

# **PUEBLO OF ACOMA LAWS 2003 (2019 Replacement)**

## **TITLE 6 CRIMINAL LAWS**

This Replacement includes laws enacted since the Pueblo of Acoma Laws 2003 pursuant to Tribal Council Resolutions dated January 1, 2016 through December 31, 2018.

# **PUEBLO OF ACOMA LAWS 2003 (2019 Replacement)**

## **TITLE 6 CRIMINAL LAWS**

These laws may be cited by Title, Chapter, Section and Year as Section or  
§\_\_-\_\_-\_\_ Pueblo of Acoma Laws 2003 (2019 Replacement)  
PUEBLO OF ACOMA LAWS 2003 (2019 Replacement)

**TITLE 6  
CRIMINAL LAWS**

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# PUEBLO OF ACOMA LAWS 2003

## TITLE 6 CRIMINAL LAWS

**Origins:** The Pueblo of Acoma Tribal Council created the first written criminal laws prior to 1971. In 2016, through Tribal Council Resolution TC-AUG-25-16-Via Title Six was amended and restated in its entirety.

### Chapter 1. INTRODUCTION TO THIS TITLE

These laws govern in all criminal cases in the Pueblo [of] Acoma courts. These laws are intended to provide for a fair trial and the just determination of every criminal proceeding before the courts. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

6-1-1 Complaint: Any criminal complaint filed in the court to be valid shall state the following facts: the name of the complaining witness, the name of the defendant and the statement whether the defendant is within the exterior boundaries of the Acoma Pueblo; and the chapter and section of [this Title] that was allegedly violated.

6-1-2 Special Domestic Violence Criminal Jurisdiction: [In addition to the jurisdiction of the Pueblo over criminal acts as set forth in §1-2-3, Acoma Pueblo exercises “special domestic violence criminal jurisdiction” as a “participating tribe,” as defined within 25 U.S.C. § 1304 (2013), subject to applicable exceptions defined therein and asserts all criminal jurisdiction as may be made under that statute including that as defined within this Section.

A. In all proceedings in which the court is exercising special domestic violence criminal jurisdiction as a participating Indian nation, all rights afforded by the Pueblo of Acoma Laws (2003), as amended shall apply and those enumerated in the Indian Civil Rights Act, 25 U.S.C. §1302 [shall apply] to all defendants. Should there be any inconsistency between Pueblo of Acoma Laws (2003) as amended, and 25 U.S.C. §1302 [concerning a defendant’s rights] 25 U.S.C. §1302 shall apply.

B. Acoma Pueblo’s special domestic violence criminal jurisdiction [extends] over any person only if he or she:

1. Resides within the jurisdiction of Acoma [Pueblo]; or

2. Is employed within the jurisdiction of Acoma [Pueblo]; or
3. Is a current or former spouse, intimate partner, shares a child in common [with], cohabits with or has cohabitated as a spouse or intimate partner or similarly situated as a spouse under the domestic or family violence laws of Acoma Pueblo or dating partner of or with:
  - a. A member of Acoma Pueblo; or
  - b. A member of another Indian tribe who resides within the jurisdiction of Acoma Pueblo.

6-1-3 Special Jurisdiction – Criminal Conduct Applicable

- A. Acoma Pueblo exercises the special domestic violence criminal jurisdiction [over] a defendant for criminal conduct that falls under 25 U.S.C. § 1304 (2013) including into one or more of the following categories:
  1. Domestic Violence and Dating Violence: An act of domestic violence or dating violence that occurs within the jurisdiction of Acoma Pueblo.
  2. Family Violence involving a household member as defined herein and where applicable is subject to special domestic violence criminal jurisdiction.
  3. Violations of Protection Orders: An act that occurs within the jurisdiction of Acoma Pueblo, and violates the portion of a protection order that:
    - a. Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;
    - b. Was issued against the defendant;
    - c. Is enforceable by Acoma Pueblo; and
    - d. Is consistent with 18 U.S.C. §2265(b).

6-1-4 Immunity from Liability: [Subject to §1-6-1, et seq.] the following persons have immunity from liability in a civil action brought by a party for any act

or omission [done] in good faith under this chapter arising from alleged domestic violence or family violence or a crime involving domestic violence or family violence.

- A. [Pueblo of Acoma Peace] officers;
- B. Victim advocates;
- C. Pueblo of Acoma Social Services staff;
- D. Pueblo of Acoma Behavioral Health staff; and/or
- E. Mandatory reporters.

## Chapter 2. PREPARATORY OFFENSES

### 6-2-1 Attempt; Classifications

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



6-2-2

Solicitation

- A. A person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, commits solicitation if, with the intent to promote or facilitate the commission of a felony or misdemeanor, such person commands, encourages, requests or solicits another person to engage in specific conduct which would constitute the felony or misdemeanor or which would establish the other's complicity in its commission. If the offense is completed, such person is as accountable as if he had committed the offense himself.
- B. If the offense is not completed, then solicitation is punishable as an offense one degree below the actual attempted crime.

6-2-3

Conspiracy

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

6-2-4

Facilitation; Classification

- A. A person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, commits facilitation if, acting with knowledge that another person is

committing or intends to commit an offense, such person knowingly provides such other person with means or opportunity for the commission of the offense and which in fact aids such person to commit the offense. If the offense is completed, and the other necessary elements are present, such other person shall be accountable if he were a principal.

- B. Facilitation is an offense of the same class as the most serious offense which is the object of or result of the facilitation.

6-2-5 Renunciation of Attempt, Solicitation, Conspiracy or Facilitation; Defenses

- A. In a prosecution for attempt, conspiracy or facilitation, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the attempt, conspiracy or facilitation.
- B. In a prosecution for solicitation, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent completed both of the following acts:
  - 1. Notified the person solicited; [and]
  - 2. Gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result solicited.
- C. A renunciation is not voluntary and complete within the meaning of this section if it is motivated in whole or in part by:
  - 1. A belief that circumstances exist which increase the probability of immediate detection or apprehension of the accused or another participant in the criminal enterprise or which render more difficult the accomplishment of the criminal purpose; or
  - 2. A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim, place or another but similar objective.
- D. A warning to law enforcement authorities is not timely within the meaning of this section unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the

conduct or result. An effort is not reasonable within the meaning of this Section unless the defendant makes a substantial effort to prevent the conduct or result.

6-2-6 Effect of Immunity, Irresponsibility or Incapacity of a Party to Solicitation, Conspiracy or Facilitation

- A. It is not a defense to prosecution for solicitation, conspiracy or facilitation that a person solicited, facilitated or with whom the defendant conspired could not be guilty of committing the offense because:
  - 1. Such person is, by definition of the offense, legally incapable in an individual capacity of committing the offense;
  - 2. Such person has an immunity to prosecution or conviction for the commission of the offense; or
  - 3. Such person does not have the state of mind sufficient for the commission of the offense in question.
- B. It is not a defense to a prosecution for solicitation or conspiracy that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense that is the object of the solicitation or conspiracy.

Chapter 3. ASSAULT, BATTERY AND RELATED CRIMES

6-3-1 Assault: Assault consists of either:

- A. an attempt to commit a battery upon the person of another;
- B. any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate batter; or
- C. the use of insulting language toward another impugning his honor, delicacy or reputation.

Whoever commits assault is guilty of a petty misdemeanor.

6-3-2 Aggravated Assault: Aggravated Assault consists of:

- A. unlawfully assaulting or striking at another with a deadly weapon or striking at another with a substantial likelihood of causing great bodily harm;

- B. committing assault by threatening or menacing another while wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner, so as to conceal identity;
- C. willfully and intentionally assaulting another with intent to commit any felony;
- D. committing assault after entering the private home of another with intent to commit the assault;
- E. A person twenty-one [(21) years] of age or [older] commits assault upon a child fourteen [(14)] years or [younger]; [or]
- F. A person commits assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired,.

Whoever commits aggravated assault is guilty of a fourth degree felony.

6-3-3 Assault with Intent to Commit a Violent Felony: Assault with intent to commit a violent felony consists of any person assaulting another with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery or burglary. Whoever commits assault with intent to commit a violent felony is guilty of a third degree felony.

6-3-4 Battery: Battery is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner. Whoever commits battery is guilty of a petty misdemeanor.

6-3-5 Aggravated Battery

- A. Aggravated battery consists of the unlawful touching or application of force to the person of another with intent to injure that person or another [person].
- B. Whoever commits aggravated battery, inflicting an injury to [a] person which is not likely to cause death or great bodily harm, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a full misdemeanor.
- C. Whoever commits aggravated battery inflicting 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 is guilty of a third degree felony.

- D. If [a] person commits the battery after entering the private home of another with intent to commit an assault or battery, [such person] is guilty of aggravated battery and will be subject to criminal penalties as specified in Subsections B or C [of this Section].
- E. If [a] person [who] is twenty-one [(21) years] of age or [older] commits the battery upon a child fourteen [(14)] years or [younger] [such person] is guilty of aggravated battery and will be subject to criminal penalties as specified in Subsections B or C [of this Section].
- F. A person [who] commits battery while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired is guilty of aggravated battery and will be subject to criminal penalties as specified in Subsections B or C [of this Section].

6-3-6 Reasonable Detention; Assault, Battery, or Criminal Damage to Property

- A. As used in this Section:
  - 1. "licensed premises" means all public and private rooms facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of establishments licensed to sell or serve alcoholic liquors;
  - 2. "proprietor" means the owner of the licensed premises or his manager or his designated representative; and
  - 3. "operator" means the owner or the manager of any establishment or premises open to the public.
- B. Any [peace] officer may arrest without warrant any person he has probable cause [to] believe has committed the crime of assault or battery as defined in this Title, or public affray, or criminal damage to property. Any proprietor or operator who causes such an arrest shall not be criminally or civilly liable if he has actual knowledge, communicated truthfully and in good faith to the [peace] officer, that the person so arrested has committed the crime of assault or battery as defined in this Title, or public affray, or criminal damage to property.

6-3-7 Shooting at Dwelling or Occupied Building; and/or from a Motor Vehicle

- A. Shooting at a dwelling or occupied building consists of willfully

discharging a firearm at a dwelling or occupied building.

1. Whoever commits shooting at a dwelling or occupied building that does not result in great bodily harm to another person is guilty of a fourth degree felony.
  2. Whoever commits shooting at a dwelling or occupied building that results in injury to another person is guilty of a third degree felony.
  3. Whoever commits shooting at a dwelling or occupied building that results in great bodily harm to another person is guilty of a second degree felony.
- B. Shooting at or from a motor vehicle consists of willfully discharging a firearm at or from a motor vehicle with reckless disregard for [another] person.
1. Whoever commits shooting at or from a motor vehicle that does not result in great bodily harm to another person is guilty of a fourth degree felony.
  2. Whoever commits shooting at or from a motor vehicle that results in injury to another person is guilty of a third degree felony.
  3. Whoever commits shooting at or from a motor vehicle that results in great bodily harm to another person is guilty of a second degree felony.
- C. This section shall not apply to a [peace] officer discharging a firearm in the lawful performance of his duties.

6-3-8

Seizure and Forfeiture of Motor Vehicle

- A. A motor vehicle shall be subject to seizure and forfeiture when the vehicle is used or intended for use in the commission of the offense of shooting at or from a motor vehicle pursuant to [§6-3-7].
- B. This Section is to be applied under the Pueblo's civil authority but the forfeiture and disposal of the motor vehicle will be in accord with all protections and procedures in Pueblo of Acoma Laws 2003, as amended.

Assault; Battery of [Pueblo] Employees or Government Officials

- A. As used in this Section:
1. "in the lawful discharge of his duties" means engaged in the performance of the duties of a [Pueblo] employee or governmental official who is working for or employed with the Pueblo of Acoma; and
  2. "[Pueblo] employee or governmental official" includes:
    - a. [the] Tribal [Governor, 1<sup>st</sup> Lt. Governor, 2<sup>nd</sup> Lt. Governor, Tribal Secretary, Tribal Interpreter], Tribal Sheriffs, Tribal Council, [and other duly appointed officials];
    - b. public safety, social service, behavioral health, and court personnel and/or anyone employed with the Pueblo of Acoma [to perform governmental responsibilities]; and
    - c. any member of [the Pueblo of Acoma] school board, school administrators, teachers and other employees of that Board.
- B. Assault upon a [Pueblo] employee or governmental official consists of:
1. an attempt to commit a battery upon the person of a [Pueblo] employee or governmental official while he is in the lawful discharge of his duties; or
  2. any unlawful act, threat or menacing conduct which causes a [Pueblo] employee or governmental official while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery.
- Whoever commits assault upon a [Pueblo] employee or governmental official is guilty of a full misdemeanor.
- C. Aggravated assault upon a [Pueblo] employee or governmental official consists of:
1. unlawfully assaulting or striking at a [Pueblo] employee or governmental official with a deadly weapon while he is in the lawful discharge of his duties;

2. committing assault by threatening or menacing a [Pueblo] employee who is engaged in the lawful discharge of his duties by a person wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner so as to conceal identity; or
3. willfully and intentionally assaulting a [Pueblo] employee while he is in the lawful discharge of his duties with intent to commit any felony.

Whoever commits aggravated assault upon a [Pueblo] employee is guilty of a third degree felony.

- D. Assault with intent to commit a violent felony upon a [Pueblo] employee consists of any person assaulting a [Pueblo] employee or governmental official while he is in the lawful discharge of his duties with intent to kill the [Pueblo] employee.

Whoever commits assault with intent to commit a violent felony upon a [Pueblo] employee is guilty of a second degree felony.

- E. Battery upon a [Pueblo] employee is the unlawful, intentional touching or application of force to the person of a [Pueblo] employee or governmental official while he is in the lawful discharge of his duties, when done in a rude, insolent or angry manner.

Whoever commits battery upon a [Pueblo] employee or governmental official is guilty of a fourth degree felony.

- F. Aggravated battery upon a [Pueblo] employee or governmental official consists of the unlawful touching or application of force to the person of a [Pueblo] employee or governmental official with intent to injure that [Pueblo] employee or governmental official while he is in the lawful discharge of his duties.

Whoever commits aggravated battery upon a [Pueblo] employee or governmental official, inflicting an injury to the [Pueblo] employee or governmental official which is not likely to cause death or great bodily harm but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a fourth degree felony.

Whoever commits aggravated battery upon a [Pueblo] employee or governmental official, inflicting great bodily harm, or does so with a



deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of a third degree felony.

- G. Every person who assists or is assisted by one or more other persons to commit a battery upon any [Pueblo] employee or governmental official while he is in the lawful discharge of his duties is guilty of a fourth degree felony.

6-3-10 Attempted Suicide

- A. A person commits Attempted Suicide by knowingly undertaking any action designed to end his or her life, when a purpose of said action is [to cause] the end of the person's life.
- B. Attempted suicide is punishable by imprisonment as a petty misdemeanor, but the charge may be dismissed for good cause, including consideration of the recommendations of family members, counselors, treatment providers and/or Tribal Sheriffs for sentencing or dismissal of the charge. Good cause may also be inferred from the circumstances if [a] defendant pursues treatment.

6-3-11 [Kidnapping] and Related Offenses

- A. Definitions. In this Chapter, unless the context otherwise requires:
1. "Relative" means a parent or stepparent, ancestor, descendent, sibling, uncle or aunt, including an adoptive relative of the same degree through marriage or adoption, or a spouse.
  2. "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with such person's liberty, by moving such person from one place to another or by confining such person. Restraint is without consent if it is accomplished by:
    - a. Physical force, intimidation or deception; or
    - b. Any means including acquiescence of the victim if the victim is a child less than eighteen [(18)] years old or an incompetent person, and the victim's lawful custodian has not acquiesced in the movement or confinement.
- B. Unlawful Imprisonment: A person commits unlawful imprisonment by knowingly restraining another person without legal justification.

1. In any prosecution for unlawful imprisonment, it is a defense that:
  - a. The restraint was accomplished by a peace officer acting in good faith in the lawful performance of his duty; or
  - b. The defendant is a relative of the person restrained and the defendant's sole intent is to assume lawful custody of the person and the restraint was accomplished without physical injury.
2. Unlawful imprisonment is punishable as a full misdemeanor, [except that] If the victim suffers great bodily harm, a substantial threat of great bodily harm, or severe emotional distress, unlawful imprisonment is punishable as a 4<sup>th</sup> degree felony.

C. [Kidnapping]; Classification

1. A person commits [kidnapping] by knowingly restraining another person with the intent to:
  - a. Hold the victim for ransom, [or use the victim] as a shield or hostage;
  - b.. Hold the victim for involuntary servitude;
  - c. Inflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a felony;
  - d. Place the victim or a third person in reasonable apprehension of imminent physical injury to the victim or such third person;
  - e. Interfere with the performance of a governmental or political function; or.
  - f. Seize or exercise control over any airplane, train, bus, ship or other vehicle.
2. Kidnapping is punishable as a 2<sup>nd</sup> degree felony. If the victim is released voluntarily by the defendant without physical injury in a safe place prior to arrest and prior to

accomplishing any of the further enumerated actions the crime is punishable as a high misdemeanor.

6-3-12 Custodial Interference: A person commits custodial interference if, knowing or having reason to know that he has no legal right to do so, such person knowingly takes, entices or keeps from lawful custody any child less than eighteen [(18)] years of age or [any person suffering from incompetency], entrusted by authority of law to the custody of another person or institution. Custodial interference is punishable [as] a full misdemeanor, [except that]

- A. If bodily harm or emotional distress results to the child [or person suffering from incompetency], then custodial interference is punishable as a 4<sup>th</sup> degree felony;
- B. If there is a great bodily harm, the threat of great bodily harm or severe emotional distress to the child [person suffering from incompetency] then it is punishable as a 3<sup>rd</sup> degree felony; [or].
- C. If death results to the child [or person suffering from incompetency] then it is punishable as a 2<sup>nd</sup> degree felony.

6-3-13 Harassment: Harassment consists of knowingly pursuing a course of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer emotional distress. Whoever commits harassment is guilty of a simple misdemeanor. A second conviction for harassment [with]in three (3) years is a full misdemeanor.

6-3-14 Stalking

- A. Definitions.
  - 1. "Course of conduct" means a pattern of conduct composed of two or more acts, including but not limited to, acts in which the defendant directly or indirectly or through third parties, by any action, method or device (including electronic devices) or means (including email, texts or social media), follows, harasses, monitors, observes, [conducts surveillance], threatens or communicates to or about a person, or interferes with a person's property. The series of acts can be over a short period of time, however but evidence a continuity of purpose.
  - 2. "Emotional distress" means significant mental suffering or

distress that may, but does not necessarily require medical or other professional treatment or counseling.

3. "Reasonable person" means a reasonable [person] in the victim's circumstances.

B. Any person [is guilty of stalking] who purposefully engages in a course of conduct directed at a specific person(s) and knows or should know that the course of conduct would cause a reasonable person to:

1. fear for their safety, the safety of a family or household member, or third person; [or]

2. suffer other emotional distress.

C. In any prosecution under this [Section], it shall not be a bar to prosecution that:

1. the actor was not given actual notice that the course of conduct was unwanted; or

2. the alleged perpetrator did not intend to cause the victim fear or other emotional distress.

D. Stalking is punishable as a full misdemeanor for the first offense and a 4<sup>th</sup> degree felony if a second offense is committed within [seven] (7) years.

6-3-15 Aggravated Stalking: If the victim [of stalking] suffers great bodily harm, a substantial threat of great bodily harm, severe emotional distress that results in requiring medical attention and/or counseling or a deadly weapon [is used as part of the stalking conduct], or threats of substantial bodily harm or death are part of the stalking conduct the crime is punishable as a 4<sup>th</sup> degree felony.

6-3-16 Exceptions: The provisions of [§§6-3-13, 6-3-14 and 6-3-15] do not apply to a [peace] officer, tribal sheriff, crime victim advocate, domestic violence advocate, and/or [the director of Pueblo of Acoma] Social Services or his or her designated agent, when acting in their official capacity and within the scope of his or her duties.

## Chapter 3A. HOMICIDE

### 6-3A-1 Murder

- A. Murder in the first degree is the killing of one human being by another without lawful jurisdiction or excuse, by any of the means with which death may be caused:
1. by any kind of willful, deliberate and premeditated killing;
  2. in the commission of or attempt to commit any felony; or
  3. by any act greatly dangerous to the lives of others, indicating a depraved mind regardless of human life.

Whoever commits murder in the first degree is guilty of a first degree felony.

- B. Unless he is acting upon sufficient [provocation], upon a sudden quarrel or in the heat of passion, a person who kills another human being without lawful justification or excuse commits murder in the second degree if in performing the acts which cause the death he knows that such acts create a strong probability of death or great bodily harm to that individual or another.

Murder in the second degree is a lesser included offense of the crime of murder in the first degree. Whoever commits murder in the second degree is guilty of a second degree felony resulting in the death of a human being.

