

**TITLE III**  
**CRIMINAL OFFENSES**

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## **CHAPTER 1. GENERAL CRIMINAL PROVISIONS**

### **§3-1-1 Construction of Criminal Code**

In criminal cases where no provision of the Tribal Code is applicable, the Tribal common law, as recognized by the Mississippi Band of Choctaw Indians, shall govern.

### **§3-1-2 Application of Code**

This Criminal Code has no application to crimes committed prior to its effective date. A crime is committed prior to the effective date of the Criminal Code if any of the essential elements of the crime occurred before that date. Prosecutions for prior crimes shall be governed, prosecuted and punished under the laws existing at the time such crimes were committed.

### **§3-1-3 Classified Crimes Defined**

A crime is a Class A offense if it is so designated by law or if upon conviction thereof a sentence of imprisonment for a term of up to six (6) months and/or a fine of five hundred dollars (\$500.00) is authorized.

A crime is a Class B offense if it is so designated by law or if upon conviction thereof a sentence of imprisonment not to exceed three (3) months and/or a fine not to exceed two hundred fifty dollars (\$250.00) is authorized.

A crime is a Class C offense if it is so designated by law or if upon conviction thereof a sentence of imprisonment not to exceed thirty (30) days and/or a fine not to exceed one hundred dollars (\$100.00) is authorized.

### **§3-1-4 Time Limitation for Commencing Prosecution**

No person shall be prosecuted, tried or punished in the Choctaw Tribal Court for any crime under the Choctaw Tribal Code unless the complaint is filed within two (2) years from the time the crime was committed or from the date the crime is known to have been committed.

### **§3-1-5 Tolling of Time Limitation for Prosecution of Crimes**

If after any crime has been committed the defendant shall conceal himself, or shall flee from or go out of the jurisdiction of the Mississippi Band of Choctaw Indians, the prosecution for such crime may be commenced within the time prescribed in §3-1-4 of the tribal code, after the defendant ceases to conceal himself or returns to the lands of the Mississippi Band of Choctaw Indians.

The prosecution for a major crime listed in the Major Crimes Act, 18 U.S.C. §1153 may be commenced within the time prescribed in §3-1-4 of the tribal code, after the United States Attorney has declined to prosecute the defendant under the federal law and has notified the Tribe in writing.

### **§3-1-6 Offenses Against Children; Tolling of Statute of Limitations**

The applicable time period for commencing prosecution pursuant to §3-1-4 of the tribal code, shall not commence to run for an alleged violation Abuse of a Child, Child Neglect or Criminal Sexual

Penetration or Sexual Assault until the violation is reported to a law enforcement agency or the victim attains the age of eighteen (18), whichever occurs first sexual exploitation of children.

## **CHAPTER 2. INITIATORY CRIMES**

### **§3-2-1 Attempt**

A person is guilty of an attempt to commit an offense if, acting with the kind of culpability otherwise required for the commission of the offense, he engages in conduct constituting a substantial step toward commission of the offense, but going beyond mere preparation.

Conduct does not constitute a substantial step toward the commission of an offense unless it is strongly corroborative of the actor's intent to commit the offense.

No defense to the offense of attempt shall arise:

- (1) because the offense attempted was actually committed; or
- (2) due to the factual or legal impossibility of consummating the intended offense if the offense could have been committed had the circumstances been as the actor believed them to be.

Except as otherwise provided in the tribal code, attempt shall be:

- (1) a Class A or B offense, if the attempted offense was a Class A offense;
- (2) a Class B or C offense, if the attempted offense was a Class B offense; or
- (3) a Class C offense, if the attempted offense was a Class C offense.

### **§3-2-2 Criminal Conspiracy**

A person is guilty of criminal conspiracy when he, intending that conduct constituting a crime or offense be performed, agrees with one or more persons to engage in or cause the performance of such conduct and any one of them commits an overt act in pursuance of the conspiracy, except that where the offense is a Class A offense the overt act is not required for the commission of conspiracy.

Except as otherwise provided in the tribal code, criminal conspiracy shall be:

- (1) a Class A offense, if an overt act in pursuance of conspiracy to commit a Class A offense is actually perpetrated by any of the conspirators;
- (2) a Class A or B offense, if no overt act in pursuance of conspiracy to commit a Class A offense was actually perpetrated by any of the conspirators;
- (3) a Class B or C offense, if the conspiracy was to commit a Class B offense; and
- (4) a Class C offense, if the conspiracy was to commit a Class C offense.

**§3-2-3 Solicitation**

A person is guilty of solicitation when he, intending that another person commit an offense, entices, advises, incites, orders or otherwise encourages such other person to commit an offense.

Except as otherwise provided in the tribal code, solicitation shall be:

- (1) a Class A offense, if the solicitation actually results in the commission of a Class A offense, otherwise a Class B offense, if the solicitation is toward the commission of a Class A offense;
- (2) a Class B offense, if the solicitation actually results in the commission of a Class B offense, otherwise a Class C offense, if the solicitation is toward the commission of a Class B offense; and
- (3) no offense, if the solicitation results or is toward the commission of a Class C offense.

**CHAPTER 3. CRIMES AGAINST PERSONS**

**§3-3-1 Abduction**

Any person who shall knowingly restrain another person unlawfully so as to interfere substantially with his liberty or knowingly and recklessly takes or entices a child under sixteen (16) from the custody of their parent or other lawful custodian, when he lacks lawful permission to do so, shall be guilty of abduction.

Abduction is a Class A offense.

**§3-3-2 Assault**

Any person who shall willfully attempt to commit a battery or intentionally place another in apprehension of receiving an immediate battery or threaten bodily harm to another person through unlawful force or violence shall be guilty of simple assault.

Assault is a Class C offense.

**§3-3-3 Battery**

Any person who shall unlawfully strike or apply force to another person or otherwise inflict any bodily injury or who shall by offering violence cause another to harm himself shall be guilty of battery.

Battery is a Class B offense.

**§3-3-4 Aggravated Assault**

Any person who:

- (1) attempts to cause serious bodily injury to another or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or
- (2) intentionally or knowingly uses a deadly weapon to put another in fear of imminent serious bodily injury without just cause or provocation shall be guilty of aggravated assault.

Aggravated assault is a Class A offense.

**§3-3-5            Aggravated Battery**

Any person who shall unlawfully or intentionally inflict any injury to another person causing great bodily harm or does so with a deadly weapon or does so in any manner whereby great bodily harm or death can be inflicted shall be guilty of aggravated battery. Aggravated battery is a Class A offense.

**§3-3-6            Bigamy**

Any person who, being married to another, marries any other person, shall be guilty of an offense, provided that no person shall be guilty thereof who believes that the prior spouse is dead or whose original spouse shall have been absent for seven (7) successive years, without being known to be living, or if the original marriage has been dissolved, pronounced void or annulled by the decree of a court of competent jurisdiction.

Bigamy is a Class B offense.

**§3-3-7            Assisting Suicide**

Any person who shall willfully advise, encourage, abet or assist another person in the taking of his own life or attempting to take his own life shall be guilty of assisting suicide.

Assisting suicide shall be a Class A offense.

**§3-3-8            Abuse of a Child**

Abuse of a child consists of a person knowingly, intentionally or negligently causing a child to be:

- (1) placed in a situation that may endanger the child's life or health;
- (2) tortured, cruelly confined or cruelly punished;
- (3) emotionally abused or placed in situations resulting in emotional harm; or
- (4) exposed to the inclemency of the weather.

Whoever commits abuse of a child which does not result in the child's death or great bodily harm is guilty of a Class B offense. If the abuse results in great bodily harm or death to the child, it is a Class A offense. As used in this section, a "child" is a person who is less than eighteen (18) years of age.

**§3-3-9 Child Neglect**

Any person who is a parent, guardian, or otherwise has legal custody of a child under the age of twelve (12) years and leaves such child unattended (or attended by a person not competent to care for the child) or who fails to provide necessities for the child's well being, including but not limited to education, medical or other care shall be guilty of the offense of child neglect. This offense is a Class B offense.

Any child under the age of eighteen (18) who is determined to be mentally incompetent or emotionally unstable shall not be left unattended. Any person who is a parent, guardian or otherwise has legal custody of such child and who violates this section shall be guilty of a Class A offense.

**§3-3-10 Contributing to the Delinquency of a Minor**

Any person eighteen (18) years of age or older who knowingly causes, encourages, advises or allows a child under the age of eighteen (18) to commit an offense as defined in the Criminal Defense title of the Tribal Code or knowingly causes, encourages or assists such a child to be a delinquent child as defined in the Choctaw Youth Code of the Tribal Code shall be guilty of the offense of contributing to the delinquency of a minor. Contributing to the delinquency of a minor is a Class C offense.

**§3-3-11 Sexual Exploitation of Children**

It is unlawful for any person to intentionally distribute or possess with intent to distribute any visual or print medium depicting any prohibited sexual act or simulation of such an act, if that person knows or has reason to know that the medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen (18) years of age. Any person who violates this subsection is guilty of a Class A offense.

It is unlawful for any person to intentionally cause or permit a child under eighteen (18) years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any visual or print medium or performed publicly. Any person who violates this subsection is guilty of a Class A offense.

It is unlawful for any person to intentionally manufacture any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen (18) years of age. Any person who violates this subsection is guilty of a Class A offense.

Definitions as used in this title:

- (1) "Prohibited sexual act" means:
  - (a) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;
  - (b) bestiality;

- (c) masturbation;
  - (d) sadomasochistic abuse for the purpose of sexual stimulation; or
  - (e) lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation.
- (2) “Visual or print medium” means:
- (a) any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer or electronically generated imagery; or
  - (b) any book, magazine or other form of publication of photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer generated or electronically generated imagery.
- (3) “Performed publicly” means performed in a place which is open to or used by the public.
- (4) “Manufacture” means the production, processing, copying by any means printing, packaging or repackaging of any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen (18) years of age.

**§3-3-12 Sexual Exploitation of Children by Prostitution**

Any person knowingly receiving any pecuniary profit as a result of a child under the age of eighteen (18) engaging in a prohibited sexual act with another is guilty of a Class A offense.

Any person hiring or offering to hire a child under the age of eighteen (18) to engage in any prohibited sexual act is guilty of a Class A offense.

Any parent, legal guardian or person having custody or control of a child under eighteen (18) years of age who knowingly permits that child to engage in or to assist any other person to engage in any prohibited sexual act or simulation of such an act for the purpose of producing any visual or print medium depicting such an act is guilty of a Class A offense.

**§3-3-13**

**§3-3-14**

**§3-3-15**

**§3-3-16**

**§3-3-17 Alcoholic Beverages to Minors**

It is unlawful for a person to:

- (1) sell, serve or give alcoholic beverages to a minor or permit a minor to consume alcoholic beverages;
- (2) buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor;
- (3) deliver alcoholic beverages to a minor; or
- (4) aid or assist a minor to buy, procure or be served with alcoholic beverages.

As used in this section, a “minor” means a person under twenty-one (21) years of age. Any person violating this section is guilty of a Class B offense.

**§3-3-18**

**§3-3-19 Harassment**

A person is guilty of harassment if he with knowledge, or pursues a pattern of conduct intended to annoy, alarm or terrorize another and he:

- (1) makes more than one (1) telephone call that serves no lawful purpose;
- (2) insults, taunts or challenges another in a manner likely to provoke a violent or disorderly response;
- (3) makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or
- (4) engages in any other course of conduct serving no legitimate purpose of the actor which he knows tends to seriously annoy or alarm another.

Harassment is a Class C offense.

**§3-3-20 Use of Telecommunications or Electronic Communications to Terrify, Intimidate, Threaten, Harass, Annoy or Offend**

- (1) It shall be unlawful for any person or persons:
  - (a) To make any comment, request, suggestion or proposal by means of telecommunication or electronic communication, which is obscene, lewd or lascivious with intent to abuse, threaten or harass any party to a telephone conversation, telecommunication or electronic communication;
  - (b) To make a telecommunication or electronic communication with intent to terrify, intimidate or harass, and threaten to inflict injury or physical harm to any person or to his property;
  - (c) To make a telephone call, whether or not a conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number;
  - (d) To make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number;
  - (e) To make repeated telephone calls or electronic communications, during which conversation ensues, solely to harass any person at the called number;
  - (f) Knowingly to permit an electronic device or a telephone of any type under his control to be used for any purpose prohibited by this section; or
  - (g) To attempt by use of telecommunication or electronic communication to extort money or other thing of value from another person.

For the purposes of this section, telecommunication and electronic communication mean and include any type of telephonic, electronic or radio communications, or transmission of signs, signals, data,

writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, tablets, iPads, computers or any other electronic device, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet. These means of communication shall also include but are not limited to social media applications, such as Facebook, Facebook Messenger, SnapChat, WhatsApp, etc., which are utilized through communications regulated by the Federal Communications Commission (the "FCC").

The use of obscene, lewd or profane language, or the making of a threat or statement as set forth in this section shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy or offend.

Any offense committed by the use of telecommunication or electronic communication as set forth in this section shall be deemed to have been committed at either the place where the telephone call or calls, or communications, originated or at the place where the call or calls, or communications, were received.

No person shall be held to have violated this section solely for providing access or connection to telecommunications or electronic communications services where the services do not include the creation of the content of the communication. Companies organized to do business as commercial broadcast radio stations, television stations, telecommunications service providers, Internet service providers, cable service providers or news organizations shall not be criminally liable under this section.

Violation of this section is a Class B offense.

### **§3-3-21 Incest**

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

Incest is a Class A offense.

### **§3-3-22 Indecent Exposure**

A person is guilty of indecent exposure if he knowingly and intentionally exposes his primary genital area, buttocks or breasts to public view under circumstances likely to cause affront or alarm.

As used in this section "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.

Indecent exposure is a Class B offense.

### **§3-3-23 Kidnapping**

A person is guilty of kidnapping if he unlawfully removes, restrains, transports or confines another person by force, intimidation or deception with intent that the person be held for any of the following purposes:

- (1) to hold for ransom or reward, or as a shield or hostage;
- (2) to facilitate commission of any offense or flight thereafter;
- (3) to inflict bodily injury on or to terrorize the victim or another; or
- (4) to interfere with the performance of any Tribal, governmental, or political function.

