

## CHAPTER 4 CRIMES

### **4-1 CRIMES GENERALLY**

4-1.01 Definition of Terms. The following words have the meaning given in this chapter unless otherwise apparent from the context:

(1) "Willfully" when applied to the intent with which an act is done or admitted, means demonstrating a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

(2) "Neglect," "negligence," "negligent," and "negligently" mean a want of such attention to the nature of probable consequences of the act or omission as a prudent man ordinarily pays in acting in his own concerns.

(3) "Corruptly" means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

(4) "Malice" and "maliciously" means a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

(5) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give any value, asked, given or accepted, with a corrupt intent to influence unlawfully the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

(6) "Bodily harm" means physical pain, illness or any impairment of physical condition and includes mental illness of impairment.

(7) "Knowingly" means consciously and intentionally with respect to conduct or to a circumstance described by a statute defining an offense, when he/she is aware of his/her conduct or that the circumstance exists. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(8) "Intentionally" means a person acts deliberately and purposefully to achieve a certain result.

(9) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(10) "Threat" means a menace, however communicated, to knowingly and intentionally:

- (a) inflict physical harm on the person threatened or by any other person or on property; or
- (b) subject any person to physical confinement or restraint; or
- (c) commit any criminal offense; or
- (d) accuse any person of criminal offense; or
- (e) expose any person to hatred, contempt or ridicule; or
- (f) harm the credit or business reputation of any person; or
- (g) reveal any information sought to be concealed by the person threatened.

(11) "Recklessly" means in disregard for the consequences of any act an indifference to safety of life, limb or property.

(12) "Controlled Substance" means, unless specifically excepted or listed elsewhere in this Chapter, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or a combination of extraction and chemical synthesis:

- (a) opium and opiate, and any of the following including salts, compounds, derivatives, or preparations of opium or opiate:

- heroin; black-tar heroin; codeine; morphine; methadone.
- (b) any of the following hallucinogenic substances, and any of their salts, isomers, salts of isomers, compounds, derivatives or preparations: lysergic acid diethylamide (LSD); psilocybin and psilocin; the main compounds found in hallucinogenic mushrooms; peyote; provided that it shall not be unlawful for any member of the Native American Church to transport peyote onto Kootenai tribal trust lands, or buy, sell, possess or use peyote in any form, in connection with the religious practices, sacraments or services of the Native American Church; Hashish and Hashish oil; Mescaline; Tetrahydrocannabinol, or any other synthetic substance made from extracts of marijuana. Marijuana,
- (c) cocaine or coca leaves, and any salt, compound, derivative, mixture, isomer, ester, ether, or preparation of cocaine or coca leaves, including the substance commonly known as "crack," produced directly or indirectly by extraction from coca leaves.
- (d) any material, compound, mixture, or preparation which contains any quantity of the following substances having stimulant effect on the nervous system: amphetamine, its salts, optical isomers, and salts of its isomers; methamphetamine, its salts, isomers and salts of its isomers; 3, 4-methylenedioxymethamphetamine (MDMA).
- (e) any material, compound, mixture, or preparation which contains any quantity of the following substances having depressant effect on the nervous system: Amobarbital; Pentobarbital; Phencyclidine (PCP); Secobarbital; Any substance which contains any quantity of a derivative of barbituric acid.
- (f) Marijuana, which means the resins, oils, seeds, leaves, buds, and flowers of the plant of the genus Cannabis, whether growing or not;
- (g) Opiate, which means a substance having an addiction-forming or addiction-sustaining capability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining capability;
- (13) "Simulated controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:
- (a) statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
- (b) statements made to the recipient that the substance maybe resold for inordinate profit; or
- (c) whether the substance is packaged in a manner normally used for illicit controlled substances.

#### 4-2 CRIMES AGAINST PERSONS

4-2.01 Assault. Any person who knowingly and intentionally intimidates or threatens immediate bodily harm to another person through unlawful force or violence shall be deemed guilty of assault.

4-2.02 Battery. Any person who knowingly and intentionally strikes another person or otherwise inflicts bodily injury, or negligently inflicts bodily harm on another with a weapon, or who shall, by threatening violence, causes another to harm himself/herself, shall be deemed guilty of battery.