### 6-3A-2 Manslaughter: Manslaughter is the unlawful killing of a human being without malice.

- A. Voluntary manslaughter consists of manslaughter committed upon a sudden quarrel or in the heat of passion. Whoever commits voluntary manslaughter is guilty of a third degree felony resulting in the death of a human being.
- B. Involuntary manslaughter consists of manslaughter committed in the commission of an unlawful act not amounting to felony, or in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection. Whoever commits involuntary manslaughter is guilty of a fourth degree felony.

6-3A-3

Justifiable Homicide by Pueblo Official or Employee

- A. Homicide is justifiable when committed [while acting in their official capacity and within the scope of his or her duties] by a Pueblo official or employee or those acting by their command and in their aid and assistance:
1. in obedience to any judgment of a competent court;
  2. when necessarily committed in overcoming actual resistance to the execution of some legal process or to the discharge of any other legal duty;
  3. when necessarily committed in retaking felons who have been rescued or who have escaped or when necessarily committed in arresting felons fleeing from justice; or
  4. when necessarily committed in order to prevent the escape of a felon from any place of lawful custody or confinement.
- B. For the purposes of this Section, homicide is necessarily committed when a Pueblo official or employee has probable cause to believe he or another is threatened with serious harm or deadly force while performing those lawful duties described in this Section. Whenever feasible, a Pueblo official or employee should give warning prior to using deadly force.

6-3A-4

Justifiable Homicide by [Private Person]. Homicide is justifiable when committed by any person in any of the following cases:

- A. when committed in the necessary defense of a [person's] life family or property, or in necessarily defending against any unlawful action directed against [the person], [the person's] spouse or other family;
- B. when committed in the lawful defense of the [person] or of another and when there is a reasonable ground to believe a design exists to commit a felony or to do some great personal injury against such person or another, and there is imminent danger that the design will be accomplished; or
- C. when necessarily committed [by a person] in attempting, by lawful ways and means, to apprehend any [other] person for any felony committed in [the person's] presence, or in lawfully suppressing any riot, or in necessarily and lawfully keeping and preserving the peace.

## Chapter 3B. DOMESTIC AND FAMILY VIOLENCE CRIMES

6-3B-1 Purposes: The purposes of this Chapter [are]:

- A. to recognize that the Pueblo of Acoma's strength is erected on a foundation of healthy families;
- B. [to ensure] the safety of victims of domestic violence and/or family violence, by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services;
- B. [to recognize that the] commission of domestic violence and/or family violence is a serious crime against society, the Pueblo, and the family, and
- C. to provide the victim[(s)] of domestic violence or family violence the maximum protection from further violence that the law, and those who enforce the law, can provide.

6-3B-2 Jurisdiction: Jurisdiction over domestic and family violence matters shall be in accordance with Title 1 and this Title. The Pueblo of Acoma court shall retain jurisdiction over members of federally recognized Indian tribes [who are subject to court orders issued pursuant to this Chapter] and [the Pueblo of Acoma Tribal Court shall have jurisdiction over] any violations of orders of protection entered pursuant to this Chapter which are alleged to have occurred outside of the boundaries of Acoma [Pueblo lands] where such orders are entitled to recognition outside [Pueblo of Acoma] boundaries as a matter of full faith and credit.

6-3B-3 Definitions: [For the purposes of this Chapter, the following definitions apply]:

- A. "Abuse" means the intentional infliction of physical harm, bodily injury or sexual assault or the infliction of the fear of imminent physical harm, and includes but is not limited to assault and battery as defined in this Title.
- B. "Alarm" means to cause apprehension or fear resulting from the reasonable perception of danger.
- C. "Coercion" means to restrain, compel or dominate by force or threat.
- D. "Contact" includes but is not limited to:

1. Repeatedly coming into and/or remaining in the visual or physical presence of [another] person;
  2. Following [another] person or with intent to contact, following the person's family members;
  3. Waiting outside the home, property, place of work or school of [another] person or the person's family members' place of work, school, home or property;
  4. Sending or making written communications in any form, including, [but not limited to] text messaging, [instant-messaging], and social media, to [another] person or the [person's] family where it may be reasonably inferred that the message is for the person.
  5. Speaking with [another] person by any means, including leaving a voicemail message;
  6. Communicating with [another] person through a third person;
  7. Committing a crime against [another] person;
  8. Communicating with a third person who has some relationship to [another] person with the intent [to have an impact on] the third person's relationship with the person;
  9. Communicating with business entities with the intent of affecting some right or interest of [another] person;
  10. Damaging [another] person's home, property, place of work or school; or
  11. Delivering directly or through a third person any object to the home, property, place of work or school of [another] person.
- E. "Course of conduct" means a pattern of conduct composed of two [(2)] or more acts, including but not limited to, acts in which the defendant directly or indirectly or through [a] third party, by any action, method or device or means, follows, monitors, observes, [conducts surveillance], threatens or communicates to or about a person, or interferes with a person's property. The series of acts can be over a short period of time, however but [show] a continuity of purpose.



- F. "Dating relationship" means a social relationship of a romantic nature. In determining whether parties have a "dating relationship," the trier of fact shall consider: (1) The length of time the relationship has existed; (2) The nature of the relationship; and (3) The frequency of the interaction between the parties.
- G. "Dating violence" means a crime committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the person[s] in the relationship.
- H. "Domestic violence" means a crime committed by a current or former household member, spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under [this Chapter]. It includes but is not limited to the occurrence of one or more of the following acts by an intimate partner or a family or household member:
1. Attempting to cause or causing physical, mental or emotional distress or harm to another family or household member or intimate partner;
  2. Placing an intimate partner or family or household member in reasonable fear of physical harm to him- or herself or another family or household member. This fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;
  3. Causing an intimate partner or family or household member to engage involuntarily in sexual activity, which includes, but not limited to, through coercion, intoxication, force, threat of force, or duress; or
  4. Attempting to commit or committing any criminal offense under Pueblo of Acoma [Laws, 2003, as amended] against another family or household member or intimate partner.

"Domestic violence" does not include acts of self-defense or [application of] culturally appropriate discipline [to] a child.

- I. "Electronic communications" means any form of expression or exchange of information by speech, photographs or written form using electronic means. Electronic communication includes, but is not limited to, communication via telephone, facsimile, electronic mail, social media and other electronic forms.
- J. "Electronic surveillance" means monitoring the behavior, activities, or whereabouts [of another person] by electronic means.
- K. "Emotional Distress". For the purpose of this Chapter, "emotional distress" means a reaction such as anguish, grief, fright, humiliation, or fury.
- L. "Family or household member" means a spouse, former spouse or family member including a relative, parent, brother, sister, step-brother or step-sister, present or former step-parent, present or former in-law, a co-parent of a child or person with whom a person has had a continuing personal relationship. When cohabitation exists, it establishes a household member but cohabitation is not necessary to be deemed a family or household member under this Chapter.
- M. "Family Violence" means the same or similar acts [that constitute] domestic violence [as defined in this Chapter], but directed towards a family or household member instead of an intimate partner.
- N. "Foreign protection order" means an injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person, issued by a court of another [federally recognized Indian tribe], state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, in a civil or criminal action.
- O. "Indian Country" means [any area that is considered "Indian country" under federal law as set forth in 18 U.S.C. §1151, as amended].
- P. "Immediate Family" means a spouse, parent, child, sibling, live-in partner, or any other person who regularly resides in the household or who in the past regularly resided in the household.
- Q. "Intimate partner" means:

- (1) spouses
  - (2) former spouses,
  - (3) persons who are or have been in a marital-like relationship including same-sex relationships;
  - (4) persons who have a child in common regardless of whether they have been married or have lived together at any time in a romantic relationship; or
  - (5) persons who are dating or have dated in the past.
- R. "Mandatory arrest" means that a [Peace] Officer shall arrest [a person] if there is probable cause to believe the person to be arrested has committed an offense as defined by this Chapter even though the arrest may be against the expressed wishes of the victim.
- S. "Minor" or "juvenile" means any person under the age of [eighteen] (18) years of age.
- T. "No Contact Order" means a court order issued pursuant to a criminal case that prohibits a criminal defendant from having contact with the victim.
- U. "Protection Order" or "Restraining Order" means a temporary or permanent civil or criminal court order, injunction, or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing violent or threatening acts, or harassment against, or contact or communication with, or physical proximity to, another person, who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual [assault] or stalking; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.
- V. "Probabl[e] cause for arrest" means that the [Peace] Officer, acting as a person of reasonable caution, has reasonable grounds to believe that the person to be arrested has committed an offense as defined by this Chapter, based on all the facts known to the officer, including the officer's personal observations, statements made by parties involved in the incident, statements made by witnesses, if

any, and any other reliable information.

W. "Repeated" means two [(2)] or more times.

6-3B-4

Domestic Violence

A. A person commits domestic violence when he or she commits any crime in this Title against an intimate partner and/or family or household member whether of a different or same sex as the alleged perpetrator.

B. The maximum punishment for the crime of domestic violence is a one-step increase above the maximum punishment set forth in the underlying crime that the defendant is being charged with in [this] Title.

C. In addition to any other crimes of domestic violence in this [Chapter], the following are crimes of domestic violence:

1. Assault against a household member or intimate partner [which] consists of:

- a. an attempt to commit a battery against a household member; or
- b. any unlawful act, threat or menacing conduct that causes a household member to reasonably believe that he [or she] is in danger of receiving an immediate battery.

Whoever commits assault against a household member is guilty of a simple misdemeanor.

2. Aggravated assault against a household member or intimate partner [which] consists of:

- a. unlawfully assaulting or striking at a household member with a deadly weapon; or
- b. willfully and intentionally assaulting a household member or intimate partner with intent to commit any felony.

Whoever commits aggravated assault against a household member is guilty of a fourth degree felony.

3. Assault against a household member or intimate partner with intent to commit a violent felony [which] consists of any person assaulting a household member with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery, kidnapping, false imprisonment or burglary.

Whoever commit[s] assault against a household member or intimate partner with intent to commit a violent felony commits a third degree felony.

4. Battery against a household member or intimate partner. consists of the unlawful, intentional touching or application of force to the person of a household member or intimate partner when done in a rude, insolent or angry manner.

Whoever commits battery against a household member or intimate partner is guilty of a full misdemeanor.

5. Aggravated battery against a household member or intimate partner.

- a. Aggravated battery against a household member consists of the unlawful touching or application of force to the person of a household member with intent to injure that person or another.

- b. Whoever commits aggravated battery against a household member by inflicting an injury to that person that is not likely to cause death or great bodily harm, but that does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a third degree felony.

- c. Whoever commits aggravated battery against a household member by inflicting great bodily harm or doing so with a deadly weapon or doing so in any manner whereby great bodily harm or death can be inflicted is guilty of a second degree felony.

6. Criminal damage to the property of a household member or intimate partner consists of intentionally damaging real, personal, community or jointly owned property of a household member with the intent to intimidate, threaten or harass that household member. Whoever commits criminal

damage to the property of a household member or [intimate] partner is guilty of a full misdemeanor, except that when the damage to the household member's interest in the property amounts to more than [Five Hundred] dollars (\$500), the offender is guilty of a fourth degree felony.

7. Deprivation of the property of a household member or intimate partner consists of intentionally depriving a household member or intimate partner of the use of separate, community or jointly owned personal property of the household member with the intent to intimidate or threaten that household member. Whoever commits deprivation of the property of a household member is guilty of a full misdemeanor.
8. Multiple convictions for crimes 6-3B-[4](A) or (C)
  - a. Whoever commits three ([3]) offenses against a household member or intimate partner as set forth in 6-3B-[4](A) or (C) is guilty of a fourth degree felony in addition to any other liability they may face.
  - b. Whoever commits four ([4]) offenses against a household member or intimate partner as set forth in 6-3B-[4](A) or (C) is guilty of a third degree felony in addition to any other liability they may face.

For the purpose of determining the number of offenses committed, each offense must have been committed after the conviction for the preceding offense.

6-3B-5 Interfering with the Reporting of Domestic Violence or Family Violence

- A. Any person who prevents or attempts to prevent a victim or witness of domestic violence or family violence from calling 911 or the Acoma Police [Department] or other law enforcement agency, or from obtaining medical assistance or making a report to any tribal, state or federal peace officer, has committed the crime of interfering with the reporting of domestic violence or family violence.
- B. Interfering with the reporting of domestic violence or family violence is a Full Misdemeanor.

6-3B-6 Interfering with the Prosecution of Domestic Violence or Family Violence

- A. Any person who prevents or attempts to prevent a witness from

testifying in a court proceeding, or otherwise impedes the prosecution of a case involving domestic violence or family violence, commits the crime of interfering with the prosecution of domestic violence or family violence.

- B. Interfering with the prosecution of domestic violence or family violence is a 4<sup>th</sup> degree felony.

6-3B-7 Violation of a Domestic or Family Violence Protection, Restraining, or No Contact Order

- A. In addition to any other penalties available under the law, a person who knowingly violates a protection, temporary restraining or no contact order issued for the purpose of preventing domestic or family violence, or a person who aides and abets another person, to knowingly violate a protection, temporary restraining or no contact order issued to prevent domestic or family violence is guilty of an offense. [This offense is a ] full misdemeanor for the 1<sup>st</sup> offense and for a 4<sup>th</sup> degree felony for any additional violation that takes place within [seven] (7) years of a previous violation of this Section.
- B. A peace officer shall make a mandatory arrest, as defined in §6-3B-3(R) of this Chapter for a violation of this Section.
- C. A violation of a protection or restraining [or no contact] order protecting against domestic or family violence shall, in addition to other penalties, constitute contempt of court and be subject to the penalties thereof.

6-3B-8 Law Enforcement Duties to Victims

- A. A peace officer who responds to an allegation of domestic violence or family violence shall use all reasonable means to protect the victim and any family or household member, and prevent further violence, including, but not limited to:
  - 1. Taking necessary actions to provide for the safety of the victim and any family or household members or witnesses, including arresting the alleged perpetrator or dominant aggressor;
  - 2. Transporting or obtaining transportation for the victim and any child(ren) to a domestic violence safe house or other place of safety within the Pueblo's service area at the victim's request;

3. Assisting the victim in removing essential personal effects, at the victim's request;
4. Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility;
5. Confiscating any weapon, including firearms, as provided for in [Pueblo of Acoma Laws 2003, as amended] and/or confiscating any weapon where there is a reasonable belief that the weapon poses a danger to the victim or the victim's family.
6. Providing assistance in obtaining a restraining order, temporary protection order or emergency no contact order.
7. Mandatory Arrest: A law enforcement officer must arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed an offense involving domestic or family violence, even if a warrant has not been issued and the offense was committed outside the presence of the officer.
8. Predominant Aggressor. When a peace officer makes an arrest pursuant to Subsection (A) of this Section, the officer shall make every effort to determine who is the predominant aggressor by considering, among other factors:
  - a. The relative severity of the injuries inflicted or the seriousness of threats creating fear of physical injury. However, injury is not dispositive if the officer determines that one person was the predominant aggressor. The officer is not required to arrest the other person believed to have caused physical harm or bodily injury against the predominant aggressor, if any:
  - b. If reasonably ascertainable, the history of domestic abuse involving the persons in any jurisdiction;
  - c. Whether any alleged crime was committed in self-defense;
  - d. The likelihood of future injuries to each person; and
  - e. Whether the incident occurred in the presence of



children whether by visual or [auditory senses], or perceived by them in any manner.

9. When a peace officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services , and giving each person immediate notice of the legal rights and remedies available [to them]. The notice shall include handing each person a copy of the following statement:

*IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the prosecuting attorney to file a criminal complaint. You also have the right to file a petition in tribal, court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in the Acoma court.*

10. Any peace officer, [appointed official], victims of crime advocate, domestic violence advocate, and/or Pueblo of Acoma Social Services director or his or her designated agent responding to the request for assistance under this Chapter is immune from civil liability to the extent allowed by Pueblo of Acoma law, specifically [§1-6-1 et. seq.]. Any jail, detention center, or law enforcement agency that makes a reasonable attempt to provide notification that an abusing [household] member is released from custody is immune civil liability to the extent allowed by law.

6-3B-9 Request for Exclusion; Prosecution of Non-Indians: In addition to the punishment set forth in this Chapter for a particular act, a finding that a person has committed an act prohibited by this Section is sufficient cause for a request for exclusion from the Pueblo pursuant to Title 1, Chapter 12 of the Pueblo of Acoma Laws 2003, as amended. Furthermore, nothing in this Section shall preclude the Pueblo of Acoma from seeking prosecution of non-Indians under federal or state law.

## Chapter 4. SEXUAL OFFENSES

6-4-1 Definitions: In this Chapter, unless the context otherwise requires:

A. "Force or Coercion" means:

1. The use of physical force or physical violence.
2. The use of threats to use physical violence, the use of a weapon, or physical force against the victim or another when the victim believes that there is a present ability to execute the threats.
3. 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.
4. 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
5. Criminal sexual penetration or criminal sexual contact by a psychotherapist on [a] patient, with or without the patient's consent, during the course of psychotherapy or within a period of one [(1)] year following the termination of psychotherapy.

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

- B. "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.
- C. "Oral sexual contact" means oral contact with the penis, vulva or anus.
- D. "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.

- E. "Position of Authority" means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child.
- F. "Sexual contact" means oral sexual contact, sexual intercourse, any intentional direct or indirect touching, intentional fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact with the intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desire of any person.
- G. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by an object or manual masturbatory contact with the penis or vulva.
- H. "Spouse" means a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separation or divorce.
- I. "Without consent" means any of the following:
  - 1. The victim is coerced by the immediate use or threatened use of force against a person or property.
  - 2. The victim is incapable of consent by reason of mental disorder, drugs, maturity, under the age of seventeen [(17)] years old (except where the alleged perpetrator is less than four [(4)] years older than the alleged victim), alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant.
  - 3. The victim is intentionally deceived as to the nature of the act.
  - 4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.

#### 6-4-2

#### Indecent Exposure

- A. A person commits indecent exposure if he or she exposes his or her genitals or anus or she exposes the areola or nipple of her breast or breasts and another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act.

B. Indecent exposure is punishable by as a simple misdemeanor.

6-4-3 Aggravated Indecent Exposure

A. Aggravated indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view in a lewd and lascivious manner, with the intent to threaten or intimidate another person, while committing one or more of the following acts or criminal offenses:

1. exposure to a child less than eighteen [(18)] years of age;
2. assault;
3. aggravated assault;
4. assault with intent to commit a violent felony;
5. battery;
6. aggravated batter[y];
7. criminal sexual penetration; or
8. abuse of a child.

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

C. Whoever commits aggravated indecent exposure is guilty of a fourth degree felony.

D. In addition to any punishment provided pursuant to the provisions of this Section, the court shall order a person convicted for committing aggravated indecent exposure to participate in and complete a program of professional counseling.

6-4-4 Public Sexual Indecency; Classification

A. A person commits public sexual indecency by intentionally or knowingly engaging in any of the following acts, if another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act:

1. An act of sexual contact.
2. An act of oral sexual contact.
3. An act of sexual intercourse.
4. An act involving contact between the person's mouth, vulva or genitals and the anus or genitals of an animal.

B. Public sexual indecency is [a] simple misdemeanor.

6-4-5

Sexual Assault

A. A person is guilty of sexual assault if they unlawfully, intentionally and without consent, engage in sexual contact with another person.

Whoever commits sexual assault is [guilty of] a 4<sup>th</sup> degree felony.

B. Sexual assault is a general intent crime.

C. Criminal sexual contact does not include touching that is:

1. inadvertent;
2. casual social contact not intended to be sexual in nature; or
3. generally recognized by mental health professionals as being a legitimate element of medical treatment or psychotherapy.

D. Aggravated Sexual Assault consists of sexual assault that is accompanied:

1. by the use of force or coercion that results in personal injury to the victim;
2. by the use of force [or] coercion when the perpetrator is aided or abetted by one or more persons; or
3. when the perpetrator is armed with a deadly weapon including any knife or firearm.

Whoever commits aggravated sexual assault is guilty of a third degree felony.

Criminal Sexual Penetration

- A. Criminal sexual penetration is the unlawful and intentional causing of a person 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.
- B. Criminal sexual penetration does not include medically indicated and/or lawful procedures.
- C. Aggravated criminal sexual penetration consists of all criminal sexual penetration perpetrated on a child under thirteen [(13)] years of age with an intent to kill or with a depraved mind regardless of human life. Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration.
- D. Criminal sexual penetration in the first degree consists of all criminal sexual penetration perpetrated:
  - 1. on a child under thirteen [(13)] years of age; or
  - 2. by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

- E. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:
  - 1. by the use of force or coercion on a child thirteen [(13) to] eighteen [(18)] years of age;
  - 2. by the use of force or coercion that results in personal injury to the victim;
  - 3. by the use of force or coercion when the perpetrator is aided or abetted by one [(1)] or more persons;
  - 4. in the commission of any other felony; or
  - 5. when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen [(13)] to eighteen [(18)] years of age is guilty of a second degree felony for a sexual offense against a child.