A removal, restraint, transportation or confinement is unlawful within the meaning of this section if it is accomplished by force, threat or deception or in the case of a person under the age of fourteen (14) or an incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

Kidnapping is a Class A offense.

**§3-3-24            Mayhem**

A person is guilty of mayhem if he intentionally or knowingly causes physical injury and deprives a human being of a member of his body or disables or renders it useless.

Mayhem is a Class A offense.

**§3-3-25            Manslaughter**

Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

- (1)     voluntary manslaughter consists of a manslaughter committed upon a sudden quarrel or in the sudden heat of passion caused by an adequate provocation.
- (2)     involuntary manslaughter consists of the commission of a unlawful act which under federal law would not amount to a felony which might produce death or a lawful act conducted in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

Voluntary and involuntary manslaughter is a Class A offenses.

**§3-3-26            Murder**

Murder is unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait or any other kind of willful, deliberate, malicious and premeditated killing; or committed in the perpetration of or attempt to perpetrate, any arson, rape, burglary or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder with malice shall be murder in the second degree.

Murder in the first degree is a Class A offense, for which no suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration shall be imposed.

Murder in the second degree is a Class A offense for which no suspension of sentence, probation, or parole shall be granted and the maximum period of incarceration shall be imposed.

**§3-3-27            Robbery**

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

- (1)     inflicts serious bodily injury upon another;
- (2)     threatens another with, or purposely puts him in fear of immediate serious bodily injury; or
- (3)     commits or threatens to commit a Class A or Class B offense.

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

**§3-3-28 Rape**

- (1) Rape is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse of the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.
- (2) Rape consists of all sexual penetration perpetrated by
  - (a) the use of force or coercion that results in personal injury or great mental anguish to the victim, or
  - (b) a person in a position of authority over an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate.
- (3) For purposes of this section “force or coercion” means:
  - (a) the use of physical force or physical violence including the use of deadly weapons;
  - (b) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;
  - (c) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;
  - (d) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or
  - (e) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient’s consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy;

Physical or verbal resistance of the victim is not an element of force or coercion.

- (4) “Great Mental Anguish” means psychological or emotional damage that requires psychiatric or psychological treatment or care, either on an inpatient or outpatient basis, and is characterized by extreme behavioral change or severe physical symptoms.
- (5) “Personal Injury” means bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ;
- (6) “Position of Authority” means that position occupied by a parent, relative, household member, teacher, employer, correctional faculty officer, when the perpetrator is in a

position over authority of inmate or other person who, by reason of that position, is able to exercise undue influence over a victim.

- (7) “Psychotherapist” means a person who is or purports to be a:
- (a) licensed physician who practices psychotherapy;
  - (b) licensed psychologist;
  - (c) licensed social worker;
  - (d) licensed nurse;
  - (e) counselor;
  - (f) substance abuse counselor;
  - (g) psychiatric technician;
  - (h) mental health worker;
  - (i) marriage and family therapist;
  - (j) hypnotherapist; or
  - (k) minister, priest, rabbi or other similar functionary of a religious organization acting in his role as a pastoral counselor.
- (8) “Psychotherapy” means professional treatment or assessment of a mental or an emotional illness, symptom or condition.

Rape is a Class A offense.

### **§3-3-29 Sexual Assault**

A person is guilty of sexual assault if that person subjects another to any sexual contact:

- (1) with the knowledge that the conduct is offensive to the other person;
- (2) with knowledge that the other person suffers from a mental disease or defect which renders the other person incapable of appraising the nature of the conduct;
- (3) with knowledge that the other person is unaware that a sexual act is being committed; or
- (4) with knowledge that the other person’s power to appraise or control the conduct is substantially impaired due to the excessive use or consumption of drugs, intoxicants, or other means of preventing resistance.

Sexual contact is any touching of the sexual or other intimate parts of the person of another or otherwise taking indecent liberties with another for the purpose of arousing or gratifying sexual desire of either party.

Sexual assault is a Class A offense.

**§3-3-30 Sodomy – Crimes Against Nature**

Any person who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

Sodomy is a Class A offense.

**§3-3-31 Criminal Sexual Penetration of a Minor**

- (1) Criminal sexual penetration of a minor is the unlawful and intentional causing of a minor to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.
- (2) Criminal sexual penetration does not include medically indicated procedures.
- (3) Criminal sexual penetration consists of all sexual penetration perpetrated:
  - (a) on a minor of either sex where the minor has not attained the age of sixteen (16); or
  - (b) by the use of force or coercion that results in personal injury to the victim; or
  - (c) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons; or
  - (d) when the perpetrator is armed with a deadly weapon.
- (4) A person is guilty of criminal sexual penetration of a minor if he or she engages in criminal sexual penetration with a minor sixteen (16) years of age but less than eighteen (18) years of age if the person is in a position of trust or authority over the child including without limitation the child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, foster parent, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.

Criminal sexual penetration of a minor is a Class A offense.

**§3-3-32 Infectious and/or Communicable Diseases – Causing Exposure to Another**

It shall be unlawful for any person to knowingly expose another person to an infectious and/or communicable disease when that person has been diagnosed as having such a disease or has reason to know that he has been exposed to such a disease. Dependent upon the type of infectious or communicable disease, exposure includes but is not limited to contact with blood, saliva, urine, feces, seminal, or other types of bodily fluids or secretions. For purposes of this section, the following are defined:

- (1) "Communicable Disease" means an illness caused by an infectious agent or its toxins that occurs through the direct or indirect transmission of the infectious agent or its products from an infected individual via an animal, vector, or the inanimate environment to a susceptible animal or human host.
- (2) "Infectious Disease" means illnesses caused by germs (such as bacteria, viruses, or fungi) that enter the body, multiply, and can cause infection. Infectious diseases may be categorized as:
  - (a) contagious, or communicable, which is spread from one person to another;
  - (b) spread by germs carried in air, water, food, or soil, or spread by vectors (such as biting insects) or by animals;

(c) emerging which means infections that have increased recently or are threatening to increase in the near future, such as a completely new infection; an infection reappearing in an area; or old infections that have become resistant to antibiotics;

(d) zoonotic, which are infectious disease of animals that are spread to humans by ticks, mosquitoes, or fleas or contact with animals (such as diseases spread by ticks (such as Lyme disease), mosquitoes (such as West Nile virus), by mammals (such as rabies).

Causing Exposure to Another is a Class A offense.

### **§3-3-33 Sexually Transmitted Diseases; Testing of Persons Convicted of Certain Sexual Offenses**

A test designed to identify any sexually transmitted disease may be performed on an offender convicted pursuant to tribal law of any sexual criminal offense:

- (1) involving contact between the penis and the vulva;
- (2) involving contact between the penis and anus;
- (3) involving contact between the mouth and penis;
- (4) involving contact between the mouth and vulva;
- (5) involving contact between the mouth and anus; or
- (6) when the court determines from the facts of the case that there was a transmission or likelihood of transmission of bodily fluids from the offender to the victim of the criminal offense.

When consent to perform a test on an offender cannot be obtained, the victim of a criminal offense under this section may petition the court to order that a test be performed on the offender. When the victim of the criminal offense is a minor or an incompetent, the parent or legal guardian of the victim may petition the court to order that a test be performed on the offender. The court shall order and the test shall be administered to the offender within ten (10) days after the petition is filed by the victim, his parent or guardian. The results of the test shall be disclosed only to the offender and to the victim or the victim's parent or legal guardian.

### **§3-3-34 Violation of Isolation or Quarantine Orders**

Any person who shall knowingly violate lawful isolation or quarantine orders issued by a Tribal, Federal, or State official pursuant to laws or regulations of that jurisdiction for the protection of public health, where that person is afflicted with an infectious and/or communicable disease, or the causative agent thereof, shall be guilty of Violation of Isolation or Quarantine Orders. For purposes of this section, the following are defined:

- (1) "Communicable Disease" means an illness caused by an infectious agent or its toxins that occurs through the direct or indirect transmission of the infectious agent or its products from an infected individual via an animal, vector, or the inanimate environment to a susceptible animal or human host.
- (2) "Infectious Disease" means illnesses caused by germs (such as bacteria, viruses, or fungi) that

enter the body, multiply, and can cause infection. Infectious diseases may be categorized as:

- (a) contagious, or communicable, which is spread from one person to another;
- (b) spread by germs carried in air, water, food, or soil, or spread by vectors (such as biting insects) or by animals;
- (c) emerging which means infections that have increased recently or are threatening to increase in the near future, such as a completely new infection; an infection reappearing in an area; or old infections that have become resistant to antibiotics;
- (d) zoonotic, which are infectious disease of animals that are spread to humans by ticks, mosquitoes, or fleas or contact with animals (such as diseases spread by ticks (such as Lyme disease), mosquitoes (such as West Nile virus), by mammals (such as rabies).

Violation of Isolation or Quarantine Orders is a Class A Offense.

### **§3-3-35 Stalking**

Stalking consists of a person knowingly pursuing a pattern of conduct that would cause a reasonable person to feel frightened, intimidated or threatened. The alleged stalker must intend to place another person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint or the alleged stalker must intend to cause a reasonable person to fear for his safety or the safety of a household member. In furtherance of the stalking, the alleged stalker must commit one or more of the following acts on more than one occasion:

- (1) following another person, in a place other than the residence of the alleged stalker;
- (2) placing another person under surveillance by being present outside that person's residence, school, workplace or motor vehicle or any other place frequented by that person, other than the residence of the alleged stalker; or
- (3) harassing another person.

As used in this section, "household member" means a spouse, former spouse, family member, including a relative, parent, present or former step-parent, present or former in-law, child or a person with whom the victim has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the purposes of this section.

Whoever commits stalking is guilty of a Class C offense.

In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at his own expense.

### **§3-3-36**

## CHAPTER 4. CRIMES AGAINST PROPERTY

### §3-4-1 Advertisements, Pulling Down

Any person who shall, without proper authorization, pull down or deface any sign or advertisement authorized by law shall be guilty of an offense under this section.

Violation of this section is a Class C offense.

### §3-4-2 Criminal Damage to Property

Criminal damage to property consists of intentionally damaging any real or personal property of another without the consent of the owner of the property.

When the value of the property damaged is less than five hundred dollars (\$500), it is a Class C offense.

When the value of the property damaged is five hundred dollars (\$500) or more, but less than one thousand dollars (\$1,000), it is a Class B offense.

When the value of the property damaged is one thousand dollars (\$1,000) or more, it is a Class A offense.

### §3-4-3 Arson

Arson consists of 1) recklessly or 2) willfully and maliciously, starting a fire or causing an explosion with the purpose of destroying or damaging any building, occupied structure or property of another, or bridge, utility line, fence or sign; or with the purpose of destroying or damaging any property whether the person's own or another's.

When the value of the property destroyed or damaged is less than five hundred dollars (\$500), it is a Class C offense.

When the value of the property destroyed or damaged is five hundred dollars (\$500) or more, but less than one thousand dollars (\$1,000), it is a Class B offense.

When the value of the property destroyed or damaged is one thousand dollars (\$1,000) or more, it is a Class A offense.

If death or bodily injury occurs, it is a Class A offense.

As used in this section, "occupied structure" includes a boat, trailer, car, airplane, vehicle, structure or place adapted for the transportation or storage of property or for overnight accommodations of persons or for carrying on business therein, whether or not a person is actually present.

### §3-4-4 Burglary

Burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the intent to commit any crime or theft therein. Any person who commits burglary is guilty of a Class A offense.

### §3-4-5 Aggravated Burglary

Aggravated burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling

or other structure, movable or immovable, occupied or unoccupied with intent to commit any crime or theft therein and the person:

- (1) is armed with a deadly weapon;
- (2) after entering, arms himself with a deadly weapon; or
- (3) commits a battery upon any person while in, entering or leaving such place. Whoever commits aggravated burglary is guilty of a Class A offense.

### **§3-4-6 Criminal Mischief**

A person is guilty of criminal mischief if:

- (1) he intentionally and unlawfully tampers with the property of another and thereby:
  - (a) recklessly endangers human life; or
  - (b) recklessly causes or threatens a substantial interruption or impairment of any public utility service; or
- (2) intentionally damages, or defaces property of another or injures the livestock or domestic animal of another;
- (3) purposely or recklessly shoots or propels a missile or other object against a motor vehicle, bus, aircraft, boat or other mechanized equipment, whether moving or standing.

Criminal mischief is a Class B offense.

### **§3-4-7 Criminal Trespass – Buildings**

Any person who shall enter or secretly remain in any building or occupied structure, or separately secured or occupied portion thereof, knowing that he is not licensed or privileged to do so, whether by day or night, shall be guilty of an offense under this section.

Criminal trespass to buildings is a Class B offense.

### **§3-4-8 Criminal Trespass – Lands**

Any person who shall enter or remain upon any lands to which notice against trespass is given by actual communication to such person, or by posting in a manner reasonably likely to come to the attention of intruders, or by fencing or other enclosure manifestly designed to exclude intruders, shall be guilty of an offense under this section.

Criminal trespass to lands is a Class C offense.

### **§3-4-9 Cruelty to Animals**

Any person who shall kill, torture, mistreat, mutilate, injure or abandon any animal shall be guilty of an offense under this section.

Cruelty to animals is a Class B offense.

**§3-4-10 Cutting Fence**

Any person who shall willfully cut the wire of a fence belonging to another person without his consent shall be guilty of an offense under this section.

The offense of fence cutting is a Class C offense.

**§3-4-11 Cutting Green Timber Without a Permit**

Any person who without first securing a permit from the Mississippi Band of Choctaw Indians cuts any standing green timber for commercial purposes on Tribal land shall be guilty of an offense under this section.

The offense of cutting green timber without a permit is a Class B offense.

**§3-4-12 Fire, Failure to Control or Report**

Any person who knows that a fire is endangering life or property of another and fails to take reasonable measures to put out or control the fire when he can do so without substantial risk to himself or, in any event, fails to give a prompt fire alarm or if he is under an official, contractual or other legal duty to prevent or combat the fire, or if the fire was started, lawfully, by him or with his assent or on property in his custody or control, shall be guilty of an offense under this section.

Failure to control or report a fire is a Class C offense.

**§3-4-13 Firing Timber**

Any person who shall willfully set on fire any timber, woods, meadow, marsh, field or prairie, not his own, shall be guilty of an offense under this section.

The offense of firing timber is a Class B offense.

