of this section shall specify the following:
- (1) The alleged criminal offense which is the subject of the application.
 - (2) The specific type of identifying physical characteristic evidence which is sought.
 - (3) The relevance of such evidence to the particular investigation.
 - (4) The identity or description of the individual who may be detained for obtaining such evidence.
 - (5) The name and official status of the investigating officer authorized to effectuate such detention and obtain such evidence.
 - (6) The place at which the obtaining of such evidence shall be effectuated.
 - (7) The time that such evidence shall be taken except that no person may be detained for a period of more than three hours for the purpose of taking such evidence.
 - (8) The period of time, not exceeding 15 days, during which the order shall continue in force and effect. If the order is not executed within 15 days, a new order may be issued, pursuant to the provisions of this section.
- (C) The order issued pursuant to this section shall be returned to the Court not later than 30 days after its date of issuance and shall be accompanied by a sworn statement indicating the type of evidence taken. The Court shall give to the person from whom such evidence was taken a copy of the order and copy of the sworn statement indicating what type of evidence was taken, if any.
- (D) For the purpose of this section, “identifying physical characteristics” includes, but is not limited to, the fingerprints, palm prints, footprints, measurements, handwriting, hand printing, sound of voice, blood samples, urine samples, saliva samples, hair samples, comparative personal appearance or photographs of an individual.

Section 590 Giving Sexually Transmitted Disease to Another (Formerly 4 PYTC § 1-210)

- (A) Any person who shall knowingly infect another person with a sexually transmitted disease shall be deemed guilty of a class 3 felony, except if the transfer of the sexually transmitted diseased occurred during the commission of sex offense in sections 515, 520, 525, 530, 540, 560, or 565 then the offense is a class 2 felony. In addition to any sentence imposed by the Court for a violation of this section, such person so convicted shall be ordered and compelled to have a medical examination and treatment for such disease until cured or under control.
- (B) The local Health Department shall conduct confidential notification of persons known to have been exposed to sexually transmitted diseases, and/or blood borne diseases, such as HIV and hepatitis.
- (C) It is not an act of unprofessional conduct for a physician to disclose the fact that their patient is infected with the human immune-deficiency virus, if the disclosure is limited to the patient's spouse or sex partner. This section does not impose a duty to disclose information, and a physician is not civilly liable for either disclosing or not disclosing information

Section 595 Sex Trafficking

- (A) Whoever knowingly--
 - (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or
 - (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection 35(A)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (B).
- (B) A person who violates this section is guilty of a class 2 felony. Sex Trafficking of a minor is a class 1 felony, punishable pursuant to 4 PYTC § 2-205.

**SUBCHAPTER I SEX OFFENDER REGISTRATION NOTIFICATION
(Formerly Title 4 Chapter 2 subchapter B)**

Section 600 Registration of Sex Offenders (Formerly 4 PYTC § 2-190)

- (A) The Pascua Yaqui Tribe shall maintain a sex offender registry.

- (B) Duties. A sex offender covered by this ordinance who is required to register with the tribe shall provide all of the information detailed in this chapter to the tribal police department or designee, and the tribal police department or designee shall obtain all of the information detailed in this chapter from covered sex offenders who are required to register with the tribe in accordance with this code and implementing policies and procedures.
- (C) Digitization. All information obtained under this code shall be, at a minimum, maintained by the police department or designee in digitized format.
- (D) Electronic Database. A sex offender registry shall be maintained in an electronic database by the police department or designee and shall be in a form capable of electronic transmission, or otherwise electronically accessible by other jurisdictions.

Section 605 Where Registration Is Required (Formerly 4 PYTC § 2-190)

- (A) Jurisdiction of Conviction. A sex offender must initially register in the jurisdiction where the sex offender was convicted of a covered sex offense regardless of the sex offender's actual or intended residency.
- (B) Jurisdiction of Incarceration. A sex offender must register in each jurisdiction in which the sex offender is incarcerated while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.
- (C) Jurisdiction of Residence. A sex offender who resides within the exterior boundaries of the reservation or otherwise resides on property owned by the tribal jurisdiction in fee or trust regardless of location must register with the tribe.
- (D) Jurisdiction of Employment. A sex offender shall register with the tribe if employed by the tribe in any capacity or otherwise is employed within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location.
- (E) Jurisdiction of School Attendance. A sex offender shall register with the tribe if they are a student in any capacity within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location.

Section 610 Covered Offenses (Formerly 4 PYTC § 2-210)

- (A) Offenders who reside within the exterior boundaries of the reservation or otherwise reside on property owned by the tribe in fee or trust regardless of location, are employed within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location, or who attend school within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location, that have been convicted of the following offenses are subject to the requirements of this code:
 - (1) Attempts and Conspiracies. Any attempt or conspiracy to commit any sex offense.

- (2) Federal Offenses. A conviction for any of the following, and any other offense here after included within SORNA:
- (a) 18 U.S.C. §1591 (sex trafficking of children),
 - (b) 18 U.S.C. §2241 (aggravated sexual abuse),
 - (c) 18 U.S.C. §2242 (sexual abuse),
 - (d) 18 U.S.C. §2243 (sexual abuse of a minor or ward),
 - (e) 18 U.S.C. §2244 (abusive sexual contact),
 - (f) 18 U.S.C. §2245 (offenses resulting in death),
 - (g) 18 U.S.C. §2251 (sexual exploitation of children),
 - (h) 18 U.S.C. §2251A (selling or buying of children),
 - (i) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
 - (j) 18 U.S.C. §2252A (material containing child pornography),
 - (k) 18 U.S.C. §2252B (misleading domain names on the internet),
 - (l) 18 U.S.C. §2252C (misleading words or digital images on the internet),
 - (m) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),
 - (n) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
 - (o) 18 U.S.C. §2424 (failure to file factual statement about an alien individual), and
 - (p) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).
- (3) Foreign Offenses. Any conviction for a sex offense involving any conduct listed in paragraph (F) below which was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, and any foreign country where the United States State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally (or vigorously) enforced the right to a fair trial in that country during the year in which the conviction occurred. \
- (4) Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. 951).

- (5) Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241) and committed by a minor who is 14 years of age or older.
- (6) Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including this tribe, which involves:
 - (a) Any type of degree of genital, oral, or anal penetration,
 - (b) Any sexual touching of or contact with a person's body, either directly or through the clothing,
 - (c) Kidnapping of a minor,
 - (d) False imprisonment of a minor,
 - (e) Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,
 - (f) Use of a minor in a sexual performance,
 - (g) Solicitation of a minor to practices prostitution,
 - (h) Video voyeurism of a minor as described in 18 U.S.C. §1801,
 - (i) Possession, production, or distribution of child pornography,
 - (j) Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,
 - (k) Any conduct that by its nature is a sex offense against a minor, and
 - (l) Any offense similar to those outlined in:
 - (i) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
 - (ii) 18 U.S.C. §1801 (video voyeurism of a minor),
 - (iii) 18 U.S.C. §2241 (aggravated sexual abuse),
 - (iv) 18 U.S.C. §2242 (sexual abuse),
 - (v) 18 U.S.C. §2244 (abusive sexual contact),

- (vi) 18 U.S.C. §2422(b)(coercing a minor to engage in prostitution),
- (vii) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).”

Section 615 Tiering of Offenses (Formerly 4 PYTC § 2-211)

General. Sex offenses prosecuted in any jurisdiction, tribal government, local government, state government or qualifying foreign country pursuant to Section 610 (A)(3) will be tiered in a manner consistent with the most similar corresponding federal offenses and offenses outlined in Section 620(E), 625(E) and 630(E).

Section 620 Tier 1 Offenses (Formerly 4 PYTC § 2-220)

- (A) Sex Offenses. A “Tier 1” offense includes any sex offense for which a person has been convicted by any jurisdiction, tribal government, local government or qualifying foreign country pursuant to Section 610(A)(3) that involves any sexual act or sexual contact with another person that is not included in Section 625 or Section 630.
- (B) Offenses Involving Minors. A “Tier 1” offense also includes any offenses for which a person has been convicted by a jurisdiction, tribal government, local government or qualifying foreign country pursuant to Section 610(A)(3) that involves the false imprisonment of a minor, video voyeurism of a minor or possession or receipt of child pornography.
- (C) Federal Offenses. All federal offenses will be tiered in accordance with the most current federal tiering classification and definitions.
- (D) Certain Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. §951) that is similar to those offenses outlined in Section 620(A),(B) or (C) shall be considered “Tier 1” offenses.
- (E) Tribal Offenses. Conviction for any of the following tribal offenses shall be considered “Tier 1” offenses:
 - (1) 4 PYTC § 1-505(A) Indecent Exposure
 - (2) 4 PYTC § 1-510(A) Public Sexual Indecency

Section 625 Tier 2 Offenses (Formerly 4 PYTC § 2-230)

- (A) Recidivism and Felonies. Unless otherwise covered by Section 630, any offense which is not the first sex offense for which a person has been convicted that is punishable by more than one year in jail or any similar tribal offense that if committed in any tribal jurisdiction or state would be considered a felony is considered a “Tier 2” offense.

- (B) Offenses Involving Minors. A “Tier 2” offense includes any sex offenses for which a person has been convicted by a jurisdiction, tribal government, local government or qualifying foreign country pursuant to Section 610(A)(3) that involves:
 - (a) The use of minors in prostitution, including solicitations,
 - (b) Enticing a minor to engage in criminal sexual activity,
 - (c) Sexual contact with a minor 13 years of age or older, whether direct or through the clothing, that involves the intimate parts of the body,
 - (d) The use of a minor in a sexual performance, or
 - (e) The production for distribution of child pornography.
- (C) Federal Offense. All federal offenses will be tiered in accordance with the most current federal tiring classification and definitions.
- (D) Certain Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. §951) that is similar to those offenses outlined in Section 620(A),(B) or (C) shall be considered “Tier 1” offenses.
- (E) Tribal Offenses. Conviction for any of the following tribal offenses shall be considered “Tier 2” offenses:
 - (a) 4 PYTC § 1-505(B) Indecent Exposure (to a person under the age of 15 years)
 - (b) 4 PYTC § 1-510(B) Public Sexual Indecency to a Minor
 - (c) 4 PYTC § 1-570 Portraying Adult as Minor
 - (d) 4 PYTC § 1-580 Admitting Minors to Public Displays of Sexual Conduct

Section 630 Tier 3 Offenses (Formerly 4 PYTC § 2-240)

- (A) Recidivism and Felonies. Any sex offense that is punishable by more than one year in jail or any similar tribal offense that if committed in any tribal jurisdiction or state would be considered a felony, is, where the offender has at least one prior conviction for a Tier 2 sex offense is a “Tier 3” offense
- (B) General Offenses. A “Tier 3” offense includes any sex offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to Section 610(A)(3) that involves:
 - (1) Non-parental kidnapping of a minor,
 - (2) A sexual act with another by force or threat,

- (3) A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate, or
 - (4) Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.
- (C) Federal Offenses. All federal offenses will be tiered in accordance with the most current federal tiering classifications and definitions.
 - (D) Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. §951) that is similar to those offenses outlined in Section 630(A),(B), or (C) shall be considered “Tier 3” offenses.
 - (E) Tribal Offenses. Convictions for any of the following tribal offenses shall be considered “Tier 3” offenses:
 - (1) 4 PYTC § 1-515 Sexual Abuse
 - (2) 4 PYTC § 1-520 Sexual Conduct with a Minor
 - (3) 4 PYTC § 1-525 Sexual Assault
 - (4) 4 PYTC § 1-530 Sexual Assault of a Spouse
 - (5) 4 PYTC § 1-540 Molestation of Child
 - (6) 4 PYTC § 1-560 Commercial Sexual Exploitation of a Minor
 - (7) 4 PYTC § 1-565 Sexual Exploitation of a Minor

Section 635 Registry Requirements for Sex Offenders (Formerly 4 PYTC § 2-250)

- (A) In general. A sex offender shall register, and keep the registration current. The sex offender must notify the Pascua Yaqui Tribe where the offender resides, where the offender is an employee, and where the offender is a student.
- (B) Initial registration. The sex offender shall initially register--
 - (1) Before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or
 - (2) Not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.
- (C) Keeping the registration current. A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person and inform the Pascua Yaqui Tribe of all changes in the information required for that offender

in the sex offender registry. The Pascua Yaqui Tribe shall immediately provide that information to all other jurisdictions in which the offender is required to register.

- (D) Initial registration of sex offenders unable to comply with paragraph (B) above. The Pascua Yaqui Tribe shall have the authority to specify the applicability of the requirements of this Ordinance to sex offenders convicted before the enactment of this Ordinance or its implementation, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with paragraph (B) above.

Section 640 Information Required In Registration (formerly 4 PYTC § 2-260)

- (A) Provided by the offender. The sex offender shall provide the following information to the tribal police department, or designee, for inclusion in the sex offender registry:
 - (1) The name of the sex offender (including any alias used by the individual).
 - (2) The date of birth (actual and purported) of the sex offender
 - (3) Internet Identifiers and Addresses - all designations used by sex offenders for purposes of routing or self-identification in Internet communications or postings.
 - (4) The telephone numbers (both fixed location and cell phones) and any other designations used by the sex offender for purposes of routing or self-identification in telephonic communications.
 - (5) A valid or purported Social Security number of the sex offender.
 - (6) The address of each residence at which the sex offender resides or will reside. Sex offenders who lack fixed abodes are nevertheless required to register. Such sex offenders must provide some more or less specific description concerning the place or places where such a sex offender habitually lives.
 - (a) Temporary Lodging Information. Sex offenders must provide information about any place in which the sex offender is staying when away from his residence for seven or more days, including identifying the place and the period of time the sex offender is staying there.
 - (7) Travel and Immigration Documents and International Travel.
 - (a) Travel and Immigration Documents. Sex offenders must produce or provide information about their passports, if they have passports. Sex offenders who are aliens must produce or provide information about documents establishing their immigration status.
 - (b) International Travel Notice. For travel abroad, sex offenders must inform their residence jurisdictions 21 days in advance if they intend to travel outside of the United States. Jurisdictions must notify the U.S. Marshals Service and immediately notify any other jurisdiction where the sex

offender is either registered, or is required to register, of that updated information. Update also must be made to NCIC/NSOR.

- (8) The name and address of any place where the sex offender is an employee or will be an employee. Sex offenders must also provide the name and address information for any place where the sex offender works as a volunteer or otherwise works without remuneration.
 - (a) Sex offenders who are employed, but do not have a fixed place of employment, must provide information regarding the places where such a sex offender works with whatever definiteness is possible under the circumstances, such as information about normal travel routes or the general area(s) in which the sex offender works
 - (9) Professional Licenses. Sex offenders must provide information about the licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.
 - (10) The name and address of any place where the sex offender is a student or will be a student.
 - (11) The license plate and registration number and a description of any vehicle (including land vehicles, aircraft, or watercraft) owned or operated by the sex offender.
 - (a) The sex offender shall indicate whether the vehicles owned or operated by the sex offender are for work or personal use.
 - (b) The sex offender shall indicate the permanent or frequent location where all vehicles are kept.
 - (12) Any other information required by the Pascua Yaqui Tribe.
- (B) Provided by the Tribe. The Tribe shall ensure that the following information is included in the registry for that sex offender:
- (1) A physical description of the sex offender. This shall include any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.
 - (2) The text of the provision of law defining the criminal offense for which the sex offender is registered. This information shall be cross linked to the SORNA database containing the text of relevant sex related laws for all jurisdictions.
 - (3) The criminal history of the sex offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.
 - (4) A current photograph of the sex offender.
 - (a) Update requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:

- (i) Every 90 days for Tier 3 sex offenders,
 - (ii) Every 180 days for Tier 2 sex offenders,
 - (iii) Every year for Tier 1 sex offenders.
- (5) A set of fingerprints and palm prints of the sex offender.
 - (6) A DNA sample of the sex offender for the purpose of analysis and entry of the resulting DNA profile into the Combined DNA Index System (CODIS).
 - (7) A photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.
 - (8) Any other information required by the Tribe.