4-2.03 Reckless Endangerment. Every person is guilty of reckless endangerment when he or she recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person.

4-2.04 Abduction. Any person who shall knowingly take away or detain another person against his/her will or without the consent of the parent or other person having lawful care or charge of him/her shall be deemed guilty of abduction.

4-2.05 Rape. Renumbered at Section 4-12.01

4-2.06 Assisting Suicide. Every person who shall intentionally, purposely, or recklessly aid another to commit suicide shall be guilty of assisting suicide.

4-2.07 Criminal Libel. Every person who shall maliciously publish any writing, sign, picture, effigy, or other representation, including radio and television broadcast, containing any falsehood which tends to expose another person to hatred, contempt or ridicule shall be deemed guilty of the misdemeanor of Criminal Libel. Upon a conviction thereof, the defendant shall be subject to imprisonment not to exceed three (3) months and a fine not to exceed \$300.00 or a combination thereof.

4-2.08 Criminal Slander. Every person who shall knowingly utter any falsehood to a third party with the intent of bringing another person into disrepute, hatred, contempt or ridicule shall be deemed guilty of a misdemeanor. Upon conviction thereof, the defendant shall be subject to imprisonment, not exceed three (3) months, or a fine of \$300.00, or both with costs.

4-2.09 False Arrest or Unlawful Restraint. Any person who shall knowingly and intentionally make, or cause to be made, the unlawful arrest, detention or imprisonment of another person, or who shall knowingly and without lawful authority restrain another as to interfere substantially with

his/her liberty, shall be deemed guilty of an offense.

4-2.10 Unlawful Use of a Firearm. Any person who carries a firearm or has a firearm on his or her person while in a physically or mentally impaired condition or threatens any person with a firearm or discharges a firearm with willful or negligent disregard for public safety or otherwise possesses or uses a firearm in a manner unsafe to the public shall be guilty of an offense.

4-2.11 Domestic or Family Violence.

(1) Any person who commits one or more of the following acts against a family or household member shall be guilty of the crime of domestic or family violence. Such crime does not include acts of self-defense by the victim.

(a) Attempting to cause or causing physical harm, bodily injury or assault to another family or household member;

(b) Placing a family or household member in fear of the infliction of physical harm, bodily injury or assault;

(c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force or duress; or

(d) Causing a family or household member emotional distress.

(2) Upon conviction, the court shall impose up to the maximum penalty allowed by federal law and the defendant shall be referred to the Council for possible loss of membership privileges for a period set by the Council after a hearing.

(3) Any person not subject to the criminal jurisdiction of the Kootenai Tribal Court but found to be guilty of Domestic or Family Violence shall be guilty of a regulatory infraction and ordered to pay a fine up to the maximum allowed by law and is subject to exclusion under Chapter 12 Exclusion Act.

(4) The Tribal Court may, upon a finding of extraordinary circumstances, suspend a conviction and order the perpetrator to complete a

Batterers Intervention Program at the perpetrator's expense.

**4-2.12 Violation of a Protection Order.**

(1) A person commits the crime of violating a protective order if he or she fails to comply with any provision of an ex parte or final protective order, regardless whether the order was issued by the Kootenai Tribal Court, registered with the Kootenai Tribal Court or issued by a foreign court.

(2) It is not a defense to this section that a protected person had not notified or registered the protection order with the Kootenai Tribal Court prior to the violation.

(3) If the person found to have violated a protection order is non-Indian, the Kootenai Tribal Court may exercise civil jurisdiction over such person and impose whatever civil penalties it finds appropriate in accordance with the laws of the Kootenai Tribe of Idaho or may refer the matter to the State of Idaho or United States for prosecution.

**4-2.13 Stalking.**

(1) A person commits the crime of stalking if the person knowingly alarms or coerces another person or a member of that person's family or household by engaging in repeated and unwanted contact, including by electronic means, with the other person; it is objectively reasonable for a person in the victim's situation to be alarmed or coerced by the contact; and the repeated and unwanted contact causes the victim reasonable apprehension regarding the person safety of the victim or a member of the victim's family or household.

(2) Any person not subject to the criminal jurisdiction of the Kootenai Tribal Court but found to be guilty of Stalking shall be guilty of a regulatory infraction and ordered to pay a fine up to the maximum allowed by law and is subject to exclusion under Chapter 12 Exclusion Act.