- F. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this Section.

Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.

- G. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:

1. not defined in Subsections D through F of this Section perpetrated on a child thirteen [(13)] to sixteen [(16)] years of age when the perpetrator is at least eighteen [(18)] years of age and is at least four [(4)] years older than the child and not the spouse of that child; or
2. perpetrated on a child thirteen [(13)] to eighteen [(18)] years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen [(18)] years of age and is at least four [(4)] years older than the child and not the spouse of that child, learns while [employed at or] performing services in or for a school tha[t] the child is a student in [the] school; or
3. o[f] an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony.

6-4-7

### Defenses

- A. It is a defense to a prosecution involving a minor, if the act was done in furtherance of lawful medical practice.
- B. It is a defense to a prosecution if the act was done by a duly licensed physician or registered nurse or a person acting under his or her direction, or any other person who renders emergency care

at the scene of an emergency occurrence, and consisted of administering a recognized and lawful form of treatment which was reasonably adapted to promoting the physical or mental health of the patient and the treatment was administered in an emergency when the duly licensed physician or registered nurse or a person acting under his or her direction, or any other person rendering emergency care at the scene of an emergency occurrence, reasonably believed that no one competent to consent could be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

6-4-8 Corroboration: The testimony of a victim of a crime need not be corroborated in prosecutions under Chapter 4 or Chapter 4A and such testimony shall be entitled to the same weight as the testimony of victims of other crimes under Pueblo of Acoma Laws 2003, as amended.

6-4-9 Adultery; Punishment Limitation on Prosecution

- A. A married person who has sexual intercourse with another other than his or her spouse, and an unmarried person who has sexual intercourse with a married person, commits adultery and is guilty of an offense. When the act is committed between parties only one of whom is married, both shall be punished.
- B. No prosecution for adultery shall be commenced except upon complaint of the [spouse of the married person alleged to have had sexual intercourse with another other than his or her spouse].
- C. Adultery is punishable by requiring treatment counseling, community service and/or a fine of no more than \$500.

6-4-10 Sexual Assault; Expenses of Investigation: Any medical expenses arising out of the need to secure evidence that a person has been the victim of a sexual assault shall be paid initially by the Pueblo. If the defendant is found or pleads guilty these expenses may be recovered from the defendant.

6-4-11 Bigamy; Classification

- A. A person who enters into a marriage knowing that he or she is still legally married to another commits the crime of bigamy.
- B. A crime of bigamy is punishable as a simple misdemeanor.



6-4-12      Prostitution

- A.      A person commits the offense of prostitution by offering to engage in any sexual act with another [other than the person's spouse] for pay or some other form or compensation.
- B.      A crime of prostitution is punishable by imprisonment as a petty misdemeanor.

Chapter 4A. CRIMES AGAINST CHILDREN

6-4A-1      Definitions

- A.      "child" means a person who is less than eighteen [(18)] years of age;
- B.      "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and
- C.      "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

6-4A-2      Abuse of a Child

- A.      Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting 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; or
  - 3.      exposed to the inclemency of the weather.
- B.      A person who commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm to the child, the person is guilty of a first degree felony.

- C. A person who commits negligent abuse of a child that results in the death of the child is guilty of a first degree felony.
- D. A person who commits intentional abuse of a child twelve [(12)] to eighteen [(18)] years of age that results in the death of the child is guilty of a first degree felony.
- E. A person who commits intentional abuse of a child less than twelve [(12)] years of age that results in the death of the is guilty of a first degree felony.
- F. Evidence that demonstrates that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals [or] equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.
- G. Evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of methamphetamine shall be deemed prima facie evidence of abuse of the child.

6-4A-3 Abandonment of a Child

- A. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. A person who commits abandonment of a child is guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case the person is guilty of a second degree felony.

6-4A-4 Abandonment of a Dependent

- A. Abandonment of dependent consists of a person having the ability and means to provide for his or her spouse and/or child(ren)'s support and abandoning or failing to provide for the support of such dependent(s).

Whoever commits abandonment of dependent(s) is guilty of a full misdemeanor for the first conviction and a high misdemeanor for the second conviction and a 4<sup>th</sup> degree felony for the third conviction.

6-4A-5 Contributing to the Delinquency of a Child: Contributing to the delinquency of a child consists of any person committing any act or

omitting the performance of any duty, which act or omission causes or tends to cause or encourage the delinquency of any [child].

Whoever commits contributing to the delinquency of a [child] is guilty of a full misdemeanor unless the child is fourteen years or less and then they are guilty of a 4<sup>th</sup> degree felony.

6-4A-6 Obstruction of Reporting or Investigation of Child Abuse or Neglect:  
Obstruction of reporting or investigation of child abuse or neglect consists of:

- A. knowingly inhibiting, preventing, obstructing or intimidating another from reporting [as mandated by the Pueblo of Acoma Laws 2003, as amended] child abuse or neglect, including child sexual abuse; or
- B. knowingly obstructing, delaying, in[t]erfering with, or denying access to a [peace] officer or social worker in the investigation of a report of child abuse [or neglect, including child] sexual abuse.

Whoever commits obstruction of reporting or investigation of child abuse or neglect is guilty of a full misdemeanor.

6-4A-7 Sexual Exploitation of Children. As used in this Section:

- A. "prohibited sexual act" means:
  - 1. sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;
  - 2. bestiality;
  - 3. masturbation;
  - 4. sadomasochistic abuse for the purpose of sexual stimulation;
  - 5. lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation.
- B. "visual or print medium" means:
  - 1. any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer or electronically

generated imagery;

2. any book, magazine or other form of publication or photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer generated or electronically generated imagery.

C. "performed publicly" means performed in a place that is open to or used by the public;

D. "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; and

E. "obscene" means any material, when the content if taken as whole:

1. appeals to a prurient interest in sex, as determined by the average person applying contemporary community standards;
2. portrays a prohibited sexual act in a patently offensive way; and
3. lacks serious literary, artistic, political or scientific value.

F. Obscene, Visual or Print Medium:

1. It is unlawful for a person to intentionally possess any obscene 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 obscene 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. A person who violates the provisions of this subsection is guilty of a fourth degree felony for sexual exploitation of children. When a separate finding of fact made by a court or jury shows beyond a reasonable doubt that a child depicted in the visual or print medium is a child under the age of thirteen [(13)], the basic sentence shall be increased by one [(1)] year.
2. The provisions of [Paragraph 1] of this [Subsection F] shall not apply to a depiction possessed by a child in which the depicted child is between the ages of fourteen [(14)] and

eighteen [(18)] and the depicted child knowingly and voluntarily consented to the possession, and:

- a. the depicted child knowingly and voluntarily consented to the creation of the depiction; or
- b. the depicted child knowingly and voluntarily produced the depiction without coercion.

[Paragraph 2 of] this [S]ubsection [F] shall not prohibit prosecution or create an immunity from prosecution for the possession of depictions that are the result of coercion.

3. It is unlawful for a person to intentionally distribute any obscene 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 obscene 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. A person who violates the provisions of this [Paragraph 3] is guilty of a third degree felony for sexual exploitation of children and shall be sentenced as a third degree felony.
4. It is unlawful for a person to intentionally cause or permit a child 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 obscene visual or print medium or performed publicly. A person who violates the provisions of this [Paragraph 4] is guilty of a third degree felony for sexual exploitation of children unless the child is under the age of thirteen [(13)], in which event the person is guilty of a second degree felony for sexual exploitation of children.
5. It is unlawful for a person to intentionally manufacture any obscene 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. A person who violates the provisions of this [Paragraph 5] is guilty of a second degree felony for sexual exploitation of children.
6. It is unlawful for a person to intentionally manufacture any obscene 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 obscene medium depicts a

prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this [Paragraph 6] is guilty of a fourth degree felony.

7. It is unlawful for a person to intentionally distribute any obscene 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 obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this [Paragraph 7] is guilty of a third degree felony.

6-4A-8 Sexual Exploitation of Children by Prostitution

- A. Any person knowingly receiving any pecuniary profit as a result of a child engaging in a prohibited sexual act with another is guilty of a second degree felony, unless the child is under the age of thirteen [(13)], in which event the person is guilty of a first degree felony.
- B. Any person knowingly hiring or offering to hire a child to engage in any prohibited sexual act is guilty of a second degree felony.
- C. Any parent, legal guardian or person having custody or control of a child 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 third degree felony.

6-4A-9 Molestation of a Child: A person who knowingly molests a child under the age of fifteen [(15)] years by fondling, playing with, or touching the private parts of such child or who causes a child under the age of fifteen years [(15)] to fondle, play with, or touch the private parts of such person is guilty of a third degree offense.

6-4A-10 Criminal Sexual Contact [With] a [Child]

- A. Criminal sexual contact [with] a [child] is the unlawful and intentional touching of or applying force to the intimate parts of a [child] or the unlawful and intentional causing a [child] to touch one's intimate parts. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

B. Criminal sexual contact [with] a [child] in the second degree consists of all criminal sexual contact of the unclothed intimate parts of a [child] perpetrated:

1. on a child under thirteen [(13)] years of age; or
2. on a child thirteen [(13)] to eighteen [(18)] years of age when:
  - a. the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit;
  - b. the perpetrator uses force or coercion that results in personal injury to the child;
  - c. the perpetrator uses force or coercion and is aided or abetted by one [(1)] or more persons; or
  - d. the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact [with] a [child] in the second degree is guilty of a second degree felony for a sexual offense against a child.

C. Criminal sexual contact of a [child] in the third degree consists of all criminal sexual contact [with] a [child] perpetrated:

1. on a child under thirteen [(13)] years of age; or
2. on a child thirteen [(13)] to eighteen [(18)] years of age when:
  - a. the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;
  - b. the perpetrator uses force or coercion which results in personal injury to the child;
  - c. the perpetrator uses force or coercion and is aided or abetted by one [(1)] or more person[s]; or
  - d. the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact [with] a [child] in the third degree is guilty of a third degree felony for a sexual offense against a child.

- D. Criminal sexual contact [with] a [child] in the fourth degree consists of all criminal sexual contact:
1. not defined in Subsection C of this Section, of a child thirteen [(13)] to eighteen [(18)] years of age perpetrated with force or coercion; or
  2. perpetrated on a child thirteen [(13)] to eighteen [(18)] years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen [(18)] years of age and is at least four [(4)] years older than the child and not the spouse of that child, learns while [employed at or] performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual contact [with a child] in the fourth degree is guilty of a fourth degree felony.

## Chapter 4B. PROTECTION OF ELDERS, AND INCAPACITATED ADULTS

### 6-4B-1 Definitions

- A. "Adult" means a person who is at least eighteen (18) years of age.
- B. "Caretaker" means:
1. A person who is required by tribal law or custom to provide services or resources to another person.
  2. A person who voluntarily undertakes to provide care or resources to another person.
  3. An institution or agency which voluntarily provides or is required by tribal law or custom, or other applicable law, to provide services or resources to a person, including, but not limited to, the duty to follow up on placements, and any such institution or agency which receives anything of value in return for providing services or resources; [or]



4. An employee or agent of any institution or agency described in Paragraph 3 [of this Subsection].
- C. "Elder" means a person who is at least sixty-five (65) years of age.
- D. "Great physical harm" means physical harm of a type that causes physical loss of a bodily member or organ or functional loss of a bodily member or organ for a prolonged period of time.
- E. "Great psychological harm" means psychological harm that causes mental or emotional incapacity for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require spiritual, psychological, or psychiatric care.
- F. "Guardian" means a Caretaker who has been given the added responsibility by governmental agency, court order, family meeting and/or document declaring a power of attorney to manage and spend the financial resources of an Elder [or] Incapacitated Adult for the benefit of the [Elder or Incapacitated Adult].
- G. "Incapacitated Adult" is an adult who has been adjudicated by a court, governmental agency or family meeting as incapacitated or is an adult who is unable to sufficiently understand, make, and communicate responsible decisions about himself or herself as a result of diagnosed mental illness, mental deficiency, physical illness, or disability or chronic use of drugs, [and/or] liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.
- H. "Neglect" means, in the case of an Elder, the failure of a Caretaker or Guardian to provide the basic needs of an Elder, though financially able to, by not supplying resources, services, or supervision necessary to maintain the Elder's minimum physical and mental health and includes the inability of a person to supply such basic needs for him or herself. Neglect is also:
  1. Interfering with delivery of necessary services and resources to an Elder or Incapacitated Adult.
  2. Failing to report suspected abuse, neglect, or exploitation of an Elder or Incapacitated Adult by any person who is a Guardian or Caretaker.
  3. Subject to an Elder's right to refuse treatment and subject to Caregiver's right to exercise sound medical discretion, the

grossly negligent.

- a. Failure to provide any treatment, service, care, medication, or item that is necessary to maintain the health and safety of an Elder or Incapacitated Adult;
- b. Failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of an Elder or Incapacitated Adult; or
- c. Failure to carry out a duty to supervise properly or control the provision of any treatment, care, food service, or medication necessary to maintain the health or safety of an Elder or Incapacitated Adult.
- d. Failure of a Caretaker to provide, through financially able to, the basic needs of a person by not supplying resources, services, or supervision necessary to maintain the person's minimum physical and mental health where the person is unable to supply such basic needs for him or herself.

- I. "Physical harm" means an injury to the body that causes substantial pain or incapacity.

6-4B-2 Abuse of an Elder or Incapacitated Adult

- A. Abuse of an Elder or Incapacitated Adult consists of knowingly, intentionally or negligently, and without justifiable cause, causing or permitting through action or inaction, an Elder or Incapacitated Adult to be:
  1. placed in a situation that may endanger the Elder's or [Incapacitated] Adult's life or health;
  2. tortured, cruelly confined, or cruelly punished;
  3. exposed to the inclemency of the weather;
  4. [subjected to] physical contact that harms or is likely to cause great physical or great emotional harm;
  5. [subjected to] inappropriate use of a physical or chemical restraint, medication, or isolation that harms or is likely to [cause] harm;

6. [subjected to] medically inappropriate conduct that causes or is likely to cause great physical or psychological harm;
  7. [subjected to] an unlawful act, a threat, or menacing conduct directed toward an Elder or Incapacitated Adult that results or might reasonably be expected to result in fear or emotional or mental distress;
  8. [subjected to] infliction of bodily injury, unreasonable confinement, intimidation, or cruel punishment with resulting Physical harm or pain or mental anguish.
  9. [subjected to] exploitation which is the unauthorized or improper use of fund[s], property, or other resources of the Elder or Incapacitated Adult, or the unauthorized or improper use of the Elder or Incapacitated Adult by a family member, Caretaker, or by any other person for personal gain or profit; or the failure to use the funds, property, or other resources of the Elder or Incapacitated Adult to the Elder's or Incapacitated Adult's reasonable desires or not otherwise in their best interests; [or]
  10. [subjected to] sexual abuse which includes, but is not limited to, any physical contact intended for the sexual gratification of the one who is making such contact and which is not consented to by the Elder or Incapacitated Adult, or for which consent is obtained by intimidation or fraud, or [where] the Elder or Incapacitated Adult is deemed unable to give consent.
- B. A person who commits abuse of an Elder or Incapacitated Adult that does not result in their death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm to an Elder or Incapacitated Adult, the person is guilty of a first degree felony.
- C. A person who commits negligent abuse of an Elder or Incapacitated Adult that results in the death is guilty of a second degree felony.
- D. A person who commits intentional abuse of an Elder or Incapacitated Adult [that] results in the death [of the Elder or Incapacitated Adult] is guilty of a first degree felony.

6-4B-3 Abandonment of an Elder or Incapacitated Adult

- A. Abandonment of an Elder or Incapacitated Adult consists of the Guardian or Caretaker of an Elder or Incapacitated Adult intentionally leaving or abandoning the Elder or Incapacitated Adult under circumstances whereby the Elder or Incapacitated Adult may or does suffer neglect or anytime when an Adult responsible for a dependent Elder or Incapacitated Adult leaves the Elder or Incapacitated Adult for more than three (3) days without communication or fails to support the Elder or Incapacitated Adult, or provide alternative support, and there is no indication of the responsible person's willingness to assume or continue being responsible for the Elder or Incapacitated Adult.
- B. A person who commits abandonment of an Elder or Incapacitated Adult is guilty of a full misdemeanor, unless the abandonment results in the Elder's or Incapacitated Adult's death or great bodily harm, in which case the person is guilty of a second degree felony.

6-4B-4 Offense Enhancement When Victim is an Elder or Incapacitated Adult: [Any person who] commits any offense in this Title where the victim is an Elder or Incapacitated Adult shall be guilty of an offense that is subject to a one step increase in the maximum allowed penalty.

Chapter 5. CRIMINAL TRESPASS AND BURGLARY

6-5-1 Definitions. In this Chapter, unless the context otherwise requires:

- A. "Enter or remain unlawfully" means an act of a person who enters or remains on premises when such person's intent for so entering or remaining is not licensed, authorized or otherwise privileged.
- B. "Entry" means the intrusion of any part of any instrument or any part of a person's body inside the external boundaries of a structure or unit of real property.
- C. "Fenced commercial yard" means a unit of real property surrounded completely by either fences, walls, building, or similar barriers or any combination thereof, and used primarily for business operations or where livestock, produce or other commercial items are located. Fenced commercial yard is also defined to be Pueblo [of Acoma] property not otherwise covered under Nonresidential structure.

- D. "Fenced residential yard" means a unit [of] real property immediately surrounding or adjacent to a residential structure and enclosed by a fence, wall, building or similar barrier, or any combination thereof.
- E. "In the course of committing" means any acts performed by an intruder from the moment of entry to and including flight from the scene of a crime.
- F. "Nonresidential structure" means any structure other than a residential structure, including Pueblo of Acoma office buildings and work areas.
- G. "Residential structure" means any structure, moveable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not.
- H. "Structure" means any building, object, vehicle, railroad car or place with sides and a floor, separately securable from any other structure attached to it and used for lodging, business, transportation, recreation or storage.

6-5-2 Criminal Trespass in the Third Degree

- A. A person commits criminal trespass in the third degree by:
  - 1. Knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry.
  - 2. Knowingly entering or remaining unlawfully on the right-of-way for tracks, or the storage or switching yards or rolling stock of a railroad company.
  - 3. Allowing one's livestock to graze or enter into the lands of others.
  - 4. Knowingly entering the Acoma Pueblo [Lands] and while there violating the laws or customs of Acoma [Pueblo].
- B. Criminal trespass [in the third degree is] punishable as a petty misdemeanor.

6-5-3 Criminal Trespass in the Second Degree

- A. A person commits criminal trespass in the second degree by knowingly entering or remaining unlawfully in any nonresidential structure or fenced commercial yard.
- B. Criminal trespass in the second degree is punishable as a simple misdemeanor.

6-5-4 Criminal Trespass in the First Degree

- A. A person commits criminal trespass in the first degree by knowingly:
  - 1. Entering or remaining unlawfully in a residential structure or fenced residential yard; or
  - 2. Entering any residential yard and, without lawful authority, looking into the residential structure thereon in reckless disregard of infringing on the inhabitant's right of privacy.
- B. Criminal trespass in the first degree is punishable as full misdemeanor.

6-5-5 Possession of Burglary Tools

- A. A person commits possession of burglary tools by possessing any explosive, tool, instrument or other article adapted or commonly used for committing any form of burglary as defined in §§ 6-5-6, 6-5-7 and 6-5-8 and intending to use or permit the use of such an item in the commission of a burglary.
- B. Possession of burglary tools is punishable as a petty misdemeanor.

6-5-6 Burglary in the Third Degree

- A. A person commits burglary in the third degree by entering or remaining unlawfully in a nonresidential structure or fenced commercial yard with the intent to commit any theft or any felony therein.
- B. Burglary in the third degree is punishable as a simple misdemeanor.

6-5-7 Burglary in the Second Degree

- A. A person commits burglary in the second degree by entering or remaining unlawfully in a residential structure with the intent to commit any theft [or] any felony therein.
- B. Burglary in the second degree is punishable as a full misdemeanor.

6-5-8 Burglary in the First Degree

- A. A person commits burglary in the first degree if such person or an accomplice violates the provisions of either §§ 6-5-6 or 6-5-7 and is armed with explosives, a deadly weapon or a dangerous instrument in the course of committing any theft or any felony.
- B. Burglary in the first degree of a nonresidential structure or of a residential structure is punishable as a fourth degree felony.

6-5-9 Burglary of Vehicle

- A. A person commits burglary of a vehicle by entering or remaining in a vehicle without the owner's or user's permission; by tampering with the entry points of the vehicle; or by breaking the windows of the vehicle.
- B. Burglary of a vehicle is punishable by imprisonment as a high misdemeanor.