Section 645 Duration of Registration Requirement; Verification and Appearance Requirements (formerly 4 PYTC § 2-270)

- (A) Full registration period. A sex offender shall keep the registration current for the full registration period (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b). The full registration period is--
 - (1) 15 years, if the offender is a tier I sex offender;
 - (2) 25 years, if the offender is a tier II sex offender; and
 - (3) The life of the offender, if the offender is a tier III sex offender.
- (B) Frequency. A sex offender who is or should be registered with the Tribe shall, at a minimum, appear in person at the Tribal Police Department, allow the Tribe to take a current photograph, and verify the information in each registry in which that offender is required to be registered not the less frequently than-
 - (1) For purposes of keeping registration current in accordance with the following time frames:
 - (a) For “Tier 1” offenders, once every year for 15 years from the date of conviction,
 - (b) For “Tier 2” offenders, once every 180 days for 25 years from the date of conviction,
 - (c) For “Tier 3” offenders, once every 90 days for the rest of their lives.
 - (2) Reduction of Registration Periods. A sex offender may have their period of registration reduced as follows:

- (a) A Tier 1 offender may have their period of registration and verification reduced by 5 years if they have maintained a clean record for 10 consecutive years.
 - (b) A Tier 3 offender may have their period of registration and verification reduced to 25 years if they were adjudicated delinquent of an offense as a juvenile which required Tier 3 registration and they have maintained a clean record for 25 consecutive years.
- (3) Clean Record. For purposes of this Section, a person has a clean record if:
- (a) They have not been convicted of any offense for which imprisonment for more than 1 year may be imposed,
 - (b) They have not been convicted of any sex offense,
 - (c) They have successfully completed, without revocation, any period of supervised release, probation, or parole, and
 - (d) They have successfully completed an appropriate sex offender treatment program certified by a jurisdiction or by the United States Attorney General.

Section 650 Duty To Notify Sex Offenders of Registration Requirements and to Register (formerly 4 PYTC § 2-280)

- (A) In general. An appropriate official shall, shortly before release of the sex offender from custody, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register--
 - (1) Inform the sex offender of the duties of a sex offender under this chapter and explain those duties;
 - (2) Require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement; and
 - (3) Ensure that the sex offender is registered.
 - (4) That upon entry of the sex offender's information in to the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status.
- (B) Notification of sex offenders who cannot comply with subsection (a). The Tribe shall prescribe rules for the notification of sex offenders who cannot be registered in accordance with subsection (a).

Section 655 Recapture (Formerly 4 PYTC § 2-290)

- (A) Recapture. The tribal police department or designee shall have in place policies and procedures to ensure the following three categories of sex offenders are recaptured:
- (1) Sex offenders incarcerated or under supervision of the tribe, whether for a covered sex offense or other crime,
 - (2) Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the tribes' laws, and
 - (3) Sex offenders reentering the justice system due to conviction for any crime
- (B) Timing of Recapture. The tribal police department or designee shall ensure recapture of the sex offenders mentioned in paragraph (A) above within the following timeframe to be calculated from the date of passage of this code:
- (1) For Tier 1 sex offenders, 1 year,
 - (2) For Tier 2 sex offenders, 180 days, and
 - (3) For Tier 3 sex offenders, 90 days.

Section 660 Registration Currency (Formerly 4 PYTC § 2-300)

- (A) Jurisdiction of Residency. All sex offenders residing within the exterior boundaries of the reservation or otherwise residing on land owned by the tribe or placed in trust for the tribe, must immediately appear at the tribal police department in person to update any change in their name, residence (including termination of residency), employment, school attendance, vehicle information, temporary lodging, email addresses, telephone numbers, Instant Messaging addresses, and any other designation used in internet communications, postings, or telephone communications. In the event of a change in temporary lodging, the sex offender and tribal police shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.
- (B) Duties of Tribal Police. With regard to changes in a sex offender's registration information, the tribal police or designee shall immediately notify:
- (1) All jurisdictions where a sex offender intends to reside, work, or attend school,
 - (2) Any jurisdiction where the sex offender is either registered or required to register, and
 - (3) Specifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service. The tribal police shall also ensure this information is immediately updated on NSOR.

- (C) Jurisdiction of Employment. All sex offenders who are employed by the tribe in any capacity or otherwise are employed within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location that change or terminate their employment shall immediately appear in person at the tribal police department to update that information. The tribal police shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.
- (D) Jurisdiction of School Attendance. Any sex offender who is a student in any capacity within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location change their school, or otherwise terminate their schooling, shall immediately appear in person at the tribal police department to update that information. The tribal police shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

Section 665 Failure to Appear for Registration and Absconding (Formerly 4 PYTC § 2-310)

- (A) Failure to Appear. In the event a sex offender fails to register with the tribe as required by this code, the tribal police or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the tribe that the sex offender failed to appear for registration.
- (B) Absconded Sex Offenders. If the tribal police or designee receives information that a sex offender has absconded the tribal police shall make an effort to determine if the sex offender has actually absconded.
 - (1) In the event no determination can be made, the tribal police or designee shall ensure the tribal police and any other appropriate law enforcement agency is notified.
 - (2) If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.
 - (3) If an absconded sex offender cannot be located then the tribal police shall take the following steps:
 - (a) Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located,
 - (b) Seek a warrant for the sex offender's arrest, and in the case of a non-Indian, the U.S. Marshals Service or FBI shall be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,
 - (c) Notify the U.S. Marshals Service regardless of whether the sex offender is Indian or non-Indian,

- (d) Update the NSOR to reflect the sex offender’s status as an absconder, or is otherwise not capable of being located,
 - (e) Enter the sex offender into the National Crime Information Center Wanted Person File.
- (C) Failure to Register. In the event a sex offender who is required to register due to their employment or school attendance status fails to do so or otherwise violates a registration requirement of this code, the tribal police or designee shall take all appropriate follow-up measures including those outlined in paragraph (B) above. The tribal police or designee shall first make an effort to determine if the sex offender is actually employed or attending school within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location.

Section 670 Requirements For In Person Appearance (Formerly 4 PYTC § 2-320)

- (A) Photographs. At each in person verification, the sex offender shall permit the tribal police to take a photograph of the offender.
- (B) Review of Information. At each in person verification the sex offender shall review existing information for accuracy.
- (C) Notification. If any new information or change in information is obtained at an in person verification, the tribal police shall immediately notify all other registration jurisdictions of the information or change in information.

Section 675 Sex Offender Acknowledgement (Formerly 4 PYTC § 2-321)

- (A) The sex offender shall read, or have read to them, and sign a form stating that the duty to register has been explained to them by the Pascua Yaqui Police Department and that the sex offender understands the registration requirement.
 - (1) The form shall be signed and dated by the Pascua Yaqui Police Department personnel registering the sex offender.
- (B) The Pascua Yaqui Police Department shall immediately upload the acknowledgement form into the Pascua Yaqui Police Department sex offender registry.”

Section 680 Public Sex Offender Registry Website (Formerly 4 PYTC § 2-330)

- (A) Website
 - (1) Website. The tribal police department or designee shall use and maintain a public sex offender registry website. Any tribal specific national website provided or approved by the SMART Office shall qualify as a public sex offender registry website under this code.

- (2) Links. The registry website shall include links to sex offender safety and education resources.
- (3) Instructions. The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.
- (4) Warnings. The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.
- (5) Search Capabilities. The registry website shall have the capability of conducting searches by name, county, city, zip code, and geographic radius.

Section 685 Required and Prohibited Information (Formerly 4 PYTC § 2-340)

- (A) Required Information. The following information shall be made available to the public on the sex offender registry website:
 - (1) Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,
 - (2) All sex offenses for which the sex offender has been convicted,
 - (3) The sex offense(s) for which the offender is currently registered,
 - (4) The address of the sex offender's employer(s),
 - (5) The name of the sex offender including all aliases,
 - (6) A current photograph of the sex offender,
 - (7) A physical description of the sex offender,
 - (8) The residential address and, if relevant, a description of a habitual residence of the sex offender,
 - (9) All addresses of schools attended by the sex offender, and
 - (10) The sex offender's vehicle license plate number along with a description of the vehicle.
- (B) Prohibited Information. The following information shall not be available to the public on the sex offender registry website:
 - (1) Any arrest that did not result in conviction,
 - (2) The sex offender's social security number,

- (3) Any travel and immigration documents, and
 - (4) The identity of the victim.
 - (5) Internet identifiers (as defined in 42 U.S.C. § 16911).
- (C) Witness Protection. For sex offenders who are under a witness protection program, the tribal police may honor the request of the United States Marshal Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

Section 690 Community Notification (Formerly 4 PYTC § 2-350)

- (A) Law Enforcement Community Notification. Whenever a sex offender registers or updates their information with the tribe, the Pascua Yaqui Police Department or designee shall:
- (1) Monitor and utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment or student status.
 - (2) Immediately notify the FBI and ensure the information is updated on NCIC/NSOR,
 - (3) Immediately notify any agency, department, or program within the tribe that is responsible for criminal investigation, prosecution, or sex offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors, and tribal probation.
 - (4) Immediately notify any and all other registration jurisdictions due to the sex offender's residency, school attendance, or employment, and
 - (5) Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).
 - (6) Enter or update information posted on the public website.
- (B) Community Notification. The tribal police or designee shall ensure there is an automated community notification process in place that ensures the following:
- (1) Upon a sex offender's registration or update of information with the tribe, the public registry website is immediately updated,
 - (2) Email notice is available to the general public to notify them when a sex offender commences residence, employment, or school attendance with the tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity.

Section 695 Crimes and Civil Sanction (Formerly 4 PYTC § 2-360)

- (A) Any violation of a provision of this code by a sex offender who is an Indian shall be considered guilty of a class 2 felony.
- (B) Any violation of a provision of this code by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, civil contempt, and banishment.

Section 699 Exclusion of Non-Members (Formerly 4 PYTC § 2-370)

Any non-member convicted for violation of this chapter may be excluded from the Pascua Yaqui Indian Reservation in accordance with Tribal Code of the Pascua Yaqui Tribe, in addition to any other penalties provided herein.

SUBCHAPTER J PROPERTY CRIMES (formerly subchapter D)

Section 700 Breaking and Entry (Formerly 4 PYTC § 1-260)

Any person who shall willfully in any manner enter any dwelling, vehicle, watercraft, aircraft, or other structure, movable or immovable, without the consent of the owner or occupant shall be deemed guilty of a class 3 felony.

Section 705 Burglary (Formerly 4 PYTC § 1-270)

- (A) A person commits burglary in the third degree by:
 - (1) Entering or remaining unlawfully in or on a nonresidential structure or in a fenced commercial or residential yard with the intent to commit any theft or any felony therein.
 - (2) Making entry into any part of a motor vehicle by means of a manipulation key or master key, with the intent to commit any theft or felony in the motor vehicle.
- (B) A person commits burglary in the second degree by entering or remaining unlawfully in or on a residential structure with the intent to commit any theft or any felony therein.
- (C) A person commits burglary in the first degree if such person or an accomplice violates the provisions of either section 705(A) or 705(B) and knowingly possesses explosives, a deadly weapon or a dangerous instrument in the course of committing any theft or any felony.
- (D) Classification
 - (1) Burglary in the third degree is a class 3 felony.
 - (2) Burglary in the second degree is a class 2 felony

- (3) Burglary in the first degree of a nonresidential structure or a fenced commercial or residential yard is a class 2 felony. It is a class 1 felony if committed in a residential structure.
- (E) In this section, unless the context otherwise requires:
- (1) “Enter or remain unlawfully” means an act of a person who enters or remains on premises when the person's intent for so entering or remaining is not licensed, authorized or otherwise privileged except when the entry is to commit theft of merchandise displayed for sale during normal business hours, when the premises are open to the public and when the person does not enter any unauthorized areas of the premises.
 - (2) “Entry” means the intrusion of any part of any instrument or any part of a person's body inside the external boundaries of a structure or unit of real property.
 - (3) “Fenced commercial yard” means a unit of real property that is surrounded completely by fences, walls, buildings or similar barriers, or any combination of fences, walls, buildings or similar barriers, and that is zoned for business operations or where livestock, produce or other commercial items are located.
 - (4) “Fenced residential yard” means a unit of real property that immediately surrounds or is adjacent to a residential structure and that is enclosed by a fence, wall, building or similar barrier or any combination of fences, walls, buildings or similar barriers.
 - (5) “Fenced yard” means a unit of real property that is surrounded by fences, walls, buildings or similar barriers or any combination of fences, walls, buildings or similar barriers.
 - (6) “In the course of committing” means any acts that are performed by an intruder from the moment of entry to and including flight from the scene of a crime.
 - (7) “Nonresidential structure” means any structure other than a residential structure and includes a retail establishment.
 - (8) “Manipulation key” means a key, device or instrument, other than a key that is designed to operate a specific lock, that can be variably positioned and manipulated in a vehicle keyway to operate a lock or cylinder, including a wiggle key, jiggle key or rocker key.
 - (9) “Master key” means a key that operates all the keyed locks or cylinders in a similar type or group of locks.
 - (10) “Residential structure” means any structure, movable or immovable, permanent or temporary, that is adapted for both human residence and lodging whether occupied or not.

- (11) “Structure” means any vending machine or any building, object, vehicle, railroad car or place with sides and a floor that is separately securable from any other structure attached to it and that is used for lodging, business, transportation, recreation or storage.
- (12) “Vending machine” means a machine that dispenses merchandise or service through the means of currency, coin, token, credit card or other nonpersonal means of accepting payment for merchandise or service received.

Section 710 Burning; Arson of occupied structure (Formerly 4 PYTC § 1-280)

- (A) Any person who willfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any building, home, barn, corral, fence, or any structure of whatsoever class or character, whether the property of himself or of another, shall be deemed guilty of a class 3 felony.
- (B) A person who knowingly and unlawfully damages an occupied structure by knowingly causing a fire or explosion shall be guilty of a class 1 felony.

Section 715 Cheats and Frauds (Formerly 4 PYTC § 1-290)

Any person, with intent to cheat and defraud, obtains or attempts to obtain from any other person, money, property or a valuable thing, by means or by use of any false or bogus check or by any other printed, written or engraved instrument, or spurious coin or metal, or attempts to obtain money, property or valuable consideration by means or by use of any trick or deception, false or fraudulent representation, statement or pretense, or by any other means shall be deemed guilty of a class 1 misdemeanor.

Section 720 Cutting Fence (Formerly 4 PYTC § 1-305)

Any Person who shall willfully cut the wire of a fence belonging to another person shall be deemed guilty of a class 2 misdemeanor.