**§3-4-14 Injury to Government Property**

Any person who by any means shall willfully or mischievously injure, destroy or deface any building or other property of the Mississippi Band of Choctaw Indians or of the United States Government or deface or write upon any walls or shall injure the grounds appurtenant thereto or the trees, fences, soil or pavement thereof shall be guilty of an offense under this section.

Injury to Government Property is a Class C offense.

**§3-4-15 Maintaining a Public Nuisance**

Any person who shall act in such a manner, or permit his property to fall into such condition as to injure or endanger the safety, health, comfort or property of his neighbors, shall be guilty of maintaining a public nuisance.

Maintaining a public nuisance is a Class C offense.

**§3-4-16 Misbranding**

Any person who shall knowingly and willfully misbrand, alter or deface any brand or mark

intended to designate ownership of any livestock of another without the consent of the owner and with the intent to deprive the owner of his property shall be guilty of the offense of misbranding.

Misbranding is a Class C offense.

**§3-4-17            Theft**

Except as otherwise provided in this Title, any person who shall take, or exercise unlawful control over, the moveable property of another with the purpose to deprive the other thereof or who unlawfully transfers immovable property of another or any interest therein with the purpose to benefit himself or another not entitled thereto shall be guilty of the offense of theft.

Theft offenses shall be punishable in accordance with the Gradation and General Provisions; Theft Offences.

**§3-4-18            Receiving Stolen Property**

Any person who shall receive or conceal or aid in receiving or concealing any property, knowing or having good reason to believe the same to be stolen, embezzled, or obtained by fraud or false pretense, theft or burglary, shall be guilty of the offense of receiving stolen property.

Receiving stolen property shall be a Class A offense if the value of the stolen property is greater than two hundred fifty dollars (\$250.00) and a Class B offense if the stolen property is less than two hundred fifty dollars (\$250.00).

**§3-4-19            Theft Offenses; Gradation and General Provisions**

Accusations of theft brought under any section of this chapter or any other chapter of this title may at any stage of the proceedings prior to the rendition of a verdict be amended to conform to the evidence so as to charge any other theft offense including embezzlement or receiving stolen property, notwithstanding that a different manner of taking is charged in the complaint and subject only to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief where the defense would be otherwise prejudiced by lack of a fair notice or by surprise.

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

Theft of property or service under any provision of this title unless otherwise stated shall be punishable as follows:

- (1) if the value of the property or services involved is more than two hundred fifty dollars (\$250.00), the offense is a Class A offense;
- (2) if the value of the property or services involved is less than two hundred fifty dollars (\$250.00), the offense is a Class B offense;

Value of property or services for purposes of this section means the price at which the property could ordinarily be bought or sold at the time of the alleged criminal act.

**§3-4-20            Unauthorized Use of Another's Vehicle**

Any person who, having acquired the consent of the owner or other person having lawful possession of any automobile, truck or other motor to the limited use thereof, willfully fails or refuses without just cause to return said vehicle, or used said vehicle for purposes other than that for which it

was acquired, but without intent to permanently deprive the owner, is guilty of an offense under this section.

The offense of unauthorized use of another's vehicle is a Class B offense unless the actor affirmatively shows that the vehicle was returned undamaged and immediately upon being notified to do so, in which case it is a Class C offense.

The Court shall order any person convicted under this section who causes damage to any motor vehicle to pay restitution to the owner or owners of any such motor vehicle.

### **§3-4-21 Taking Possession of or Taking Away a Motor Vehicle**

Any person who shall willfully and without authority, take possession of or take away a motor vehicle belonging to another, and any person who knowingly shall aid and abet in such taking possession or taking away, is guilty of this offense.

Taking possession of a motor vehicle is a Class A offense.

Any person convicted under this section who causes damage to any motor vehicle shall be ordered by the court to pay restitution to the owner of any such motor vehicle.

This section shall not apply to the enforcement of a security interest in a motor vehicle.

### **§3-4-22 Carjacking; Attempted Carjacking; Armed Carjacking**

Whoever shall knowingly or recklessly by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, or attempting to do so, or by any other means take a motor vehicle from another person's immediate actual possession shall be guilty of carjacking.

Carjacking is a Class A offense.

A person who is convicted of attempted carjacking shall receive the same punishment as the person who is convicted of carjacking.

Whoever commits the offense of carjacking while armed with or having readily available any pistol or other firearm or imitation thereof or other dangerous or deadly weapon, including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, Bowie knife, butcher knife, switchblade, razor, blackjack, billy, or metallic or other false knuckles, or any object capable of inflicting death or serious bodily harm, shall be guilty of armed carjacking.

Armed carjacking is a Class A offense.

Any person who is convicted of attempted armed carjacking shall receive the same punishment as the person who is convicted of armed carjacking.

## **CHAPTER 5. CRIMES AFFECTING COMMERCE AND TRADE**

### **§3-5-1 Bad Checks**

It is unlawful for any person to issue in exchange for anything of value, with intent to defraud, any check, draft or order for the payment of money, knowing at the time of the issuing that the offender

has insufficient funds in or credit with the bank.

Any person violating this section is guilty of a Class C offense when the amount of the check, draft or order or the total amount of the checks, drafts or orders is less than twenty-five dollars (\$25.00).

Any person violating this section is guilty of a Class B offense when the amount of the check, draft or order or the total amount of the checks, drafts or order is more than twenty-five dollars (\$25.00) but less than five hundred dollars (\$500.00).

Any person violating this section is guilty of a Class A offense when the amount of the check, draft or order or the total amount of the checks, drafts and orders is greater than five hundred dollars (\$500.00).

This section does not apply to:

- (1) Any check where the payee or holder knows or has been expressly notified prior to the drawing of the check that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment on its presentation; or
- (2) Any post-dated check.

### **§3-5-2 Embezzlement**

Any person who shall, having lawful custody of property not his own, appropriate the same to his own use with intent to deprive the owner thereof, is guilty of the offense of embezzlement. Each separate incident of embezzlement constitutes a separate and distinct offense.

As used in this section, embezzlement shall include the spending of a minor's funds by a parent or guardian for other than the purpose for which the funds were placed in the custody of the parent or guardian.

Whoever commits embezzlement when the value of the property embezzled is less than two hundred fifty dollars (\$250.00) is guilty of a Class B offense and if the value of the property embezzled is over two hundred fifty dollars (\$250.00) is guilty of a Class A offense.

### **§3-5-3 Forgery**

Forgery consists of:

- (1) falsely making or altering any signature to or any part of, any writing purporting to have any legal efficacy with intent to injure or defraud; or
- (2) knowingly issuing or transferring a forged writing with intent to injure or defraud. Forgery is guilty of a Class B offense.

### **§3-5-4 Counterfeiting; Making or Possessing Counterfeit Dies for Coins**

Whoever, without lawful authority:

- (1) makes any die, hub, or mold, or any part thereof, either of steel or plaster, or any other substance, in likeness or similitude as to the design or the inscription thereon, of any die, hub, or mold designated for the coining or making of any of the genuine gold, silver, nickel, bronze, copper or other coins coined at the mints of the United States; or
- (2) possesses any such die, hub, or mold, or any part thereof, or permits the same to be used for

or in aid of the counterfeiting of any such coins of the United States is guilty of a Class A offense.

**§3-5-5 Possession of Counterfeit Gold or Silver Coin with Intention to Utter**

It shall be unlawful for any person to have in his possession any counterfeit or any gold or silver coin, knowing the same to be counterfeited, with intent to defraud or injure, by uttering the same, as true or false, or by causing the same to be so uttered. Any person violating this section is guilty of a Class A offense.

**§3-5-6 Fraud**

A person is guilty of fraud if, by willful misrepresentation or deceit, or by fraudulent conduct, practices or representations he obtains any money or other property from another.

A person deceives if he purposely:

- (1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- (2) prevents another from acquiring information which would affect his judgment of a transaction;
- (3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
- (4) fails to disclose a lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid or is not a matter of official record.

The term "deceive" does not, however, include matters having no pecuniary significance, or mere puffing by statements unlikely to deceive ordinary persons in the group addressed.

The offense of fraud shall be punishable in accordance with the section titled Gradation and General Provisions of Theft Offenses.

**§3-5-7 Theft of Telecommunications Service**

It is unlawful for any person to:

- (1) obtain or attempt to obtain telecommunications service by trick, artifice, deception, use of any illegal device or decoder or other fraudulent means without authorization of the provider;
- (2) assist or instruct any person to obtain or attempt to obtain any telecommunications service without authorization of the provider;
- (3) make or attempt to make or assist any person to make or maintain a telecommunications service connection whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of

telecommunications service without authorization of the provider; or

- (4) make or maintain any modification or alteration to any device that was installed with the authorization of the provider for the purpose of intercepting or receiving any telecommunications service without authorization of the provider.

Definitions:

- (1) “Provider” means a person that offers telecommunication service for lawful compensation.
- (2) “Telecommunication service” means any audio, video, data or programming offered for a fee or other consideration to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images, sounds or intelligence of any nature delivered by telephone or telephone service, including cellular or other wireless telephones, cable television service, wire, radio, electromagnetic, photo-electronic or photo-optical equipment, coaxial or fiber optic cable, terrestrial microwave, television broadcast or satellite transmission.

Any person who violates this section is guilty of a Class B offense.

### **§3-5-8 Fraudulent Use of A Credit Card**

A person is guilty of the fraudulent use of a credit card if he uses a credit card for the purpose of obtaining property or services with knowledge that:

- (1) the card is stolen;
- (2) the card has been revoked, canceled or is invalid; or
- (3) the use of the credit card is unauthorized by either the issuer or the person to whom the card has been issued.

“Credit card” means an instrument or device, whether known as a credit card, credit plate, charge card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value, either on credit or in consideration of undertaking or guarantees by the issuer of the payment of a check drawn by the cardholder.

Fraudulent use of a credit card is a Class A offense.

## **CHAPTER 6. CRIMES AGAINST THE SOCIAL ORDER**

### **§3-6-1 False Alarms**

Any person who knowingly causes a false alarm of fire or other emergency to be transmitted to any official or volunteer or transmitted within any organization dealing with emergencies involving danger to life and property is guilty of an offense under this section.

A False Alarm is a Class B offense.

**§3-6-2 Discharging Firearms**

Any person who fires a gun within a hundred (100) yards of a residence or occupied building or structure or in any other place on the Reservation with careless disregard for human life is guilty of an offense under this section.

Discharging a Firearm is a Class B offense.

**§3-6-3 Flags – Desecration Thereof**

Any person who in any manner shall publicly mutilate, deface or defile, any official flag, color or ensign of the United States or the Mississippi Band of Choctaw Indians is guilty of an offense under this section.

Flag Desecration is a Class B offense.

**§3-6-4 Bootlegging/Manufacture of Alcoholic Beverage**

Any person who shall within the limits of the Choctaw Indian Reservation manufacture, sell, barter, manufacture, or transport for sale or barter upon the Choctaw Indian Reservation, any alcoholic beverage intended for the personal use or consumption of himself or others is guilty of an offense under this section.

These provisions shall not be applicable to any individual, partnership, corporation, association or other legal entity possessing a valid license or permit from the Mississippi State Tax Commission and the proper Tribal licensing authority under this section of Tribal Ordinance No. 16-T.

It is a Class B offense for any person to sell, barter, manufacture or transport for sale or barter any alcoholic beverage in violation of this section.

**§3-6-5 Littering**

Littering consists of discarding refuse:

- (1) on public property in any manner other than by placing the refuse in a receptacle provided for the purpose by the responsible governmental authorities or otherwise in accordance with lawful direction; or
- (2) on private property not owned or lawfully occupied or controlled by the person, except with the consent of the owner, lessee or occupant thereof.

Whoever commits littering is guilty of a Class B offense. The use of uniform traffic citations is authorized for the enforcement of this section. The court may to the extent permitted by law, as a condition to suspension of any other penalty provided by law, require a person who commits littering to pick up and remove from any public place or any private property, with prior permission of the legal owner, any litter deposited thereon.

Any jail sentence imposed pursuant to this section may be suspended, in the discretion of the magistrate or judge, upon conditions that the offender assist in litter clean-up in the jurisdiction for a period not to exceed the length of the suspended sentence.

For purposes of this section, “refuse” means any article or substance:

- (1) which is commonly discarded as waste; or

- (2) which, if discarded on the ground, will create or contribute to an unsanitary, offensive or unsightly condition.

Refuse includes also, but is not limited to, the following items or class of items: waste food; waste paper and paper products; cans, bottles or other containers; junked household furnishings and equipment; junked parts or bodies of automobiles and other metallic junk or scrap; portions or carcasses of dead animals; and collections of ashes, dirt, yard trimmings or other rubbish.

### **§3-6-6 Marijuana – Simple Possession**

Any person who shall have possession of one ounce or less of or use any Marijuana or any mixture or compound thereof or any cigarettes, cigars or other commodities intended for smoking in which there is a mixture containing one ounce or less of Marijuana or any mixture or compound thereof is guilty of the offense of simple possession of marijuana under this section.

The offense of simple possession of marijuana is a Class B offense.

For the purposes of this Section, “Marijuana” means all parts of the plant *Cannabis*, including any and all varieties, species and subspecies of the genus *Cannabis*, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include “Hemp”, meaning the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a tetrahydrocannabinol (“THC”) concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.

### **§3-6-7 Marijuana – Sale, Manufacture & Possession Over 1 Ounce**

Any person who shall plant, grow, cultivate, keep for sale, sell, barter, give or have possession of more than one ounce of Marijuana or any mixture or compound thereof or any cigarettes, cigars or other commodities intended for smoking in which there is a mixture containing more than one ounce of Marijuana or any mixture or compound thereof is guilty of an offense under this section.

Violation of this section is a Class A offense.

For the purposes of this Section, “Marijuana” means all parts of the plant *Cannabis*, including any and all varieties, species and subspecies of the genus *Cannabis*, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include, “Hemp”, meaning the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a tetrahydrocannabinol (“THC”) concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.