Chapter 6. CRIMINAL DAMAGE TO PROPERTY

6-6-1 Definitions. In this Chapter, unless the context otherwise requires:

- A. "Damaging" means "damage" as defined in § 6-7-[1(A)].
- B. "Defacing" means any unnecessary act of substantially marring any surface or place, by any means, or any act of putting up, affixing, fastening, printing or painting any notice upon any structure, without permission from the owner.
- C. "Litter" includes any rubbish, refuse, waste material, paper, glass, cans, bottles, organic or inorganic trash, debris, filthy or odoriferous objects, dead animals, or any foreign substance of whatever kind or description including junked or abandoned vehicles, whether or not any of these items are of value.
- D. "Tamper" means any act of interference.

- E. "Utility" means any enterprise, public or private, which provides gas, electric, steam, water, sewer or communications services, as well as any common carrier on land, rail, sea or air.

6-6-2

Criminal Damage

- A. A person commits criminal damage by recklessly:
  - 1. Defacing or damaging property of another person [or entity, including, but not limited to the Pueblo of Acoma];
  - 2. Tampering with property of another person [or entity, including, but not limited to the Pueblo of Acoma]; so as substantially to impair its function or value;
  - 3. Tampering with the property of a utility; or
  - 4. Parking any vehicle in such a manner as to deprive livestock of access to the only reasonably available water.
  
- B. Criminal damage is as follows:
  - 1. Criminal damage is in the first degree if the person recklessly damages property of another in an amount of five thousand dollars [(\$5,000)] or more, or if the person recklessly causes impairment of the functioning of any utility. This crime is punishable as a 4<sup>th</sup> degree felony.
  - 2. Criminal damage is in the second degree if the person recklessly damages property of another in an amount of one thousand five hundred dollars (\$1,500) or more but less than five thousand dollars (\$5,000) and is punishable as a high misdemeanor.
  - 3. Criminal damage is in the third degree if the person recklessly damages property of another with a value of less than one thousand five hundred dollars (\$1,500) and is punishable as a simple misdemeanor.
  - 4. The Court may also order restitution.

6-6-3

Criminal Littering or Polluting

- A. A person commits criminal littering or polluting if such person without lawful authority:



1. Throws, places, drops or permits to be dropped on public property or property of another which is not a lawful dump any litter, destructive or injurious material which he does not immediately remove;
  2. Discharges or permits to be discharged any sewage, oil products or other harmful substances into any waters or onto any shorelines within the [Pueblo of Acoma lands]; or
  3. Dumps any earth, soil, stones, ores or minerals on any lands.
- B. Criminal littering or polluting is in the first degree if the act involves placing any destructive or injurious material on or within fifty (50) feet of a highway, beach or shoreline of any body of water used by the public.
- C. Criminal littering or polluting in the first degree is punishable as a high misdemeanor; in all other cases criminal littering or polluting is punishable as a simple misdemeanor.

## Chapter 7. ARSON

6-7-1 Definitions: In this Chapter unless the context otherwise requires:

- A. "Damage" means any physical or visual impairment of any surface.
- B. "Occupied structure" means any structure as defined in [Subsection] D in which one or more human beings either is or is likely to be present or so near as to be in equivalent danger at the time the fire or explosion occurs. The term includes any dwelling house, whether occupied, unoccupied or vacant.
- C. "Property" means anything other than a structure which has value, tangible or intangible, public or private, real or personal, including documents evidencing value or ownership.
- D. "Structure" means any building, object, vehicle, watercraft, aircraft or place with sides and a floor, separately securable from any other structure attached to it and used for lodging, business, transportation, recreation or storage.

## 6-7-2 Reckless Burning

- A. A person commits reckless burning by recklessly causing a fire or

explosion which results in damage to an occupied structure, unoccupied structure or property.

- B. Reckless burning is punishable as a petty misdemeanor.
- C. The court may order restitution.

6-7-3 Arson of an Unoccupied Structure or Property; Classification

- A. A person commits arson of an unoccupied structure or property by damaging an unoccupied structure or property by knowingly causing a fire or explosion.
- B. Arson of an unoccupied structure is punishable as a high misdemeanor.
- C. The Court may order restitution.

6-7-4 Arson of an Occupied Structure; Classification

- A. A person commits arson of an occupied structure by damaging an occupied structure by knowingly causing a fire or explosion.
- B. Arson of an occupied structure is punishable as a third degree felony.

Chapter 8. THEFT

6-8-1 Definitions. In this Chapter, unless the context otherwise requires:

- A. "Control" or "exercise control" means to act so as to exclude others from using their property except on the defendant's own terms.
- B. "Deprive" means to withhold the property interest of another either permanently or for so long a time period that a substantial portion of its economic value or usefulness or enjoyment is lost, or to withhold it with the intent to restore it only upon payment of reward or other compensation or to transfer or dispose of it so that it is unlikely to be recovered.
- C. "Material misrepresentation" means pretense, promise, representation or statement of present, past or future fact which is fraudulent and which, when used or communicated, is instrumental in causing the wrongful control or transfer of property or services. The pretense may be verbal or it may be a physical act.

- D. "Means of transportation" means any vehicle.
- E. "Obtain" means to bring about or receive the transfer of any interest in property, whether to a defendant or to another, or to secure performance of a service.
- F. "Property of another" means property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, including property in which the defendant also has an interest, notwithstanding the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the defendant is not in such property, even if legal title is in the creditor pursuant to a security agreement.
- G. "Services" includes labor, professional service, transportation, telephone, gas or electricity services, accommodation in hotels, restaurants, leased premises or elsewhere, admission to exhibitions and use of vehicles or other moveable property.
- H. "Value" means the fair market value of the property or services at that time of the theft. Written instruments which do not have a readily ascertained market value have their value either the face amount of indebtedness less the portion satisfied or the amount of economic loss involved in deprivation of the instrument whichever is greater. When property has undeterminable value its value shall be determined by the trier of fact and, in reaching its decision, all relevant evidence may be considered including evidence of such property's value to its owner.

Amount taken in thefts committed pursuant to one [(1)] scheme or course of conduct, whether from one [(1)] or several persons, may be aggregated in the indictment or information at the discretion of the Pueblo in determining the classification of the offense.

6-8-2 Theft; Classification

- A. A person commits theft if, without lawful authority, such person knowingly:
  - 1. Controls property of another with the intent to deprive him of such property;
  - 2. Converts for an unauthorized term or use services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term of

use;

3. Obtains property or services of another by means of any material misrepresentation with intent to deprive him of such property or services;
  4. Comes into control of lost, mislaid or [wrongly] delivered property of another under circumstances providing means of inquiry as to the true owner and appropriates such property to his own or another's use without reasonable efforts to notify the true owner;
  5. Controls property of another knowing or having reason to know that the property was stolen; or
  6. Obtains services known to the defendant to be available only for compensation without paying or an agreement to pay such compensation or diverts another's services to his own or another's benefit without authority to do so.
- B. Theft of property or services with a value of more than one thousand dollars (\$1000) is punishable as a high misdemeanor. Theft of property or services with a value of more than one hundred dollars (\$100) simple misdemeanor. Theft of any property or services at one hundred dollars (\$100) or less is punishable as a petty misdemeanor. Theft of firearms, livestock or a motor vehicle shall be punishable as a 4<sup>th</sup> degree felony.

#### 6-8-3 Unlawful Use of Means of Transportation; Auto Theft

- A. A person commits unlawful use of means of transportation if, without intent permanently to deprive, such person knowingly takes unauthorized control over another's means of transportation.
- B. Unlawful use of means of transportation is punishable as a petty misdemeanor.

#### 6-8-4 Theft by Extortion

- A. A person commits theft by extortion by knowingly obtaining or seeking to obtain property or services by means of a threat to do in the future any of the following:
  1. Cause physical injury to anyone by means of a deadly weapon or dangerous instrument;

2. Cause physical injury to any except as provided in Paragraph 1;
  3. Cause damage to property;
  4. Engage in other conduct constituting an offense;
  5. Accuse anyone of a crime or bring criminal charges against anyone;
  6. Expose a secret or an asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule or to impair his credit or business;
  7. Take or withhold action as a public servant or cause a public servant to take or withhold action;
  8. Tak[e] or withhold action or caus[e] [anyone] to take or withhold action for a compensation, monetary or other; [or]
  9. Perform or cause to be performed any other act which would not in itself materially benefit the defendant with respect to his wealth, safety, business calling, career, financial condition, reputation or personal relationships.
- B. Theft by extortion, as defined in Subsection A, is punishable as a high misdemeanor.

6-8-5

Shoplifting; Detaining Suspect; Defense to Wrongful Detention; Civil Action by Merchant; Classification; Public Services in Lieu of Fines

- A. A person commits shoplifting if, while in an establishment in which merchandise is displayed for sale, such person knowingly obtains such goods of another with the intent to deprive him of such goods by:
1. Removing any of the goods from the immediate display or from any other place within the establishment without paying the purchase price;
  2. Charging the purchase price of the goods to a fictitious person or any person without his authority;
  3. Paying less than the purchase price of the goods by some trick or artifice such as altering, removing, substituting or otherwise disfiguring any label, price tag or marking;

4. Transferring the goods from one container to another; or
  5. Concealment.
- B. Any person who knowingly conceals upon himself or another person unpurchased merchandise of any mercantile establishment while within the mercantile establishment shall be presumed to have the necessary culpable mental state pursuant to Subsection A.
  - C. A merchant, or his agent or employee, with reasonable cause, may detain on the premises in a reasonable manner and for a reasonable time any person suspected of shoplifting as defined in Subsection A for questioning or summoning a [peace] officer.
  - D. Reasonable cause is a defense to a civil or criminal action against a peace officer, merchant or an agent or employee of such merchant for false arrest, false or unlawful imprisonment or wrongful detention.
  - E. If a minor engages in conduct which violates Subsection A notwithstanding the fact that such minor may not be held responsible because of his minority, any merchant injured by the shoplifting of such minor may bring a civil action against the parent or legal guardian of such minor.
  - F. Shoplifting property with a value of more than one thousand dollars (\$1000) is punishable as a high misdemeanor. Shoplifting property with a value of more than one hundred dollars (\$100) but not more than one thousand dollars (\$1,000) is punishable as a simple misdemeanor.
  - G. The court may, in imposing sentence upon a person convicted of violating this Section, require any person to perform public service designated by the court in addition to or in lieu of any fine which the court might impose.

6-8-6

Unlawful Failure to Return Rented Property; Classification

- A. A person commits unlawful failure to return rented property if, without notice to and permission of the lessor of property leased for a period of time, such person knowingly fails without good cause to return such property within seventy-two (72) hours after the time provided for such return in the rental agreement.

- B. The lessor shall include within the rental agreement, in bold print, clear written notice to the lessee of the date and time on which return of the property is required and of the maximum penalties to which the lessee shall be subject upon failure to return the property within seventy-two (72) hours of that date and time.
- C. It shall be a defense to prosecution under this section that the defendant was physically incapacitated and unable to request or obtain permission of the lessor to retain the property or that the property itself was in such condition, through no fault of the defendant, that it could not be returned to the lessor within such time.
- D. Unlawful failure to return rented property is punishable as a petty misdemeanor.

6-8-7 Disposal of Encumbered Property: It shall be unlawful for any person to dispose of in any way, property which he knows to be encumbered.

## Chapter 9. ROBBERY

6-9-1 Definitions: In this Chapter, unless the context otherwise requires:

- A. "Force" means any physical act directed against a person as a means of gaining control of property.
- B. "In the course of committing" means all the defendant's acts beginning with the initiation and extending through the flight from a robbery.
- C. "Property of another" means property of another as defined in Section 6-8-[1(F)].
- D. "Threat" means a verbal or physical menace of imminent physical injury to a person.

### 6-9-2 Robbery

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

6-9-3 Aggravated Robbery

- A. A person commits Aggravated Robbery if in the course of committing robbery such person is aided by one or more accomplices [who are] actually present.
- B. Aggravated Robbery is punishable as a 4<sup>th</sup> degree felony.

6-9-4 Armed Robbery; Classification

- A. A person commits Armed Robbery if in the course of committing robbery such person or an accomplice:
  - 1. Is armed with a deadly weapon; or
  - 2. Uses or threatens to use a deadly weapon or dangerous instrument.
- B. For the purposes of this Chapter, exhibition in the course of committing Armed Robbery of an article fashioned or used in a manner to lead any reasonable person to believe it to be deadly or dangerous is presumed evidence of its deadly or dangerous character.
- C. Armed Robbery is punishable as a third degree felony.

Chapter 10. FORGERY AND RELATED OFFENSES

6-10-1 Definitions. In this Chapter, unless the context otherwise requires:

- A. "Coin machine" means a coin box, turnstile, vending machine or other mechanical, electrical, or electronic device or receptacle designed to receive a coin or bill of a certain denomination or a token made for such purpose, and in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition or use of some property or service.
- B. "Complete written instrument" means a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof.
- C. "Forged instrument" means a written instrument which has been falsely made, completed or altered.
- D. "Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which



requires additional matter to render it a complete written instrument.

- E. "Slug" means an object, article or device which by virtue of its size, shape or any other quality is capable of being inserted, deposited or otherwise used in a coin machine as a fraudulent substitute for a genuine token, lawful coin, or bill of the United States.
- F. "To falsely alter a written instrument" means to change, without the permission of anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter or in any other manner, so that the altered instrument falsely appears or purports to be in all respects an authentic creation of, [or authorized by] its ostensible maker.
- G. "To falsely complete a written instrument" means to transform an incomplete written instrument into a complete one by adding, inserting or changing matter without the permission of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respect an authentic creation of, [or authorized by] its ostensible maker.
- H. "To falsely make a written instrument" means to make or draw a complete or written instrument which purports to be an authentic creation of its ostensible maker but which is not either because the ostensible maker is fictitious, or because, if real, [the ostensible maker] did not authorize the making or drawing of such written instrument.
- I. "Written instrument" means:
  - 1. Any paper, document or other instrument containing written or printed matter or its equivalent; or
  - 2. Any token, stamp, seal, badge, trademark or other evidence or symbol of value, right, privilege or identification.

6-10-2

Forgery

- A. A person commits Forgery if, with intent to defraud, such person:
  - 1. Falsely makes, completes or alters a written instrument; or
  - 2. Knowingly possesses a forged instrument; or
  - 3. Offers or presents, whether accepted or not, a forged

instrument or one which contains false information.

B. Forgery is punishable as a simple misdemeanor.

6-10-3 Criminal Possession of a Forgery Device

A. A person commits criminal possession of a forgery device if such person:

1. Makes or possesses with knowledge of its character any plate, dye, or other device, apparatus, equipment or article specifically designed or adapted for use in forging written instruments; or
2. Makes or possesses any device, apparatus, equipment or article adaptable for use in forging written instruments with intent to use it or to aid or permit another to use it for purposes of forgery.

B. Criminal possession of a forgery device is punishable as a simple misdemeanor.

6-10-4 Criminal Simulation

A. A person commits criminal simulation if, with intent to defraud, such person makes, alters, or presents or offers whether accepted or not, any object so that it appears to have an antiquity, rarity, source, authorship or value that it does not in fact possess.

B. Criminal simulation is punishable as a simple misdemeanor.

6-10-5 Obtaining a Signature by Deception

A. A person commits obtaining a signature by deception if, with intent to defraud, such person obtains the signature of another person to a written instrument by knowingly misrepresenting or omitting any fact material to the instrument or transaction.

B. Obtaining a signature by deception is punishable as a petty misdemeanor.

6-10-6 Criminal Impersonation

A. A person commits criminal impersonation by:

1. Assuming a false identity with the intent to defraud another;  
or
2. Pretending to be a representative of some person or organization with the intent to defraud.

B. Criminal impersonation is punishable as a petty misdemeanor.

6-10-7 Unlawful Use of Slugs

A. A person commits unlawful use of slugs if:

1. With intent to defraud the supplier of property or a service sold or offered by means of a coin machine, such person inserts, deposits or otherwise uses a slug in such machine;  
or
2. Such person makes, possesses, offers for sale or disposes of a slug with intent to enable a person to use it fraudulently in a coin machine.

B. Unlawful use of slugs is punishable as a petty misdemeanor.

Chapter 11. CREDIT CARD FRAUD

6-11-1 Definitions: In this Chapter, unless the context otherwise requires:

A. "Canceled or revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended, revoked or terminated by the issuer of such credit card by written notice sent by certified or registered mail addressed to the person to whom such credit card was issued at such person's last known address. Such written notice shall be presumed to have been given to any cardholder when deposited as certified or registered matter in the United States mail addressed to the person to whom the credit card was issued at such person's last known address.

B. "Cardholder" means any person:

1. Named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer; or
2. In possession of a credit card with the consent of the person to whom the credit card was issued.

- C. "Credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card or identification 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 possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder, upon a promise to pay in part or in full therefore at a future time, whether or not all or any part of the indebtedness represented by such promise to make deferred payment is secured or unsecured.
- D. "Expired credit card" means a credit card which is no longer valid because the term shown on such credit card has elapsed.
- E. "Incomplete credit card" means a credit card upon which part of the matter, other than the signature of the cardholder, which an issuer requires to appear before it can be used by a cardholder, has not been stamped, embossed, imprinted or written.
- F. "Issuer" means any business organization or financial institution or its duly authorized agent, which issues a credit card.
- G. "Merchant" means a person who is authorized by an issuer or a participating party to furnish money, goods, services or anything else of value upon presentation of that issuer's credit card by cardholder.
- H. "Participating party" means a business organization or financial institution which is obligated or permitted by contract to acquire from a merchant a sales slip or sales draft or instrument for the payment of money evidencing a credit card transaction and from whom an issuer is obligated or permitted by contract to acquire such sales slip, sales draft or instrument for the payment of money evidencing a credit card transaction.
- I. "Receives or receiving" means acquiring possession or control of a credit card or accepting a credit card as security for a loan.

6-11-2

Theft of a Credit Card or Obtaining a Credit Card by Fraudulent Means

- A. A person commits theft of a credit card or obtaining a credit card by fraudulent means if such person:
  - 1. Takes a credit card from the possession, custody or control of any person without the cardholder's or issuer's consent through conduct defined in §§ 6-8-2 and § 6-8-4; or

2. Receives a credit card knowing or having reason to believe it to have been obtained illegally, lost, mislaid or delivered under a mistake as to the identity or address of the cardholder and without lawful authority retains possession thereof with intent to use it, to sell it or to transfer it to a person other than the issuer or the cardholder; or
  3. Sells, transfers or conveys a credit card with the intent to defraud; or
  4. With intent to defraud, obtains possession, care, custody or control over a credit card as security for debt.
- B. Theft of a credit card or obtaining a credit card by fraudulent means is punishable as a petty misdemeanor.

6-11-3

Receipt of Anything of Value Obtained by Fraudulent Use of a Credit Card

- A. A person, being a third party, commits receipt of anything of value obtained by fraudulent use of a credit card by buying or receiving money, goods, services or any other thing of value obtained in violation of § 6-11-5, knowing or believing that it was so obtained.
- B. Receipt of anything of value obtained by fraudulent use of a credit card is punishable by imprisonment of not more than sixty (60) days or a fine of not more than one hundred fifty dollars (\$150) or both if the value of the property is less than one hundred dollars. If the value of the property bought or received is one hundred dollars or more the offense is punishable by imprisonment of not more than ninety (90) days or a fine of not more than three hundred dollars (\$300) or both. Amounts obtained by fraudulent use of a credit card pursuant to one scheme or course of conduct, whether from one or several persons, may be aggregated in determining the classification of offense.
- C. The court may order restitution.

6-11-4

Forgery of Credit Card

- A. A person commits forgery of a credit card if such person:
1. With intent to defraud, alters any credit card, falsely makes, manufactures, fabricates or causes to be made, manufactured or fabricated an instrument or device

purporting to be a credit card without the express authorization of an issuer to do so, or falsely embosses or alters a credit card, or instrument or device purporting to be a credit card, or [offers] such a credit card or instrument or device purporting to be a credit card.

2. Other than the card holder, with intent to defraud, signs the name of any actual or fictitious person to a credit card or instrument for the payment of money which evidences a credit card transaction.

B. Forgery of a credit card is punishable as a simple misdemeanor.

6-11-5 Fraudulent Use of a Credit Card.

A. A person commits fraudulent use of a credit card [if] such person:

1. With intent to defraud, uses, for the purposes of obtaining money, goods, services or any other thing of value, a credit card or credit card number obtained or retained in violation of this Chapter or a credit card or credit card number which such person knows or has reason to believe is forged, expired, canceled or revoked; or
2. Obtains money, goods, services or any other thing of value by representing, without the consent of the cardholder, that he is the holder [of] a specified card or by representing that he is the holder of a credit card and such card has not in fact been issued.

B. Fraudulent use of a credit card is punishable as a simple misdemeanor. If the value of all money, goods, services and other things of value obtained in violation of this section exceeds one hundred dollars in any consecutive six [(6)] month period the offense is punishable as a full misdemeanor.