Section 725 Cutting Timber without Permit (Formerly 4 PYTC § 1-310)

Any person, who cuts, digs up or who is defacing vegetation, without authorization, shall be deemed guilty of a class 2 misdemeanor.

Section 730 Disposing of Property of an Estate (Formerly 4 PYTC § 1-320)

Any person who without proper authority sells trades or otherwise disposes of any property of an estate before the determination of the heirs shall be guilty of a class 1 misdemeanor.

Section 735 Extortion (Formerly 4 PYTC § 1-340)

Any person who shall willfully by making false charges against another person or by any other means whatsoever, extort or attempt to extort money, goods, property or anything else of value, shall be deemed guilty of extortion, a class 2 felony.

Section 740 Forgery (Formerly 4 PYTC § 1-350)

Any person who shall, with intent to defraud, falsely makes, signs, completes, executes or alters any written instrument, shall be deemed guilty of forgery, a class 2 felony.

Section 745 Fraud (Formerly 4 PYTC § 1-360)

Any person who shall by willful misrepresentations or deceit, or by false interpreting, or by the use of false weights and measures obtain money or other things of value shall be deemed guilty of a class 1 felony.

Section 750 Illegal Sale and Purchase of Trust Property (Formerly 4 PYTC § 1-370)

Any person who sells or buys or in any way disposes of or acquires any trust or reimbursable property in violation of the government regulations shall be deemed guilty of a class 3 felony.

Section 755 Issuance of Fraudulent Checks; Presumptions (Formerly 4 PYTC § 1-380)

- (A) Any person who shall intentionally, knowingly, and willfully issue in exchange for anything of value, with intent to defraud, check, draft, or order for payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has insufficient funds in or credit with the bank of depository for payment of such check, draft, or order in full amount upon its presentation, shall be deemed guilty.
- (B) Issuing a fraudulent check is a class 1 misdemeanor, except if the amount issued is five thousand dollars or more then it is a class 3 felony.
- (C) Presumptions.
 - (1) For the purposes of this subsection, the issuer's knowledge of insufficient funds may be presumed if either:
 - (a) The issuer had no account or a closed account with the bank or other drawee at the time the issuer issued the check.
 - (b) Payment was refused by the bank or other drawee for lack of funds on presentation within thirty days after issue and the issuer failed to pay the holder in full the amount due on the check, together with reasonable costs, within twelve days after receiving notice of that refusal.
 - (2) If a person obtained property or secured performance of services by issuing or passing a check when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check as well as all other checks then outstanding, the person's intent to deprive the owner of property or to avoid payment for service under section 790 may be presumed if either:
 - (a) The issuer had no account or a closed account with the bank or other drawee at the time the issuer issued the check.

- (b) Payment was refused by the bank or other drawee for lack of funds on presentation within thirty days after issue and the issuer failed to pay the holder in full the amount due on the check, together with reasonable costs, within twelve days after receiving notice of that refusal.
- (3) Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence

Section 760 Littering (Formerly 4 PYTC § 1-390)

- (A) Any person who shall place any garbage, refuse, ashes, junk, glass, bottles, cans, or any other form of litter or debris on or near any public road, or upon any other public property or in or around any public waters of the Pascua Yaqui Tribe shall be deemed guilty.
- (B) Littering is a class 1 misdemeanor, except if the form of litter or debris is destructive or injurious material, sewage, oil products or any harmful substances introduced into any public waters, then it is a class 3 felony.

Section 765 Trafficking in Stolen Property (Formerly 4 PYTC § 1-410)

- (A) Any person who recklessly traffics in the property of another that has been stolen is guilty of trafficking in stolen property in second degree.
- (B) Any person who knowingly initiates, organizes, plans, finances, directs, manages or supervises the theft and trafficking in the property of another that has been stolen is guilty of trafficking in stolen property in the first degree.
- (C) Trafficking in stolen property in the second degree is a class 2 felony. Trafficking in stolen property in the first degree is a class 1 felony.
- (D) For purposes of this section:
 - (1) “Dealer in property” means any Person who buys and sells property as a business.
 - (2) “Stolen property” means property that has been the subject of any unlawful taking.
 - (3) “Traffic” means to sell, transfer, distribute, dispense or otherwise dispose of stolen property to another person, or to buy, receive, possess or obtain control of stolen property, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person.
- (E) Permissible Inferences. In an action for trafficking in stolen property:
 - (1) Proof of possession of property recently stolen, unless satisfactorily explained, may give rise to an inference that the person in possession of the property was aware of the risk that it had been stolen or in some way participated in its theft.

- (2) Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
- (3) Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

Section 770 Possession of altered property (Formerly 4 PYTC § 1-410(E))

- (A) Any person who is a dealer in property and recklessly possesses property the permanent identifying features of which, including serial numbers or labels have been removed or in any fashion altered is guilty of a class 2 felony.
- (B) It is a defense to a prosecution under this section that a person has lawfully obtained a special serial number pursuant to Arizona Revised Statutes § 28-320 or lawfully possesses the usual indicia of ownership in addition to mere possession or has obtained the consent of the manufacturer of the property.
- (C) For purposes of this section:
 - (1) “Dealer in property” means any Person who buys and sells property as a business.

Section 775 Shoplifting (Formerly 4 PYTC § 1-420)

- (A) A person who willfully takes possession of any goods offered for sale by any mercantile establishment, without the consent of the owner or manager, with the intent to convert such goods to his own use without paying for them is guilty of an offense.
- (B) A person is presumed to have the necessary culpable mental state pursuant to subsection A of this section if the person does either of the following:
 - (1) Knowingly conceals on himself or another person unpurchased merchandise of any mercantile establishment while within the mercantile establishment; or
 - (2) Uses an artifice, instrument, container, device or other article to facilitate the shoplifting; or
 - (3) Conceals among his belongings.
- (C) A merchant or merchant’s employee who has reasonable cause to believe that a person has willfully taken possession of goods with the intent to convert them without paying for them may detain and question the person in regard thereto in a reasonable manner and for a reasonable time.

- (D) If a merchant, or merchant's employee detains and questions a person pursuant to Subsection (C) of this section, and the person thereafter brings a civil or criminal action against the merchant or merchant's employee, based upon the detention and questioning, such reasonable cause shall be a defense to the action if the detention and questioning were performed in a reasonable manner and for a reasonable time.
- (E) Classification:
- (1) Class 2 felony if the property has a value of two thousand dollars or more, or shoplifting property during any continuing criminal episode or shoplifting property if done to promote, further or assist any criminal street gang or criminal syndicate. "Continuing criminal episode" means theft of property with a value of one thousand five hundred dollars or more if committed during at least three separate incidences within a period of ninety consecutive days.
 - (2) Class 3 felony if the property has a value of one thousand dollars or more but less than two thousand dollars.
 - (3) Class 1 misdemeanor if the property is valued at less than one thousand dollars, except if the property is a firearm in which case the shoplifting is a class 3 felony
 - (4) class 2 felony if A person who in the course of shoplifting uses an artifice, instrument, container, device or other article with the intent to facilitate shoplifting or who commits shoplifting and who has previously committed or been convicted within the past five years of two or more offenses involving burglary, shoplifting, robbery, or theft.

Section 780 Tampering with Communications (Formerly 4 PYTC § 1-430)

Any person who shall interfere with communications by displacing, removing, injuring or destroying any radio station, TV tower, antenna, cable, telephone, line, wire, pole, or conduit or shall cut, break, tap, or shall use any other means in destroying, interfering with, or preventing the operation of communications or shall assist in any of the foregoing conditions shall be deemed guilty of a class 2 misdemeanor.

Section 785 Criminal Trespass (Formerly 4 PYTC § 1-440)

A person commits criminal trespass by:

- (A) Knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by a law enforcement officer, the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry.
- (B) Entering any residential yard and, without lawful authority, looking into the residential structure thereon in reckless disregard of infringing on the inhabitant's right of privacy.
- (C) knowingly entering or remaining unlawfully in or on any nonresidential structure or in any fenced commercial yard

- (D) Entering or remaining unlawfully in or on a residential structure.
- (E) Entering or remaining unlawfully in a fenced residential yard
- (F) Entering or remaining unlawfully on the property of another and burning, defacing, mutilating or otherwise desecrating a religious symbol or other religious property of another without the express permission of the owner of the property.
- (G) Classification:
 - (1) Criminal trespass under subsection A is a class 3 misdemeanor
 - (2) Criminal trespass under subsection C is a class 2 misdemeanor
 - (3) Criminal trespass under subsection B, D, E and F is a class 1 misdemeanor
- (H) Pursuant to subsection A of this section, a request to leave by a law enforcement officer acting at the request of the owner of the property or any other person having lawful control over the property has the same legal effect as a request made by the property owner or other person having lawful control of the property.

Section 790 Theft; Embezzlement (Formerly 4 PYTC § 1-450)

- (A) A person commits theft if, without lawful authority, the person knowingly:
 - (1) Controls property of another with the intent to deprive the other person of such property; or
 - (2) Converts for an unauthorized term or use services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use; or
 - (3) Obtains services or property of another by means of any material misrepresentation with intent to deprive the other person of such property or services; or
 - (4) Comes into control of lost, mislaid or misdelivered property of another under circumstances providing means of inquiry as to the true owner and appropriates such property to the person's own or another's use without reasonable efforts to notify the true owner; or
 - (5) Controls property of another knowing or having reason to know that the property was stolen; or
 - (6) Obtains services known to the defendant to be available only for compensation without paying or an agreement to pay the compensation or diverts another's services to the person's own or another's benefit without authority to do so; or
- (B) A person commits theft if, without lawful authority, the person knowingly takes control, title, use or management of a vulnerable adult's property while acting in a position of trust

and confidence and with the intent to deprive the vulnerable adult of the property. Proof that a person took control, title, use or management of a vulnerable adult's property without adequate consideration to the vulnerable adult may give rise to an inference that the person intended to deprive the vulnerable adult of the property.

- (C) Any person who shall, having lawful custody of property not his own, appropriate the same for his use with intent to deprive the owner thereof shall be deemed guilty of embezzlement.
- (D) It is an affirmative defense to any prosecution under subsection B of this section that either:
 - (1) The property was given as a gift consistent with a pattern of gift giving to the person that existed before the adult became vulnerable.
 - (2) The property was given as a gift consistent with a pattern of gift giving to a class of individuals that existed before the adult became vulnerable.
 - (3) A Tribal, State or United States court approved the transaction before the transaction occurred.
- (E) The inferences set forth in section 765(E) statute apply to any prosecution under subsection A, paragraph 5 of this section.
- (F) Subsection B of this section does not apply to an agent who is acting within the scope of the agent's duties as or on behalf of a health care institution that is licensed by a Tribal, State or United States authority and that provides services to the vulnerable adult.
- (G) Classification:
 - (1) Theft of property or services or embezzlement with a value of \$25,000 or more is a class 1 felony.
 - (2) Theft of property or services or embezzlement with a value of \$3,000 or more but less than \$25,000 is a class 2 felony.
 - (3) Theft of property or services or embezzlement with a value of \$1,000 or more but less than \$3,000 is a class 3 felony.
 - (4) Theft of any property or services valued at less than \$1,000 is a class 1 misdemeanor, unless the property is taken from the person of another, is a firearm or is an animal taken for the purpose of animal fighting, in which case the theft is a class 3 felony.
- (H) For the purposes of this section:
 - (1) "Adequate consideration" means the property was given to the person as payment for bona fide goods or services provided by the person and the payment was at a rate that was customary for similar goods or services in the community that the vulnerable adult resided in at the time of the transaction.

- (2) “Pattern of gift giving” means two or more gifts that are the same or similar in type and monetary value.
- (3) “Position of trust and confidence” means that a person is any of the following:
 - a) A person who has assumed a duty to provide care to the vulnerable adult.
 - b) A joint tenant or a tenant in common with a vulnerable adult.
 - c) A person who is in a fiduciary relationship with a vulnerable adult including a de facto guardian or de facto conservator.
 - d) A person who is in a confidential relationship with the vulnerable adult. The issue of whether a confidential relationship exists shall be an issue of fact to be decided by the court based on the totality of the circumstances.
 - e) A beneficiary of the vulnerable adult in a governing instrument.
- (4) “Property” includes all forms of real property and personal property.
- (5) “Property of another” means property in which any person other than the defendant has an interest on which the defendant is not privileged to infringe, including property in which the defendant also has an interest, notwithstanding the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant is not deemed property of another person who has only a security interest in the property, even if legal title is in the creditor pursuant to a security agreement.
- (6) “Vulnerable adult” means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment. Vulnerable adult includes an incapacitated person which means any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

Section 795 Unauthorized Leasing (Formerly 4 PYTC § 1-470)

Any person who leases his land allotment in violation of any Tribal leasing regulations shall be deemed guilty of a class 1 misdemeanor.

SUBCHAPTER K ROBBERY

Section 800 Definitions

In this subchapter, unless the context otherwise requires:

- (1) “Force” means any physical act directed against a person as a means of gaining control of property.
- (2) “In the course of committing” includes any of the defendant’s acts beginning with the initiation and extending through the flight from a robbery.
- (3) “Property of another” means property of another as defined in section 790.
- (4) “Threat” means a verbal or physical menace of imminent physical injury to a person.

Section 810 Robbery

- (A) A person commits robbery if in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property.
- (B) Robbery is a class 2 felony.

Section 820 Aggravated Robbery

- (A) A person commits aggravated robbery if in the course of committing robbery as defined in section 810, such person is aided by one or more accomplices actually present.
- (B) Aggravated robbery is a class 2 felony.

Section 830 Armed Robbery

- (A) A person commits armed robbery if, in the course of committing robbery as defined in section 810, such person or an accomplice:
 - (1) Is armed with a deadly weapon or a simulated deadly weapon; or
 - (2) Uses or threatens to use a deadly weapon or dangerous instrument or a simulated deadly weapon.
- (B) Armed robbery is a class 1 felony.

SUBCHAPTER L GUNS; EXPLOSIVES (formerly subchapter E)

Section 900 Carrying a Concealed or Deadly Weapon (Formerly 4 PYTC § 1-490)

- (A) Any person who shall go about in public places armed with a dangerous or deadly weapon, concealed or unconcealed, shall be deemed guilty of a class 3 felony.
- (B) Any person who shall go about in any Tribal Enterprise or Other Enterprise, or the premises of such Tribal Enterprise or Other Enterprise, armed with a dangerous or deadly weapon, concealed or unconcealed, shall be deemed guilty of a class 3 felony.

- (C) “Deadly weapons” within the meaning of the foregoing shall be construed to mean any and all kinds and classes of offensive weapons, such as guns, pistols, revolvers, knives with blades over four inches in length, and any and all classes and kinds of weapons and instruments by whatever name called, designed to or intended and used for the purpose of inflicting a dangerous wound.
- (D) “Other Enterprise” means any retail, commercial, or entertainment facilities that may be operated on the Tribe’s Reservation by any entity or individual other than the Tribe.
- (E) “Tribal Enterprise” means Casino del Sol, Casino of the Sun, the Anselmo Valencia Tori Amphitheater, the Chevron gas station, the Tribe’s resort, conference center, parking structure, and warehouse facility, and any other retail, commercial, or entertainment facilities or venues that may be hereafter operated by the Tribe on the Tribe’s Reservation.
- (F) Commissioned peace officers shall be exempt from this section.
- (G) Subsections (A) and (B) shall not apply to a weapon described in Section (C) if such weapon is possessed for the purposes of preparing for, conducting or participating in a training, exhibition, demonstration, contest or athletic event involving the use of such a weapon that is sanctioned by the Pascua Yaqui Police Department.