### **§3-6-8 Narcotics and Dangerous Drugs; Possessing/Selling of Drug Paraphernalia**

- (1) It is a Class A offense for any person who without lawful authority knowingly possess, sell, trade, transport, give away, use or manufacture any of the following:
  - (a) any opium, cocaine, coca leaves, morphine, codeine, heroin or any derivative thereof;
  - (b) any drugs known as hallucinogens, psychotomimetics, desleptics or psychedelics including lysergic acid diethylamide (LSD), mescaline, psilocybin, dimethyltryptamine (DMT) and methyldimethoxy methyl-phenyl-ethylamine (STP);

- (c) any drug scheduled as a “controlled substance” under the provisions of Title 21, Chapter 13 of the United State Code as amended to the date of the offense; or
- (d) any of the following narcotic drugs, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:
  - (i) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;
  - (ii) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;
  - (iii) opium poppy and poppy straw, including all parts of the plant of the species *Papaver somniferum* L. except its seeds;
  - (iv) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; or
  - (v) synthetic cannabinoids.
- (2) It is Class C offense for any person without lawful authority to knowingly possess, sell, trade, transport, give away, use or manufacture 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 marijuana or any drug scheduled as a “controlled substance” under the provisions of Title 21, Chapter 13 of the United States Code as amended to the date of the offense. For the purposes of this subsection, the term “drug paraphernalia” does not include any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance. In determining whether an object is drug paraphernalia, the Court shall consider, in addition to all other logically relevant factors, the following:
  - (a) statements by an owner or by anyone in control of the object concerning its use;
  - (b) prior convictions, if any of an owner, or of anyone in control of the object, under any state, tribal, or federal law relating to marijuana or any controlled substance;
  - (c) the proximity of the object, in time and space, to conduct that is a direct violation of this Chapter;
  - (d) the proximity of the object to marijuana or a controlled substance;
  - (e) the existence of any residue of marijuana or a controlled substance on the object;
  - (f) direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate conduct in violation of this Chapter;

(g) the existence and scope of legitimate uses for the object in the community; and

(h) expert testimony concerning the object's use.

A second or subsequent conviction of selling/possessing drug paraphernalia within five (5) years shall be a Class B offense.

(3) This section does not apply to the nondrug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church.

**§3-6-9 Prostitution**

Prostitution consists of any person who knowingly engages or offers to engage in an act of sexual activity with another person for a fee or who pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual activity.

For purposes of this section the term "sexual activity" means sexual intercourse or any sexual act involving the genitals of one person and the genitals, mouth or anus of another person, regardless of the sex of either participant.

Prostitution is a Class A offense.

**§3-6-10 Patronizing Prostitutes**

Patronizing prostitutes consists of:

- (1) entering or remaining in a house of prostitution or any other place where prostitution is practiced, encouraged or allowed with intent to engage in a sexual act with a prostitute; or
- (2) knowingly hiring or offering to hire a prostitute, or one believed by the offeror to be a prostitute, to engage in a sexual act with the actor or another.

Patronizing prostitutes is a Class A offense.

**§3-6-11 Recklessly Endangering Another**

Any person who recklessly engages in conduct which places or may place another in danger of death or serious bodily injury shall be guilty of an offense under this section.

Recklessly endangering is a Class B offense.

**§3-6-12 Removal of Landmarks**

Any person who shall willfully remove, alter or destroy any boundary marker or other landmark erected by the Mississippi Band of Choctaw Indians or the United States Government within the limits of the Choctaw Indian Reservation shall be guilty of an offense under this section.

Removal of landmarks is a Class C offense.

**§3-6-13 Failing to Disclose Facts or Change of Circumstances to Obtain Public Assistance**

Any person knowingly fails to disclose any material facts known to be necessary to determine eligibility for public assistance or knowingly failing to disclose a change in circumstances for the

purpose of obtaining or continuing to receive public assistance to which he is not entitled or in amounts greater than that to which he is entitled shall be guilty under this section.

When the value of the assistance wrongfully received is one hundred dollars (\$100.00) or less it is a Class C offense.

When the value of the assistance wrongfully received is more than one hundred dollars (\$100.00) but not more than two hundred fifty dollars (\$250.00) it is a Class B offense.

When the value of the assistance wrongfully received is more than two hundred fifty dollars (\$250.00) it is a Class A offense.

### **§3-6-14 Misappropriating Public Assistance**

Any public officer or public employee who fraudulently misappropriates, attempts to misappropriate or aids and abets in the misappropriation of food stamp coupons, WIC checks pertaining to the special supplemental food program for women, infants and children, food stamps or medical identification cards, public assistance benefits or funds received in exchange for food stamp coupons, shall be guilty under this section of a public offense.

When the value of the thing misappropriated is one hundred dollars (\$100.00) or less it is a Class C offense.

When the value of the thing misappropriated is more than one hundred dollars (\$100.00) but not more than two hundred fifty dollars (\$250.00) it is a Class B offense.

When the value of the thing misappropriated is more than two hundred fifty dollars (\$250.00) but not more than two thousand five hundred dollars (\$2,500.00) it is a Class A offense.

### **§3-6-15 Making or Permitting a False Claim for Reimbursement for Public Assistance Services**

Any person who knowingly makes, causes to be made or permits to be made a claim for reimbursement for service provided to a recipient of public assistance for services not rendered or making a false material statement or forged signature upon any claim for services, with intent that the claim shall be relied upon for the expenditure of public money shall be guilty under this section of an offense.

Making or permitting a false claim for reimbursement for public assistance services is a Class A offense.

### **§3-6-16 Falsely Obtaining Services or Accommodations; Probable Cause; Immunity; Penalty**

Any person who falsely obtains services or accommodations consists of any person obtaining service, food, entertainment or accommodations without paying with the intent to cheat or defraud the owner or person supplying such service, food, entertainment or accommodations.

Any law enforcement officer may arrest without warrant any person he has probable cause to believe has committed the crime of falsely obtaining services or shall be guilty of an offense under this section of accommodations as defined in this section. Any merchant, owner or proprietor who causes such an arrest shall not be criminally or civilly liable if he has actual knowledge that the person so arrested has committed the crime of falsely obtaining services or accommodations.

When the value of the service, food, entertainment or accommodations furnished is less than one hundred dollars (\$100.00) it is a Class C offense;

When the value of the service, food, entertainment or accommodations furnished is more than one hundred dollars (\$100.00) but not more than two hundred fifty dollars (\$250.00) it is a Class B offense;

When the value of the service, food, entertainment or accommodations furnished is more than two hundred fifty dollars (\$250.00) it is a Class A offense.

**§3-6-17            Carrying a Concealed Deadly Weapon**

Any person who shall go about in public places with a deadly weapon concealed in whole or in part upon his person or in his possession shall be deemed guilty of this offense. For purposes of this title, a “deadly weapon” is defined as any firearm, whether loaded or unloaded; or any weapon which is capable of producing death or great bodily harm, including but not restricted to any type of daggers, brass knuckles, switchblade knives, Bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including swordcanes, and any kind of sharp pointed canes, also slingshots, slung shots, bludgeons; or any other weapons with which dangerous wounds can be inflicted.

Any person found in violation of subsection 1 of this section shall have said weapon seized by the arresting officer and such weapon upon conviction of the person charged shall be disposed of as ordered by the court.

Carrying a concealed weapon is a Class B offense.

**§3-6-18            Unlawful Carrying of a Deadly Weapon on School Premises**

Any person who carries a deadly weapon on school premises except by:

- (1) a peace officer;
- (2) a school security personnel;
- (3) a student, instructor or other school-authorized personnel engaged in Army, Navy, Marine Corps or Air Force Reserve Officer Training Corps Programs or state-authorized hunter safety training instruction; or
- (4) a person conducting or participating in a school-approved program, class or other activity involving the carrying of a deadly weapon shall be guilty of an offense under this section.

As used in this section, “school premises” means:

- (a) the buildings and grounds, including playgrounds, playing fields and parking areas and any school bus of any elementary, secondary, junior high or high school in or on which school or school-related activities are being operated; or
- (b) any other public buildings or grounds, including playing fields and parking areas that are not school property, in or on which school-related and sanctioned activities are being performed.

Carrying of a deadly weapon on school premises is a Class A offense.

**§3-6-19 Negligent Use of a Deadly Weapon**

Any person who:

- (1) discharges a firearm into any building or vehicle or so as to knowingly endanger a person or his property;
- (2) carries a firearm while under the influence of an intoxicant or narcotic;
- (3) endangers the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or
- (4) discharges a firearm within one hundred (100) yards of a dwelling or building, not including abandoned or vacated buildings on public lands during hunting seasons, without the permission of the owner or lessees thereof is guilty of an offense under this section.

The provisions of subsections (1), (3) and (4) of this section shall not apply to a peace officer or other public employee who is required or authorized by law to carry or use a firearm in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or employment.

The exceptions from criminal liability provided for in Subsection 2 of this section shall not preclude or affect civil liability for the same conduct.

Negligent use of a deadly weapon is a Class A offense.

**§3-6-20 Possession of Alcoholic Beverages**

It is unlawful for any person to keep or have in his possession any vinous, alcoholic, malt, intoxicating or spirituous liquor, or intoxicating bitters or drinks or any other liquor or beverage which, if drunk, will produce intoxication.

Possession of alcoholic beverages is a Class C offense.

This section shall not be applicable to business sales or give-aways conducted by the employees of any licensed gaming entity on Tribal trust lands designated by the Tribal Council as resort areas, nor shall this section be applicable to business sales conducted by the employees of any business holding a license or permit authorizing the on-premises consumption of alcoholic beverages, light wines, and beer issued by the Tribal Council.

**§3-6-21 Intoxication or Impairment; Treatment for Repeat Offenses**

It shall be unlawful to be under the influence of an intoxicating beverage, drugs, or other controlled substance in a public place, or in a private place where one unreasonably disturbs another person. Public place means any public property or any building, enclosure, roadway, sidewalk, restaurant, place of worship, entertainment venue, or place of instruction, where persons are generally allowed or invited to be in attendance.

Being under the influence of an intoxicating beverage may be identified by observation of slurred speech; red glossy eyes; staggered walking; odor of alcoholic beverage coming from the breath or person of the individual; incapacitation; evidence of alcoholic beverages at the scene of arrest; or

statements made by the person. Public drunkenness may be further determined by Field Sobriety Testing (“FST”) procedures. Inability to complete FST’s may present further evidence of drunkenness.

Intoxication or Impairment is a Class C offense.

Any person charged with a second or subsequent offense of public drunkenness or impairment, may, upon a plea of guilty, nolo contendere (“no contest”) or conviction thereof, be required by the court to complete an intake at Choctaw Behavioral Health and to participate in and complete a prescribed course of treatment for alcohol or substance abuse and rehabilitation. Acceptance of treatment under this section shall not be considered a commitment.

**§3-6-22                    Inhalation of Noxious Fumes**

Any person who engages in the deliberate inhalation of noxious fumes for the purpose of producing an intoxicated or other unnatural state of mind, such as results from inhaling the fumes from glue, gasoline, aerosol propellant, or other substances, shall be guilty of inhalation of noxious fumes.

Inhalation of noxious fumes is a Class C offense.

**§3-6-23                    Disruption of Government Business**

It shall be unlawful for any person or group of persons to willfully and knowingly enter and remain in or upon the floor of the Office of the Tribal Chief, the Tribal Council Hall, the office of any duly elected member of the Tribal Council, or any such temporary offices or meeting places of the officers described above, or any posted or cordoned-off, or otherwise restricted area of a building or grounds at which the Tribal Chief or Tribal Council members are or will be temporarily visiting, with the intent to impede or disrupt the orderly conduct of governmental business or official functions, to engage in disorderly or disruptive conduct, or otherwise impair the due respect of the authority of such officers in or within proximity to any buildings or grounds so designated.

Disruption of government business is a Class A offense.

**§3-6-24                    Cohabitation of Minors**

It shall be unlawful for any person eighteen (18) years of age or older to permit, in the person’s place of residence, a person under eighteen (18) years of age to cohabit with another person not his spouse.

It shall be unlawful for any person eighteen (18) years of age or older to cohabit with another person under eighteen (18) years of age not the person’s spouse.

Cohabitation of minors is a Class A offense.

**§3-6-25                    Owning or Possessing of Dangerous Dog Breeds<sup>1</sup>**

Any person who knowingly owns, keeps, harbors, or possesses a dangerous dog breed shall be guilty under this section of an offense. Such animal shall be surrendered to law enforcement personnel or shall be seized.

A dangerous dog breed shall be defined as:

- a.            dog that belongs to a breed commonly known as a pit bull dog.

It shall be a defense to this section if the individual is authorized by Tribal Resolution and in furtherance of those duties as prescribed.

Violation of this section is a Class B offense.

**§3-6-26 Curfew Violation**

- (1) It shall be unlawful for any person to be on public, tribal government property, between the hours of 10:00 p.m. and 5:00 a.m. Sunday through Thursday or between the hours of 12:00 a.m. and 5:00 am Friday (Saturday morning) or Saturday (Sunday morning) unless he or she is in attendance at an organized school, church, or tribal function or working at their place of employment with the permission of their supervisor.
- (2) For purposes of this section, public tribal government property is defined as, but not limited to, property containing buildings, structural improvements, ballfields, or courts, pavilions, facility buildings, swimming pool areas, playground facilities or any other similar tribal property. Persons who are actively engaged in hunting or fishing activities are not subject to this curfew.

Curfew Violation is a Class C offense.

**§3-6-27 Criminal Defamation**

A person is guilty of criminal defamation if he knowingly and with malicious intent communicates to any person orally or in writing any information which he knows or should know to be false and knows that the information tends to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby expose him to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if no justification or motive for making it is shown by way of defense.

It shall be a defense to criminal defamation that the person making the publication was at the time engaged in the formal broadcast or publication of news by some public means or media of communication and in good faith believed he was reporting a newsworthy event with a basis in truth.

Criminal defamation is a Class C offense.

**§3-6-28 Possession and Distribution of Tobacco Products and Alternative Tobacco Products to Minors**

- (a) No person under the age of twenty-one (21) shall have in his possession any tobacco products or alternative tobacco products, or shall procure or attempt to procure any tobacco products, or alternative tobacco products, for his own use or for use by any other person.
- (b) No person shall knowingly sell, offer to sell, barter or give any tobacco product, or alternative tobacco product, to another person under the age of twenty-one (21).

“Tobacco products” means any substance that contains tobacco, including but not limited to cigarettes, cigars, pipes, snuff, smoking tobacco or smokeless tobacco; and also includes rolling papers, pipes or other paraphernalia used to consume tobacco products.