6-11-6 Possession of Machinery, Plate or Other Contrivance or Incomplete Credit Card

A. A person commits possession of machinery, plate or other contrivance or incomplete credit card if such person:

1. Possesses an incomplete credit card with intent to complete it without the express consent of the issuer.
2. Possesses, with intent to defraud and with knowledge of its

character, any machinery, plate or any other contrivance designed to reproduce an instrument or device purporting to be the credit card of an issuer who has not consented to the preparation of such credit card.

- B. Possession of machinery, plate or other contrivance or incomplete credit card in Subsection A is punishable as a petty misdemeanor.

6-11-7 False Statement as to Financial Condition or Identity

- A. A person commits false statement as to financial condition or identity if such person makes or causes to be made, either directly or indirectly, any false statement in writing as to a material fact, knowing it to be false, with the intent that it be relied on respecting the identity of that person or of any other person, firm or corporation or the financial condition of that person, firm or corporation or the financial condition of that person or of any other person, firm or corporation, for the purpose of procuring the issuance of a credit card.
- B. False statement as to financial condition or identity is punishable as a petty misdemeanor.

6-11-8 Fraud by Person Authorized to Provide Goods or Services

- A. A person commits fraud by a person authorized to provide goods or services if such person knowingly:
  - 1. Furnishes money, goods, services or any other thing of value upon presentation of a credit card obtained or retained in violation of § 6-11-[2], or a credit card which such person knows is forged, expired, canceled or revoked; or
  - 2. Fails to furnish money, goods, services or any other thing of value which such person represents in writing to the issuer or a participating party that such person has furnished, and who receives any payment therefore.
- B. Except as provided in Subsections C and D, fraud by a person authorized to provide goods or services in Subsection A, is a class 1 misdemeanor.
- C. If the payment received by the person for all money, goods, services or other things of value furnished in violation of Subsection A[(1)] exceeds one hundred dollars in any consecutive six [(6)] - month period, the offense is punishable as a simple misdemeanor.

- D. If the difference between the value of all monies, goods, services or any other thing of value actually furnished and the payment or payments received by the person therefore upon such representation in violation of subsection A[(2)] exceeds one hundred dollars [(\$100)] in any consecutive six [(6)]-month period, the offense is punishable as a simple misdemeanor.

## Chapter 12. CONTROLLED SUBSTANCES

### 6-12-1 Purpose and Goal

- A. This Chapter may be cited as the "Controlled Substances Act."
- B. The purpose of this Chapter is to provide that any violation of federal law governing Controlled Substances, specifically the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801 *et seq.*, as amended, is a violation of Pueblo of Acoma law to the full extent the Pueblo of Acoma is authorized to do so under federal law, and to supplement that law. While the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801 *et seq.*, as amended is to be read where possible as consistent with the written Law of the Pueblo of Acoma, where there is a conflict the written Law of the Pueblo of Acoma shall apply.
- C. The goal of this Chapter shall be, through enforcement, to restore justice. Where an individual is only charged with, or cited for a minor offense and/or substance abuse the goal is to obtain treatment and recovery. Consideration should be given to referring such individual defendants to the Pueblo of Acoma Wellness Court program.

### 6-12-2 Definitions: This Chapter is to be interpreted using the definitions set forth in the 21 U.S.C. §802, as amended. Other terms as used in this Chapter are:

- A. "Acoma" or "Pueblo" means the Pueblo of Acoma, a federally recognized Indian Tribe;
- B. "Controlled substance" means a drug or other substance or immediate precursor, included in schedule I, II, III, IV, or V of part B of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801 *et seq.*, as amended. The term does not include distilled spirits, wine, malt beverages, or tobacco.



- C. "Exclusion" means the process of removing a Person from Pueblo of Acoma lands as set forth in §§1-12-1, et seq., of Pueblo of Acoma Laws 2003, as amended.
- D. "Federal Act" means the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801 et seq., as amended.
- E. "Governor" means the duly appointed Governor of the Pueblo of Acoma.
- F. "Person" means an individual, a partnership, corporation, association, joint venture, institution, political subdivision, government agency or other legal entity.
- G. "Prosecutor" means a person authorized by the Tribal Council to prosecute violations of Acoma law in Court, or who is authorized to file civil action to enforce Acoma laws on the lands of Acoma.
- H. "Registered Manufacturer" means any person who is in compliance with the requirements of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801 *et seq.*, as amended, and who is properly registered with the Attorney General of the United States under 21 U.S.C. §§ 822 and 823, as amended, as a registered manufacturer, distributor or dispenser as well as in compliance with all Pueblo of Acoma Laws 2003, as amended.
- I. "State" means any of the fifty states that make up the United States of America.
- J. "Tax Administrator" means the chief officer of the Acoma Taxation Department.
- K. "Tribal Council" means the duly appointed Council of Acoma.
- L. "Court" means the Pueblo of Acoma Court;

6-12-3

Violation of the Federal Act

- A. It is a violation of this Chapter for any Person to commit a violation of the Federal Act. Any person who is found guilty of committing a violation of the Federal Act may be fined or imprisoned or both, to the full extent the Pueblo of Acoma is authorized to do so under federal law, and may also be subject to civil penalties, forfeiture, and exclusion from Acoma as set forth in this Chapter.
  - 1. A first offense is punishable as a full misdemeanor.

2. Second and subsequent offenses are punishable as a fourth degree felony.

B. Any person who is a Registered Manufacturer licensed by the Pueblo of Acoma who violates the federal act or Pueblo of Acoma law set forth in this Chapter, may be subject to exclusion from Acoma lands and forfeiture of all property located on Acoma lands, in addition to any other penalty or fine.

6-12-4 Registered Manufacturer. It shall not be unlawful on Pueblo of Acoma lands for a person who is a registered manufacturer, distributor or dispenser to manufacture, possess, dispense, distribute or transport a Controlled Substance on Acoma land if done in compliance with Acoma Law, and the Federal Act.

A. Every person who proposes to be a Registered Manufacturer, Distributor or Dispenser on Acoma land shall apply for a Registered Manufacturer license from the Tax Administrator.

B. Every Person applying for a license to be a Registered Manufacturer on Acoma Land must submit to the Tax Administrator with the license application:

1. Proof of valid federal registration pursuant to the federal act; and

2. a Plan of Operation.

C. The Tax Administrator shall conduct an initial review of the application to determine if other tribal agencies need to review the application, and will distribute the application to those agencies for review.

D. The Plan of Operation shall include:

1. A description of what controlled substances are to be manufactured, possessed, dispensed, distributed and/or transported at Acoma, or to and from Acoma in a manner that complies with all applicable federal, tribal and state laws;

2. A description of the types of equipment, facilities (including the physical plant) and personnel necessary for the registered manufacturer's proposed activity;

3. A description of the land, water and energy that would likely be used by the registered manufacturer;
4. A description of how any Controlled Substances are to be manufactured, possessed, dispensed, distributed and/or transported at Acoma, or and to and from Acoma in a manner that complies with all applicable federal, tribal and state laws;
5. A description of security measures that will be taken to keep the public safe;
6. Any warnings necessary concerning any potentially dangerous conditions posed by the manufacture, possession, dispensing, distribution or transportation of the controlled substances, or hazardous substances.
7. The applicant for a license must [also] certify in writing that:
  - a. the applicant will comply with all Federal, applicable State and Acoma laws including, but not limited to Acoma tax laws, environmental laws (including water quality, water use and air quality standards), natural resource and public health laws;
  - b. the applicant agrees to Acoma exercising jurisdiction over the applicant to the full extent allowable under federal law and Acoma Law;
  - c. the applicant agrees to the jurisdiction of the [Acoma] Court to resolve any disputes where any party to the legal action is a member of Acoma, resides within Acoma or has a significant connection to the litigation; and
  - d. the applicant will comply with the federal act, as amended, and is registered as a manufacturer, distributor and/or dispenser under the federal act, specifically 21 U.S.C. §§ 822 and 823, as amended.
8. All information provided to the United States pursuant to 21 U.S.C. §§822 and 823, as amended, and any periodic submissions made pursuant to 21 U.S.C. §§ 827(b) (inventory records) and 827(d)(1)(sales, delivery or disposal of any controlled substances), as amended.

- E. The Tax Administrator shall certify in writing that the applicant is informed of all Acoma tax laws that may be applicable to a registered manufacturer's activities on Acoma.
- F. In reviewing an application to be licensed as a registered manufacturer on Acoma land, the Tax Administrator, in consultation with other Acoma agencies as determined by the Tax Administrator after initial review of the application, shall decide whether it is in the public interest to grant the license. Such consideration shall include but is not limited to the following factors:
  - 1. Maintenance of effective controls against diversion of Controlled Substances into other than legitimate medical, scientific or industrial channels;
  - 2. Compliance with Pueblo of Acoma as well as the federal act, and any other applicable state and federal laws;
  - 3. Past experience of [the] applicant in the lawful manufacture or distribution of controlled substances, including the applicant's establishment of effective controls against diversion of controlled substances for other than lawful purposes, proper procedures for handling dangerous or hazardous materials, ensuring that they will not be improperly used or contaminate the environment;
  - 4. Prior criminal conviction records under federal, tribal and/or state laws relating to any controlled substances;
  - 5. Whether any information furnished is false or misleading;
  - 6. Any previous suspension or revocation of an applicant's registration under the federal act;
  - 7. Any factors relevant to, and consistent with ensuring the public health, safety and public welfare, including protecting Acoma's traditions and culture;
  - 8. Potential effect on the Acoma economy and creation of jobs on Pueblo lands;
  - 9. Potential effect of the operations on Acoma's natural resources, utilities, energy consumption, and/or waste disposal.

- G. For each application for a registered manufacturer's license, the Tax Administrator shall prepare a report to the Governor stating the Tax Administrator's opinion as to whether to grant the license. If the Tax Administrator reviews and approves of a proposed Plan of Operations submitted by an applicant, and any Acoma agency has significant concerns about the approved Plan of Operations, the agency may submit its concerns in writing to the Acoma Tax Administrator who must include the agency's statement in the report to the Governor on that application for a license. Based upon the Tax Administrator's Report, the Governor shall decide whether the license should be granted.
- H. If a registered manufacturer's license is not granted by the Governor, an applicant can request reconsideration by the Tribal Council. A decision by the Tribal Council shall be final and not subject to further review.
- I. Annual Renewal. All registered manufacturers licensed to conduct activities on Acoma land must submit a plan of operation to the Tax Administrator annually. A registered manufacturer may submit the same plan in subsequent years as long as the registered manufacturer certifies in writing that there are no substantial or material changes in its operations or other circumstances that require its plan of operation and license to be amended. The Tax Administrator shall review the annual plan of operations and any other pertinent and relevant information to provide a report to the Governor on whether the registered manufacturer is complying with applicable federal, [tribal] and state laws.
- J. For annual renewal of registered manufacturer licenses, the Tax Administrator shall annually submit a list of registered manufacturers licensed to conduct activities on Acoma lands to the Governor and the Tribal Council with a report on each registered manufacturer's compliance with its approved plan of operation and applicable laws. The registered manufacturer's license is automatically renewed unless the Governor acts within thirty (30) days of the submission and disapproves the license renewal. Any person, whose license renewal is disapproved, can request reconsideration by the Tribal Council. Any decision of the Tribal Council shall be final, and not subject to further review.
- K. The Tax Administrator and other Acoma agencies with law enforcement or other regulatory duties shall have the authority to conduct reasonable searches in accordance with the goals and objectives of Acoma Law, including, but not limited to this Chapter. Such searches may include inspection of a registered

manufacturer's business facility and records, including financial records of the principals of any entity that is a registered manufacturer. In addition, The Acoma Department of Public Safety personnel have the same rights and privileges as the United States Department of Justice to inspect the facility and/or records to ensure compliance with all applicable laws.

- L. The Tax Administrator is authorized to promulgate rules and regulations and to charge reasonable fees relating to the licensing of a registered manufacturer and control of the manufacture, distribution and dispensing of controlled substances by a registered manufacturer.

6-12-5 Distribution to a Minor: In addition to any violation of the federal act, it is a violation of Acoma law for any person who is twenty-one (21) years of age or older to intentionally distribute a Controlled Substance to a person under the age of twenty-one (21) years. Any person who violates this section,

1. For the first offense shall be guilty of committing a fourth degree felony
2. For the second and subsequent offenses, shall be guilty of committing a second degree felony.

6-12-6 Controlled Substances; Possession Prohibited; Civil Penalty

- A. Any individual, other than a licensed registered manufacturer who knowingly possesses a controlled substance in violation of this Chapter or the federal act in an amount that, as specified by regulation of the Attorney General of the United States, is a personal use amount shall be liable to the Pueblo of Acoma for a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each such violation.

1. Income and net assets: The income and net assets of an individual shall not be relevant to the determination whether to assess a civil penalty under this Section or to prosecute the individual criminally. However, in determining the amount of a penalty under this Section, the income and net assets of an individual shall be considered.
2. Prior conviction: A civil penalty may be assessed at the discretion of the court even if the individual previously was convicted of a federal, state, or tribal offense relating to a controlled substance.

3. Limitation on number of assessments: A civil penalty may not be assessed on an individual under this Section on more than two separate occasions.

B. Assessment: A civil penalty under this section may be assessed by the court only by an order made on the record after opportunity for a hearing. The prosecutor shall provide written notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the [Thirty] (30) -day period beginning on the date such notice is issued.

C. Expungement Procedures: The court shall dismiss the proceedings under this Section against an individual upon application of such individual at any time after the expiration of Three (3) years if:

1. the individual has not previously been assessed a civil penalty under this Section;
2. the individual has paid the assessment;
3. the individual has complied with any conditions imposed by the Court;
4. the individual has not been convicted of a federal, state or tribal offense relating to a controlled substance; and
5. the individual agrees to submit to a drug test, and such test shows the individual to be drug free.

A nonpublic record of a disposition under this Subsection shall be retained by the court and the prosecutor solely for the purpose of determining in any subsequent proceeding whether the person would qualify for a civil penalty or expungement under this Section. If a record is expunged under this Subsection, an individual concerning whom such an expungement has been made shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this Section or the results thereof in response to an inquiry made of him for any purpose.

6-12-7

Trafficking Controlled Substances; Violation; Penalties

- A. In addition to any violation of the federal act for Trafficking Controlled Substances, it is a violation of Acoma law for any person to intentionally traffic in controlled substances. Except as authorized in this Chapter, any person who violates this Section:
  - 1. For the first offense shall be guilty of committing a fourth degree felony.
  - 2. For the second and subsequent offenses shall be guilty of committing a second degree felony.
- B. As used in this Section, "Traffic" means the:
  - 1. Manufacture of any controlled substance;
  - 2. Distribution, sale, barter or giving away any controlled substance in large quantities as set forth in 21 U.S.C. 841(b), as amended; [or]
  - 3. Possession with intent to distribute any controlled substance.

6-12-8

Controlled or Counterfeit Substances; Distribution Prohibited; Penalties

- A. In addition to any violation of the federal act for distribution of controlled substances, and except as authorized by this Chapter, it is unlawful for any person to intentionally distribute or possess with intent to distribute a controlled substance. Any person who violates this Sub-section with respect to:
  - 1. Marijuana:
    - a. For the first offense shall be guilty of committing a full misdemeanor.
    - b. For the second and subsequent offenses shall be guilty of committing a high misdemeanor.
  - 2. Any other controlled substance:
    - a. For the first offense shall be guilty of committing a fourth degree felony.
    - b. For the second or subsequent offenses shall be guilty of committing a third degree felony.



- B. Except as authorized by this Chapter, it is unlawful for any person to intentionally create or deliver, or possess with intent to deliver, a counterfeit substance. Any person who violates this Subsection with respect to a counterfeit substance shall be guilty of committing a fourth degree felony.

6-12-9 Penalties Under Other Laws: Any penalty imposed for violation of the federal act is in addition to any civil or administrative penalty or sanction otherwise provided by law.

6-12-10 Conditional Discharge for Possession as Offender Who is Not a Registered Manufacturer

- A. If any person other than a registered manufacturer, is found guilty of a violation of this Chapter, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon reasonable conditions and for a period not to exceed one [(1)] year, as the court may prescribe.
- B. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided.
- C. The court may, in its discretion, dismiss the proceedings against the person and discharge the person from probation before the expiration of the maximum period prescribed [for] the person's probation.
- D. If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court may discharge such person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without court adjudication of guilt, but a nonpublic record shall be retained by the court solely for the purpose of use by the court in determining whether or not in subsequent proceedings, the person qualifies under this Section. A discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.
- D. Upon the dismissal of a person and discharge of the proceedings against [the person] under this Section, a person, if the person was not over eighteen [(18)] years of age at the time of the offense, may apply to the court for an order to expunge from all official records, all records relating to the person's arrest, indictment or information, trial, finding or plea of guilty, and dismissal or

discharge pursuant to this Section except nonpublic records filed with the court. If the court determines, after hearing, that the charge was dismissed, the proceedings against the person were discharged and that the person was not over eighteen (18) years of age at the time of the offense, it shall enter the order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information. No person in whose behalf an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

6-12-11 Probationary Period: Notwithstanding any other provision of law, the Court may place on probation for a period not to exceed two (2) years any person convicted of a violation of this Chapter where the maximum punishment is a full misdemeanor or less if:

- A. The court does not impose a prison sentence; or
- B. The court suspends all or any prison sentence which is imposed.

6-12-12 Powers of Enforcement Personnel: Any officer or employee designated and properly empowered by the Pueblo may:

- A. Serve search warrants, arrest warrants and administrative inspection warrants;
- B. Make arrests without warrant for any offense under this Chapter committed in his or her presence, or if he or she has probable cause to believe that the person to be arrested or cited has committed or is committing a violation of this Chapter which may constitute a felony; or
- C. Make seizures of property pursuant to this Chapter.

6-12-13 Forfeitures; Property Subject: The following items are subject to forfeiture:

- A. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this Chapter;
- B. All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of this Chapter;

- C. All property which is used, or intended for use, as a container for property described in Subsections A or B of this Section;
- D. All conveyances, including but not limited to aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation of property described in Subsections A or B [of this Section];
- E. All books, records and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this Chapter;
- F. Narcotics paraphernalia or money which is a fruit or instrumentality of a crime; and
- G. Notwithstanding Subsection D of this Section:
  - 1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Chapter;
  - 2. No conveyance is subject to forfeiture under this Section by reason of any act or commission established by the owner to have been committed or omitted without owner's knowledge or consent;
  - 3. A conveyance is not subject to forfeiture for a violation of a [misdemeanor]; and
  - 4. A forfeiture of a conveyance encumbered by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission.

6-12-14      Forfeiture; Procedure

- A. Property subject to forfeiture and disposal under this Chapter may be seized by any [peace or other law] enforcement officer upon an order issued by the court.
- B. Seizure without such an order may be made if:
  - 1. The seizure is incident to issuance of a citation, an arrest or

search under a search warrant or an inspection under an administrative inspection warrant;

2. The property subject to seizure has been the subject of a prior judgment in favor of Acoma in an injunction or forfeiture proceeding based upon this Chapter;
  3. The [peace or other law] enforcement officer has probable cause to believe that the property, which is a controlled substance, is directly or indirectly dangerous to health or safety; or
  4. The [peace or other law] enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this Chapter.
- C. In the event of seizure pursuant to Subsection A of this Section, proceedings under Subsection D of this Section shall be instituted promptly and not later than thirty (30) days after seizure.
- D. Property taken or detained under this Section shall not be subject to replevin, but is deemed to be in the custody of the agency seizing it subject only to the orders and decrees of the court. When property is seized under this Chapter, the [peace or other] enforcement officer may:
1. Place the property under seal;
  2. Remove the property to a place designated by the [peace or other] enforcement officer; or
  3. Under order of the court remove it to an appropriate location for disposition in accordance with law.
- E. When property is forfeited under this Chapter, the agency seizing it shall:
1. Sell that which is not required to be destroyed by law. The proceeds shall revert to the Acoma Court and Law Enforcement Fund; or
  2. Take custody of the property for use by the Acoma Department of Public Safety in the enforcement of this Chapter or remove it for disposition in accordance with law; provided that where a motor vehicle has been seized by a

governmental agency or department within its respective jurisdiction, such agency or department shall institute forfeiture proceedings in a court of competent jurisdiction.

6-12-15 Summary Forfeiture

- A. Controlled substances that are manufactured, possessed, transferred, sold or offered for sale in violation of this Chapter are contraband and shall be seized and summarily forfeited to Acoma.
- B. Controlled substances which are seized or come into the possession of Acoma, the owners of which are unknown, are contraband and shall be summarily forfeited to Acoma.
- C. Species of plants from which controlled substances may be derived which have been planted or cultivated in violation of this Chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to Acoma.

6-12-16 Burden of Proof: It is not necessary for the Pueblo to negate any exemption or exception in [this Chapter] in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under the [this Chapter]. The burden of proof of any exemption or exception is upon the person claiming it.