Section 910 Misconduct Involving Weapons; Defenses; Definitions (Formerly 4 PYTC § 1-500)

In addition to the general offense of Carrying a Concealed or Deadly Weapon, there shall be the offense of Misconduct Involving Weapons as enumerated herein. A person commits the offense of Misconduct Involving Weapons by knowingly:

- (A) Carrying a deadly weapon except a pocket knife concealed or unconcealed on his person or within his immediate control in or on a means of transportation:
 - (1) In the furtherance of any of the following: Abduction, Assault, Aggravated Assault on a Tribal Officer, , Endangerment, False Arrest, Kidnapping, Homicide, Stalking, Threatening or Intimidating, Breaking and Entry, Burglary, Disorderly Conduct, Criminal Trespass, Theft, Resisting Lawful Arrest, Rout, and the crimes enumerated in Subchapter O-Narcotics; Drug Crimes of this Title.
 - (2) When contacted by a law enforcement officer and failing to accurately answer the officer if the officer asks whether the person is carrying a concealed or deadly weapon; or
- (B) Carrying a deadly weapon except a pocket knife concealed on his person or concealed within his immediate control in or on a means of transportation if the person is under twenty-one years of age; or
- (C) Possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor; or

- (D) Selling or transferring a deadly weapon to a prohibited possessor; or
- (E) Defacing a deadly weapon; or
- (F) Possessing a defaced deadly weapon knowing the deadly weapon was defaced; or
- (G) Discharging a firearm at an occupied structure in order to assist, promote or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise; or
- (H) Possessing a deadly weapon on school grounds; or
- (I) Supplying, selling or giving possession or control of a deadly weapon to another person if the person knows or has reason to know that the other person would use the firearm in the commission of any felony; or
- (J) Section 910, subsections F and I shall not apply to:
 - (1) A peace officer or any person summoned by any peace officer to assist and while actually assisting in the performance of official duties; or
 - (2) A member of the military forces of the United States in the performance of official duties; or
 - (3) A warden, deputy warden, correctional officer, detention officer, court security personnel, or federal law enforcement agent in the performance of official duties.
- (K) If a law enforcement officer contacts a person who is in possession of a firearm, the law enforcement officer may take temporary custody of the firearm for the duration of that contact.
- (L) For the purposes of this section:
 - (1) “Contacted by a law enforcement officer” means a lawful traffic or criminal investigation, arrest or detention or an investigatory stop by a law enforcement officer that is based on reasonable suspicion that an offense has been or is about to be committed.
 - (2) “School” means a public or nonpublic kindergarten program, charter school, common school or high school.
 - (3) “School grounds” means in, or on the grounds of, a school.
 - (4) “Deadly weapons” means any and all kinds and classes of offensive weapons, such as guns, pistols, revolvers, knives with blades over four inches in length, and any and all classes and kinds of weapons and instruments by whatever name called, designed to or intended and used for the purpose of inflicting a dangerous wound.
 - (5) “Deface” means to remove, alter or destroy the manufacturer’s serial number.

- (6) “Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle shotgun or other weapon that will expel, is designed to expel or may readily be converted to expel a projectile by action of an explosive. Firearm does not include a firearm in permanently inoperable condition.
- (7) “Occupies Structure” means any building, object, vehicle, watercraft, aircraft or place with sides and a floor that is separately securable from any other structure attached to it, that is used for lodging, business, transportation, recreation or storage and in which one or more human beings either are or are likely to be present or so near as to be in equivalent danger at the time the discharge of a firearm occurs. Occupied structure includes any dwelling house, whether occupied, unoccupied or vacant.
- (8) “Prohibited Possessor” means any person:
- (a) Who has been found to constitute a danger to self or to others or to be persistently or acutely disabled or gravely disabled pursuant to court order, and whose right to possess a firearm has not been restored.
 - (b) Who has been convicted within or without this Reservation of a felony or who has been adjudicated delinquent for a felony and whose civil right to possess or carry a firearm has not been restored in any jurisdiction.
 - (c) Who is at the time of possession serving a term of imprisonment in any correctional or detention facility.
 - (d) Who is at the time of possession serving a term of probation pursuant to:
 - (i) a conviction for a domestic violence offense as defined in Chapter 3 of this Title; or
 - (ii) for a domestic violence offense committed in another jurisdiction; or
 - (iii) a felony offense, parole, community supervision, work furlough, home arrest or release on any other basis.
- (9) “Prohibited weapon”:
- (a) Includes the following:
 - (i) An item that is a bomb, grenade, rocket having a propellant charge of more than four ounces or mine and that is explosive, incendiary or poison gas.
 - (ii) A device that is designed, made or adapted to muffle the report of a firearm.

- (iii) A firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger.
- (iv) A rifle with a barrel length of less than sixteen inches, or shotgun with a barrel length of less than eighteen inches, or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than twenty-six inches.
- (v) An instrument, including a nunchaku, that consists of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, in the design of a weapon used in connection with the practice of a system of self-defense.
- (vi) A breakable container that contains a flammable liquid with a flash point of one hundred fifty degrees Fahrenheit or less and that has a wick or similar device capable of being ignited.
- (vii) A chemical or combination of chemicals, compounds or materials, including dry ice, that is possessed or manufactured for the purpose of generating a gas to cause a mechanical failure, rupture or bursting or an explosion or detonation of the chemical or combination of chemicals, compounds or materials.
- (viii) An improvised explosive device.
- (ix) Any combination of parts or materials that is designed and intended for use in making or converting a device into an item set forth in item (i), (vi) or (viii) of this subdivision.

(b) Does not include:

- (i) Any fireworks that are imported, distributed or used in compliance with TRIBAL laws or local ordinances.
- (ii) Any propellant, propellant actuated devices or propellant actuated industrial tools that are manufactured, imported or distributed for their intended purposes.
- (iii) A device that is commercially manufactured primarily for the purpose of illumination.

(M) Classification;

- (1) Misconduct involving weapons under subsection C, G or I of this section is a class 2 felony

- (2) Misconduct involving weapons under subsection A, subdivision (1) of this section or section D, E or F of this section is a class 3 felony.
- (3) Misconduct involving weapons under subsection A, subdivision (2) of this section or section H, of this section is a class 1 misdemeanor.
- (4) Misconduct involving weapons under subsection B of this section is a class 3 misdemeanor.

Section 920 Discharging Fireworks (Formerly 4 PYTC § 1-510)

Any person who shall discharge any fireworks of an explosive or burning nature in any public building, private building, or stockyard, without authorization, shall be guilty of a class 1 misdemeanor.

Section 930 Discharge of Firearms (Formerly 4 PYTC § 1-520)

- (A) A person who with criminal negligence discharges a firearm within or into the limits of Pascua Yaqui reservation is guilty of a class 2 felony.
- (B) Any person who discharges a air-gun, slingshot, hunting bow, archery bow or other similar weapons, in or about a building, residence, store or other public or business house, or other public place, thereby endangering the life or person of another, or disturbing the peace of the persons inside the buildings or injuring, destroying or damaging any property therein, or who discharges a firearm in an inhabited area in such a way as to place persons or property in the vicinity in danger shall be deemed guilty of a class 3 felony.
- (C) For purposes of this section:
 - (1) “Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle shotgun or other weapon that will expel, is designed to expel or may readily be converted to expel a projectile by action of an explosive. Firearm does not include a firearm in permanently inoperable condition.

Section 940 Explosives (Formerly 4 PYTC § 1-530)

A person is guilty of a class 2 felony who:

- (A) Maliciously deposits, or explodes, or who attempts to explode, at, in, under or near any train or car or any depot, stable, car-house, theater, schoolhouse, church dwelling house or other place where human beings usually inhabit, assemble, frequent or pass, any chemical compound or explosives, with intent to injure or destroy such buildings, vessel, boat or other structure, or with intent to injure, intimidate or terrify a human being, or by means of which a human being is injured or endangered.
- (B) Keeps or stores dynamite, gun cotton, nitroglycerine or gun powder in greater quantities than twenty-five pounds at one time, or blasting or gunpowder in greater quantities than fifty pounds at one time, in or upon any building or premises within a distance of one-half

mile of the exterior limits of a city or town, except in vessels, railroad cars or vehicles receiving and keeping them in the course of and for the purpose of transportation alone.

- (C) Keeps or stores percussion caps, gunpowder or other blasting powder, within a distance of two hundred feet of a building or premises where hercules, dynamite, gun cotton, nitroglycerine or giant powder is kept or stored.
- (D) Knowingly sells or has in his possession dynamite, nitroglycerine or other highly explosive material, or fuse, or transports them from point to point within the reservation without having plainly marked, in large letters, in a conspicuous place on the box or package containing such explosive material, the name and explosive character thereof, and without having marked plainly upon the wrapper of each stick of dynamite or other explosive material the date of manufacture thereof.

SUBCHAPTER M CRIMES AGAINST THE PUBLIC (formerly subchapter F)

Section 1000 Bribery (Formerly 4 PYTC § 1-540)

Any person who shall give or offer to give any money, property or services, or anything else of value to another person with corrupt intent to influence another in the discharge of his public duties or conduct and any person who shall accept, solicit or attempt to solicit any bribe, as above defined, shall be deemed guilty of a class 1 misdemeanor.

Section 1005 Tampering or Destroying Evidence (Formerly 4 PYTC § 1-560)

- (A) A person commits tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or which such person knows is about to be instituted, such person:
 - (1) Destroys, mutilates, alters, conceals or removes physical evidence with the intent to impair its verity or availability; or
 - (2) Knowingly makes, produces or offers any false physical evidence; or
 - (3) Prevents the production of physical evidence by an act of force, intimidation or deception against any person.
- (B) Inadmissibility of the evidence in question is not a defense.
- (C) Tampering with physical evidence is a class 3 felony.

Section 1010 Disobedience of Lawful Order of Court (Formerly 4 PYTC § 1-570)

Any person who shall willfully disobey any order, subpoena, warrant or command duly issued, made or given by the Pascua Yaqui Tribal Court or any officer thereof shall be deemed guilty of a class 1 misdemeanor.

Section 1015 Urinating or Defecating in Public (Formerly 4 PYTC § 1-581)

A person commits urinating or defecating in public if he or she urinates or defecates in a public place or in any place exposed to public view, except an established lavatory or toilet is guilty if a class 1 misdemeanor.

Section 1020 Dumping Trash on Tribal Property (Formerly 4 PYTC § 1-590)

- (A) It shall be unlawful for any person to dump or leave trash or garbage on any:
 - (1) Tribal property or on the Pascua Yaqui reservation, or
 - (2) along any Tribal highway in or on the reservation.
- (B) Nothing herein shall be constructed as affecting authorized collections and dumping of such trash or garbage.
- (C) A person in violation of this section shall be guilty of a class 2 misdemeanor.

Section 1025 False Alarms; Reporting (Formerly 4 PYTC § 1-610)

- (A) Any person who shall give, signal or transmit or permit any other person to cause to be given, signaled, or transmitted in any manner any false alarms of fire, a crime, threat of a bomb or any other emergency which necessitates, but does not necessarily result in, an immediate response by the agency receiving the false alarm or report, shall be deemed guilty of a class 1 misdemeanor.
- (B) For the purposes of this section, false alarm or report shall be deemed and construed as being any act as follows:

The giving, signaling or transmission to any public fire station, police station or other emergency agency, or to any officer or employee thereof, whether by telephone, spoken word or otherwise, false information to the effect that there is a fire, or crime being committed or some other emergency at or near the place indicated by the person giving, signaling or transmitting such information.
- (C) A person found in violation of the section shall be ordered to pay all reasonable costs incurred by the responding agencies as a result of the false report.

Section 1030 Impersonation of a Public Officer (Formerly 4 PYTC § 1-620)

Any person who knowingly impersonates a police officer or any other public official or any official acting for the Pascua Yaqui Tribal government, by using badges or any type of credentials, uniforms, decals, or any other means to exercise the function of any public officials or law enforcement officers, shall be deemed guilty of a class 3 felony.

Section 1035 Criminal Damage; Injury to Public Property (Formerly 4 PYTC § 1-630)

- (A) A person commits criminal damage by:

- (1) Recklessly defacing or damaging property of another person.
 - (2) Recklessly tampering with property of another person so as substantially to impair its function or value.
 - (3) Recklessly damaging property of a utility.
 - (4) Recklessly drawing or inscribing a message, slogan, sign or symbol that is made on any public or private building, structure or surface, except the ground, and that is made without permission of the owner.
 - (5) Intentionally tampering with utility property.
- (B) Criminal damage is punished as follows:
- (1) Criminal damage is a class 1 felony if the person recklessly damages property of another in an amount of \$10,000 or more.
 - (2) Criminal damage is a class 2 felony if the person recklessly damages property of another in an amount of \$2,000 or more but less than \$10,000.
 - (3) Criminal damage is a class 3 felony if the person recklessly damages property of another in an amount of \$1,000 or more but less than \$2,000.
 - (4) Criminal damage is a class 1 misdemeanor if the person recklessly damages property of another in an amount of more than \$250 but less than \$1,000.
 - (5) In all other cases criminal damage is a class 2 misdemeanor.
- (C) For a violation of subsection A, paragraph 4 of this section, in determining the amount of damage to property, damages include reasonable labor costs of any kind, reasonable material costs of any kind and any reasonable costs that are attributed to equipment that is used to abate or repair the damage to the property.

Section 1040 Liquor Violation (Formerly 4 PYTC § 1-640)

- (A) It shall be unlawful for any person within the exterior boundaries of the Pascua Yaqui Reservation to sell, offer for sale, give or otherwise distribute beer, wine, liquor or other alcoholic beverages to any person under the age of 21 years, to any intoxicated person, or to any person at a time or under any circumstances not permitted under the laws of the State of Arizona or regulations of the Arizona Liquor Control Board. A violation of this offense is a class 1 misdemeanor.
- (B) It shall be unlawful for any minor child, or person under the age of 21 years of age to buy, sell, or otherwise distribute, consume or possess any alcoholic beverage within the exterior boundaries of the Pascua Yaqui Indian Reservation; any person who violates this provision shall be guilty of a class 3 misdemeanor.

- (C) A person who is under the age of 21 years and who solicits another person to purchase, sell, give, serve or furnish spirituous liquor contrary to law is guilty of a class 3 misdemeanor.
- (D) It shall be unlawful for any person to consume any alcoholic beverage or possess a broken package of any alcoholic beverage in public place, thoroughfare or gathering place, including the Cultural Grounds, Potam Park, ball fields, Victor Flores Gymnasium, or Pascua Yaqui Education Center. A person who violates this offense is guilty of a class 2 misdemeanor.
- (E) A public place shall mean any place which is regularly held open for the use of the general public, is owned by the Tribe or Community, is a public street, or is not private property.
- (F) It is unlawful for any person to:
 - (1) Consume spirituous liquor while operating or while within the passenger compartment of a motor vehicle that is located on any public highway or right-of-way of a public highway.
 - (2) Possess an open container of spirituous liquor within the passenger compartment of a motor vehicle that is located on any public highway or right-of-way of a public highway.
- (G) A person who violates subsection F of this section is guilty of a class 2 misdemeanor.
- (H) Section F does not apply to:
 - (1) A passenger in any bus, limousine or taxi.
 - (2) A passenger in the living quarters of a motor home, which is defined as a motor vehicle that is primarily designed as temporary living quarters and that:
 - (a) Is built onto as an integral part of, or is permanently attached to, a motor vehicle chassis.
 - (b) Contains at least four of the following independent life support systems if each is permanently installed and designed to be removed only for purposes of repair or replacement:
 - (i) A cooking facility with an onboard fuel source.
 - (ii) A gas or electric refrigerator.
 - (iii) A toilet with exterior evacuation.
 - (iv) A heating or air conditioning system with an onboard power or fuel source separate from the vehicle engine.