**4-3 CRIMES AGAINST PROPERTY**

**4-3.01 Trespass.**

(1) Any person who shall knowingly and intentionally go upon or pass over any cultivated or enclosed lands or premises of another person and shall refuse to go immediately therefrom on request of the owner or occupant or who shall knowingly allow livestock to occupy or graze on the cultivated or enclosed lands of another person shall be deemed guilty of trespass.

(2) Any person who is lawfully exercising Tribal fishing, hunting, or gathering rights upon the land in question shall not be guilty of criminal trespass to land.

**4-3.02 Theft.** Crimes defined as theft under this section include the crimes known as robbery and breaking-and-entering (burglary).

(1) Any person who shall take or exercise unlawful control over the moveable property of the owner with the purpose to deprive the owner of the property; or knowingly uses, conceals or abandons the property in such manner as to deprive the owner of the property; or uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property; or

(2) Any person involved the taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear; or

(3) Any person who enters any house, room apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, vehicle, trailer, airplane or railroad car, with intent of taking property as described in section (1) or (2) of this section; is guilty of the crime of theft.

**4-3.03 Embezzlement.** Any person who, having lawful custody of property not his/her own, shall knowingly and intentionally appropriate the same to his/her own use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement.

**4-3.04 Fraud.** Any person who shall knowingly and intentionally by misrepresentation or deceit, or by false interpretation or by the use of false weights or measures, knowingly obtain any money

or other property of value, shall be deemed guilty of fraud.

4-3.05 Issuing a Bad Check. Any person who knowingly and intentionally issues or delivers a check for the purpose of obtaining the property, labor or services of another, knowing that it will not be paid by the depository, commits the offense of issuing a bad check. If the offender has an account with the depository, failure to make good the check within fifteen (15) days after written notice of nonpayment has been received by the issuer is prima facie evidence that the person knew it would not be paid by the depository.

4-3.06 Forgery. Any person who, with intent to defraud, falsely signs, or knowingly executes or alters any written instrument, shall be deemed guilty of forgery.

4-3.07 Receiving Stolen Property. Any person who knowingly obtains control over stolen property knowing the property to have been stolen by another, and:

(1) Has the purpose of depriving the owner of the property; or

(2) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner of the property; or

(3) Uses, conceals or abandons the property, knowing such use, concealment or abandonment probably will deprive the owner of the property, shall be deemed guilty of an offense.

4-3.08 Extortion.

(1) Any person who obtains property from another, with his or her consent, by threat of force or by intimidation under color of official right shall be deemed guilty of extortion.

(2) Any person who, by making false charges against another or by any other means whatsoever, knowingly extorts any monies, goods, property, or anything else of value, shall be deemed guilty of extortion.

4-3.09 Malicious Mischief. Any person who knowingly and maliciously disturbs, injures, destroys, or tampers with any property of another, shall be deemed guilty of malicious mischief.

4-3.10 Arson. Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids or counsels or procures the burning of any dwelling house, whether occupied or unoccupied or vacant, any building or structure of whatever class or character, or any kitchen, shop, barn, stable, or other outhouse that is a parcel thereof, or belonging to or adjoining thereto, whether the property is of himself or herself or of another, shall be guilty of arson.

4-3.11 Conversion of Goods from Legal Custody. Every person who willfully injures or destroys, or takes from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of conversion of goods from legal custody.

4-3.12 Obtaining Money, Property or Labor Under False Pretenses. Every person who knowingly, by any false or fraudulent representation, defrauds any other person of money, labor or property, real or personal, or obtains the signature of another to any instrument in writing whereby any liability is created, or who causes or procures others to report falsely of his or her wealth or mercantile character, and by thus imposing upon any person, obtains credit, and thereby gets possession of money or property, or obtains the labor or service of another, is guilty of obtaining such benefits by false pretenses.

4-3.13 Disposing of Property of an Estate. It shall be unlawful for any person, who, without prior authorization, sells, exchanges, or otherwise disposes of any property of an estate.

4-3.14 Failure to Report of Control Fire. It shall be unlawful for any person, knowing that a fire is endangering life or property, to fail to take prompt and reasonable action to give a fire alarm to any individual, agency, or organization having a duty to deal with such emergency. Upon convictions, imprisonment shall not exceed ninety (90) days or \$300.00.