Chapter 13. BUSINESS AND COMMERCIAL FRAUDS

6-13-1 Definitions: In this Chapter, unless the context otherwise requires:

- A. "Adulterated" means varying from the standard of composition or quality prescribed by statute or administrative regulation or, if none, as set by established commercial usage.
- B. "Fiduciary" means a trustee, guardian, executor, administrator, receiver or any other person carrying on functions of trust on behalf of another person, corporation or organization.
- C. "Financial institution" means a bank, insurance company, credit union, savings and loan association, investment trust or other organization held out to the public as a place of deposit for funds or medium of savings or collective investment.
- D. "Insolvent" means that, for any reason, a financial institution is unable to pay its obligations in the ordinary or usual course of business or the present fair salable value of its assets is less than the amount that will be required to pay its probable liabilities on its

existing debts as they become absolute and matured.

- E. "Mislabeled" means:
1. Varying from the standard of truth or disclosure in labeling prescribed by statute or administrative regulation or, if none, as set by established commercial usage; or
  2. Represented as being another person's product, though otherwise labeled accurately as to quality and quantity.
- F. "Misleading statement" means an offer to sell property or services when the offeror does not intend to sell or provide the advertised property or services:
1. At a price equal to or lower than the price offered;
  2. In a quantity sufficient to meet the reasonably expected public demand, unless the quantity available is specifically stated in the advertisement; or
  3. At all.
- G. "Security interest" means an interest in personal property or fixtures pursuant to Article 9 [of the Uniform Commercial Code as adopted by the State of New Mexico].

6-13-2

Deceptive Business Practices: A person commits deceptive business practices if in the course of engaging in a business, occupation or profession such person recklessly:

- A. Uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity;
- B. Sells, offers, or exposes for sale, or delivers less than the represented quantity of any commodity or service;
- C. Takes or attempts to take more than the represented quantity of any goods or service when as buyer such person furnishes the weight or measure;
- D. Sells, offers, or exposes for sale adulterated goods or services; or
- E. Sells, offers, or exposes for sale mislabeled goods or services.

6-13-3 False Advertising: A person commits false advertising if, in connection with the promotion of the sale of property or services, such person recklessly causes to be made or makes a false or misleading statement in any advertisement.

6-13-4 Defrauding Secured Creditors: A person commits defrauding secured creditors if such person destroys, removes conceals, encumbers, transfers or otherwise deals with property subject to a security interest to hinder enforcement of that interest.

6-13-5 Defrauding Judgment Creditors: A person commits defrauding judgment creditors if such person secretes, assigns, conveys or otherwise disposes of his property with the intent to defraud a judgment creditor or to prevent that property from being subjected to payment of a judgment.

6-13-6 Fraud in Insolvency: A person commits fraud in insolvency if, when proceedings have been or are about to be instituted for the appointment of a trustee, receiver or other person entitled to administer property for the benefit of creditors or when any other assignment, composition or liquidation for the benefit of creditors has been or is about to be made, such person:

- A. Destroys, removes, conceals, encumbers, transfers or otherwise harms or reduces the value of the property with intent to defeat or obstruct the operation of any law relating to the administration of property for the benefit of creditors;
- B. Knowingly falsifies any writing or record relating to the property;
- C. Knowingly misrepresents or refuses to disclose to a receiver or other person entitled to administer property for the benefit of creditors the existence, amount or location of the property or any other information which he could be legally required to furnish to such administration; or
- D. Obtains any substantial part of or interest in the debtor's estate with intent to defraud any creditor.

6-13-7 Receiving Deposits in an Insolvent Financial Institution

- A. A person commits receiving deposits in an insolvent financial institution if, as an officer, manager or other person participating in the direction of a financial institution, such person receives or permits the receipt of a deposit, premium payment or investment in the institution knowing that the institution is insolvent.

- B. It is a defense to prosecution under this Section that the person making the deposit, premium payment or investment was fully informed of the financial condition of the institution.

6-13-8 Usury: A person commits usury by knowingly engaging in or directly or indirectly providing financing for the business of making loans at a higher rate of interest or consideration than authorized by law.

6-13-9 Classification: Unless otherwise indicated, offenses committed under this Chapter are punishable as a simple misdemeanor.

#### Chapter 14. ORGANIZED CRIME AND FRAUD

6-14-1 Definitions: For the purposes of this Chapter:

- A. "Creditor" means any person making an extension of credit or any person claiming by, under, or through any person making an extension of credit.
- B. "Debtor" means any person to whom an extension of credit is made or any person who guarantees the repayment of an extension of credit, or in any manner undertake[s] to indemnify the creditor against loss resulting from the failure of any person to whom an extension is made to repay the same.
- C. "Extortionate extension of credit" means any extension of credit with respect to which is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, family reputation, reputation or property of any person.
- D. "Extortionate" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, family reputation, reputation or property of any person.
- E. "To collect an extension of credit" means to induce in any way any person to make repayment thereof.
- F. "To extend credit" means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.



- G. "Repayment of an extension of credit" means the repayment, satisfaction or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.
- H. "Dealer in property" means a person who buys and sells property as a business.
- I. "Stolen property" means property that has been subject of any unlawful taking.
- J. "Traffic" means to sell, transfer, distribute, dispense or otherwise dispose of stolen property to another person, or to buy, receive, possess or obtain control of stolen property, with intent to sell, transfer, distribute, dispense or otherwise dispose of [the stolen property] to another person.
- K. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal syndicate even though such person[s] may not know each other's identity or membership in the combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit cooperation.
- L. "Criminal syndicate" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this Pueblo.
- M. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.
- N. "Enterprise" means any corporation, association, labor union, or other legal entity or any group of individuals associated in fact although not a legal entity.
- O. "Financial institution" means any bank, trust company, savings and loan association, credit union or small money lender under the jurisdiction of the Pueblo.
- P. "Racketeering" means an act, committed for financial gain which is chargeable under the laws of this Pueblo and punishable by imprisonment for more than ninety (90) days, regardless of whether such act is charged or indicted, involving:

1. Homicide,
2. Robbery,
3. Kidnapping,
4. Forgery,
5. Theft,
6. Bribery,
7. Gambling,
8. Usury,
9. Extortion,
10. Extortionate extensions of credit,
11. Dealing in narcotic drugs or dangerous drugs,
12. Trafficking in explosives, weapons or stolen property,
13. Leading organized crime,
14. Obstructing or hindering criminal investigations or prosecutions,
15. Asserting false claims including, but not limited to, false claims asserted through fraud or arson,
16. False statements or publications concerning land for sale or lease or sale of subdivided lands or sale and mortgaging of unsubdivided lands,
17. Resale of realty with intent to defraud,
18. Fraud in purchase or sale of securities,
19. Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen, [or]
20. A scheme or artifice to defraud.

- Q. "Records" means any book, paper, writing, record, computer program or other material.
- R. "Access" means to approach, instruct, communicate with, store data in, retrieve data from [or] to otherwise make use of any resources of a computer, computer system or computer network.
- S. "Computer" means an electronic device which performs logic, arithmetic or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, software or communication facilities which are connected or related to such a device in a system or network.
- T. "Computer network" means the interconnection of communication lines with a computer through remote terminals or a complex consisting of two or more interconnected computers.
- U. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
- V. "Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer system.
- W. "Computer system" means a set of related, connected or unconnected computer equipment, devices and software.
- X. "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, marketable security or any other written instrument which is transferrable for value.
- Y. "Property" means financial instruments, information, including electronically produced data, computer software and programs in either machine or human readable form, and anything of value, tangible or intangible.
- Z. "Services" includes computer time, data processing and storage functions.

6-14-2 Making Extortionate Extensions of Credit

- A. Any person who makes an extortionate extension of credit is guilty of a crime.

B. In any prosecution pursuant to this Section, if it is shown that all of the following factors were present in connection with the extension of credit, there is prima facie evidence that the extension of credit was extortionate:

1. The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable at the time the extension of credit was made through civil judicial process against the debtor in the county within which the debtor, if a natural person, resided or in every county within which the debtor, if other than a natural person, was incorporated, or qualified to do business.
2. The extension of credit was made at a rate of interest in excess of an annual rate of forty-five [(45%)] percent calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of the collection or attempt at collection.

6-14-3 [Reserved for Future Use]

6-14-4 [Reserved for Future Use]

6-14-5 Permissible Inferences. In an action for trafficking in stolen property:

- A. Proof of possession of property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession of the property was aware of the risk that it had been stolen or in some way participated in its theft.
- B. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
- C. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual

indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

6-14-6 Possession of Altered Property

- A. A person who has in his possession property the permanent identifying features of which, including serial numbers or labels, have been removed or in any fashion altered, without the consent of the manufacturer of the property, is guilty of an offense.
- B. It is a defense to a prosecution under this Section that a person has lawfully obtained a special serial number or lawfully possesses the usual indicia of ownership in addition to mere possession.

6-14-7 Trafficking in Stolen Property

- A. A person who recklessly traffics in the property of another that has been stolen is guilty of trafficking in stolen property in the second degree and the offense is punishable by a fine of up to five hundred dollars (\$500).
- B. A person who knowingly initiates, organizes, plans, finances, directs, manages or supervises the theft and trafficking in the property of another that has been stolen is guilty of a full misdemeanor offense.

6-14-8 Leading Organized Crime

- A. A person commits leading organized crime by:
  - 1. Intentionally organizing, managing, directing supervising or financing a criminal syndicate;
  - 2. Knowingly inciting or inducing others to engage in violence or intimidation to promote or further the criminal objectives of which criminal syndicate;
  - 3. Furnishing advice, assistance or direction in the conduct, financing or management of [a] criminal syndicate's affairs with the intent to promote or further the criminal objectives of such syndicate; or

4. Intentionally promoting or furthering the criminal objectives of [a] syndicate by inducing or committing any act or omission by a public servant in violation of his official duty.

B. No person shall be convicted pursuant to this Section on the basis of accountability as an accomplice unless he aids or participates in violating this section in one of the ways specified.

6-14-9 Bribery of Participants in Professional or Amateur Games, Sports, Horse Races, Dog Races, Contests. Whoever knowingly gives, promises or offers to any professional or amateur baseball, football, hockey, polo, tennis, horse race, dog race, or basketball player or boxer or any player or referee or other official who participates or expects to participate in any professional or amateur game or sport, or to any manager, coach, trainer of any team or participant or prospective participant in any such game, contest or sport, any benefit with intent to influence him to lose or try to lose or cause to be lost or to limit his or his team's margin of victory or defeat, or in the case of a referee or other official to affect his decisions or the performance of his duties in any way, in a baseball game, football, hockey or basketball game, boxing, tennis, horse race, dog race, or polo match, or any professional or amateur sport, or game, in which such player or participant or referee or other official is taking part or expects to take part, or has any duty or connection therewith, is guilty of an offense.

6-14-10 Fraudulent Schemes and Artifices. Any person who, pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of an offense.

6-14-11 Fraudulent Schemes and Practices; Wilful Concealment: Notwithstanding any provision of the law to the contrary, in any matter related to the business conducted by any department or agency of this Pueblo, any person who, pursuant to a scheme or artifice to defraud or deceive, knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry, is guilty of an offense.

6-14-12 Illegal Control of an Enterprise; Illegally Conducting an Enterprise

A. A person commits illegal control of an enterprise if such person, through racketeering or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.

B. A person commits illegally conducting an enterprise if such person is employed or associated with an enterprise and conducts or

participates in the conduct of such enterprise's affairs through racketeering.

C. A knowing violation of this section is an offense.

6-14-13 Judicial Powers over Racketeering Criminal Cases: During the pendency of any criminal case charging an offense included in the definition of racketeering, the court may, in addition to its other powers, issue an order pursuant to § 6-14-14 (B) and (C). Upon conviction of a person for an offense included in the definition of racketeering, the court may, in addition to its other powers of disposition, issue an order pursuant to § 6-14-14.

6-14-14 Racketeering; Civil Remedies

A. A person who sustains injury to his person, business or property by racketeering as defined by a violation of § 6-14-12 may file an action in court for the recovery of treble damages and the costs of the suit, including reasonable attorney's fees. The Pueblo may file an action [on] behalf of the person[(s)] injured or to prevent, restrain, or remedy racketeering as defined by § 6-14-12 or a violation of § 6-14-12.

B. The court has jurisdiction to prevent, restrain, and remedy racketeering as defined [by §6-14-12] or a violation of § 6-14-12 after making provision for the rights of all innocent persons affected by such violation and after hearing or trial, as appropriate, by issuing appropriate orders.

C. Prior to a determination of liability such orders may include but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture or other restraints pursuant to this Section as [the court] deems proper.

D. Following a determination of liability, such orders may include but are not limited to:

1. Ordering any person to divest himself of any interest, direct or indirect, in any enterprise.

2. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in the activities of which affect the laws of this Pueblo, to the extent [permitted by applicable law].

3. Ordering dissolution or reorganization of any organization.
  4. Ordering the payment of treble damages to those persons injured by racketeering as defined or a violation of § 6-14-12.
  5. Ordering the payment of all costs and expenses of the prosecution and investigation of any offense included in the definition of racketeering or a violation of § 6-14-11, civil and criminal, incurred by the Pueblo as appropriate to be paid to the general fund of the Pueblo which brings the action.
  6. Payment to the general fund of the Pueblo as appropriate to the extent not already ordered to be paid in other damages:
    - a. Any interest acquired or maintained by a person in violation of § 6-14-12.
    - b. Any interest in, security of, claims against or property or contractual right of any kind affording a source of influence over any enterprise which a person has established, operated, controlled, conducted or participated in the conduct of in violation of § 6-14-12.
    - c. An amount equal to the gain a person has acquired or maintained through an offense included in the definition of racketeering.
- E. A final judgment or decree rendered in favor of the Pueblo in any criminal proceeding brought by this Pueblo shall preclude the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding.
- F. Notwithstanding any law to the contrary, the initiation of civil proceedings related to violations of any offense included in the definition of racketeering or a violation of § 6-14-12 shall be commenced within seven (7) years after actual discovery of the violation.
- G. The Pueblo may, in any civil action brought pursuant to this Section, file with the clerk of the Court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or presiding chief judge of the Court [to] designate a judge to hear and determine the action. The judge so designated shall promptly assign such action for hearing, participate in the hearings and



determination and cause the action to be expedited.

- H. The [burden] of proof in [civil] actions brought pursuant to [this] Section is the preponderance of the evidence.

6-14-15 Racketeering; Investigation of Records; Confidentiality; Court Enforcement

- A. A custodian of the records of a financial institution shall, at no expense to the financial institution, produce for inspection or copying the records in the custody of such financial institution when requested to be inspected by the police chief authorized by the Tribal Council provided such person requesting such information signs and submits a sworn statement to the custodian that the request is made in order to investigate racketeering as defined or a violation of § 6-14-12. Such records may be removed from the premises of the financial institution only for the purpose of copying the records and shall be returned within forty-eight (48) hours. The police chief or an authorized peace officer designated by the Tribal Council shall be prohibited from using or releasing such information except in the proper discharge of official duties. The furnishing of records in compliance with this Section by a custodian of records shall be a bar to civil or criminal liability against such custodian or financial institution in any action brought alleging violation of the confidentiality of such records.
- B. The police chief may petition the court for enforcement of this Section in the event of noncompliance with the request for inspection. Enforcement shall be granted if the request is reasonable and the and the police chief has reasonable grounds to believe the records sought to be inspected are relevant to a civil or criminal investigation of an offense included in the definition of racketeering [in] § 6-14-12.
- C. The investigative authority granted pursuant to the provision of this Section may not be exercised by the police chief in the absence of authorization by the Tribal Council.
- D. Any person releasing information obtained pursuant to this Section, except in the proper discharge of official duties, is guilty of an offense punishable by a fine of up to three hundred dollars (\$300).

6-14-16 Computer Fraud

- A. A person commits computer fraud by accessing, altering, damaging or destroying without authorization any computer, computer system, computer network, or any part of such computer, system or

network, with the intent to devise or execute any scheme or artifice to defraud or deceive, or control property or services by means of false or fraudulent pretenses, representations or promises.

- B. A person commits computer fraud by intentionally and without authorization accessing, altering, damaging or destroying any computer, computer system or computer network or any computer software, program or data contained in such computer, computer system or computer network.

6-14-17 Illegal Operation of a Pawn Shop

- A. A person commits the crime of illegal operation of a pawn shop by failing to comply with all provisions of [Pueblo of Acoma Laws 2003, as amended].
- B. Illegal operation of a Pawn Shop is punishable by imprisonment for not more than one hundred eighty (180) days or a fine of not more than five hundred dollars (\$500) or both. The Acoma Police Department] may file a separate forfeiture action as permitted by Pueblo of Acoma Laws, 2003, as amended.

6-14-18 Punishments: Offenses committed under this Chapter unless otherwise stated are punishable as a full misdemeanor unless otherwise indicated or unless severe physical injury was likely to or did result then it is punishable as a third degree felony. For a second or subsequent offense any crime committed under this title unless otherwise indicated is punishable as a fourth degree felony.

Chapter 15. INTERFERENCE WITH GOVERNMENTAL OPERATIONS

6-15-1 Obstructing Governmental Operations

- A. A person commits obstructing governmental operations if, by using or threatening to use violence or physical force, such person knowingly obstructs, impairs or hinders:
  - 1. The performance of a governmental function by a Pueblo official, employee or agent acting under color of his official authority; or
  - 2. The enforcement of the penal law or the preservation of the peace by a peace officer acting under color of his official authority.

B. This Section does not apply to the obstruction, impairment or hindrance of the making of an arrest.

C. Obstructing governmental operations is an offense.

6-15-2 Refusing to Aid a Peace Officer

A. A person commits refusing to aid a peace officer if, upon a reasonable command by a person reasonably known to be a peace officer, such person knowingly refuses or fails to aid such peace officer in:

1. Effectuating or securing an arrest; or
2. Preventing the commission by another of any offense.

B. A person who complies with this Section by aiding a peace officer shall not be held liable to any person for damages resulting therefrom, provided such person acted reasonably under the circumstances known to him at the time.

C. Refusing to aid a peace officer is an offense.

6-15-3 Refusing to Assist in Fire Control

A. A person commits refusing to assist in fire control if:

1. Upon a reasonable command by a person reasonably known to be a fireman, such person knowingly refuses to aid in extinguishing a fire or in protecting property at the scene of a fire; or
2. Upon command by a person reasonably known to be a fireman or peace officer, such person knowingly disobeys an order or regulation relating to the conduct of persons in the vicinity of a fire.

B. In this section, "fireman" means any officer of the [Pueblo Department of Public Safety], or any other person vested by law with the duty to extinguish flames.

C. A person who complies with this Section by assisting in fire control shall not be held liable to any person for damages resulting therefrom, if such person acted reasonably under the circumstances known to him at the time.

D. Refusing to assist in fire control is an offense.

6-15-4 Compounding

- A. A person commits compounding if such person knowingly accepts or agrees to accept any pecuniary benefit as consideration for:
1. Refraining from seeking prosecution of an offense; or
  2. Refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to the offense.
- B. Subsection A shall apply in all cases except those which are [authorized] by leave of court as provided by law.
- C. Compounding is an offense punishable to the same degree as the crime compounded.

6-15-5 Impersonating a [Pueblo official, employee or agent]

- A. A person commits impersonating a [Pueblo official, employee or agent] if such person pretends to be a [Pueblo official, employee or agent] and engages in any conduct with the intent to induce another to submit to his pretended official authority or to rely upon his pretended official acts.
- B. It is no defense to a prosecution under this section that the office the person pretended to hold did not in fact exist or that the pretended office did not in fact possess the authority claimed for it.
- C. Impersonating a public servant is a high misdemeanor offense.

6-15-6 Tampering with a Public [or Pueblo] Record

- A. A person commits tampering with a public [or Pueblo] record if, with the intent to defraud or deceive such person knowingly:
1. Makes or completes a written instrument, knowing that it has been falsely made, which purports to be a public [or Pueblo] record or true copy thereof or alters or makes a false entry in a written instrument which is a public [or Pueblo] record or a true copy of a public [or Pueblo] record;

2. Presents or uses a written instrument which is or purports to be a public [or Pueblo] record, knowing that it has been falsely made, completed or altered or that a false entry has been made, with intent that it be taken as genuine;
  3. Records, registers or files or offers for recordation, registration or filing in a governmental office or agency a written statement which has been falsely made, completed or altered or in which a false entry has been made or which contains a false statement or false information;
  4. Destroys, mutilates, conceals, removes or otherwise impairs the availability of any public [or Pueblo] record; or
  5. Refuses to deliver a public [or Pueblo] record in such person's possession upon proper request of a [Pueblo official, employee or agent] entitled to receive such record for examination or other purposes.
- B. In this Section "[Pueblo] record" means all official books, papers, written instruments or records created, issued, received or kept by [the Pueblo of Acoma. Public record means all official books, papers, written instruments or records created, issued, received or kept by any other governmental office or agency or required by law to be kept by others for the information of [a governmental entity].
- C. Tampering with a [Pueblo or] public record is a high misdemeanor offense.