(v) A potable water supply system that includes at least a sink, a faucet and a water tank with an exterior service supply connection.

(vi) A 110-125 volt electric power supply.

(I) For the purposes of this section:

(1) “Motor vehicle” means any vehicle that is driven or drawn by mechanical power and that is designed primarily for use on public highways. Motor vehicle does not include a vehicle operated exclusively on rails.

(2) “Open container” means any bottle, can, jar or other receptacle that contains spirituous liquor and that has been opened, has had its seal broken or the contents of which have been partially removed.

(3) "Passenger compartment" means the area of a motor vehicle designed for the seating of the driver and other passengers of the vehicle. Passenger compartment includes an unlocked glove compartment and any unlocked portable devices within the immediate reach of the driver or any passengers. Passenger compartment does not include the trunk, a locked glove compartment or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

(4) “Public highway or right-of-way of a public highway” means the entire width between and immediately adjacent to the boundary lines of every way maintained by tribal or the federal government, the state or Arizona or a county, city or town if any part of the way is generally open to the use of the public for purposes of vehicular travel.

Section 1045 Maintaining a Public Nuisance (Formerly 4 PYTC § 1-650)

Any person who shall act in such a manner, or shall permit his property to become dangerous or hazardous or impair the safety, health, or comfort of the public by the discarding of refuse or rubbish shall be deemed guilty of a class 2 misdemeanor and will be required to remove such nuisance when so ordered by the Court.

Section 1050 Misuse of Funds, Commodities or Articles (Formerly 4 PYTC § 1-660)

Any person who is awarded need-based funds, commodities, or services, and knowingly misuses the award, shall be deemed guilty of a class 1 misdemeanor.

Section 1055 Negligent Handling of Campfire and/or Negligent Starting of a Fire (Formerly 4 PYTC § 1-670)

Any person who builds a campfire upon the lands of the Pascua Yaqui Reservation without clearing the ground immediately around it free from material which may carry fire, or who leaves thereon a campfire burning and unattended, or who permits a campfire to spread thereon, or who by throwing away a lighted cigar, cigarette or match or by use of firearms, or in any other manner

starts a fire in the desert, or in any other area on the Pascua Yaqui Reservation and leaves the fire unquenched shall be deemed guilty of a class 3 felony.

Section 1060 Purloining Records (Formerly 4 PYTC § 1-680)

Any person who shall willfully steal, embezzle, alter, corrupt, withdraw, falsify, or void any record, process, charter, gift, grant, conveyance, bond or contract, issue, forfeited recognizance of other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registry, acknowledgement or certificate, or shall alter, deface, or falsify any minute, document, book, or proceeding whatsoever, of or belonging to any public office within this Reservation shall be deemed guilty of a class 3 felony.

§1-1065 Perjury; Unsworn Falsification; Classifications; Definitions (Formerly 4 PYTC § 1-690)

- (A) A person commits perjury by, in any judicial proceedings in any court of the Pascua Yaqui Tribe, making either:
 - (1) A false sworn statement in regard to a material issue, believing it to be false.
 - (2) A false unsworn declaration, certificate, verification or statement in regard to a material issue that the person subscribes as true under penalty of perjury, believing it to be false.
- (B) A person commits unsworn falsification by knowingly:
 - (1) Making any statement that he believes to be false, in regard to a material issue, to a public servant in connection with an application for any benefit, privilege or license.
 - (2) Making any statement that he believes to be false in regard to a material issue to a public servant in connection with any official proceeding as defined in subsection D, paragraph 2 of this section.
- (C) Classifications:
 - (1) a violation of subsection A shall be a class 2 felony.
 - (2) a violation of paragraph 1, subsection B, is a class 2 misdemeanor.
 - (3) a violation of paragraph 2, subsection B is a class 1 misdemeanor.
- (D) Definitions;
 - (1) “Material” means that which could have affected the course or outcome of any proceeding or transaction. Whether a statement is material in any given factual situation is a question of law.

- (2) “Official proceeding” means a proceeding heard before any legislative, judicial, administrative or other governmental agency or official authorized to hear evidence under oath.
- (3) “Statement” means any representation of fact and includes a representation of opinion, belief or other state of mind where the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.
- (4) “Sworn statement” means any statement knowingly given under oath or affirmation attesting to the truth of what is stated, including a notarized statement whether or not given in connection with an official proceeding.

Section 1070 Refusing to Aid an Officer (Formerly 4 PYTC § 1-700)

Any person who shall neglect or refuse when called upon to do so, to aid or assist an officer of the Tribal Police, or other officer of the Bureau of Indian Affairs or other law enforcement officer whatsoever, to assist in the arrest of any person charged with or convicted of any offense or in securing such offender when apprehended or in conveying such offender to the nearest place of confinement shall be deemed guilty of a class 1 misdemeanor.

Section 1075 Refusal to Obey a Lawful Order (Formerly 4 PYTC § 1-710)

Any person who refuses to obey a lawful order of the police or fire department shall be guilty of a class 2 misdemeanor.

Section 1080 Removal or Destruction of Antiquities (Formerly 4 PYTC § 1-720)

Any person without proper authority who removes, excavates, injures, or destroys any historic or prehistoric ruin or monument or any object of antiquity is guilty of a class 3 felony.

Section 1085 Resisting Lawful Arrest (Formerly 4 PYTC § 1-730)

- (A) A person commits resisting arrest by intentionally preventing or attempting to prevent a person reasonably known to him to be a peace officer, acting under color of such peace officer's official authority, from effecting an arrest by:
 - (1) Using or threatening to use physical force against the peace officer or another.
 - (2) Using any other means creating a substantial risk of causing physical injury to the peace officer or another.
 - (3) Engaging in passive resistance.
- (B) Resisting arrest pursuant to subsection A, paragraph 1 or 2 of this section is a class 3 felony. Resisting arrest pursuant to subsection A, paragraph 3 of this section is a class 1 misdemeanor.

- (C) For the purposes of this section, “passive resistance” means a nonviolent physical act or failure to act that is intended to impede, hinder or delay the effecting of an arrest.

Section 1090 Rout (Formerly 4 PYTC § 1-740)

If two or more persons shall meet to do an unlawful act upon common cause of quarrel, and make advances towards it, they shall be guilty of a class 3 misdemeanor.

Section 1091 Tribal Curfew (Formerly 4 PYTC § 1-750)

- (A) The Tribal Curfew shall be 10:00 p.m. to 6:00 a.m. Sunday through Thursday and 12:00 a.m. (midnight) to 6:00 a.m. Friday and Saturday, and such curfew shall apply to all persons under 18 years of age in any public place, street thoroughfare, park or other community property. Any person who violates this section shall be deemed to have committed a status offense. Any person who violates this section shall be deemed to have committed a status offense.
- (B) In addition, for a child who is suspended from school and is in public without adult supervision, the Tribal Curfew shall be between the hours of 7:30a.m. and 3:00p.m. weekdays.
- (C) The provisions of this section shall not apply to any juvenile who is participating in a cultural event or activity, or who is accompanied by a parent, guardian or custodian, or who is lawfully married, or who is on an emergency errand, or who is on reasonable, legitimate, or specific business or activity directed or permitted by his parent guardian or custodian.

Section 1092 Unlawful Assembling (Formerly 4 PYTC § 1-760)

Two or more persons who assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being commanded to do so by a Tribal Judge, Tribal police officer, Tribal Chairman, or any other law enforcement officer shall be deemed guilty of a class 1 misdemeanor.

Section 1093 Wrecked, Junked or Unserviceable Vehicles (Formerly 4 PYTC § 1-770)

It shall be unlawful for any person to store any wrecked, junked, or unserviceable vehicles or any unserviceable appliances or implements such as stoves, refrigerators, washing machines, or any other items discarded to disfigure the appearance of the premises. Whoever shall violate this section shall be deemed guilty of a class 3 misdemeanor.

SUBCHAPTER N ESCAPE & RELATED OFFENSES

Section 1100 Escape or Aiding a Fugitive (Formerly 4 PYTC § 1-600)

- (A) Escape. Any person who, being in lawful custody for an offense, charged with or found guilty of a criminal offense, escapes or attempts to escape from lawful custody shall be deemed guilty of a class 3 felony.

- (B) Aiding a Fugitive or Interfering with Lawful Arrest. Any person who shall purposely hide, conceal, or give misinformation as to a fugitive's whereabouts when a Warrant of Arrest has been issued or law officer(s) is (are) in legal pursuit shall be deemed guilty of a class 1 misdemeanor an offense.
- (C) Any sentence for a violation of section A of this section shall run consecutive to any other sentence of incarceration the defendant is currently serving, unless running such sentences consecutive would cause a defendant's total time of incarceration to exceed the maximum allowed under the Constitution of the Pascua Yaqui Tribe or United States law.

Section 1110 False Reporting to Law Enforcement

- (A) It is unlawful for a person to knowingly make to a law enforcement agency of either this state or a political subdivision of this state a false, fraudulent or unfounded report or statement or to knowingly misrepresent a fact for the purpose of interfering with the orderly operation of a law enforcement agency or misleading a peace officer.
- (B) Violation of this section is a class 1 misdemeanor.

Section 1120 Hindering Prosecution

- (A) A person commits hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction or punishment of another for any felony, the person renders assistance to the other person.
- (B) A person commits hindering prosecution in the second degree if, with the intent to hinder the apprehension, prosecution, conviction or punishment of another for any misdemeanor, status or petty offense, such person renders assistance to such person.
- (C) Classification
 - (1) Hindering prosecution in the first degree is a class 3 felony, except that it is a class 2 felony if either:
 - a) The person knows or has reason to know that the offense involves terrorism or murder.
 - b) The person commits the offense with the intent to promote, further or assist a criminal street gang.
 - (2) Hindering prosecution in the second degree is a class 1 misdemeanor
- (D) For purposes of section 1120 a person renders assistance to another person by knowingly:
 - (1) Harboring or concealing the other person; or

- (2) Warning the other person of impending discovery, apprehension, prosecution or conviction. This does not apply to a warning given in connection with an effort to bring another into compliance with the law; or
- (3) Providing the other person with money, transportation, a weapon, a disguise or other similar means of avoiding discovery, apprehension, prosecution or conviction; or
- (4) Preventing or obstructing by means of force, deception or intimidation anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of the other person; or
- (5) Suppressing by an act of concealment, alteration or destruction any physical evidence that might aid in the discovery, apprehension, prosecution or conviction of the other person; or
- (6) Concealing the identity of the other person.

Section 1130 Promoting Prison Contraband

(A) In this section, unless context suggests otherwise:

- (1) Contraband means any dangerous drug, narcotic drug, marijuana, intoxicating liquor of any kind, deadly weapon, dangerous instrument, explosive, wireless communication device, multimedia storage device or other article whose use or possession would endanger the safety, security or preservation of order in the tribal detention facility or juvenile detention facility, or violate any policy or procedure of the tribal detention facility or juvenile detention facility.
- (2) “Correctional facility” means any place used for the confinement or control of a person:
 - (a) Charged with or convicted of an offense; or
 - (b) Held for extradition; or
 - (c) Pursuant to an order of court for law enforcement or probation purposes.
 - (d) Lawful transportation or movement incident to correctional facility confinement pursuant to this paragraph is within the control of a correctional facility. For the purposes of this chapter, being within the control of a correctional facility does not include release on parole, on community supervision, on probation or by other lawful authority on the condition of subsequent personal appearance at a designated place and time.

(B) A person not otherwise authorized by law is guilty of promoting prison contraband by:

- (1) Knowingly taking contraband into a correctional facility or the grounds of a correctional facility; or
 - (2) Knowingly conveying contraband to any person confined in a correctional facility; or
 - (3) Knowingly making, obtaining or possessing contraband while being confined in a correctional facility or while being lawfully transported or moved incident to correctional facility confinement.
- (C) Any person who has reasonable ground to believe there has been a violation or attempted violation of this section shall immediately report the violation or attempted violation to the official in charge of the tribal detention facility or to law enforcement.
- (D) This section does not apply to any of the following:
- (1) A prisoner who possesses or carries any tool, instrument or implement used by that person at the direction or with the permission of prison officials.
 - (2) Contraband located at the place where a person is on home arrest.
 - (3) Contraband authorized by the tribal detention facility policies and used at the direction or with the permission of tribal detention facility officials.
- (E) Promoting prison contraband if the contraband is a deadly weapon, dangerous instrument or explosive is a class 2 felony. Promoting prison contraband if the contraband is a dangerous drug, narcotic drug or marijuana is a class 2 felony. In all other cases promoting prison contraband is a class 3 felony. Failure to report a violation or attempted violation of this section is a class 2 felony.

Section 1140 Obstructing governmental operations; classification

- (A) A person commits obstructing governmental operations if, by using or threatening to use violence or physical force, such person knowingly obstructs, impairs or hinders:
- (1) The performance of a governmental function by a public servant acting under color of his official authority; or
 - (2) The enforcement of the penal law or the preservation of the peace by a peace officer acting under color of his official authority.
- (B) This section does not apply to the obstruction, impairment or hinderance of the making of an arrest.
- (C) Obstructing governmental operations is a class 1 misdemeanor.

SUBCHAPTER O NARCOTICS; DRUG CRIMES (formerly subchapter H)

Section 1200 Dangerous Drugs, Narcotic Drugs, Cannabis and Vapor Releasing Toxic Substances; Definitions

In this subchapter, unless context otherwise requires:

- (A) Dangerous drug shall have the same meaning as defined by of the State of Arizona as set forth in section 3401, chapter 34, Title 13, of the Arizona Revised Statutes, to include any current and future amendments, except as set forth in this Chapter.
- (B) Narcotic drug shall have the same meaning as defined by of the State of Arizona as set forth in section 3401, chapter 34, Title 13, of the Arizona Revised Statutes, to include any current and future amendments, except as set forth in this Chapter.
- (C) Marijuana shall have the same meaning as defined by of the State of Arizona as set forth in section 3401, chapter 34, Title 13, of the Arizona Revised Statutes, to include any current and future amendments, except as set forth in this Chapter, including,
 - (1) The resin extracted from any part of a plant of the genus cannabis, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or its resin.
 - (2) Every compound, manufacture, salt, derivative, mixture or preparation of such resin or tetrahydrocannabinol.
- (D) Vapor-releasing toxic substance shall have the same meaning as defined by of the State of Arizona as set forth in section 3401, chapter 34, Title 13, of the Arizona Revised Statutes, to include any current and future amendments, except as set forth in this Chapter.