“Alternative tobacco products” means any other product that consists of or contains nicotine that may be ingested by chewing, smoking, absorbing, dissolving, inhaling or by any other means.

“Electronic cigarette or cigar, cigarillo or pipe” means an electronic product or device that produces a vapor to deliver nicotine or other substances by inhaling vapor from the device which simulates smoking (commonly referred to as “vaping”).

Violation of this section is a Class B offense.

**§3-6-29 Presenting False Evidence of Age or Identity for Tobacco Products and Alternative Tobacco Products**

No person under the age of twenty-one (21) shall present any written, printed or photostatic evidence of age or identity that is false for the purpose of procuring or attempting to procure any tobacco products or alternative tobacco products.

Violation of this section is a Class B offense.

**§3-6-30 Distribution of Tobacco or Alternative Tobacco Products as Free Samples Prohibited**

A person who sells, distributes, promotes or advertises tobacco, or alternative tobacco products, shall not provide free samples of tobacco or alternative tobacco products to a person under the age of twenty-one (21).

Any person who violates this section is guilty of a Class B offense.

**§3-6-31 Presenting False Evidence of Age or Identity for Alcohol Beverages**

A minor who presents to any person, employee, agent or lessee licensed to distribute alcohol to any written, printed or photostatic evidence of age or identity that is false, for the purpose of procuring or attempting to procure any alcoholic beverages, is guilty of a Class B offense.

**§3-6-32 Disorderly Conduct**

A person is guilty of disorderly conduct if he intentionally or knowingly:

- (1) uses violent, abusive, indecent, profane, or vulgar language, and the language by its very utterance tends to incite an immediate breach of the peace;
- (2) makes an offensive gesture or display in a public place, or to someone in a public place and the gesture or display tends to incite an immediate breach of peace;
- (3) creates, by chemical means, a noxious and unreasonable odor in a public place;
- (4) makes unreasonable noise in a public place or near a private residence that he has no right to occupy; or
- (5) commits any of the acts enumerated herein during an incident of domestic violence.

For purposes of this section, “breach of the peace” shall be defined as the criminal offense of creating a public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or distracting noise.

Disorderly conduct is a Class C offense.

**§3-6-33 Failure to Send Children to School**

A parent, guardian or custodian of a compulsory-school-age child shall cause such child to enroll in and attend a Bureau of Indian Affairs (“BIA”) funded school, public school or legitimate nonpublic school for the period of time that such child is of compulsory-school-age except:

- (1) when a compulsory-school-age child is physically, mentally or emotionally incapable of attending school as determined by the appropriate school official based upon sufficient medical documentation;
- (2) when a compulsory-school-age child is being educated in a legitimate home instruction program approved by the Tribe or the State of Mississippi;
- (3) when a waiver of school attendance requirements is granted by the Chief pursuant to Resolution CHO 70-96. Parents, guardians or custodians of compulsory-age-children who obtain a waiver and who fail to comply with the requirements in Resolution CHO 70-96 may be subject to prosecution under this section; or
- (4) if the child has been expelled from his or her school. The parent, guardian or custodian of the compulsory-school-age child shall immediately enroll such child in another school or obtain a waiver pursuant to Resolution CHO 70-96.

Any parent, guardian or custodian of a compulsory-school-age child who refuses or willfully fails to enroll or send such child to school shall be guilty of failure to send children to school, a Class C offense.

Compulsory-school-age child means a child who has attained the age of five (5) by September 1 of the calendar year and who has not attained the age of eighteen (18) years on or before September 1 of the calendar year.

Any terms not specifically defined in this section or school policies and procedures not contained in this section shall be interpreted or applied in accordance with the Parent-Student Handbook or School Policy Handbooks of the appropriate schools of where the student is attending.

**§3-6-34 Harboring or Assisting Excluded Persons in Violation of an Order of Exclusion**

Any person who knowingly or intentionally:

- (a) harbors or conceals a person who has been formally adjudicated by the Tribal Court to be excluded, or banned, from being within the boundaries of the reservation, or from residing on the reservation; or
- (b) warns the excluded person of impending apprehension by law enforcement; or
- (c) prevents or obstructs law enforcement or refuses to aid law enforcement in the search for or apprehension of an excluded person; or
- (d) prevents lawful service of process of summons or subpoenas upon an excluded person by either law enforcement or private process server upon an excluded person who is being unlawfully concealed,

shall be guilty of Harboring or Assisting Excluded Persons in Violation of an Order of Exclusion.

Harboring or Assisting Excluded Persons in Violation of an Order of Exclusion is a Class A offense.

**§3-6-35 Harboring or Assisting Non-Members Residing in Choctaw Indian Country without a Permit**

Any person who intentionally or knowingly:

- (a) aids, abets or harbors a person(s) who is/are required to comply with the residency application process under Title XIX (19) of this Code; or
- (b) prevents or obstructs law enforcement of the Tribe's permit officer from lawfully serving a permit notice to any non-Indian residing on the reservation; or
- (c) prevents lawful service of process of summons or subpoenas upon any non-Indian person(s) by either law enforcement or private process server who is being unlawfully concealed; or
- (d) continues to provide a residence or shelter to any non-Indian person(s) who have been denied a permit after an application has been denied, or after non-renewal of a prior permit, or after revocation of a permit,

shall be guilty of Harboring or Assisting Non-Member Residents in Choctaw Indian Country.

Harboring or Assisting Non-Member Residents in Choctaw Indian Country is a Class B offense.

**CHAPTER 7. CRIMES RELATING TO PUBLIC OFFICE**

**§3-7-1 Abuse of Office**

Any person who shall subject another to arrest, detention, search, seizure, mistreatment, dispossession, or shall deny or impede another in the exercise of enjoyment of any right, privilege, power, or immunity, by acting or purporting to act in an official capacity on behalf of the Mississippi Band of Choctaw Indians or the United States government, or taking advantage of such actual or purported capacity knowing that his conduct is illegal, shall be guilty of an offense under this section.

Abuse of office is a Class B offense.

**§3-7-2 Bribery**

Any person who shall give or offer to give any money, services or other gain or advantage to another person with corrupt intent to influence such person in the discharge of his public duties or conduct and any person who shall accept, solicit or attempt to solicit any bribe shall be guilty of the offense of bribery.

Bribery is a Class B offense.

**§3-7-3 Extortion**

Any person who compels or induces another person to deliver property or anything of value to himself or to a third person by threatening that the actor or another will:

- (1) cause physical injury to some person;
- (2) cause damage to property;

- (3) accuse some person of a crime or cause criminal charges to be brought against some person;
- (4) publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, disgrace, or ridicule; or
- (5) kidnap the person threatened or another person shall be guilty of the offense of extortion.

Extortion is a Class B offense.

**§3-7-4 Misusing Public Money**

A person is guilty of “misusing public money” if, being a public servant or other person charged with the receipt, safekeeping, transfer or disbursement of public monies, he:

- (1) without lawful authority appropriates the money or any portion of it to his own use or the use of another;
- (2) loans the money or any portion thereof without lawful authority;
- (3) fails to keep the money in his possession until lawfully disbursed or paid out;
- (4) deposits the money in a bank or with a person not lawfully authorized to receive such;
- (5) knowingly keeps any false account, or makes a false entry or erasure in any document of or relating to the money;
- (6) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account;
- (7) knowingly refuses or omits to pay over on lawful demand by competent authority any public monies in his hands;
- (8) knowingly omits to transfer money when transfer is required by proper authority;
- (9) makes a profit for himself or another not lawfully entitled to such, or in an unlawful manner, out of public monies;
- (10) fails to pay over to the proper account or authority any fines, forfeitures, or fees received by him; or
- (11) handles public money in a reckless manner as a result of which a risk of loss of such money is significant.

“Public money” includes all money, bonds, and evidence of indebtedness or their equivalent, belonging to, or received or held by the Tribe or any other government, or any agency, authority, commission or other operation within this jurisdiction providing a service or benefit for the public.

Misusing public money is a Class A offense.

**§3-7-5 Retaliation for Official Action**

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

Retaliation for official action is a Class B offense.

**§3-7-6 Threat or Intimidation**

Any person who, directly or indirectly, utters or addresses any threat of unlawful harm to any other person with the purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant or voter or to influence a public official to violate any public duty shall be guilty of an offense under this section.

Threat or intimidation is a Class A offense.

**§3-7-7 Unsworn Falsification**

Any person who shall, with the purpose of misleading a public servant in the performance of an official function, make a false written statement which he does not believe to be true or submits any writing which he knows to be forged, altered or otherwise lacking in authenticity shall be guilty of an offense under this section.

Unsworn falsification is a Class B offense.

**§3-7-8 Tribal Government and Tribal Entities: Records, Documents, Papers: Unauthorized Disclosure, Theft, Unauthorized Copies, Concealment, or Destruction Thereof**

The unauthorized disclosure, stealing, unauthorized copying and/or carrying away, or fraudulently withdrawing, concealing or taking away or destroying any record, document, paper, etc., whether the same be paper or computer record, deposited with the Tribal government of the Mississippi Band of Choctaw Indians, any of its agencies, or any Tribally-owned entity, whether owned in whole or in part by the Mississippi Band of Choctaw Indians, shall be larceny without reference to the value of the document, record, paper, etc., so disclosed, carried away, or destroyed. Such offense is a Class A offense.

**CHAPTER 8. CRIMES RELATING TO JUDICIAL ADMINISTRATION**

**§3-8-1 Bail Jumping**

Any person who if, having been released on bail or on his own recognizance by court order or other lawful authority upon condition that he subsequently appear on a charge of an offense, he fails without just cause to appear in person or in the case where a Class B or Class C offense is charged, by counsel at the time and place which have been lawfully designated for his appearance shall be guilty of an offense under this section.

Bail jumping is a Class B offense.

**§3-8-2 Disobedience to Lawful Order of Court**

Any person who shall willfully disobey any order, subpoena, summons, warrant or command duly issued, made or given by any Court of the Mississippi Band of Choctaw Indians or any judge thereof will be guilty of an offense under this section.

Disobedience to lawful order of court is a Class B offense.

**§3-8-3           Escape**

Any person who shall unlawfully remove himself from official detention or fail to return to official detention following temporary leave granted for a specific purpose or limited period (excluding probation, parole, release on bail) shall be guilty of escape.

Escape is a Class B offense.

**§3-8-4           False Arrest**

Any person who shall willfully and knowingly make, or cause to be made, the unlawful arrest, detention or imprisonment of another shall be guilty of false arrest.

False arrest is a Class C offense.

**§3-8-5           Flight to Avoid Prosecution or Judicial Process**

Any person who shall absent himself from the Choctaw Indian Reservation for the purpose of avoiding arrest, prosecution or other judicial process shall be guilty of an offense under this section.

Flight to avoid prosecution or judicial process is a Class B offense.

**§3-8-6           Obstructing Justice**

Any person who with the purpose of hindering the apprehension, prosecution, conviction or punishment of another for a crime, shall harbor or conceal another, provide a weapon, transportation or other means of escape, warn another of impending discovery or give false information to a police officer concerning the whereabouts of a person sought, shall be guilty of obstructing justice.

Obstructing justice is a Class B offense.

**§3-8-7           Perjury**

Any person who shall willfully and deliberately, in any judicial proceeding in any Court of the Mississippi Band of Choctaw Indians, falsely swear or interpret, or shall make a sworn statement or affidavit knowing the same to be untrue, or shall induce or procure an affidavit another same to be untrue, shall be guilty of perjury under this section.

Perjury is a Class B offense.

**§3-8-8           Resisting Lawful Arrest or Process; Failure to Comply with Commands of Law Enforcement Officers**

Any person who shall willfully and knowingly:

- (1) by force or violence, resist or assist another person to resist a lawful arrest, or the serving or execution of any legal process; or
- (2) fails or refuses to promptly comply with or obey a request, command or order of a law enforcement officer, having the authority to then and there arrest any person for a violation of the law;

- (a) move or absent himself and any vehicle or object subject to his control from the immediate vicinity where the request, command or order is given; or
- (b) arise, if lying or sitting down, and move to a point designated by an officer outside the immediate area; or
- (c) refrain from lying or sitting down in the immediate vicinity; or
- (d) refrain from obstructing, with his body or any part thereof, or in any manner, the lawful movement or passage of any vehicle; or
- (e) refrain from placing, permitting or cooperating with another to place, his body or any part thereof, in front of or behind any vehicle, in such a manner as to interfere with, or prevent its movement or block its path in lawful movement; or
- (f) refrain from chaining or tying or to bind himself or another to any object or person; or
- (g) unbind, unchain or loosen himself, or remove himself, from any chain or others means whereby he may be prevented from moving away from the place or the immediate vicinity where he may be when such officer issues said order, request or command; or
- (h) walk, or move to, enter and remain in, either or both, as may be directed by such officer, any police or other vehicle operated by any law enforcement officer or department, or any other vehicle designated by such an officer; or
- (i) act or do or refrain from acting or doing as ordered, requested or commanded by said officer to avoid any breach of the peace at or near the place of issuance of such order, request or command.

shall be guilty of Resisting Lawful Arrest or Process; Failure to Comply with Commands of Law Enforcement Officers, which shall be a Class B offense.

**§3-8-9                    Witness Tampering; Destruction of Evidence**

Any person who shall, believing that an official proceeding or investigation is pending or about to be instituted, attempt to induce a witness to testify or inform falsely or avoid process or absent himself from any proceeding or investigation for which he has been legally summoned or who shall alter, destroy or conceal any document or thing to impair its authenticity or availability in such proceeding or investigation or attempt to or influence any juror's determinations outside of formal court proceedings and deliberations or any judge presiding in the case shall be guilty of an offense under this section.

Witness Tampering; Destruction of Evidence is a Class B offense.

**§3-8-10                  Refusing to Aid an Officer**

All persons must aid arresting officers when commanded. Any person who shall neglect or refuse when called upon by any Tribal police or a police officer to assist in a nonviolent situation after the arrest of any person charged with of convicted or any offense or in securing such offender when apprehended, or in transporting such offender to the nearest place of confinement shall be deemed guilty of an offense.

Refusing to aid an officer is a Class B offense.