6-15-7 Securing the Proceeds of an Offense

- A. A person commits securing the proceeds of an offense if, with intent to assist another in profiting or benefitting from the commission of an offense, such person aids the person in securing the proceeds of the offense.
- B. Securing the proceeds of an offense is a simple misdemeanor offense.

6-15-8 Obstructing Criminal Investigations or Prosecutions: A person who knowingly attempts by means of bribery, misrepresentation, intimidation or force or threats of force to obstruct, delay or prevent the communication of information or testimony relating to a violation of any criminal statute to a peace officer, magistrate or prosecutor or who knowingly injures another in his person or property on account of the giving by the latter or by any other person of any such information or testimony to a peace officer,

magistrate or prosecutor is guilty of [the] offense [of Obstructing a Criminal Investigation or Prosecution].

6-15-9 Punishment: Offenses committed under this title and chapter are punishable as a simple misdemeanor unless otherwise indicated.

## Chapter 16. ESCAPE AND RELATED OFFENSES

6-16-1 Definitions: [For the purposes of this Chapter, unless the context otherwise requires:]

A. "Contraband" means any dangerous drug, narcotic drug, intoxicating liquor [or] any kind, deadly weapon, dangerous instrument, explosive or any other article whose use or possession would endanger the safety, security or preservation of order in a correctional facility or of any person therein.

B. "Corrections facility" means any place used for the confinement or control of a person:

1. Charged with or convicted of an offense;
2. Held for extradition; or
3. Pursuant to an order of court for law enforcement purposes.

Lawful transportation or movement incident to Correction[s] Facility confinement pursuant to this Subsection, Paragraphs 1, 2, or 3 is within the control of a correctional facility. However, for purposes of this Chapter, being within the control of a Correction[s] Facility does not include release on parole, probation or by other lawful authority upon condition of subsequent personal appearance at a designated place and time.

C. "Custody" means the imposition of actual or constructive restraint pursuant to an on-site arrest or court order but does not include detention in a Correction[s] Facility, juvenile detention center or state hospital.

D. "Escape" means departure from custody or from a Correction[s] facility in which a person is held or detained with knowledge that such departure is unpermitted or failure to return to custody or detention following a temporary leave granted for specific purpose or for a limited period.

6-16-2 Escape in the Third Degree; Classification

- A. A person commits escape in the third degree if, having been arrested for, charged with or found guilty of a petty offense, such person knowingly escaped from custody.
- B. Escape in the third degree is punishable as a petty misdemeanor.

6-16-3 Escape in the Second Degree; Classification

- A. A person commits escape in the second degree by knowingly:
  - 1. Escaping from a Correction[s] Facility; or
  - 2. Escaping from custody imposed as a result of having been arrested for, charged with or found guilty of an offense punishable by imprisonment in excess of ten (10) days or from a tribal work release or related program.
- B. The sentence imposed for a violation of this Section shall run consecutively to the original sentence or sentences for which the defendant was confined. A subsequent violation of this Section is punishable as a high misdemeanor.

6-16-4 Escape in the First Degree; Classification

- A. A person commits escape in the first degree by knowingly escaping from custody or a Correction[s] Facility by:
  - 1. Using or threatening to use physical force against another person; or
  - 2. Using or threatening to use a deadly weapon or dangerous instrument against another person.
- B. The sentence imposed for a violation of this Section shall run consecutively to the original sentence or sentences for which the defendant was confined.
- C. Escape in the first degree is punishable as a high misdemeanor and if injury results or it is a subsequent violation of this Section it is punishable as a fourth degree felony.

6-16-5 Promoting Prison Contraband

- A. A person, not otherwise authorized by law, commits promoting prison contraband:
  - 1. By knowingly taking contraband into a Correction[s] Facility or the grounds of such facility; or
  - 2. By knowingly conveying contraband to any person confined in a Correction[s] Facility; or
  - 3. By knowingly making, obtaining or possessing contraband while being confined in a Correction[s] Facility.
- B. Promoting prison contraband is punishable as a full misdemeanor.

6-16-6 Failure to Appear in the Second Degree

- A. A person commits failure to appear in the second degree if, having been required by law to appear in connection with any misdemeanor or petty offense, such person knowingly fails to appear as required regardless of the disposition of the charge requiring the appearance.
- B. Failure to appear in the second degree is punishable as a petty misdemeanor.

6-16-7 Failure to Appear in the First Degree

- A. A person commits failure to appear in the first degree if, having been required by law to appear in connection with any offense punishable by imprisonment in excess of ninety (90) days, such person knowingly fails to appear as required, regardless of the disposition of the charge requiring the appearance.
- B. Failure to appear in the first degree is punishable as a high misdemeanor.

6-16-8 Resisting Arrest; Giving False Information

- A. A person commits resisting arrest by intentionally preventing a person reasonably known to him to be a peace officer, acting under color of such peace officer's official authority, from effecting an arrest by:



1. Using or threatening to use physical force against the peace officer or another; or
  2. Using any other means creating a substantial risk of causing physical injury to the peace officer or another.
- B. Resisting arrest is an offense punishable as a simple misdemeanor.
- C. A person commits giving false information by intentionally giving false information; identification; or knowingly misleads a police officer who in the normal course of his duty is seeking to identify that individual, a companion or ownership of any property presently in the possession [of the individual and/or companion].
- D. Giving false information is punishable as a simple misdemeanor.

6-16-9 Resisting an Order Directing, Regulating or Controlling Motor Vehicle

- A. A person commits resisting an order directing, regulating or controlling a motor vehicle by knowingly failing to obey an order of a person reasonably known to him to be a peace officer, directing, regulating or controlling his vehicle.
- B. Resisting an order directing, regulating or controlling a motor vehicle is punishable by as a petty misdemeanor.

6-16-10 Hindering Prosecution; Definition: For purposes of § 6-16-11 and § 6-16-12 a person renders assistance to another by knowingly:

- A. Harboring or concealing such person;
- B. Warning such person of impending discovery, apprehension, prosecution or conviction. This does not apply to a warning given in connection with an effort to bring another into compliance with the law;
- C. Providing such person with money, transportation, that might impede the person's discovery, apprehension, prosecution or conviction; or
- D. Preventing or obstructing by means of force, deception or intimidation anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of such person; or
- E. Suppressing by an act of concealment, alteration or destruction any

physical evidence that might aid in the discovery, apprehension, prosecution or conviction of such person.

6-16-11 Hindering Prosecution in the Second Degree

- A. A person commits hindering prosecution in the second degree if, with the intent to hinder the apprehension, prosecution, conviction or punishment of another for any misdemeanor or petty offense, such person renders assistance to [the accused] person.
- B. Hindering prosecution in the second degree is punishable as a petty misdemeanor.

6-16-12 Hindering Prosecution in the First Degree

- A. A person commits hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction or punishment of another for any crime punishable as a fourth degree felony or higher [the person renders assistance to the accused person].
- B. Hindering prosecution in the first degree is punishable as a full misdemeanor.

Chapter 17. BRIBERY

6-17-1 Bribery of a Pueblo Official, Employee or Agent

- A. A person commits bribery of a Pueblo Official, Employee or Agent if with corrupt intent:
  - 1. [A] person offers, confers or agrees to confer any benefit upon with the intent to influence the [Pueblo Official's, Employee's or Agent's] opinion, judgment, exercise of discretion or other action in his official capacity..
  - 2. While a [Pueblo Official, Employee or Agent], such person solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his, opinion, judgment, exercise of discretion or other action as a [Pueblo Official, Employee or Agent] may thereby be influenced.
- B. It is no defense to a prosecution under this Section that a person sought to be influenced was not qualified to act in the desired way because such person had not yet assumed office, lacked jurisdiction or for any other reason. A violation of this Section is

punishable as a fourth degree felony.

6-17-2 Trading in [Pueblo] Office

- A. A person commits trading in [Pueblo] office if with corrupt intent:
  - 1. Such person offers, confers or agrees to confer any benefit upon a [Pueblo Official, Employee or Agent] upon an agreement or understanding that he will or may be appointed to a [Pueblo]; or
  - 2. While a [Pueblo Official, Employee or Agent], such person solicits, accepts or agrees to accept any benefit from another upon an agreement or understanding that the person will or may be appointed to a Pueblo office.
- B. This section does not apply to contributions to political campaign funds or other similar political contributions made without corrupt intent.

6-17-3 Forfeiture and Disqualification from Office; Classification

- A. A person convicted of violating any Section of this Chapter shall forever be disqualified from becoming a [Pueblo Employee or Agent] and shall, if such person is a [Pueblo Employee or Agent] at the time of conviction, forfeit his office.
- B. Unless otherwise indicated, a person convicted of violating any section of this Chapter is punishable as a full misdemeanor.

Chapter 18. PERJURY AND RELATED OFFENSES

6-18-1 Definitions: In this Chapter, unless the context otherwise requires:

- A. "Material" means that which could have affected the course or outcome of any proceeding or transaction. Whether a statement is material in any given factual situation is a question of law.
- B. "Statement" means any representation of fact and includes a representation of opinion, belief or other state of mind where the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.
- C. "Sworn statement" means any statement knowingly given under oath or affirmation attesting to the truth of what is stated, including a notarized statement.

- 6-18-2      Perjury: A person commits perjury by making a false sworn statement in regard to a material issue, believing it to be false. This offense is punishable as a high misdemeanor, unless the underlying offense is a third degree felony [or] higher in which case, perjury is punishable a one step below the underlying charge.
- 6-18-3      False Swearing: A person commits false swearing by making a false sworn statement, believing it to be false. This offense is punishable as a high misdemeanor.
- 6-18-4      Unsworn Falsification: A person commits unsworn falsification by knowingly:
- A. Making any statement which he believes to be false, in regard to a material issue, to a [Pueblo official, employee or agent or other] public servant in connection with an application for any benefit, privilege or license.
  - B. Making any statement which he believes to be false in regard to a material issue to a [Pueblo official, employee or agent or other] public servant in connection with any official proceeding.
- 6-18-5      Perjury by Inconsistent Statements. When a person has made inconsistent statements under oath, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single charge alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.
- 6-18-6      Limitation of Defenses
- A. It is no defense to a prosecution under this Chapter that:
    - 1. The statement was inadmissible under the rules of evidence;
    - 2. The oath or affirmation was taken or administered in an irregular manner; or
    - 3. The defendant mistakenly believed the false statement to be immaterial.
  - B. The provisions of law which declare that evidence obtained upon examination of a person as a witness cannot be received against

him in a criminal proceeding do not forbid giving such evidence against the person upon any proceedings founded upon a charge of perjury committed in such examination.

6-18-7 Proof of Guilt: Proof of guilty beyond a reasonable doubt is sufficient for perjury or false swearing and it shall not be necessary that proof be made by a particular number of witnesses or by documentary or other type of evidence.

6-18-8 Punishment: Unless otherwise indicated, offenses committed under any section of this chapter are punishable as a high misdemeanor.

## Chapter 19. INTERFERENCE WITH JUDICIAL AND OTHER PROCEEDINGS

6-19-1 Definitions: In this Chapter, unless the context otherwise requires:

- A. "Juror" means any person who is a member of any impaneled jury, and include[s] any person who has been drawn or summoned to attend as a prospective juror.
- B. "Official proceeding" means a proceeding heard before [the Pueblo Tribal Council and] any [other] legislative, judicial, administrative or other governmental agency or official authorized to hear evidence under oath.
- C. "Physical evidence" means any article, object, document, record or other thing of physical substance.
- D. "Testimony" means oral or written statements, documents or any other material that may be offered by a witness in an official proceeding.
- E. "Threat" means a threat [as defined] by § 6-9-1(D).

6-19-2 Influencing a Witness: A person commits influencing a witness if such person threatens a witness or offers, confers or agrees to confer any benefit upon a witness in any official proceeding or a person he believes may be called as a witness with intent to:

- A. Influence the testimony of that person;
- B. Induce that person to avoid legal process summoning him to testify; or
- C. Induce that person to absent himself from any official proceeding to which he has been legally summoned.

- 6-19-3      Receiving a Bribe by a Witness: A witness in an official proceeding or a person who believes he may be called as a witness commits receiving a bribe by a witness if such person knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understand that:
- A.      His testimony will thereby be influenced;
  - B.      He will tempt to avoid legal process summoning him to testify; or
  - C.      He will absent himself from any official proceeding to which he has been legally summoned.
  - D.      The penalty for bribing a witness is [that for] a fourth degree felony.
- 6-19-4      Tampering with a Witness: A person commits tampering with a witness if such person knowingly induces a witness in any official proceeding or a person he believes may be called as a witness to:
- A.      Unlawfully withhold any testimony;
  - B.      Testify falsely; or
  - C.      Absent himself from any official proceeding to which he has been legally summoned.
  - D.      The penalty for witness tampering is [that for] a fourth degree felony.
- 6-19-5      Influencing a Juror: A person commits influencing a juror if such person threatens a juror or offers, confers or agrees to confer a benefit upon a juror with the intent to influence the juror's vote, opinion, decision or other action as a juror. The penalty for influencing a juror will be one step below the underlying crime charged if the underlying crime is a felony.
- 6-19-6      Receiving a Bribe by a Juror: A juror commits receiving a bribe by a juror if such person knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his vote, opinion, decision or other action as a juror may be influenced. The penalty for receiving a bribe by a juror is [that for a] a fourth degree felony.
- 6-19-7      Jury Tampering: A person commits jury tampering if, with intent to influence a juror's vote, opinion, decision or other action in a case, such person directly or indirectly, communicates with a juror other than as part of the normal proceedings of the case. The penalty for jury tampering will be one step below the underlying crime charged if the underlying crime is a felony.

6-19-8 Misconduct by a Juror: A juror commits misconduct by a juror if, in relation to an action or proceeding pending or about to be brought before him, such person knowingly:

- A. Allows an unauthorized communication to be made to him; or
- B. Makes a promise or agreement to decide for or against any party to the proceeding other than as part of jury deliberation.
- C. The penalty for misconduct by a juror will be one step below the underlying crime charged if the underlying crime is a felony.

6-19-9 Tampering with Physical Evidence

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

6-19-10 Interfering with Judicial Proceedings: A person commits interfering with judicial proceedings if such person knowingly:

- A. Engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority;
- B. Disobeys or resists the lawful order, process or other mandate of a court;
- C. Refuses to be sworn or affirmed as a witness in any court proceeding;

- D. Publishes a false or grossly inaccurate report of a court proceeding;
- E. Refuses to serve as a juror unless exempted by law; or
- F. Fails inexcusably to attend a trial at which he has been chosen to serve as a juror.

6-19-11 Unlawful Disclosure of an Indictment, Information or Complaint: A person commits unlawful disclosure of an indictment, information or complaint if, except in the proper discharge of his official duties or as authorized by the court, such person knowingly discloses the fact that an indictment, information or complaint has been found or filed before the accused person is in custody or has been served with a summons.

6-19-12 Simulating Legal Process: A person commits simulating legal process if such person knowingly sends or delivers to another any document falsely to be an order or other document that simulated civil or criminal process.

6-19-13 Punishment: Unless otherwise indicated, offenses committed under any Section of this Chapter are punishable as a full misdemeanor.

## Chapter 20. OFFENSES AGAINST PUBLIC ORDER

6-20-1 Unlawful Assembly: A person commits unlawful assembly by:

- A. Assembling with two or more other persons with the intent to engage in conduct [constituting] a riot as defined in §6-20-2; or
- B. Being present at an assembly of two or more other persons who are engaged in or who have the readily apparent intent to engage in conduct constituting a riot as defined in §6-20-2 and knowingly remaining there and refusing to obey an official order to disperse.

6-20-2 Riot: A person commits riot if, with two or more other persons acting together, such person recklessly uses force or violence or threatens to use force or violence, if such threat is accompanied by immediate power of execution, which disturbs the peace. A violation of this section is a simple misdemeanor.

6-20-3 Disorderly Conduct: A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:

- A. Engages in fighting, [or] violent or seriously disruptive behavior;
- B. Makes unreasonable noise;



- C. Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person;
- D. Makes any protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession;
- E. Refuses to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard or other emergency;
- F. Recklessly handles, displays or discharges a deadly weapon or dangerous instrument; or
- G. Appears in any public or private place in an intoxicated, disorderly or disruptive condition.

6-20-4

Loitering: A person commits loitering if such person intentionally:

- A. Is present in a public place and in an offensive manner or in a manner likely to disturb the public peace, solicits another person to engage in any sexual offense;
- B. Is present in a transportation facility and after a reasonable request to cease or unless specifically authorized to do so, solicits or engages in any business, trade or commercial transactions involving the sale of merchandise or services;
- C. Is present in a public place with one or more persons to unlawfully possess, use or sell [one or more controlled substances as set forth in Chapter 12 of this Title];
- D. Is present in a public place to beg, unless specifically authorized by law;
- E. Is present in a public place, unless specifically authorized by law; or
- F. Is present in or about a school or school grounds after a reasonable request to leave and either does not have any reason or relationship involving custody of or responsibility for a pupil or student or any other specific legitimate reason for being there or does not have written permission to be there from anyone authorized to grant permission.

6-20-5 Obstructing a Highway or Other Public Thoroughfare: A person commits obstructing a highway or other public thoroughfare if, having no legal privilege to do so, such person, alone or with other persons, recklessly interferes with the passage of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.

6-20-6 False Reporting: A person commits false reporting by initiating or circulating a report of a bombing, fire, offense or other emergency knowing that such report is false and intending:

- A. That it will cause action of any sort by an official or volunteer agency organized to deal with emergencies;
- B. That it will place a person in fear of imminent serious physical injury; or
- C. That it will prevent or interrupt the occupation of any building, room, place of assembly, public place or means of transportation.

6-20-7 Criminal Nuisance: A person commits criminal nuisance:

- A. If, by conduct either lawful in itself or unreasonable under the circumstances, such person recklessly creates or maintains a condition which endangers the safety or health of others.
- B. By knowingly conducting or maintaining any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

6-20-8 Residential Picketing: A person commits residential picketing if, with intent to harass, annoy or alarm another person, such person intentionally engages in picketing or otherwise demonstrates before or about the residence or dwelling place of an individual, other than a residence or dwelling place also used as the principal place of business of such individual. A violation of this section is a petty misdemeanor.

6-20-9 Cruelty to Animals or Poultry

- A. A person commits cruelty to animals or poultry if, except as otherwise authorized by law, such person recklessly:
  - 1. Subjects any animals or poultry under human custody or control to cruel mistreatment;
  - 2. Subjects any animal or poultry under his custody or control to cruel neglect or abandonment;

3. Kills any animal or poultry under the custody or control of another without either legal privilege or consent of the owner.
  4. Using animals in religiously sanctioned activities will constitute an exception to this section.
- B. It is a defense to Subsection A of this Section if any person exposes poison to be taken by a dog which has killed or wounded livestock or poison to be taken by predatory animals on premises owned, leased or controlled by him for the purpose of the protection of such person or his livestock or poultry, and the treated property is kept posted by the person who authorized or performed the treatment until such poison has been removed, and such poison is removed by the person exposing the poison after the threat to such person, his livestock or poultry has ceased to exist. The posting required shall be in such manner as to provide adequate warning to [a] person who enter[s] the property by the point or points of normal entry. The warning notice which is posted shall be of such size that it is readable at a distance of fifty [(50)] feet, shall contain a poison statement and symbol and shall state the word "Danger" or "Warning".
- C. A violation of this Section is a simple misdemeanor for the first offense, a high misdemeanor for the second offense, a fourth degree felony for the third and subsequent offenses.

6-20-10

Interference with the Peaceful Conduct of Educational Institutions

- A. A person commits interference with the peaceful conduct of educational institutions by knowingly:
1. Going upon or remaining upon the property of any educational institution in violation of any rule or regulation of such institution or for the purpose of interfering with the lawful use of such property by others or in such manner as to deny or interfere with the lawful use of such property by others; or
  2. Refusing to obey a lawful order given pursuant to Subsection B of this section.
- B. When the chief administrative officer of an educational institution or an officer or employee designated by him to maintain order has

reasonable grounds to believe that any person or persons are committing any act which interferes with or disrupts the lawful use of such property by others at the educational institution or has reasonable grounds to believe any person has entered upon the property for the purpose of committing such an act, such officer or employee may order such person to leave the property of the educational institution.