Section 1200.1 Precursor and Regulated Chemicals; Definitions

- (A) Precursor chemicals means any material, compound, mixture or preparation which contains any quantity of the following substances and their salts, optical isomers or salts of optical isomers:
 - (1) N-acetylanthranilic acid.(used in manufacture of pharmaceuticals, plastics, can be used to make methaqualone and mecloqualone (Quaaludes))
 - (2) Anthranilic acid.(used industrially in production of saccharin (artificial sweetener) and to make perfumes, can be used to make Quaaludes and Mandrax).
 - (3) Ephedrine.(used to treat asthma, bronchodilators, can be used to make methamphetamine)
 - (4) Ergotamine.(used in treatments for migraines, and to hasten contractions in child birth, can be used to manufacture lysergic acid, LSD)

- (5) Isosafrole.(used in perfumes and flavorings, also as pesticide, can be used to make ecstasy/molly)
- (6) Lysergic acid.(found in ergot, a fungus which grows on grains, used in medical research, can be used in manufacture of LSD)
- (7) Methylamine.(used in pesticides, cleaning agents, photo processing, and for tanning and leather dye processes, can be used to make methamphetamine)
- (8) N-ethylephedrine.(see (3) ephedrine)
- (9) N-ethylpseudoephedrine.(Sudafed, used to make methamphetamine)
- (10) N-methylephedrine.(decongestant, cough suppressant, can be used to make methamphetamine)
- (11) N-methylpseudoephedrine. (Sudafed, used to make methamphetamine)
- (12) Norephedrine.
- (13) (-)-Norpseudoephedrine. (Phenylpropanolamine, used as stimulant, decongestant and anorectic agent, used to make methamphetamine)
- (14) Phenylacetic acid. (used to manufacture meth/amphetamines)
- (15) Phenylpropanolamine. (used as stimulant, decongestant and anorectic agent, used to make methamphetamine)
- (16) Piperidine.(commonly used solvent and reagent in chemical laboratories, used to manufacture PCP and TCP)
- (17) Pseudoephedrine. (Used in the manufacture of bronchodilators and nasal decongestant, Sudafed, etc., used to make methamphetamine)
- (18) 4-cyano-2-dimethylamino-4, 4-diphenyl butane.(methadone intermediate, methadone precursor)
- (19) 4-cyano-1-methyl-4-phenylpiperidine.(precursor to opioid analgesic drug pethidine (meperidine-narcotic pain reliever))
- (20) Chlorephedrine. (contaminant of the methamphetamine manufacturing process)
- (21) Chlorpseudoephedrine. (contaminant of the methamphetamine manufacturing process)
- (22) Ethyl-4-phenylpiperidine-4-carboxylate.(component of Demerol)

- (23) 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid. (opioid, Demerol)
 - (24) 1-methyl-4-phenylpiperidine-4-carboxylic acid. (component of Demerol)
 - (25) N-formyl amphetamine.(Formetorex, anorectic)
 - (26) N-formyl methamphetamine.(used to yield methamphetamine final product)
 - (27) Phenyl-2-propanone.(used in manufacture of amphetamine and methamphetamine)
 - (28) 1-piperidinocyclohexane carbonitrile.(contaminant of illicit PCP)
 - (29) 1-pyrrolidinocyclohexane carbonitrile. (used to make PCPy)
- (B) Regulated chemical means the following substances in bulk form that are not a useful part of an otherwise lawful product:
- (1) Acetic anhydride.(used in production of photographic film, preservatives for wood products, and to manufacture aspirin as well as morphine, one of primary chemicals used to make heroin.
 - (2) Hypophosphorous acid. (found in wart removal products, used to turn ephedrine to methamphetamine)
 - (3) Iodine.(disinfectant, water purification, nutritional supplement, used in methamphetamine production)
 - (4) Sodium acetate.(used in heating pads and hand warmers, salt and vinegar potato chips, larger quantities can be used in production of methamphetamine)
 - (5) Red phosphorus.(match books, flares, used in production of methamphetamine)
 - (6) Gamma butyrolactone (GBL). (flavoring, cleaning solvent, superglue remover, body naturally converts to gamma hydroxyl butyrate (GHB-depressant 4(z))
 - (7) 1, 4-butanediol.(solvent, can be used as recreational drug “one comma four” effects similar to GHB)
 - (8) Butyrolactone.(see (6) butyrolactone)
 - (9) 1, 2 butanolide. (see (6) butyrolactone)
 - (10) 2-oxalalone. (anabolic testosterone agent)
 - (11) Tetrahydro-2-furanone. (see (6) butyrolactone)

- (12) Dihydro-2(3H)-furanone. (see (6) butyrolactone)
- (13) Tetramethylene glycol. (butanediol, sometimes used as substitute for GBL and GHB)

Section 1200.2 Unlawful Substances; Threshold Amounts

- (A) Threshold amount means a weight, market value or other form of measurement of an unlawful substance as follows:
 - (1) One gram of heroin. (equal to ¼ teaspoon)
 - (2) Nine grams of cocaine (powder form) (equal to 2 ¼ teaspoons) or 750 mg cocaine (rock form) (equal to 3/16 of a teaspoon)
 - (3) Seven hundred fifty milligrams of cocaine base or hydrolyzed cocaine (equal to 3/20 of a teaspoon).
 - (4) Four grams or 50 milliliters of PCP (equal to 1 teaspoon).
 - (5) Nine grams of methamphetamine, including methamphetamine in liquid suspension (equal to 2 ¼ teaspoons).
 - (6) Nine grams of amphetamine, including amphetamine in liquid suspension (equal to 2 ¼ teaspoons).
 - (7) One-half milliliter of lysergic acid diethylamide (LSD), or in the case of blotter dosage units, fifty dosage units (equal to 1/10 of a teaspoon)
 - (8) Two pounds of marijuana.
 - (9) For any combination consisting solely of those unlawful substances listed in subdivisions (1) through (8) of this paragraph, an amount equal to or in excess of the threshold amount, as determined by the application of subsection (B).
 - (10) For any unlawful substance not listed in subdivisions (1) through (8) of this paragraph or any combination involving any unlawful substance not listed in subdivisions (1) through (8) of this paragraph, a value of at least one thousand dollars (\$1000).
- (B) For purposes of determining if the threshold amount is equaled or exceeded in any single offense or combination of offenses, a percentage of each substance listed by weight in subsection (A) of this section, or any fraction thereof to its threshold amount shall be established. The percentages shall be added to determine if the threshold amount is equaled or exceeded. If the total of the percentages established equals or exceeds one hundred per cent, the threshold amount is equaled or exceeded. If the threshold amount is equaled or exceeded because of the application of this subsection, the person shall be sentenced as if the combination of unlawful substances consisted entirely of the unlawful substance of the

greatest proportionate amount. If there are equal proportionate amounts, the person shall be sentenced as if the unlawful substances consisted entirely of the unlawful substance constituting the highest class of offense.

- (C) If threshold amount is equaled or exceeded, a conviction calls for mandatory incarceration.
- (D) A person who violates this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the sentence imposed by the court has been served or commuted.

Section 1205 Prohibited Acts: Unlawful Possession of Dangerous Drugs, Narcotic Drugs, and Marijuana;

- (A) It shall be unlawful for any person to plant, cultivate, possess, have under their control, dispense, use, transport, carry, sell, give away, prepare for sale, furnish, administer, or offer to sell, furnish, administer or give away any dangerous or narcotic drug or marijuana, or any analogue of a dangerous drug, narcotic drug, or marijuana.
- (B) Any person who violates any section of this subchapter and does so within 100 feet of a school or other educational facility, or upon or within 100 feet of a public park, cultural grounds, or at a cultural event, shall be convicted of an aggravated offense which carries the following sentence:
 - (1) Probation shall not be available
 - (2) The term of incarceration shall be no less than the presumptive term.
- (C) Classifications:
 - (1) Narcotic Drugs
 - (a) Possession or use of a narcotic drug shall be a class 3 felony.
 - (b) Possession of a narcotic drug for sale shall be a class 2 felony.
 - (c) Possession of equipment or chemicals, or both, for the purpose of manufacturing a narcotic drug shall be a class 2 felony.
 - (d) Manufacture of a narcotic drug shall be a class 2 felony.
 - (e) Administration of a narcotic drug to another person shall be a class 2 felony.
 - (f) Obtaining or procuring the administration of a narcotic drug by fraud, deceit, misrepresentation or subterfuge shall be a class 2 felony.
 - (g) Transportation for sale, importation, offer to transport for sale or import into this state, sell, transfer, or offer to sell or transfer a narcotic drug shall be a class 2 felony.

(2) Dangerous Drugs:

- (a) Possession or use of a dangerous drug shall be a class 3 felony
- (b) Possession of a dangerous drug for sale shall be a class 2 felony.
- (c) Possession of equipment or chemicals, or both, for the purpose of manufacturing a dangerous drug shall be a class 2 felony.
- (d) Manufacture of a dangerous drug shall be a class 3 felony. Manufacture of methamphetamine shall be a class 2 felony.
- (e) Administration of a dangerous drug to another person shall be a class 2 felony.
- (f) Obtaining or procuring the administration of a dangerous drug by fraud, deceit, misrepresentation or subterfuge shall be a class 2 felony.
- (g) Transportation for sale, importation, or offer to transport for sale or import, sell, transfer, or offer to sell or transfer a dangerous drug shall be a class 2 felony.

(3) Marijuana:

- (a) Possession or use of marijuana: less than 2 lb. shall be a class 1 misdemeanor, greater than 2 lbs. but less than 4 lbs. shall be a class 3 felony, greater than 4 lbs. shall be a class 2 felony.
- (b) Possession of marijuana for sale: less than 1 lbs. shall be a class 3 felony, greater than 1 lb. but less than 2 lbs. shall be a class 2 felony, greater than 2 lbs. shall be a class 1 felony.
- (c) Production of marijuana: less than 1 lb. shall be a class 3 felony, greater than 1 lb. but less than 2 lbs. shall be a class 2 felony, greater than 2 lbs. shall be a class 1 felony.
- (d) Transportation for sale, importation, or offering to transport for sale or import, sale, transfer, or offering to sell or transfer marijuana: less than 1 lb. shall be a class 3 felony, greater than 1 lb. but less than 2 lbs. shall be a class 2 felony, greater than 2 lbs. shall be a class 1 felony.
- (e) It shall not be unlawful for any individual to be in possession of marijuana pursuant to a valid State of Arizona medical marijuana card, provided the amounts possessed are within the authorized limits and it is not for the purpose of production, sale, transfer, or cultivation as defined under Arizona law.

- (D) It shall be within the discretion of the Judge pronouncing sentence upon any violator of this chapter to order that person to be confined to a treatment facility for care and treatment but that confinement shall not exceed six months.
- (E) If there is probable cause to believe that a non-member of the Pascua Yaqui Tribe has violated a provision of this subchapter, the Tribal Court shall have the option of retaining jurisdiction over that person or placing the non-member in the custody of the United States Marshall for prosecution in the Federal Courts or to Pima County authorities, or the State of Arizona law enforcement officials.
- (F) This section shall not apply to persons who possess, have under their control, use, transport, or carry narcotics or dangerous drugs pursuant to a prescription by a licensed physician, physician's assistant, nurse practitioner, osteopath, dentist, veterinarian, or other medical personnel authorized by law, and;
 - (1) The person is using the drug as prescribed, which may be determined by an analysis of the person's blood, urine, or other bodily fluids, which analysis quantifies the amount of the narcotic or dangerous drug in the person's system and which quantified amount is within the range of medically accepted levels for the effective use of the prescribed drug for that person; and
 - (2) The prescribed drug is for a current medical condition, and the prescription of the drug is reasonable according to generally accepted medical standards.
- (G) This section shall not apply to manufacturers, wholesalers, apothecaries, physicians, physician's assistants, nurse practitioners, osteopaths, dentists, veterinarians or other medical personnel authorized by law to have under their control, dispense, use, transport, sell, prepare for sale, furnish, administer, or offer to do the same, any drug listed in Subchapter O, so long as such acts are done without violation of any law of the United States.
- (H) This section shall not apply to the administration of prescribed narcotic drugs by healthcare professionals or family members to a person who needs assistance in taking their prescription.

Section 1210 Possession of Precursor and Regulated Chemicals

A person shall not knowingly:

- (A) Possess a precursor chemical.
- (B) Sell, transfer or otherwise furnish any precursor chemical, regulated chemical or other substance or equipment with knowledge that the recipient will use the precursor chemical, regulated chemical, substance or equipment to unlawfully manufacture a dangerous drug or narcotic drug.
- (C) Possess more than 24 grams of pseudoephedrine, norepseudoephedrine, or phenylpropanoldmine

- (D) A violation of (A) or (B) of this subsection is a class 1 felony.
- (E) A violation of (C) of this subsection is a class 3 felony.

Section 1215 Controlled Substance Analogues; Designer Drugs

It shall be unlawful for any person to possess, use, manufacture, transport, sell, give away, or offer to sell or give away any controlled substance analogue, to the extent the controlled substance analogue is intended for human consumption.

- (A) The term “controlled substance analogue” means a substance:
 - (1) With a chemical structure that is substantially similar to the chemical structure of a controlled substance listed in Sections 1200, 1200.1 and 1200.2;
 - (2) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect of a controlled substance listed in Section 1200, 1200.1 and 1200.2; or
 - (3) With respect to a particular person, that person represents or intends that the controlled substance analogue will have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect of a controlled substance listed in Section 1200, 1200.1 and 1200.2.
- (B) For the purposes of this section, evidence that a substance was not marketed, advertised, or labeled as being for human consumption shall not by itself be sufficient to establish that the substance was not intended for human consumption.
- (C) Possession or use of a controlled substance analogue is a class 3 felony.
- (D) Possession of a controlled substance analogue for sale is a class 2 felony.
- (E) Manufacture of a controlled substance analogue is a class 2 felony.

Section 1220 Manufacturing Methamphetamine under Circumstances that Cause Injury to a Child

- (A) A person shall not knowingly manufacture methamphetamine in the presence of a child or a dependent or vulnerable adult.
- (B) A person shall not knowingly manufacture methamphetamine under any circumstance that causes physical injury to a child, or a dependent or vulnerable adult.
- (C) For the purposes of this section,

- (1) “Dependent or vulnerable adult” means an individual who is 18 years or older and is unable to protect himself or herself from abuse, neglect, or exploitation by others because of a mental or physical impairment.
 - (2) A violation committed under this section does not require that a person have care or custody of the child or vulnerable adult.
- (D) Violation of part (A) shall be a class 2 felony. Violation of part (B) shall be a class 1 felony

Section 1225 Employment or Use of Persons Under 18 years of age in Drug Operations

- (A) A person shall not knowingly or intentionally
- (1) Employ, hire, use, persuade, entice or coerce a person under 18 years of age to engage in any conduct, completed or preparatory, that is prohibited by any provision of this subchapter;
 - (2) Sell, transfer, or offer to sell or transfer to a minor any substance in his or her possession that is listed in Section 1200.
- (B) Violation of this section shall be a class 1 felony. A person who violates this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the sentence imposed by the court has been served or commuted.

Section 1230 Drug Paraphernalia; Definitions (Formerly 4 PYTC § 1-790)

In this section, unless the context otherwise requires:

- (A) “Drug” means any narcotic drug, dangerous drug, marijuana, a vapor-releasing toxic substance, or peyote.
- (B) “Drug paraphernalia” means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a drug in violation of this subchapter. It includes but is not limited to:
- (1) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a drug or from which a drug can be derived.
 - (2) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing drugs.
 - (3) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a drug.