**§3-8-11 Assault or Battery on a Tribal Employee**

(1) A person commits the offense of Assault or Battery on a Tribal Employee if the person purposely or knowingly causes:

- (a) bodily injury on a Tribal Employee who is acting in the course of their duties;
- (b) reasonable apprehension of serious bodily injury by use of a weapon in a Tribal Employee who is acting in the course of their duties or in;
- (c) bodily injury with a weapon to Tribal Employee who is acting in the course of their duties;
- (d) serious bodily injury to a Tribal Employee who is acting in the course of their duties; or
- (e) bodily fluids to make physical contact with a Tribal Employee who is acting in the course of their duties.

(2) For the purposes of this Section, the following definitions apply:

- (a) "Tribal Employee" means an Elected Official or any employee of:
  - (i) the Mississippi Band of Choctaw Indians' tribal government;
  - (ii) Choctaw Shopping Center Enterprise;
  - (iii) Choctaw Resort Development Enterprise;
  - (iv) Choctaw Residential Center Enterprise;
  - (v) Chahta Enterprise; or
  - (vi) any other Ordinance 56 enterprise.
- (b) "Elected Official" means either the Tribal Chief or a member of the Tribal Council of the Mississippi Band of Choctaw Indians.
- (c) "Bodily Fluids" means any bodily secretion, including, but not limited to, feces, urine, blood, saliva, and seminal fluid.

(3) When the offense of Assault or Battery on a Tribal Employee is on an Elected Official, then the Elected Official shall be presumed to have been acting in the course of their duties.

Violation of this Section shall be a Class A offense. Violation of Subsections (1)(b), 1(c), 1(d), or 1(e) shall result in a mandatory six (6) months to serve in detention.

**§3-8-12 Furnishing/Possessing Contraband**

- (1) It shall be unlawful for any person to knowingly furnish or attempt to furnish contraband to an inmate of a correctional facility or jail.
- (2) It shall be unlawful for an inmate of a correctional facility or jail to knowingly possess or

attempt to possess contraband.

(3) “Contraband” means any marijuana as defined in Criminal Code §3-6-6, narcotic or dangerous drugs as listed in Criminal Code §3-6-8, drug paraphernalia, tobacco products or alternative tobacco products or electronic cigarette or pipe as defined in Criminal Code §3-6-28, dangerous weapon, alcohol, unauthorized electronic device, cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards or charges. “Dangerous weapon” is any firearm, knife, sharpened instrument, material or substance, which is calculated or designed to inflict death or bodily harm, or to be used in a manner likely to inflict death or bodily harm.

Violation of this Section shall be a Class A offense.

## **CHAPTER 9. CRIMINAL SENTENCING AND PUNISHMENT**

### **§3-9-1 Sentencing in General**

A person adjudged guilty of an offense under this Tribal Code shall be sentenced in accordance with this chapter.

Penal laws enacted or adopted after the effective date of this Tribal Code shall be classified for sentencing purposes in accordance with the provisions of this chapter.

### **§3-9-2 Designation of Offenses**

Offenses are designated as Class A offenses, Class B offenses, and Class C offenses. Where so designated, a given offense may fall into two (2) or more possible classes, depending on the nature and seriousness of the actual offense committed.

### **§3-9-3 General Principles**

The sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant.

### **§3-9-4 Sentences and Combinations of Sentences; Civil Penalties**

A court may, as provided in this chapter, sentence a person adjudged guilty of an offense to any one of the following sentences or a combination of such sentences:

- (1) to payment of a fine;
- (2) to probation and/or suspension of sentence on such terms and conditions as the court may direct; or
- (3) to imprisonment or confinement, either full or part time.

A court shall also have the authority to order a person adjudged guilty of an offense to pay any or all of the following amounts or do the following acts:

- (1) pay court costs not to exceed twenty-five dollars (\$25);
- (2) pay any civil penalty provided by law; or

- (3) pay money damages, surrender property, or perform any other act for the benefit of any person or party injured personally or his property by the person adjudged guilty provided such injuries are fairly attributable to the act or failure to act constituting the offense for which guilt was adjudged.

This section shall not deprive a court of authority to cite for contempt, cancel or suspend a license, forfeit property or do any other act or make any other order authorized by law.

### **§3-9-5 Maximum Fines and Sentences of Imprisonment**

A person convicted of an offense may be sentenced as follows:

- (1) if the offense is a Class A offense, to a term of imprisonment not to exceed six (6) months and to a fine not to exceed five hundred dollars (\$500);
- (2) if the offense is a Class B offense, to a term of imprisonment not to exceed three (3) months and to a fine not to exceed two hundred fifty dollars (\$250);
- (3) if the offense is a Class C offense, to a term of imprisonment not to exceed thirty (30) days and to a fine not to exceed one hundred dollars (\$100).

The terms of imprisonment listed above apply only to full-time incarceration in the Tribal or some other jail or penitentiary and do not apply to full or part-time residence or confinement in a medical or rehabilitative facility as a condition of probation or parole or as otherwise ordered by the court.

The fines listed above may be imposed in addition to any amounts ordered paid as restitution, civil penalties or court cost.

### **§3-9-6 Payment of Fines and Other Monies**

Fines shall be paid by cash, money order, electronic payment processing, and/or with the consent of the court, may be worked off by performing approved labor for the Tribe, at the rate of twenty-five dollars (\$25.00) per day, or as otherwise established by the Tribal Council.

The court may, upon request of a defendant or upon its own motion, allow that any fines or other required payments be paid in installments and on conditions tailored to the means of the defendant.

The imposition of incarceration should not be imposed as an automatic alternative to payment of a fine or other money, but rather a court should, upon default to pay a fine or other money as required, examine the reason for the default, and may, if justice requires, impose an additional sentence of incarceration of no more than one (1) day of incarceration for each five dollars (\$5.00) of the required money left unpaid.

The methods available for collecting a civil judgment shall be available to collect any unpaid money upon order of the court following a failure to make any required payment and ascertainment of a reason therefore.

When justice requires, the court may revoke a fine or any unpaid portion thereof or any other monies required to be paid, or may modify the terms and conditions of payment.

No indigent defendant shall be incarcerated solely on account of his inability to pay a money fine. No alternative sentence offering a choice of a jail term of payment of monetary fine shall be entered against an indigent defendant.

**§3-9-7 Guilty Pleas**

If a plea of guilty is made by the defendant, the judge shall make inquiry of the complaining witnesses, arresting officers or the individuals having knowledge of the pertinent facts as to the circumstances surrounding the commission of the offense charged, and the previous record of the defendant. The judge shall also make inquiry concerning the health of the defendant, his family status, the defendant's income, the defendant's record of employment, and all such other matters as may assist the judge in reaching a conclusion on which to base the imposition of a fair and just sentence. A maximum sentence shall be imposed only in aggravated cases and in those involving repeated violations of the law.

**CHAPTER 10. CRIMES INVOLVING DOMESTIC VIOLENCE**

**§3-10-1 Purpose**

- (1) The Crimes involving Domestic Violence Chapter shall be construed to promote the following:
  - (a) that violence against family members is not in keeping with Choctaw values. It is the expectation that the criminal justice system and other service providers respond to victims of domestic violence with fairness, compassion and in a prompt and effective manner. The goal of this Chapter is to provide victims of domestic violence with safety and protection;
  - (b) it is also the goal to utilize the criminal justice system in setting standards of behavior within the family that are consistent with Choctaw values and as such, the criminal justice system will be utilized to impose consequences upon offenders for behavior that violates Choctaw values that hold the family sacred. These consequences are meant as responses that will allow offenders the opportunity to make positive changes in their behavior and understand that violence is never an acceptable choice; or
  - (c) the prevention of future violence in all families through prevention and public education programs that promote cultural teachings and Choctaw values so as to nurture non-violence within Choctaw families and respect for Choctaw men and women alike.

**§3-10-2 Definitions**

As used in this chapter, unless context otherwise requires:

- (1) "Abuse/Domestic Violence" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together, but does not include acts of self-defense:
  - (a) attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;
  - (b) placing, by physical menace or threat, another in fear of serious bodily injury;
  - (c) causing a family or household member to engage involuntarily in sexual activity

- by force, threat of force, or duress;
  - (d) criminal sexual conduct committed against a minor in violation of this chapter; or
  - (e) intentionally, knowingly or recklessly causing damage in excess of one hundred dollars (\$100.00) to the property of family or household members.
- (2) “Family” or “household” members include:
- (a) adults who are current or former spouses;
  - (b) adults or minors who live together or who have lived together;
  - (c) adults or minors who are related or formerly related by marriage as recognized by state statute or common law.
  - (d) minor children of a person in a relationship that is subsection a through c above.
- (3) “Program for batterers” means a specialized behavioral modification or counseling program that accepts both court-ordered participants and voluntary participants who have battered or abused a family or household member.
- (4) “Program for victims of domestic violence” means a specialized program for victims of domestic violence and their children that includes but is not limited to advocacy, shelter, crisis intervention, supportive services and referrals.
- (5) “Crime involving domestic violence” means when a family or household member commits an act of abuse or domestic violence as defined in this chapter against another family or household member and said act is committed in conjunction with or is an underlying element of one or more of the following crimes:
- (a) Crimes Against Persons:
    - (1) Abduction, §3-3-1;
    - (2) Assault, §3-3-2;
    - (3) Battery, §3-3-3;
    - (4) Aggravated Assault, §3-3-4;
    - (5) Aggravated Battery, §3-3-5;
    - (6) Harassment, §3-3-19;
    - (7) Use of Telecommunications or Electronic Communications to Terrify, Intimidate, Threaten, Harass, Annoy or Offend, §3-3-20;
    - (8) Sexual Assault, §3-3-29; or
    - (9) Stalking, §3-3-35
  - (b) Crimes Against Property:

- (1) Criminal Damage to Property, §3-4-2;
- (2) Cruelty to Animals, §3-4-9; or
- (3) Theft, §3-4-17
- (c) Crimes Against the Social Order:
  - (1) Recklessly Endangering Another, §3-6-11; or
  - (2) Negligent Use of a Deadly Weapon, §3-6-19

The crimes listed in Subsections A through C above shall be charged as a domestic violence crime and shall be designated as such on all police and court documents. For example, an assault against a family or household member shall be charged as “assault, §3-3-2 (Domestic, §3-10-2(5)(a)(2)).

The use of alcohol or any other mind altering substance in the committing of domestic violence or any crime related to domestic violence shall not diminish the seriousness of domestic violence or take precedence over the crime of domestic violence. The fact that the perpetrator was under the influence at the time of the offense shall not be utilized by law enforcement, prosecution or the court to mitigate the severity of the violence. Voluntary intoxication, which is available as a legal defense only in cases involving specific intent crimes, shall not be available as a defense to a perpetrator, nor shall it be utilized to lessen the consequences to the perpetrator.

- (6) “Deadly weapon” means any firearm, whether loaded or unloaded or any weapon which is capable of producing death or serious bodily injury, including but not restricted to knives and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, or any other objects with which serious bodily injury can be inflicted.
- (7) “Serious bodily injury” means an injury to the person which creates a high probability of death or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.
- (8) “Spouse” means a husband or wife within a marriage which is recognized by the Choctaw Tribal Code.

**§3-10-3 Penalties; Protective Orders, Consent Agreements, Conditions of Release and Probation**

- (1) Violation of a protective order or a court-approved consent agreement known to the defendant shall be a Class A Offense. Likewise, a Class A offense shall be charged for any violation of any criminal court order, including but not limited to orders containing conditions of release or conditions of probation imposed upon the defendant for a crime involving domestic violence. Such conditions of release or probation are not limited to but may include the following:
  - (a) enjoin the defendant from threatening to commit or committing acts of domestic violence against the petitioner or other family or household members;
  - (b) prohibit the defendant from harassing, annoying, telephoning, contacting or

otherwise communicating verbally, or in writing with the petitioner directly or indirectly through family members, relations by marriage, friends and co-workers;

- (c) remove or exclude the defendant from the residence of the petitioner;
  - (d) require the defendant to stay away from the residence, school, place of employment or a specified place frequented regularly by the petitioner and any named family member or household member;
  - (e) prohibit or not prohibit the defendant from using or possessing a firearm within the discretion of the court unless a firearm has been used in the commission of the act;
  - (f) require the defendant to attend a program for batterers or some other counseling and/or treatment program;
  - (g) direct the defendant to pay restitution to the victim; or
  - (h) impose any other condition necessary to protect the victim of domestic violence and any designated family or household member or to rehabilitate the defendant.
- (2) Violation of any of the above condition ordered by the court carries a maximum penalty of six (6) months in jail or imposition of a fine of five hundred dollars (\$500.00), or both.
- (3) The petitioner to whom a protective order has been is granted cannot be arrested for violation of an order that has been issued for the purpose of protecting the petitioner unless the order specifically prohibited the petitioner from making contact with the defendant.

**§3-10-4 Duties of Law Enforcement Officer to Victim of Domestic Violence**

- (1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence and have a duty to arrest upon finding probable cause to believe that domestic violence has occurred. Such means of protection include but are not limited to:
- (a) taking the action necessary to provide for the safety of all the victims and any family or household member;
  - (b) confiscating any weapon involved in the alleged act(s) of domestic violence;
  - (c) obtaining from any available service provider transportation for the victim and any child or children to a shelter or any other place of safety;
  - (d) assisting the victim and any child or children in removing essential personal effects; or
  - (e) assisting the victim and any child or children in obtaining medical treatment, including transportation to a medical facility.

**§3-10-5 Mandatory Arrest for Crimes Involving Domestic Violence**

A law enforcement officer shall arrest a person with or without a warrant when he has probable

cause to believe that the person has, within twenty-four (24) hours of such arrest, knowingly committed any crime involving domestic violence as defined in §3-10-2(1) and (5), regardless of whether the alleged act occurred in the presence of the law enforcement officer.

Any arrest made pursuant to subsection (1) of this section shall be designated as a crime involving domestic violence on all police and court documents.

**§3-10-6           Mandatory Arrest for Certain Violations of Orders for Protection, Court-Approved Consent Agreements or Criminal Court Orders**

(1) A police officer shall arrest, without a warrant and take into custody a person whom the police officer has probable cause to believe has violated one of the following orders of the court, if the existence of the order can be verified by the officer. If probable cause has been established and an arrest is not made within twenty-four (24) hours, the police officer shall file with the Court an affidavit requesting a warrant to apprehend.