- C. The appropriate governing board of every educational institution shall adopt rules and regulations for the maintenance of public order upon all property under its jurisdiction which is used for educational purposes and shall provide a program for the enforcement of such rules and regulations. Such rules and regulations shall govern the conduct of students, faculty and other staff and all members of the public while on the property. Penalties for violations of such rules and regulations shall be clearly set forth and enforced. Penalties shall include provisions for the ejection of a violator from the property, and suspension, expulsion or other appropriate disciplinary action.
- D. No educational institution shall be eligible to receive any aid or assistance unless rules and regulations are adopted in accordance with this Section.
- E. No provision in this Section shall prevent or limit the authority of the governing board of any educational institution to discharge any employee or expel, suspend or otherwise punish any student for violation of its rules or regulations, even though such violation is unlawful under this Chapter or is otherwise an offense.
- F. The provisions of this Section may be enforced by any [peace] officer wherever and whenever a violation occurs.
- G. For the purposes of this Section:
  - 1. "Educational institution" means, except as otherwise provided, any high school or common school in this Pueblo.
  - 2. "Governing board" means the body, whether appointed or elected, which has responsibility for the maintenance and government of an educational institution.
  - 3. "Property" means all land, buildings and other board of an educational institution and devoted to educational purposes.

6-20-11 Unlawful Reading or Learning of Contents of Message in Telegraph or Telephone Office: A person who, by means of any matching, instrument or contrivance, or in any other manner, knowingly and without lawful authority reads a message to learn the contents thereof, while the message is in a telegraph or telephone office, or is being received at or sent from such office, or who uses or communicates to others any information so obtained, is guilty of a petty misdemeanor offense.

6-20-12 Disclosure or Alteration of Telephone or Telegraph Message Without Authority: A person who knowingly discloses the contents of a telegraph or telephone message, or any part thereof addressed to another person, without permission of such person, unless directed to do so by the lawful order of a court or judge, or who knowingly alters the purport, effect or meaning thereof, is guilty of a petty misdemeanor offense.

6-20-13 Opening Without Authority or Procuring False Delivery of Telephone or Telegraph Message: A person not connected with a telegraph or telephone office who, without authority or consent of the person to whom the sealed envelope is directed, knowingly opens such sealed envelope enclosing a telegraph or telephone message addressed to any other person, with the intent of learning the contents of the message, or who fraudulently represents any other person, and thereby procures to be delivered to himself the message addressed to such other person, with the intent to use, destroy or detain the message from the person entitled to receive it, is guilty of a petty misdemeanor offense.

6-20-14 Preventing Use of Telephone in Emergency; False Representation of Emergency

A. In this Section, unless the context otherwise requires:

1. "Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.
2. "Party line" means a subscriber's-line-telephone-circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

B. Any person who knowingly refuses to yield or surrender the use of a party line to another person to report a fire or summon police, medical or other aid in case of emergency, is guilty of a simple misdemeanor offense.

- C. Any person who asks for or requests the use of a party line on the pretext that an emergency exists, knowing that no emergency in fact exists, is guilty of a simple misdemeanor offense.
- D. Every telephone directory compiled and distributed to subscribers shall contain a notice explaining this Section, such notice to be printed in type which is no smaller than any other type on the same page, other than headings, and to be preceded by the work "warning". The provisions of this Subsection shall not apply to directories distributed solely for business advertising purposes, commonly known as classified directories.

6-20-15 Use of Telephone, Email or Social Media to Terrify, Intimidate, Threaten, Harass, Annoy or Offend

- A. It shall be unlawful for any person, with intent to terrify, intimidate, threaten, harass, annoy or offend, to use a telephone, email, electronic or social media and use any obscene, lewd or profane language or suggest any lewd or lascivious act, or threaten to inflict injury or physical harm to the person, or to otherwise disturb by repeated anonymous telephone calls the peace, quiet or right of privacy of any person at the place where the telephone call or calls were received.
- B. 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.
- C. Any offense committed by use of a telephone as set forth in this Section shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received.
- D. Any person who violates this Section is guilty of an offense. [A] violation of this [Section is] punishable as a simple misdemeanor for the first offense and punishable as a full misdemeanor for a second offense within [seven] (7) years and for each subsequent offense it is punishable as a high misdemeanor if it occurs with [seven] (7) years.

6-20-16 Definition; Effect of Inequality of Annoyance or Damage; Conduct Involving Obscene Items

- A. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to

interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by a considerable number of persons, or which unlawfully obstructs the free passage or use, in the customary manner, of any public park, square, street or highway, is a public nuisance, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal.

- B. It is a public nuisance for any person to sell, offer to sell, transfer, trade or disseminate any item which is obscene within two thousand (2,000) feet, measured in a straight line, of the nearest boundary line of any building used as a private or public elementary or high school, of any public park, or of any residence district.
- C. Any person who knowingly maintains or commits a public nuisance or who knowingly fails or refuses to perform any legal duty relating to the removal of a public nuisance is guilty of an offense. [A] violation of this Section [is] punishable as a petty misdemeanor.

6-20-17 Possession of Alcohol: [Except as specifically permitted in Title 19 of Pueblo of Acoma Laws 2003, as amended], it shall be unlawful to possess, manufacture or place in trade any article which produces intoxication within the confines and limits of the Pueblo [of] Acoma. A violation of this Section [is] punishable as a petty misdemeanor.

6-20-18 Interference with Religious Ceremonies: It shall be unlawful for any individual to conduct themselves in a manner which is likely to disturb any religious ceremony within the Pueblo of Acoma. To [prosecute a person] under this Section, the alleged violator must first be given notice by the celebrants or some other complainant that his or her conduct is interfering with the ceremonies. A violation of this Section is punishable as a full misdemeanor.

6-20-19 Failure to Obey a Lawful Order: It shall be unlawful for any individual to disobey a lawful order given by a [peace] officer in the performance of his duties; orders given by court personnel specifically, judges or probation officers; or other emergency personnel in an emergency situation. A violation of this Section [is] punishable as a simple misdemeanor unless the failure to obey a lawful order could reasonably result in serious physical injury then it is punishable as a full misdemeanor.

**Origins:** See origins for Section 6-19-9 Pueblo of Acoma Laws 2003.

6-20-20 Discharge of Fireworks: It shall be unlawful to discharge fireworks in any manner other than those prescribed by the Acoma Tribal Council in its

enactment of a fireworks [law]. A violation of this Section is punishable as a petty misdemeanor.

6-20-21 Discharge of Firearms at Religious Ceremonies or Other Public Gatherings: It shall be unlawful to discharge firearms at religious ceremonies or other public gatherings except in a manner consistent with laws [enacted] by the Acoma Tribal Council. A violation of this Section [is] punishable as a full misdemeanor.

6-20-22 Concealed Weapons

A. It shall be unlawful for any individual to have concealed upon themselves any weapon which is capable of inflicting a serious or mortal injury.

B. An individual may carry a concealed weapon if he or she has obtained a proper permit issued by the Pueblo.

C. A violation of this Section [is] punishable as a simple misdemeanor.

6-20-23 Pornography: It shall be unlawful for any individual to have in their possession any items which appeal to the prurient nature of a man with the intent to distribute said items for compensation of any nature or to juveniles under the age of eighteen (18). A violation of this Section [is] punishable as a full misdemeanor.

6-20-24 Explosives: It shall be unlawful for any individual to have in their possession any explosive without first having obtained a proper permit from the [Pueblo]. A violation of this Section [is] punishable as simple misdemeanor.

6-20-25 Tampering or Interfering with the Mails: It shall be unlawful for any individual to tamper with or interfere with the U.S. Mail in any manner designed to delay or defeat the delivery of said mail.

6-20-26 Malicious Prosecution: It shall be unlawful for any individual to initiate civil or criminal action against another individual knowing that such actions lack merit in law or fact. A violation of this Section for this first offense is punishable as a petty misdemeanor. A second and subsequent violation is punishable as full misdemeanor.

6-20-27 Welfare Offenses: It shall be unlawful for any individual to obtain public assistance to which that individual is not entitled. To commit this crime an individual must knowingly give false information or withhold information so as to mislead the appropriate agency as to the actual needs of the individual. A violation of this Section is punishable as a petty



misdemeanor.

- 6-20-28 Criminal Negligence: It shall be unlawful for any individual to conduct himself or herself in a manner which a reasonably prudent person would know would cause or would be likely to cause harm to another person or property. A violation of this Section is punishable as a petty misdemeanor.
- 6-20-29 Parolee Registration: Any individual [entering] Pueblo of Acoma Lands who is currently a parolee must within twenty-four (24) hours of his or her entry, register with the Acoma Department of Public Safety . A violation of this [Section] is punishable as a petty misdemeanor.
- 6-20-30 Possession of Firearms by a Felon: It shall be unlawful for any convicted felon to have in his possession, or own, any firearm of any nature or caliber unless written permission and conditions are set forth by the Tribal Sheriffs for use only for traditional purposes and/or the court pursuant to a written order.
- 6-20-31 Unauthorized Parade: No individual or group can sponsor or arrange a parade of more than five (5) individual[s] without first registering with and obtaining a Parade Permit from the Pueblo.
- 6-20-32 Punishment: An offense committed under any Section of this Chapter unless otherwise indicated [is] punishable as a petty misdemeanor.

## Chapter 21. OFFENSES RELATING TO THE GENERAL WELFARE

### 6-21-1 The Court System (Contempt of Court)

- A. It shall be unlawful for any individual to disobey a valid order of the court.
- B. It shall be unlawful for any individual to disrupt the normal functions of the court.
- C. It shall be unlawful for any individual to be in civil or criminal contempt of the court.

- 6-21-2 Traditional Laws: It shall be unlawful for any individual to disobey the annual pronouncements of conduct as made by the religious leaders of the Pueblo on Advisement Day. Violations hereunder, shall be processed by the Tribal Sheriffs or other appropriate religious leaders through the traditional remedies. Appeals to the Tribal Court shall only be available in the event that a defendant can show clear and convincing evidence that his civil rights as protected by the Indian Civil Rights Act [25 U.S.C. § §§

1301-1304, as amended] have been violated.

6-21-3

Domestic Relations

- A. It shall be unlawful for any individual to offer for adoption any child in any manner other than as follows:
  - 1. Traditional adoption followed by appropriate action in court.
  - 2. Placement for adoption through Acoma Social Services.
  - 3. Placement for adoption through New Mexico Social Services with proper notice to the Governor of Acoma and the court of Acoma.
- B. It shall be unlawful for any parent to remove a minor child from his or her custodial parent with the intent to permanently deprive the custodial parent of contact with the minor child.
- C. It shall be unlawful for any parent to interfere with the legitimate visitation rights of a non-custodial parent. Clear and convincing evidence of a likelihood of danger to the child shall be a defense to this charge.
- D. It shall be unlawful for any individual owing support to a dependent person to withhold such support. Clear and convincing evidence of loss of job and notice to the dependent person shall be a defense to this charge.
- E. It shall be unlawful for any individual who knows that another individual is suffering from an alcohol or chemical dependency to offer or procure for the dependent individual that substance upon which he is dependent.
- F. It shall be unlawful for any individual under the age of eighteen (18) to smoke cigarettes.
- G. It shall be unlawful for any individual to offer or procure cigarettes for a child under the age of eighteen (18).
- H. It shall be unlawful for any child under the age of sixteen (16) to be out after the hour of 9:00 p.m. It shall be unlawful for any child under the age of seventeen (17) to be out after the hour of 10:00 p.m. It shall be unlawful for any parent of such children to allow the child to be out after the above curfews.
- I. All children under the age of sixteen (16) are to attend school and a

failure to do so is unlawful within the Pueblo of Acoma. It shall be unlawful for any parent of such children to fail to see to the regular attendance of their child in school.

6-21-4 Traditional Events

- A. Prior to the scheduling of any traditional events of the Pueblo of Acoma, the religious leaders of the Pueblo may propose such restrictions as they desire to the Tribal Council of the Pueblo of Acoma. Upon the adoption and publication of such restrictions by a valid resolution of the Tribal Council, said restrictions shall be as valid as any law contained within the Criminal Code of the Pueblo of Acoma. Prosecutions for offenses thereunder shall be pursued within the court upon the execution of a valid criminal complaint by a tribal sheriff, tribal religious leader or chief of police.
- B. One month prior to any traditional event the Tribal Council shall promulgate a [resolution] outlining the acceptable usage of firearms, including but not limited to age of user, caliber, number of weapons allowed, etc. Violation of said [resolution] shall be a violation of [this Title].
- C. Special Hunts as directed by the religious leaders of Acoma are to be held under guidelines set by the same leaders unless otherwise directed by the Tribal Council of Acoma. Any violator of the guidelines shall be prosecuted as outlined in Subsection [A] above.
- D. It shall be unlawful to assist in any manner in the recording of traditional or religious observances. Such illegal recordings shall include, but not be limited to, recordings, tapings, painting, photography, sketching, and video-recording.
- E. It shall be unlawful to assist any non-Indian to gain entry to Sky City during restricted observances.
- F. It shall be unlawful to remove or assist in the removal of any antiquities from Acoma Pueblo [Lands].

6-21-5 Police Procedures

- A. It shall be unlawful to interfere with the duties and actions of the police, fire department personnel or any other emergency personnel.
- B. It shall be unlawful to leave the custody of the police when held in lawful custody, whether that custody be in jail, in a hospital, at the

scene of arrest or during any times of transport or community work pursuant to a court order or the direction of police personnel.

- C. It shall be unlawful to assist anyone in leaving the custody of the police as set out in Section [B] above.

6-21-6 Classification: Any violation under this Chapter is punishable by imprisonment of not more than ninety (90) days or a fine of not more than three hundred dollars (\$300) or both.

## Chapter 21A. COMPULSORY SCHOOL ATTENDANCE

### 6-21A-1. Definitions

- A. "Habitual Truant" means a student who has accumulated the equivalent of ten [(10)] days or more of unexcused absences within a school year.
- B. "Student in need of early intervention" or "Truant" means a student who has accumulated five [(5)] unexcused absences within a school year;
- C. "Unexcused absence" means an absence from school or classes for which the student does not have an allowable excuse pursuant to the rules of the local school board or governing authority of a school or private school.

### 6-21A-2 Enforcement of Attendance; Habitual Truants; Penalty

- A. To initiate enforcement of this Chapter against an habitual truant or their parents or guardians, a local school board or governing body of a school or private school or its authorized representatives shall give written notice of the habitual truancy by mail to or by personal service on the parent or guardian. The notice shall include a date, time and place for the parent to meet with the Tribal Sheriffs and/or Acoma Juvenile Probation Officers to develop intervention strategies that focus on keeping the student in an educational setting.
- B. If unexcused absences continue after written notice of habitual truancy has been provided, the student shall be reported to the Acoma juvenile probation services for an investigation as to whether the student shall be considered to be a neglected child or a child in a family in need for services because of habitual truancy.

- C. If, after review by the Tribal Sheriffs and/or juvenile probation office where the student resides, a determination and finding is made that the habitual truancy by the student may have been caused or knowingly allowed by the parent or guardian of the student, then the matter will be referred by the Tribal Sheriffs and/or juvenile probation office to the Pueblo of Acoma prosecutor for appropriate investigation and filing of charges allowed under this Chapter.
- D. A parent or guardian of the student who, after receiving written notice and after the matter has been reviewed in accordance with this Chapter, knowingly allows the student to continue to accumulate unexcused absences or otherwise violate the student's school's attendance policy shall be guilty of a petty misdemeanor subject only to fines and community service. If violations continue, upon the second and subsequent convictions, the parent or guardian of the student who knowingly allows the student to continue to violate this Chapter [is] guilty of a simple misdemeanor.

## Chapter 22. DRUG PARAPHERNALIA ACT

### 6-22-1 Definitions

- A. The term "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801, et seq., as amended, or §§6-12-1, , et seq., [and] Pueblo of Acoma Laws, 2003, as amended. It includes, but is not limited to:
  - 1. Kits used or intended for use, in planting, propagating, cultivating, growing or harvesting of any species of plant which is a Controlled Substance as defined in §6-12-2(C);
  - 2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a Controlled Substance as defined in §6-12-2(C);
  - 3. Isomerization devices used, intended for use, or designed for use to increase the potency of any species of plant which is a Controlled Substance as defined in §6-12-2(C);

4. Testing equipment, used, intended for use, or designed for use in identifying or in analyzing the strength; effectiveness or purity of a Controlled Substance as defined in §6-12-2(C);
5. Scales and balances used, intended for use, or designed for use in weighing or measuring a Controlled Substance as defined in §6-12-2(C);
6. Dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting a Controlled Substance as defined in §6-12-2(C);
7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining a Controlled Substance as defined in §6-12-2(C);
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding a Controlled Substance as defined in §6-12-2(C);
9. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of a Controlled Substance as defined in §6-12-2(C);
10. Containers and other objects used, intended for use, or designed for use in storing or concealing a Controlled Substance as defined in §6-12-2(C);
11. Hypodermic syringes, needles or other objects used, intended for use, or designed for use in injecting parenterally into the human body a Controlled Substance as defined in §6-12-2(C);
12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing into the human body a Controlled Substance as defined in §6-12-2(C); such as:
  - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

- b. Water pipes;
- c. Carburetion tubes and devices
- d. Smoking and carburetion masks;
- e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- f. Miniature cocaine spoons and cocaine vials;
- g. Chamber pipes;
- h. Carburetor pipes;
- i. Electric pipes;
- j. Air-driven pipes;
- k. Chillums;
- l. Bong; [or]
- m. Ice pipes or chillers.

B. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following;

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any tribal, state or federal law relating to a controlled substance as defined in §6-12-2(C);
3. The proximity of the object, in time and space, to direct violation of §§6-12-1, et seq.;
4. The proximity of the object to a controlled substance as defined in §6-12-2(C);
5. The existence of any residue of a controlled substance as defined in §6-12-2(C);

- C. Any violation of this Chapter shall carry a penalty that is one step below the offense for which the drug paraphernalia is being used, or intended to be used. Where there is no other Controlled Substance as defined in §6-12-2(C) involved, then the offense shall be punished as a simple misdemeanor.

## Chapter 23. WORTHLESS CHECK ACT

### 6-23-1 Title and Definitions

- A. This section may be cited as the "Worthless Check Act."
- B. The following definitions shall apply in any interpretation of [this Chapter]:
  - 1. "Check" means any check, draft or written order for money;
  - 2. "Person" means any person, firm or corporation;
  - 3. "Draw" means the making, drawing, uttering or delivering of a check;
  - 4. "Thing of value" includes money, property, services, goods and wares; and lodging;
  - 5. "Credit" means an arrangement or understanding with the drawer for the value of the check.

6-23-2 Purpose: The purpose of th[is Section]is to remedy the evil of giving checks on a bank without first providing funds in or credit with the depository on which they are made or drawn to pay or satisfy the same, which tends to create the circulation of worthless checks on banks, bad banking, check kiting and mischief to trade and commerce.

6-23-3 Unlawful to Issue: It is unlawful for a person to issue in exchange for anything of value, with intent to defraud, any check, draft or order for payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has insufficient funds in or credit with the bank or depository for the payment of such check, draft or order in [full] upon its presentation.

### 6-23-4 Penalty

- A. Any person violating §6-23-3 shall be punished as follows:
  - 1. When the amount of the check, draft or order, or the total



amount of the checks, drafts or orders, are for more than one dollar (\$1.00) but less than fifty dollars (\$50.00), [the offense is] punishable as a petty misdemeanor.

2. When the amount of the check, draft or order, or the total amount of checks, drafts or orders, are for fifty dollars (\$50.00) or more, [ the offense is] punishable as a simple misdemeanor.

B. The court shall also have the authority to order restitution and reasonable costs.

6-23-5 Exceptions: The Worthless Check Act does not apply to:

A. Any check where the payee or holder knows or has been expressly notified prior to the drawing of the check or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment on its presentation; or

B. Any post-dated check.

6-23-6 Intent to Defraud; How Established: In the prosecution of an offense under this [Section], the following rules of evidence shall govern:

A. If the maker or drawer of a check, payment of which is refused by the bank or depository upon which it is drawn because of no account in the name of the maker or drawer in the bank, proof of the fact that the maker or drawer had no account in the bank or depository upon which the check is drawn shall be prima facie evidence of an intent to defraud and of knowledge of insufficient funds in or credit with the bank or depository with which to pay the draft;

B. If the maker or drawer of a check, payment of which is refused by the bank or depository upon which it is drawn because of insufficient funds or credit in the account of the maker or drawer in the bank or depository, fails, within three [(3)] business days after notice to him that the check was not honored by the bank or depository, to pay the check in full, together with any protest fees or costs thereon, such failure shall constitute prima facie evidence of a knowledge of the insufficiency of funds in the bank or depository at the time of the making or drawing of the check and of an intent to defraud.

6-23-7 Notice: Notice as used in [this Section] shall consist of either notice given to the person entitled thereto in person or notice given to such person in writing. The notice in writing is presumed to have been given when deposited as certified matter in the United States mail, addressed to the person at his address as it appears on the check.

6-23-8 Citizen's Complaint; Costs: Where prosecutions are initiate[d] under[ this Section] before the court, the party applying for the warrant is liable for costs accruing in the event the case is dismissed at his request or for failure to prosecute.

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