- (4) Testing equipment used, intended for use or designed for use in identifying or analyzing the strength, effectiveness or purity of drugs.
- (5) Scales and balances used, intended for use or designed for use in weighing or measuring drugs.
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting drugs.
- (7) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana.
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding drugs.
- (9) Capsules, balloons, envelopes or other containers used, intended for use or designed for use in packaging small quantities of drugs.
- (10) Containers and other objects used, intended for use or designed for use in storing or concealing drugs.
- (11) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting drugs into the human body.
- (12) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
 - (a) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.
 - (b) Water pipes.
 - (c) Carburetion tubes and devices.
 - (d) Smoking and carburetion masks.
 - (e) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
 - (f) Wired cigarette rolling papers.
 - (g) Miniature cocaine spoons and cocaine vials.
 - (h) Chamber pipes.
 - (i) Carburetor pipes.

- (j) Electric pipes.
- (k) Air-driven pipes.
- (l) Chillums.
- (m) Bonges.
- (n) Ice pipes or chillers.
- (o) Cocaine freebase kits.

Section 1240 Possession, Manufacture, Delivery and Advertisement of Drug Paraphernalia; (Formerly 4 PYTC § 1-790)

- (A) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a drug in violation of Section 1200. Any person who violates this subsection is guilty of a class 3 felony.
- (B) It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a drug in violation of Section 1200. Any person who violates this subsection is guilty of a class 3 felony.
- (C) It is unlawful for a person to place in a newspaper, magazine, handbill or other publication any advertisement knowing, or under circumstances where one reasonable should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a class 3 felony.
- (D) All drug paraphernalia is subject to forfeiture as provided in this Code. The failure to charge or acquittal of an owner or anyone in the control of drug paraphernalia in violation of this section does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.
- (E) Exemptions. This section shall not apply to:
 - (1) Any person authorized by Tribal, state, or Federal law to manufacture, possess, or distribute such items;
 - (2) Any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.

Section 1245 Intoxication by Inhaling (Formerly 4 PYTC § 1-800)

- (A) A person shall not knowingly:
 - (1) Breathe, inhale or drink gasoline, lighter fluid, glue, paint thinner, paint or varnish dispensed by use of aerosol spray, or any vapor-releasing toxic substance as defined by Section 1200(D) for the purpose of becoming intoxicated.
 - (2) Sell, transfer, or offer to sell any vapor-releasing toxic substance to a person under eighteen years of age.
 - (3) Sell, transfer or offer to sell or transfer any vapor-releasing toxic substance if such person is not at the time of sale, transfer, or offer, employed by or engaged in operating a licensed commercial establishment at a fixed location regularly offering such substances for sale and such sale, transfer or offer is made in the course of employment or operation.
- (B) Punishment for the first violation of this section shall be a class 3 misdemeanor with a minimum of seven days in jail, not to exceed 30 days in jail, and such other conditions deemed appropriate by the Court including drug rehabilitation treatment, community service and a fine not to exceed \$500.
- (C) Punishment for a second violation of this section within five years of the first shall be a class 2 misdemeanor, with a minimum of 60 days in jail, and such other conditions deemed appropriate by the Court including drug rehabilitation treatment, community service and a fine not less than \$500 or more than \$1000.
- (D) Any person punished under this section and order to pay a fine may reduce said fine at the rate of ten dollars for every day of community service performed with Court permission.
- (E) This section is not applicable to the transfer of a vapor-releasing toxic substance from a parent or guardian to his or her child, unless the parent knows or should know the child will intentionally breathe, inhale, or drink the vapor-releasing toxic substance for the purpose of becoming intoxicated.
- (F) This section is not applicable to a sale or transfer of vapor-releasing toxic substances made for industrial or manufacturing purposes.

Section 1250 Furnishing Tobacco to Minors (Formerly 4 PYTC § 1-810)

- (A) For the purposes of this section:
 - (1) “Shisha” includes any mixture of tobacco leaf and honey, molasses or dried fruit or any other sweetener.
 - (2) “Tobacco product” means any of the following:
 - (a) Cigars.

- (b) Cigarettes.
 - (c) Cigarette papers of any kind.
 - (d) Smoking tobacco of any kind.
 - (e) Chewing tobacco of any kind.
- (3) “Vapor product” means a noncombustible tobacco-derived product containing nicotine that employs a mechanical heating element, battery or circuit, regardless of shape or size that can be used to heat liquid nicotine solution contained in cartridges.
- (B) A person who knowingly sells, gives or furnishes a tobacco product, a vapor product or any instrument or paraphernalia that is solely designed for the smoking or ingestion of tobacco or shisha, including a hookah or waterpipe, to a minor is guilty of a class 3 misdemeanor.
- (C) A minor who buys, or has in his or her possession or knowingly accepts or receives from any person a tobacco product, a vapor product or any instrument or paraphernalia that is solely designed for the smoking or ingestion of tobacco or shisha, including a hookah or waterpipe, is guilty of a class 3 misdemeanor.
- (D) A minor who misrepresents his or her age to any person by means of a written instrument of identification with the intent to induce the person to sell, give or furnish a tobacco product, a vapor product or any instrument or paraphernalia that is solely designed for the smoking or ingestion of tobacco or shisha, including a hookah or waterpipe, in violation of subsection (A) or (B) of this section is guilty of a class 2 misdemeanor.

Section 1255 Seizure and Civil Forfeiture

- (A) The interest of the legal owner or owners or record of any vehicle used to transport unlawfully a narcotic drug, or in which a narcotic drug is unlawfully kept, deposited or concealed, or in which a narcotic is unlawfully possessed by an occupant shall be forfeited to the Pascua Yaqui Tribe. Such forfeiture proceedings shall be civil in nature, and enforcement of any judgment pursuant to this section shall be enforceable by the Tribal Prosecutor as a civil judgment.
- (B) Any Police Officer making or attempting to make arrest for a violation of this section shall seize the vehicle used to transport unlawfully a narcotic drug, or in which a narcotic drug is unlawfully kept, deposited or concealed, or unlawfully possessed by an occupant, shall immediately deliver the vehicle to the Tribal Police to be held as evidence until forfeiture is declared or a release ordered.
- (C) A Peace Officer who seizes a vehicle under the provisions of this section shall file a report with the Prosecutor, who shall file a Notice of Seizure and Intention of Forfeiture proceedings with the Clerk of the Tribal Court and the clerk shall serve notice thereof on all owners or claimants of the vehicle, by one of the following methods.

- (1) Upon an owner or claimant who's right, title or interest is of record in the Division of Motor Vehicles of the State in which the automobile is licensed, by mailing a copy of the notice by registered mail to the address on the records of the Division of Motor Vehicles of said state.
 - (2) Upon the owner or claimant whose name and address is unknown but who is believed to have an interest in the vehicle by publication in one issue of a newspaper of general circulation in Pima County, Arizona.
- (D) Within 20 days after the mailing or publication of a Notice of Seizure, as provided by Paragraph (C) of this section, the owner of the seized vehicle may file a verified answer to the allegation of the use of the vehicle contained in the Notice of Seizure and of the intended forfeiture proceedings. No extension of time shall be granted for the purpose of filing the answer.
- (E) If a verified answer to the notice given as prescribed by this article is not filed within 20 days after the mailing or publication thereof, the Court shall hear evidence upon the charge of unlawful use of the vehicle and upon motion shall order the vehicle forfeited to the Pascua Yaqui Tribe.
- (F) If a verified answer is filed, the forfeiture proceedings shall be set for hearing on a day not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of the Notice of Seizure.
- (1) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the vehicle was not used to transport unlawfully narcotic drugs, or in which a narcotic drug was not unlawfully possessed by an occupant of the vehicle, or the vehicle was not used as a depository or place of concealment for narcotic drugs.
 - (2) A claimant of any right, title or interest in the vehicle may prove his lien, or conditional sales contract to be bona fide and that his right, title or interest was created after a reasonable investigation of the moral responsibility, character and reputation of the purchaser, and without knowledge that the vehicle was being used or was to be used for the purpose charged. No person who has the lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon and furnishing supplies and materials for and for the storage, repairs and safekeeping of any vehicle and no person doing business under any law or state of the United States relating to banks, trust companies, building and loan associations, and loan companies, credit unions, or money lenders or entities engaged in the business of selling vehicles or purchasing conditional sales contracts on vehicles or purchasing conditional sales contracts on vehicles shall be required to prove that his right, title or interest was created after a reasonable investigation of the owner, purchase or person in possession of the vehicle when it was brought to the claimant.

- (G) If proper proof is presented at the hearing, the Court shall order the vehicle released to the bona fide owner, lien holder, mortgagee or vendor. (1) If the amount due a claimant is less than the value of the vehicle, it shall be sold at public auction by the Tribal Police after due and proper notice has been given. (2) If no claimant exists and the confiscating agency wishes to retain the vehicle for its use, it may do so. If such vehicle is not to be retained, it shall be disposed of as provided in Subsection (1) of this paragraph.

Section 1260 Seizure and Forfeiture of Personal Property; Forfeiture of the Right to Reside in Housing Authority or Tribal Housing

- (A) Personal property. The interest and/or ownership of the legal owner or owners of any personal property, including cash money, which is
- (1) Used to promote, purchase, sell, produce, manufacture, process, store, conceal a narcotic or dangerous drug; or
 - (2) intended to further an illegal enterprise to promote, purchase, sell, produce, manufacture, process, store or conceal narcotic or dangerous drugs; or
 - (3) Traceable to the sale, purchase, production, manufacture, processing, storing or concealing of a narcotic or dangerous drug shall be seized and forfeited to the Tribe in the same manner as a vehicle.
- (B) Tenancy. The tenancy or right thereto of any person in a HUD rental unit, Tribal rental home or Housing Authority rental shall be forfeited and the house or unit shall be reassigned if the tenant of a HUD rental unit, Tribal rental home, or Housing Authority rental uses same for transporting, keeping, depositing or concealing unlawfully or possessing unlawfully therein any narcotic or dangerous drug.

SUBCHAPTER P DOMESTIC VIOLENCE (Formerly 4 PYTC § 3)

Section 1300 Purpose (Formerly 4 PYTC § 3-1)

The purpose of this chapter is to recognize that domestic violence are serious crimes against society, the Pascua Yaqui Tribe, and the family. The purpose of this chapter is also to provide the victim of domestic violence the maximum protection from further violence that the law can provide. Furthermore, the purpose of this chapter is to recognize that the strength of the Pascua Yaqui Tribe is family, and that the safety of victims of domestic violence, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services. Responses to domestic violence shall stress the enforcement of laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribe's policy that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. This chapter shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

Section 1305 Definitions (Formerly 4 PYTC § 3-10)

- (A) “Domestic violence” means any act that is a dangerous crime against children as defined in section 2-205 of Title 4 or an offense prescribed in sections 210 - First degree murder, 220 - second degree murder, 230 - manslaughter, 240 - negligent homicide, 310 - abandonment of child, 320 - abuse of a minor, 330 - care of dependent persons, 350 - custodial interference, 360 - exploitation of elderly, 405 - assault, 410 - aggravated assault, 425 - endangerment, 435 - kidnapping, 445 - harassment, 446 - aggravated harassment, 450 - unlawful imprisonment, 460 - stalking, 465 - threatening or intimidating, 470 - disorderly conduct, subsection A, paragraph 1, 2, 3 or 4, 525 - sexual assault, 530 - sexual assault of a spouse, 545 - child abuse, 780 - tampering with communications, 785 - criminal trespass, 1035 - criminal damages, 1350 - aggravated domestic violence, or cruelty and neglect of animals under 8 PYTC 6-1-60(A)(3) or (4), if any of the following applies:
- (1) The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.
 - (2) The victim and the defendant have a child in common.
 - (3) The victim or the defendant is pregnant by the other party.
 - (4) The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
 - (5) The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.
 - (6) The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship:
 - (a) The type of relationship.
 - (b) The length of the relationship.
 - (c) The frequency of the interaction between the victim and the defendant.
 - (d) If the relationship has terminated, the length of time since the termination.
- (B) “Dating partners” means persons who are or have been in a social relationship or a romantic or intimate nature as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

- (C) “Intimate partners” means spouses, former spouses, persons who are or have been in a martial-like relationship, including same-sex relationships, persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship.
- (D) “Child Prostitution” means:
 - (1) Causing a minor to engage in prostitution.
 - (2) Using any minor for purposes of prostitution.
 - (3) Permitting a minor under such person’s custody or control to engage in prostitution.
 - (4) Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.
 - (5) Receiving any benefit for or an account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.
 - (6) Financing, managing, supervision, controlling or owing, either alone or in association with others, prostitution activity involving a minor.
 - (7) Transporting or financing the transportation of any minor with the intent that such minor engage in prostitution.

**Section 1310 Arrest; Mandatory Arrest; Release; Prevention of Future Violence
(Formerly 4 PYTC § 3-20)**

- (A) A peace officer may, with or without a warrant, arrest a person if he has probable cause to believe that domestic violence has been committed and he has probable cause to believe that the person to be arrested has committed the offense, whether such offense is a felony or a misdemeanor or whether such offense was committed within or without the presence of the peace officer.
- (B) In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, a peace officer shall arrest and take into custody a person, with or without a warrant, if the peace officer has probable cause to believe that domestic violence has been committed and he has probable cause to believe that the person to be arrested has committed the offense, whether such offense was committed within or without the presence of the peace officer unless the officer has reasonable grounds to believe the victim will be protected from further injury or the suspect is not available at the time. Failure to make an arrest does not give rise to civil liability.
- (C) A person arrested pursuant to Subsection (A) or (B) of this section may be released from custody in accordance with the rules of criminal procedure or other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other

specifically designated persons and may provide for additional conditions which the Court deems appropriate, including participation in any counseling programs available to the defendant.

- (D) **Prevention of Future Violence.** When a law enforcement officer has reason to believe that a person has been subject to domestic violence, the officer shall use all reasonable means to prevent further violence, including but not limited to:
- (1) Questioning of the persons present to determine if a firearm is present on the premises and confiscating any weapon involved in the alleged domestic violence or taking temporary possession of any weapons found in the household that are in plain view or found pursuant to a consent search, and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm seized pursuant to this section shall be held for a minimum of 72 hours, after which time the weapon shall be released by the police department or the prosecutor shall file notice of intent to retain the firearm for up to six months and the owner shall be served with notice and shall have the right to request a hearing to dispute the seizure and for the return of the firearm;
 - (2) Assisting in obtaining transportation of the victim to a shelter if so desired;
 - (3) Assisting the victim in removing essential personal effects;
 - (4) Assisting the victim and children in obtaining necessary medical treatment;

Section 1315 Notice (Formerly 4 PYTC § 3-30)

- (A) When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform any alleged or potential victim of the procedures and resources available for the protection of such victim including:
- (1) An order for protection pursuant to Section 60 and an injunction.
 - (2) The emergency telephone number for the local police agency.
 - (3) Telephone numbers for emergency services in the local community.
- (B) A peace officer is not civilly liable for noncompliance with Section (A) of this section.

Section 1320 Classification (Formerly 4 PYTC § 3-40)

An offense included in domestic violence carries the classification prescribed in the criminal code in which the offense is classified.