- (a) Protective Order
- (b) Court-Approved Consent Agreement
- (c) Any criminal court order issued against the defendant for a crime involving domestic violence, including but not limited to conditions of release or probation.

(2) Violation of any of the above orders carries a maximum penalty of six (6) months in jail or imposition of a fine of five hundred dollars (\$500.00) or both.

**§3-10-7           Authority of Law Enforcement Officer to Seize Weapons**

(1) Incident to an arrest for a crime involving domestic violence, a law enforcement officer shall:

- (a) seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime; or
- (b) seize a weapon that is in plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to confiscation when officers conclude that the weapon must be confiscated to protect law enforcement, victims of domestic violence or others.

**§3-10-8           Possession of a Firearm While Subject to an Order of Protection**

It is illegal for a person to possess a firearm while subject to a court order restraining such person from harassing, stalking, threatening or otherwise inflicting emotional or physical abuse upon a family or household member provided that the protection order was issued following an evidentiary hearing where the defendant had notice and an opportunity to appear. The protection order must also include a specific finding that the defendant represents a credible threat to the physical safety of the victim, or must include an explicit prohibition against the use of force that would reasonably be expected to cause injury.

**§3-10-9           Possession of a Firearm after Conviction of a Crime Involving Domestic Violence**

- (1) It is illegal to possess a firearm for a period of two (2) years following a conviction of a qualifying crime involving domestic violence. A qualifying crime involving domestic violence must have as an element the use of physical force resulting in serious bodily injury, or the use or threatened use of a firearm.
- (2) Upon any second or subsequent conviction of a qualifying crime of domestic violence, the offender shall be prohibited from possessing a firearm for a period of five (5) years following the date of the second or subsequent conviction.

**§3-10-10 Official Use Exemption**

- (1) The restrictions of §3-10-8 do not apply to firearms issued by governmental agencies to a law enforcement officer or military personnel so long as the officer or military personnel is on duty. Personal firearms do not fall within this exemption nor may these persons possess officially issued firearms when off duty.
- (2) The official use exemption does not apply to §3-10-9. This means that law enforcement officers or military personnel who have been convicted of a qualifying crime involving domestic violence will not be able to possess or receive firearms for any purpose, including the performance of official duties.

**§3-10-11 Immunity of Officers for Arrests in Domestic Violence Incidents**

- (1) A law enforcement officer shall not be held liable in any civil or criminal action for an arrest based on probable cause, enforcement in good faith of a court order or any other action or omission in good faith under this chapter arising from an alleged domestic violence incident brought by any authorized party, or an arrest made in good faith without a warrant when the officer has probable cause to believe that the person has within twenty-four (24) hours of such arrest knowingly violated the provision of a facially valid protective order, court-approved consent agreement or a criminal court order issued by any recognizable court of law.
- (2) The Attorney General or a special prosecutor shall not be held liable in any civil action for his order of an arrest based on probable cause, enforcement in good faith of a court order or any other action or omission in good faith under this chapter arising from an alleged domestic violence incident brought by any authorized party, or an arrest made in good faith without a warrant when the Attorney General or special prosecutor has probable cause to believe that the person has within twenty-four (24) hours of such arrest knowingly violated the provision of a facially valid protective order, court-approved consent agreement or a criminal court order issued by any recognizable court of law.

**§3-10-12 Conditions of Release**

- (1) There shall be a mandatory minimum “holding” period of twenty-four (24) hours prior to the release of a defendant charged with a crime involving domestic violence if said crime resulted in bodily injury or serious bodily injury to the victim, or threat of serious bodily injury to the victim:
  - (a) if the defendant is not arrested for a crime of domestic violence within seventy-two (72) hours of the alleged incident, the judge may in his discretion waive the twenty-four (24) hour holding period so long as the judge determines from the totality of the circumstances that the victim is not in immediate danger of bodily injury, serious bodily injury or threat of serious bodily injury from the

perpetrator; or

- (b) within the twenty-four (24) hour holding period, bail may be set by a Tribal judge via telephone. Bail may also be set by a Tribal judge at the time of the arraignment. The defendant, however, shall not be released prior to the expiration of twenty-four (24) hours from the time of arrest, notwithstanding the defendant's ability to meet the bond requirement.
- (2) Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of an order for protection, court-approved consent agreement or criminal court order involving domestic violence, the court may impose conditions of release or bail on the alleged assailant to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
- (a) an order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim or other family or household member;
  - (b) an order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, either directly or indirectly through family, relations by marriage, friends or co-workers;
  - (c) an order directing the person to vacate or stay away from the home of the alleged victim and/or child and to stay away from any location where the victim is likely to be;
  - (d) an order prohibiting the person from using or possessing a firearm or other weapon specified by the court;
  - (e) an order prohibiting the person from possession or consumption of alcohol or controlled substances; or
  - (f) any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court.
- (3) If conditions of release are imposed, the Clerk of Court or Detention Officer shall:
- (a) issue a written order for conditional release;
  - (b) immediately distribute a copy of the order to Law and Order and the Family Violence and Victim's Services Office; or
  - (c) provide Law and Order with any available information concerning the location of the perpetrator in a manner that protects the safety of the victim.
- (4) The Clerk of Court or Detention Officer shall provide a copy of the conditions to the arrested or charged person upon his release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
- (5) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon such a request,

the court shall hold a prompt hearing to review the conditions.

**§3-10-13 Written Procedures for Prosecution of Domestic Violence**

Within one hundred twenty (120) days following the enactment of this chapter, the Attorney General shall develop and submit to the Choctaw Tribal Council for approval, written policies for the prosecution of crimes involving domestic violence to ensure the effective prosecution of said crimes.

**§3-10-14 Record of Dismissal Required in Court File**

When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why any witnesses are unavailable and the reasons the case cannot be prosecuted. The Clerk of Court shall immediately forward a copy of the dismissal to the Office of the Family Violence and Victim's Services Program. The Family Violence & Victim's Services Program shall then notify the victim of the dismissal.

**§3-10-15 Referral of Domestic Violence Cases to Peacemaker Court**

At any time after the filing of a criminal complaint or the filing of a petition for a protective order, the judge may solely within his discretion, depending on the nature of the case, refer the domestic violence case to the Peacemaker Court for an alternative resolution or disposition. The Peacemaker Judge shall with due diligence attempt to resolve the case referred for resolution. If the Peacemaker Judge believes that in all likelihood the matter cannot be resolved through the peacemaking process, the judge shall within twenty (20) days of the filing of the transfer order refer the case back to the criminal court for prosecution.

**§3-10-16 Spousal Privileges Inapplicable in Criminal Proceedings Involving Domestic Violence**

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

- (a) the privilege of confidential communication between spouses; or
- (b) the testimonial privilege of spouses.

**§3-10-17 Advocate-Victim Privilege Applicable in Cases Involving Domestic Violence**

(1) Except as otherwise provided in subsection (2) below, a victim of domestic violence may refuse to disclose, and may prevent an advocate from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim if the privilege is claimed by:

- (a) the victim; or
- (b) the person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if there is no victim in existence or if the privilege has been waived by the victim.

- (2) The privilege does not relieve a person from any duty imposed in the mandatory reporting of child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse or neglect.
- (3) As used in this subsection, “advocate” means an employee of or volunteer for a program for victims of domestic violence who:
  - (a) has a primary function of rendering advice, counseling or assistance to victims of domestic violence; supervising the employees or volunteers of the program; or administering the program; or
  - (b) works under the direction of a supervisor of the program, supervises employees or volunteers or administers the program.

**§3-10-18 Conditions of Probation for a Perpetrator Convicted of a Crime Involving Domestic Violence**

- (1) Before placing a perpetrator who is convicted of a crime involving domestic violence on probation, the court shall consider the safety and protection of the victim of domestic violence.
- (2) The court may condition the granting of probation to a perpetrator in compliance with one or more orders of the court, including but not limited to:
  - (a) enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;
  - (b) prohibiting the perpetrator from harassing, annoying, telephoning or contacting, or otherwise communicating with the victim, directly or indirectly through family, relations by marriage, friends or co-workers;
  - (c) requiring the perpetrator to stay away from the residence, school, place of employment or a specified place frequented regularly by the victim and any designated family or household member;
  - (d) prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;
  - (e) prohibiting the perpetrator from possessing a firearm or other specified weapon;
  - (f) directing the perpetrator to surrender any weapons owned or possessed by the perpetrator;
  - (g) directing the perpetrator to participate in and complete to the satisfaction of the court, a program for batterers, treatment for alcohol or substance abuse, or psychiatric or psychological treatment or any other program or service deemed applicable by the Domestic Violence Program or Probation Officer;
  - (h) directing the perpetrator to pay restitution to the victim; or
  - (i) imposing any other condition necessary to protect the victim of domestic violence and any designated family or household member or to rehabilitate the perpetrator.

**§3-10-19 Required Written Policies and Procedures**

- (1) Within one hundred twenty (120) days of the enactment of this chapter, Law and Order shall develop and submit to the Choctaw Tribal Council for approval, written policies concerning:
  - (a) the effective response of the agency to cases involving domestic violence;
  - (b) enforcement of all applicable Choctaw Tribal Code statutes concerning domestic violence;
  - (c) protection and safety of the victims of domestic violence and other family and household members;
  - (d) the method or process for sanctions against officers or officials who fail to follow or enforce official protocols;
  - (e) coordination with hospitals and programs for victims of domestic violence; or
  - (f) mandatory training of officers in the handling of domestic violence offenses and the enforcement of domestic violence laws.

**§3-10-20 Role of the Court; Sentencing; Probation Conditions**

- (1) In responding to the crime of domestic violence, the court shall:
  - (a) First Offense: If the alleged offender pleads guilty or is found guilty, the judge may order any sentence available to him generally for each crime listed in §3-10-2(5). In addition, every conviction of domestic violence shall require the defendant to complete a program for batterers, if offered at the time of sentencing. If a program for batterers is not offered at the time of sentencing, the judge shall order the defendant to participate in any counseling or treatment program available to the court that, in the judge's discretion, will bring about a cessation of domestic abuse.

In the event the offender does not comply with the program for batterers or any other condition or order imposed by the court, the court shall find the offender in contempt of court and shall impose a minimum ten (10) days, maximum six (6) months in jail along with the service of any suspended sentence that may have been imposed in a previous hearing. A finding of contempt and service of jail time does not release the offender from any of the conditions originally imposed, including but not limited to participation in a program for batterers which shall be required during the offender's incarceration, if feasible, and shall continue upon his release until such time as the offender has completed the program.

- (b) Second or Subsequent Offense: If the alleged offender pleads guilty or is found guilty of a second or subsequent offense involving domestic violence occurring within five (5) years of a previous offense involving domestic violence, the offender shall be sentenced to a minimum of thirty (30) days in jail with six (6) months to one (1) year probation and/or any maximum sentencing, fine, rehabilitation and community service remedies available to the court. In addition, the judge may order the offender to participate in and complete a program for batterers regardless of whether the offender has participated in or completed the program as fulfillment of requirements from a previous court order.

**§3-10-21 Juveniles**

- (1) Any juvenile committing a crime involving domestic violence as defined in §3-10-2(1) and (5) shall be subject to prosecution by the Youth Court.
- (2) Sentencing involving juveniles shall be at the discretion of the Youth Court Judge.
- (3) A program for batterers which focuses specifically on juvenile offenders may be implemented by the Family Violence and Victim's Services Program or any other Tribal agency and made available for the Youth Court Judges to incorporate into the disposition of cases involving domestic violence if, in the discretion of the Youth Court Judge, the need for such program exists.

**CHAPTER 11. CRIMES INVOLVING GAMING**

**§3-11-1 Definitions**

As used in this chapter, unless the context requires otherwise:

- (1) "Associated equipment" means any equipment or mechanical, electromechanical, or electronic contrivance, component or machine used remotely or directly in connection with gaming or with any game that would not otherwise be classified as a gaming device, including dice, playing cards, links which connect to progressive slot machines, equipment which affects the proper reporting of gross revenue, computerized systems of betting at a race book or sports pool, computerized systems for monitoring slot machines and devices for weighing or counting money;
- (2) "Commission" means the Choctaw Gaming Commission;
- (3) "Establishment" means any premises wherein or whereon any licensed Tribal gaming is done;
- (4) "Game or gambling game," except as otherwise provided by law, means any game played with cards, dice or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine or any other game or device approved by the Commission;
- (5) "Gaming or gambling" means to deal, operate, carry on, conduct, maintain or expose for play any game as defined in subsection 4;
- (6) "Gaming equipment" means any mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming or any game which affects the result of a wager by determining win or loss. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any game or which determines the outcome of a game. The term does not include a system or device which affects a game solely by stopping its operation so that the outcome remains undetermined;

- (7) “License” means a gaming license or a manufacturer’s, seller’s or distributor’s license issued by the Commission;
- (8) “Licensee” means any person to whom a valid license has been issued; or
- (9) “Person” means any association, corporation, firm, partnership, trust or other form of business association as well as a natural person.
- (10) “Premises” means land, together with all buildings, improvements and personal property located thereon.
- (11) “Paraphernalia for manufacturing slugs” means the equipment, products and materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing or concealing a counterfeit facsimile of the chips or tokens approved by the Commission or lawful coins of the United States, the use of which is unlawful pursuant to subsection §3-11-6(2) of this section. The term includes, but is not limited to:
  - (a) metal or metal alloys;
  - (b) molds, forms or similar equipment capable of producing a likeness of a gaming token or United States coin;
  - (c) melting pots or other receptacles; or
  - (d) tongs, trimming tools or other similar equipment.

**§3-11-2 Cheating in General**

It is unlawful for a person to cheat at any gambling game.

**§3-11-3 Authorized Games**

It is unlawful for a person to engage in or participate in a game or in gaming not authorized or provided for in the Tribal-State Compact for Regulation of Class III gaming on the Mississippi Band of Choctaw Indians’ Reservation in Mississippi or regulations issued by the Commission.

**§3-11-4 Gaming Offenses**

It is unlawful for any person:

- (1) to alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players;
- (2) to place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or that is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome;
- (3) to claim, collect or take, or attempt to claim, collect or take money or anything of value in or from a gambling game, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won;

- (4) knowingly to entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of the CTC Title XV or the regulations issued by the Commission, with the intent that the other person play or participate in the gambling game;
- (5) to place or increase a bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet;
- (6) to reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including pinching bets; or
- (7) to manipulate, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a slot machine, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game.

**§3-11-5            Devices**

It is unlawful for any person at an establishment to use or possess with the intent to use, any device to assist in:

- (1) projecting the outcome of the game;
- (2) keeping track of the cards played;
- (3) analyzing the probability of the occurrence of an event relating to the game; or
- (4) analyzing the strategy for playing or betting to be used in the game, except as permitted by the Commission.

**§3-11-6            Chips and Tokens**

It is unlawful for any licensee, licensee's employee or other person to use counterfeit chips in a gambling game.

It is unlawful for any person, in playing or using any gambling game designed to be played with, receive or be operated by chips or tokens approved by the Commission or by lawful coins of the United States of America:

- (1) knowingly to use other than chips or tokens approved by the Commission or lawful coins, legal tender of the United States of America, or to use coins not of the same denominations as the coins intended to be used in that gambling game; or
- (2) to use any device or means to violate the provisions of this chapter.

It is unlawful for any person to have on his person or in his possession on or off the premises of any establishment any device intended by such person to be used to violate the provisions of this chapter.

It is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his employment within an establishment, to have on his person or in his possession on or off the

premises of any licensed gaming establishment any key or device known to have been designed for the purpose of and suitable for opening, entering or affecting the operation of any gambling game, drop box or any electronic or mechanical device connected thereto, or for removing money or other contents there from.

It is unlawful for any person to have on his person or in his possession any paraphernalia for manufacturing slugs. Possession of more than one of the devices, equipment, products or materials described in this section permits a rebuttable inference that the possessor intended to use them for cheating.

### **§3-11-7 Manufacturing, Selling, Altering, or Marking**

It is unlawful to manufacture, sell or distribute any cards, chips, dice, game or device that is intended to be used to violate any provision of this chapter.

It is unlawful to mark, alter or otherwise modify any associated equipment or gaming device in a manner that:

- (1) affects the result of a wager by determining win or loss; or
- (2) alters the normal criteria of random selection, which affects the operation of a game or which determines the outcome of a game.

It is unlawful for any person to instruct another in cheating or in the use of any device for that purpose, with the knowledge or intent that the information or use so conveyed may be employed to violate any provision of this chapter.

### **§3-11-8 Penalties**

A violation of any of the provisions of §3-11-2 through §3-11-7 shall be a Class A offense.

In addition to any other penalty provided in this chapter, any person who attempts, or two or more persons who conspire, to violate any provisions of §3-9-2 through §3-9-7 of this chapter shall be punished by imposing the penalty provided in subsection (1) of this section, whether or not he personally played any gambling game or used any prohibited device and whether or not the crime is completed.

### **§3-11-9 Questioning**

If any person shall commit or attempt to commit a violation of any provision of §3-11-2 through §3-11-7, any officer, employee or agent of a licensee, or a contractor hired by a licensee to provide security services, acting in good faith and upon probable cause based upon reasonable grounds therefore, may question such person in a reasonable manner for the purpose of ascertaining whether or not such person should be charged with a violation of this chapter. The questioning of a person by an officer, employee or agent of a licensee or by a contractor hired by a licensee to provide security services shall not render the licensee, its officer, its employee or its agent, or a law enforcement officer, civilly liable for slander, false arrest, false imprisonment, malicious prosecution, unlawful detention or otherwise in any case where the licensee's officer, employee or agent, or the contractor hired by the licensee to provide security services, is acting in good faith and upon reasonable grounds to believe that the person questioned is committing or attempting to commit a violation of §3-9-2 through §3-9-7.

## CHAPTER 12. CRIMES RELATING TO PARADES, PROCESSIONS AND PUBLIC DEMONSTRATIONS

### §3-12-1 Parades, Processions and Public Demonstrations

- (1) Permit Required, Applications, Granting:
  - (a) it shall be unlawful to organize or hold, or to assist in organizing or holding or to take part or participate in, any parade or procession or other public demonstration on the streets, public ways or the lands of the Mississippi Band of Choctaw Indians, unless a permit therefore has been secured from the Director of the Department of Law and Order;
  - (b) to secure such permit, written application shall be made by at least three (3) members of the Tribe to the Director, setting forth the probable number of persons, vehicles and animals which will be engaged in such parade, processions or other public demonstration, proof of one-time liability insurance coverage in the amount of five hundred thousand (\$500,000) and the route along the streets, other public ways or lands over, along or on which it is desire to have or hold such parade, procession or other public demonstration; or
  - (c) the Director of Law and Order shall grant a written permit for such parade, procession or other public demonstration, prescribing the streets, other public ways or lands which may be used therefore, after determining that the safety of the public in the use of the site would not thereby be endangered.
- (2) Time Restrictions: No permit shall be granted under this section for a parade, procession or other public demonstration to begin after 8 o'clock p.m., except parades or processions held in connection with school-approved activities, such as homecoming parades.
- (3) Conduct of Participants: Participants in such parades, processions or other public demonstrations shall conduct themselves in the following manner:
  - (a) all persons walking or riding shall be unarmed and without explosives of any kind and those walking will line up no more than four abreast in the right-hand lane of traffic in units of a hundred (100) or less, with an interval of fifteen (15) feet being maintained between units. All persons not in formation will not be covered by the permit;
  - (b) all traffic directions at intersections along the route of march and directions of police officers will be obeyed;
  - (c) all persons covered by the permit will adhere strictly to the designated route;
  - (d) all persons covered by the permit must assemble at the prescribed area and accompany the march only on the sidewalks or streets designated in the permit and in formation;
  - (e) no such parade, procession or public demonstration shall obstruct the entrance to any business on the lands of the Mississippi Band of Choctaw Indians, any Tribal or other governmental agency or prevent the access of any persons thereto; or

- (f) no person shall permit children under the age of eighteen (18) to participate in such parade, procession or public demonstration without the permission of a parent or guardian of the child.
- (4) Review of Application Upon Denial: If an application for a permit is denied, after the filing of a proper application therefore, the applicant shall have the right to have the Choctaw Tribal Council consider the application immediately, and to pass on whether the requested permit should be issued or not, by filing with the Tribal Chief a written request for a review of the action of the Director of the Department of Law and Order with respect to the application. Such review shall be held within five (5) days after the filing of such request. The Director and the applicant shall have the right to appear before Tribal Council and to present proof in support of the application for the permit and the denial of the permit. The Tribal Council shall, without delay, pass on the question of whether the permit should be issued or not, and should it be of the opinion that such permit should be issued, the same shall be issued forthwith.
- (5) Violations, Penalty: Any person found guilty of violating the provisions of this section shall be guilty of a Class C offense and subject to a term of imprisonment not to exceed thirty (30) days and to a fine not to exceed one hundred dollars (\$100.00). Each day any violation of this section continues, it will constitute a separate offense.\*

## **CHAPTER 13. COMPUTER CRIMES**

### **§3-13-1 Definitions**

For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

- (1) “Access” means to program, to execute programs on, to communicate with, store data in, retrieve data from or otherwise make use of any resources, including data or programs, of a computer, computer system or computer network;
- (2) “Computer” means an electronic, magnetic, optical or other high-speed data processing device or system performing logical arithmetic and storage functions and includes any property, data storage facility or communications facility directly related to or operating in conjunction with such device or system. Computer shall not include an automated typewriter or typesetter, a machine designed solely for word processing which contains no data base intelligence or a portable hand-held calculator nor shall computer include any other device which contains components similar to those in computers but in which the components have the sole function of controlling the device for the single purpose for which the device is intended; thus the controlled device is a processor of data or is a storage of intelligence in which case it too is excluded;
- (3) “Computer network” means a set of related, remotely connected devices and communication facilities including at least one (1) computer system with the capability to transmit data through communication facilities;
- (4) “Computer program” means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data;
- (5) “Computer software” means a set of computer programs, procedures and associated documentation concerned with operation of a computer system;

- (6) “Computer system” means a set of functionally related, connected or unconnected, computer equipment, devices or computer software;
- (7) “Computer services” means providing access to or service or data from a computer, a computer system or a computer network and includes the actual data processing;
- (8) “Financial instrument” means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security;
- (9) “Intellectual property” means data, computer programs, computer software, trade secrets, copyrighted materials and confidential or proprietary information in any form or medium when such is stored in, produced by or intended for use or storage with or in a computer, a computer system or computer network;
- (10) “Property” means financial instruments, electronically stored or produced data and computer programs, whether in machine readable or human readable form;
- (11) “Proper” means includes:
  - (a) discovery by independent invention;
  - (b) discovery by “reverse engineering”; that is, by starting with the known product and working backward to find the method by which it was developed. The acquisition of the known product must be by lawful means;
  - (c) discovery under license or authority of the owner;
  - (d) observation of the property in public use or on public display; or
  - (e) discovery in published literature.
- (12) “Use” means to make use of, to convert to one’s service, to avail oneself of or to employ. In the context of this act, “use” includes to instruct, communicate with, store data in or retrieve data from or otherwise utilize the logical arithmetic or memory functions of a computer.

### **§3-13-2 Computer Fraud**

Computer fraud is the accessing or causing to be accessed of any computer, computer system, computer network or any part thereof with the intent to:

- (1) defraud; or
- (2) Obtain money, property or services by means of false or fraudulent conduct, practices or representations; or through the false or fraudulent alteration, deletion or insertion of programs or data.

Computer Fraud is a Class A offense.

### **§3-13-3 Offense Against Computer Users**

An offense against computer users is the intentional:

- (1) denial to an authorized user, without consent, of the full and effective use of or access to a computer, a computer system, a computer network or computer services; or
- (2) use or disclosure to another, without consent, of the numbers, codes, passwords or other means of access to a computer, a computer system, a computer network or computer services.

An offense against Computer Users is a Class A offense.

#### **§3-13-4 Offense Against Computer Equipment**

An offense against computer equipment or supplies is the intentional modification or destruction, without consent, of computer equipment or supplies used or intended to be used in a computer, computer system or computer network.

An offense against computer equipment or supplies is a Class A offense.

#### **§3-13-5 Offense Against Intellectual Property**

An offense against intellectual property is the intentional:

- (1) destruction, insertion or modification, without consent, of intellectual property; or
- (2) disclosure, use, copying, taking or accessing, without consent, of intellectual property. An offense against intellectual property shall be guilty of a Class A offense.

The provisions of this section shall not apply to the disclosure, use, copying, taking or accessing by proper means as defined in this chapter.

#### **§3-13-6 Venue**

For the purposes of venue under the provisions of this chapter, any violation of this chapter shall be considered to have been committed within the Choctaw Indian Reservation or if the offense is committed by a non-Indian:

- (1) in the county in which any act was performed in furtherance of any transaction violating this chapter; or
- (2) in the county from which, to which or through which any access to a computer, computer system or computer network was made, whether by wire, electromagnetic waves, microwaves or any other means of communication.

#### **§3-13-7 Effect on Other Offenses**

The criminal offenses created by this chapter shall not be deemed to supersede, or repeal any other criminal offense.

### **CHAPTER 14. CASTLE DOCTRINE ACT**

#### **§3-14-1 Defenses and Immunities**

- (1) In addition to all other defenses now or hereinafter found in the Tribal Code and/or

recognized by the common law of the Tribe, a person is justified in using defensive force that is intended or likely to cause death or great bodily harm to another if the person reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another. The defensive force described in this subsection shall not be considered “unlawful”.

- (2) A person who uses defensive force that is intended or likely to cause death or great bodily harm to another is presumed to reasonably believe such force is necessary to prevent death or great bodily harm to himself or herself or another if:
  - (a) The person against whom the defensive force was used either:
    - i. Was in the process of unlawfully and forcefully entering, a dwelling, residence, occupied vehicle, business, place of employment or the immediate premises of any of the foregoing or
    - ii. Had unlawfully or forcefully entered a dwelling, residence, occupied vehicle, business, place of employment or the immediate premises of any of the foregoing; or
    - iii. Had removed or was attempting to remove another person against that person’s will from the dwelling, residence, occupied vehicle, business, place of employment or the immediate premises of any of the foregoing when the other person had the legal right to be there;

and

- (b) The person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred.
- (3) The presumption stated in subsection 2 shall not apply, however, if:
  - (a) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, vehicle, business, place of employment or the immediate premises of any of the foregoing; or
  - (b) The person or persons sought to be removed is a child, grandchild, or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used; or
  - (c) The person who uses defensive force is engaged in a criminal activity constituting a felony under state or federal law or is using the dwelling, residence, vehicle, business, place of employment or the immediate premises of the foregoing to further a criminal activity constituting a felony under state or federal law; or
  - (d) The person against whom defensive force is used is a Protective Services Unit Officer or a Law Enforcement Officer who enters or attempts to enter a dwelling, residence, vehicle, business, place of employment or the immediate premises of the foregoing in the performance of his or her official duties and the officer identified himself or herself in accordance with applicable law, or the person using force knew or reasonably should have known that the person entering or attempting to enter was a Protective Service Unit Officer or Law Enforcement Officer acting in the performance of his or her official duties.
- (4) A person who is justified in using defensive force that is intended or likely to cause death or great bodily harm to another, as defined in subsections 1, 2 and 3 of this section, has no duty to retreat and has the right to stand his or her ground and meet force with force, including defensive force that is intended or likely to cause death or great bodily harm to

another. No fact finder shall be permitted to consider the failure to retreat of a person defined in this subsection as evidence that the person's use of force was unnecessary, excessive or unreasonable.

- (5) A person who is justified in using defensive force that is intended or likely to cause death or great bodily harm to another, as defined in subsections 1, 2 and 3 of this section, is immune from criminal prosecution and from civil action(s) or civil liability for the use of such force.
- (6) A law enforcement agency may use standard procedures for investigating the use of defensive force as described in subsections 1, 2 and 3 of this section, but the agency may not arrest the person for using the defensive force unless it determines that there is probable cause to believe that the force that was used was not justified, as described in subsections 1, 2 and 3 of this section, or was otherwise unlawful.
- (7) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided for in subsection 5 of this section. A defendant who has previously been adjudicated "not guilty" of any crime by reason of immunity as provided for in subsection 5 of this section shall be immune from any civil action for damages arising from the same conduct.
- (8) For purposes of this section, the following terms shall have the following meaning:
  - (a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.
  - (b) "Residence" means dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.
  - (c) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.