Section 1325 Deferred Sentencing Permitted (Formerly 4 PYTC § 3-50)

- (A) If the defendant is found guilty of an offense included in domestic violence the Court may defer sentencing if:
 - (1) The perpetrator meets eligibility criteria established pursuant to subsection (B);
 - (2) Consent of the prosecutor is obtained after consultation with the victim, when the victim is available;
 - (3) A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
 - (4) The court orders conditions of the deferred sentence that are necessary to protect the victim, prevent future violence, and rehabilitate the perpetrator
- (B) The Court shall establish criteria for determination of:
 - (1) A perpetrator's eligibility for deferred sentencing
 - (2) A perpetrator's successful completion of the conditions imposed by the Court; and
 - (3) Penalties for violation of the conditions imposed by the Court.
- (C) The case against a perpetrator of domestic violence may be dismissed if the perpetrator successfully completes all conditions imposed by the court pursuant to subsection (A).

Section 1330 Order of Protection; Ex Parte Orders of Protection; Procedure; Contents; Arrest for Violation; Penalty (Formerly 4 PYTC § 3-60)

- (A) A person may file a verified petition, as in civil actions, with the Tribal Court Judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence.
- (B) The petition shall state the:
 - (1) Name and address of plaintiff for purposes of service, except that if a person is a resident of a domestic violence shelter, the person is not required to reveal the address of the shelters but a means of communicating with the resident, such as a post office box or address of his or her attorney, must be disclosed.
 - (2) Name and address, if known, of the defendant.
 - (3) Specific statement, including dates, of the domestic violence attempt.
 - (4) Relationship between the parties pursuant to Section 10(F) and whether there is pending between the parties an action for annulment, legal separation or dissolution of marriage.

- (5) Name of the Court in which any prior or pending proceeding or order was sought or issued concerning the conduct which is sought to be restrained.
 - (6) Desired relief.
- (C) The Court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff to determine whether the orders requested should issue without further hearing. If the Court determines that there is reasonable cause to believe that the defendant may commit an act of domestic violence or that the defendant has committed an act of domestic violence, the Court shall issue an order as provided in Subsection (D) of this section. If the Court denies the requested relief, it may schedule a further hearing within ten days, with reasonable notice to the defendant.
- (D) An order of protection issued by a Court may include any of the following:
- (1) Either or both parties may be enjoined from committing a violation of one or more of the offenses included in domestic violence.
 - (2) One party may be granted the use and exclusive possession of the parties' residence on a showing that there is reasonable cause to believe that physical harm may otherwise result.
 - (3) Either or both parties may be restricted from coming near the residence, place of employment or school of the other party or other specifically designated locations or person on a showing that there is reasonable cause to believe that physical harm may otherwise result.
 - (4) Relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances.
- (E) In addition to any other relief authorized in this section, the Court may order that neither party contact the other except through a third party or until further order of the Court. No presumption of misconduct shall arise out of issuance of an order pursuant to this subsection and an order issued under this subsection may not be used for any purpose by either party in any subsequent proceedings involving child custody or visitation rights.
- (F) The Court shall not grant a mutual order of protection to opposing parties. The Court may issue a separate order of protection restraining each opposing party where each party has served petitions for protection orders, and each party has committed domestic violence as defined by the code, each poses a continuing risk of violence to the order, and each has otherwise satisfied all prerequisites for the type of order and remedies sought.
- (G) At any time during which the order is in effect, a party under an order of protection or restrained from contacting the other party is entitled to a hearing on written request. A hearing requested by a party under an order of protection or restrained from contacting the other party shall be held within ten days from the date requested unless the Court finds good cause to continue the hearing. The hearing shall be held at the earliest possible time. An *ex parte* order issued under this section shall state on its face that the defendant is

entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the Court may modify, revoke or continue the order.

- (H) The order shall include the following statement:

CERIFICATE OF COMPLIANCE WITH THE VIOLENCE AGAINST WOMEN ACT:
This protective order meets all full faith and credit requirements of the Violence Women's Act 18 U.S.C. 2265. This court has jurisdiction over the parties and the subject matter. The respondent was afforded notice or this order has been issued ex parte due to immediate danger and the respondent has been given an opportunity to be heard in a timely manner as provided by the law of this jurisdiction. **THIS ORDER IS VALID AND ENTITLED TO ENFORCEMENT IN THIS AND ALL OTHER JURISDICTIONS UNDER FEDERAL FULL FAITH AND CREDIT LAWS.** If you disobey this order the court may find you in contempt of court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

WARNING: POSSESSION OF A FIREARM OR AMMUNITION BY RESPONDENT WHILE THIS ORDER IS IN EFFECT MAY BE PROHIBITED UNDER FEDERAL OR STATE LAW.

WARNING: ONLY THE COURT HAS THE POWER TO CHANGE THESE CONDITIONS REGARDLESS OF THE CONSENT OF THE PROTECTED PARTY

- (I) An order shall be served on the defendant. An order is effective immediately on the plaintiff. An order is effective on the defendant on service of a copy of the order. An order expires, unless renewed, one year after service on the defendant.
- (J) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the Court shall register a certified copy of the order of protection and a copy of the affidavit of service of process or acceptance of service with the Tribal Police Department. Registration of an order means that a certified copy of the order of protection and a copy of the affidavit or acceptance of service have been received by police department. The police department shall maintain a central repository for orders of protection so that the existence and validity of the orders can be easily verified. The effectiveness of an order does not depend on its registration and for enforcement purposes, a certified copy of an order of the Court, whether or not registered, is presumed to be a valid existing order of the Court for a period of six months from the date of service of the order on the defendant. Any changes or modifications of the order are effective upon entry of an order of the Court and shall be registered with the police department within 24 hours of the entry of the order, excluding weekends and holidays.
- (K) A peace officer may, with or without a warrant, arrest a person if the peace officer has probable cause to believe that the person is in violation of disobeying or resisting an order issued pursuant to this section, whether or not such violation occurred in the presence of the officer.

- (L) A person arrested pursuant to Subsection (K) of this section may be released from custody in accordance with the rules of criminal procedure or other applicable ordinance. An order for release, with or without an appearance bond, shall include pretrial release conditions, which the court deems appropriate, including participation in any counseling programs available to the defendant.
- (M) The remedies provided in this section for enforcement of the orders of the Court are in addition to any other civil and criminal remedies available. The Tribal Court may hear and decide all matters arising pursuant to this section.
- (N) A peace officer making an arrest pursuant to this section is not civil or criminal liable for such arrest if the officer acts upon probable cause and without malice.
- (O) In addition to person authorized to serve process, a peace officer may serve an order of protection issued pursuant to this section.

Section 1335 Orders of Protection; Other Jurisdictions; Penalties (Formerly 4 PYTC § 3-70)

- (A) A police officer who is entitled to enforce tribal laws may enforce the terms and provisions of a qualifying order of protection within the Pascua Yaqui Indian Reservation.
- (B) A peace officer may arrest and take into custody any person who the peace officer has probable cause to believe has willfully violated an order of protection issued by the Pascua Yaqui Tribal Court under [Section 1330](#) of this chapter or a qualifying order of protection from another jurisdiction.
- (C) A qualifying order of protection means:
 - (1) The order of protection prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person.
 - (2) The order was issued against the defendant.
 - (3) The order is enforceable by the Pascua Yaqui Tribe.
 - (4) The order was issued by a court of competent jurisdiction including federal, state or tribal courts.
- (D) Any person who willfully violates the terms of a qualifying protection order is guilty of the crime of Violation of a Protection Order and such violation is a Class 3 Felony for the first conviction. It is a Class 2 Felony for a second or subsequent conviction.

Section 1340 Domestic Violence Designation (Formerly 4 PYTC § 3-80)

- (A) Any act that is a dangerous crime against children as defined in section 2-205 of Title 4 or an offense prescribed in sections 210 - First degree murder, 220 –second degree murder,

230 - manslaughter, 240 – negligent homicide, 310 – abandonment of child, 320 – abuse of a minor, 330 – care of dependent persons, 350 – custodial interference, 360 – exploitation of elderly, 405 - assault, 410 – aggravated assault, 425 - endangerment, 435 - kidnapping, 445 - harassment, 446 – aggravated harassment, 450 – unlawful imprisonment, 460 - stalking, 465 – threatening or intimidating, 470 – disorderly conduct, subsection A, paragraph 1, 2, 3 or 4, 525 – sexual assault, 530 – sexual assault of a spouse, 545 – child abuse, 780 – tampering with communications 785 – criminal trespass, 1035 – criminal damages, 1350 – aggravated domestic violence, or cruelty and neglect of animals under 8 PYTC 6-1-60(A)(3) or (4), of this Title may be designated as a domestic violence crime, which serves as notice that the Tribe may seek additional conditions at sentencing upon conviction.

Section 1345 Endangering Welfare of Minor (Formerly 4 PYTC § 3-90)

- (A) A person commits the crime of endangering the welfare of a minor if he knowingly commits a crime of domestic violence in the presence of an unmarried person under eighteen years of age. A class 1 misdemeanor.
- (B) Any crime of domestic violence which is committed in the presence of a minor child of the offender or of the victim is deemed abuse as defined at 5 PYTC §7-20(B). If an officer reasonably believes that domestic violence has been committed in front of a child of the defendant or the victim, the officer shall report such abuse pursuant to 5 PYTC §7-230.

Section 1350 Aggravated Domestic Violence; Habitual Offender; Penalties; Domestic Violence Penalties; Considerations (Formerly 4 PYTC § 3-100)

- (A) A person is guilty of aggravated domestic violence if the person within a period of eighty-four (84) months commits a third or subsequent violation of a domestic violence offense or commits a new violation of a domestic violence offense having been convicted of two or more prior domestic violence offenses in any state, tribal court or court of the United States within the previous eighty-four (84) months if such offenses would constitute a domestic violence offense if committed within the Tribe’s jurisdiction.
- (B) A person who is convicted under this section and who within a period of eighty-four (84) months has been convicted of two prior domestic violence offenses in Pascua Yaqui Tribal Court or in any state or tribal court or court of the United States if such offenses would constitute a domestic violence offense if committed within the Tribe’s jurisdiction is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than four (4) months in detention.
- (C) A person who is convicted under this section and who within a period of eighty-four (84) months has been convicted of three prior domestic violence offenses in Pascua Yaqui Tribal Court or in any state or tribal court or court of the United States if such offenses would constitute a domestic violence offense if committed within the Tribe’s jurisdiction is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than eight (8) months in detention.

- (D) For the purposes of this section, a third or subsequent violation for which a conviction occurs does not include a conviction for an offense arising out of the same series of acts.
- (E) Regardless of whether a person is charged under this section or as a first or second time offender, if a defendant is convicted of an offense involving domestic violence and the victim was pregnant at the time of the commission of the offense, at the time of sentencing the Court shall take into consideration the fact that the victim was pregnant and may increase the sentence.
- (F) Regardless of whether a person is charged under this section or as a first or second time offender, if a defendant is convicted of an offense involving domestic violence and the victim is fifty-five years of age or more at the time of the offense or the victim is a vulnerable adult at the time of the offense, at the time of sentencing the Court shall take into consideration the fact that the victim was fifty-five years of age or more or was a vulnerable adult and may increase the sentence.
- (G) For the purposes of this section, “vulnerable adult” means a person who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment.
- (H) Aggravated Domestic Violence is a class 3 felony.

SUBCHAPTER Q MISCELLANEOUS (formerly subchapter I)

Section 1400 Adultery (Formerly 4 PYTC § 1-860)

Any person who shall have had sexual intercourse with a person, either of such persons being married to a third person, shall be deemed guilty of adultery, a class 3 misdemeanor.

Section 1405 Bigamy (Formerly 4 PYTC § 1-870)

Any person who, being married, shall marry another person without having obtained a divorce, shall be deemed guilty of Bigamy, a class 3 misdemeanor. This section shall not apply to the remarriage of a person whose husband or wife shall have been absent from such person for a period of three years or more, and shall not have been known, by such person, to have been living within that time, nor to any person whose former marriage shall have been declared void by any Court having competent jurisdiction.

Section 1410 Prostitution (Formerly 4 PYTC § 1-880)

- (A) It is unlawful for a person to knowingly engage in prostitution.
- (B) A person who knowingly entices any other person into a house of prostitution, or elsewhere, for the purpose of prostitution with another person, is guilty of an offense.
- (C) A person who knowingly, by any false pretenses, false representations or other fraudulent means, procures any other person to engage in prostitution with another person, is guilty of an offense.

- (D) A person who knowingly receives money or other valuable thing, for, or on account of, procuring or placing in a house of prostitution, or elsewhere, any person for the purpose of prostitution, is guilty of an offense.
- (E) A person who knowingly receives money or other valuable thing from the earnings of a person engaged in prostitution is guilty of an offense.
- (F) A person who knowingly by force, fraud, intimidation or threats, causes his or her spouse to live in a house of prostitution or to lead a life of prostitution, is guilty of an offense.
- (G) A person who knowingly procures or solicits any minor for the purpose of Prostitution is guilty of an offense.
- (H) A person who knowingly detains any person in a house of prostitution because of a debt such person has contracted or is said to have contracted, is guilty of an offense.
- (I) A person who knowingly operates or maintains a house of prostitution or prostitution enterprise is guilty of an offense.
- (J) Sections B, C, and D of this Section shall not apply to a peace officer acting in the scope of duty or in conduct of an investigation.
- (K) Classification and penalties.
 - (1) A person who violates paragraph A of this section is guilty of a class 1 misdemeanor, except that:
 - (a) A person who is convicted of a second violation, within seven years, of this section shall be sentenced to serve not less than 30 consecutive days incarcerated and is not eligible for probation or suspension of execution of sentence until the entire sentence is served.
 - (b) A person who is convicted of a third violation, within seven years, of this section shall be sentenced to serve not less than 60 consecutive days incarcerated, is not eligible for probation or suspension of execution of sentence until the entire sentence is served and shall complete an appropriate court ordered education or treatment program.
 - (c) A person who has previously been convicted of three or more violations, within seven years, of this section and who commits a subsequent violation of this section is guilty of a class 3 felony, shall be sentenced to serve not less than 180 consecutive days incarcerated and is not eligible for probation or suspension of execution of sentence until the entire sentence is served.
 - (2) A person who violates paragraph B, C, D, E, F, H or I of this section is guilty of a class 3 felony.
 - (3) A person who violates paragraph G of this section is guilty of a class 1 felony.

- (L) Definitions. In this Section, unless the context otherwise requires:
- (1) “House of prostitution” means any building, structure, vehicle, room, or place that is used for the purpose of prostitution, or where acts of prostitution occur.
 - (2) “Operate and maintain” means to organize, design, perpetuate or control. Operate and maintain includes providing financial support by paying utilities, rent, maintenance costs or advertising costs, supervising activities or work schedules, and directing or furthering the aims of the enterprise.
 - (3) “Prostitution” means engaging in or agreeing or offering to engage in sexual conduct under a fee arrangement with any person for money or any other valuable consideration.
 - (4) “Sexual Conduct” means “Oral Sexual Contact”, “Sexual Contact”, and “Sexual Intercourse” as defined at 4 PYTC § 1-500.
 - (5) “Prostitution enterprise” means any corporation, partnership, association or other legal entity or any group of individuals associated in fact although not a legal entity engaged in providing prostitution services.”