#### **4-4 CRIMES AGAINST TRIBAL ADMINISTRATION**

4-4.01 Injury to Public Property. Any person who shall, without proper authority, knowingly use or tamper with, or knowingly or negligently injure any

public property of the Tribe, or property held for the benefit of the Tribe by the United States, shall be deemed guilty of an injury to public property.

4-4.02 Misuse of USDA Commodities. Any person who shall, within the Kootenai Reservation, knowingly sell, trade, waste, or otherwise dispose of in an unauthorized manner USDA commodities issued by the Tribe, and any person who knowingly receives from another person as part of a sale, trade or other transaction, any USDA donated commodities issued to that person by the Tribe, shall be deemed guilty of misuses of USDA donated commodities.

4-4.03 Bribery. Any person who shall knowingly give or offer to give any money, property or services, or anything else of value to another person with the intent to influence another in the discharge of his/her public duties or conduct, and any person who shall knowingly accept, solicit or accept any bribe, shall be deemed guilty of an offense. Upon conviction, the Tribal Council may, in addition to the usual penalties, relieve such person of his or her tribal office.

4-4.04 Perjury. Any person who shall knowingly, in any judicial proceeding in the Tribal Court, falsely swear or interpret, or shall make a sworn statement or affidavit, knowing the same to be untrue, or shall induce or procure another person to do so, shall be deemed guilty of perjury.

4-4.05 Resisting Lawful Arrest. Any person who shall knowingly, by force, violence or subterfuge, resist or assist another person to resist a lawful arrest, shall be deemed guilty of resisting lawful arrest.

4-4.06 Refusing to Aid Officer. Any person who shall neglect or refuse, without good cause, when called upon by any law enforcement officer to assist in the arrest of any person charged with or convicted of any offense or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement or in preventing the commission by another of an offense, shall be deemed guilty of refusing to aid an officer of the law.

4-4.07 Obstructing Justice. Any person who, knowing a person is an offender, knowingly prevents or obstructs anyone from performing an act that might aid in the discovery or apprehension

of an offender, or suppresses by act of concealment, alteration or destruction, any physical evidence that might aid in the discovery or apprehension of an offender, shall be deemed guilty of the offense of obstructing justice.

4-4.08 Escape. Any person who, being in lawful custody, for any offense, shall knowingly escape or who shall knowingly permit or assist another person to escape from lawful custody shall be deemed guilty of escape.

4-4.09 False Reports to Law Enforcement Officers. Any person who knowingly gives false information to any law enforcement officer with the purpose of implicating another, reporting an offense or incident that he/she knows not to have occurred, or pretending to furnish information relating to an offense or incident when he/she knows he/she has no such information shall be deemed guilty of false reporting.

4-4.10 Disobedience to Lawful Orders of Court - Contempt.

(1) Any person who shall knowingly disobey any order, subpoena, warrant, or command duly issued, made or given by the Tribal Court or any officer thereof, or who shall knowingly fail to return to official detention following leave granted for a specific purpose or limited time, shall be deemed guilty of criminal contempt.

(2) For purpose of this section, "official detention" includes, but is not limited to, constraint incidental to release on bail.

4-4.11 Violation of Approved Tribal Law. Any person who knowingly violates a law promulgated by Tribal Council and legally in force, shall be deemed guilty of an offense.

4-4.12 Impersonation of a Tribal Official or Other Person in Authority. Any person who shall falsely impersonate or identify or represent himself or herself as a Tribal Councilman, Police Officer, Game Warden, Peace Officer or any other person of authority authorized by the Kootenai Tribe, the United States, the State of Idaho or any of its political subdivisions, for the purpose of inducing another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his or her prejudice shall be deemed guilty of impersonation.

4-4.13 Bail Jumping - Default in Required Appearance. It shall be unlawful for any person, set at liberty by Court order, with or without bail, upon condition that he or she will subsequently appear at a specified time and place, without lawful excuse, to fail to appear at the time and place so specified.

4-4.14 Abuse of Office.

(1) It shall be unlawful for any person acting or purporting to act for the Kootenai Tribe in any official capacity to unlawfully subject, or threaten to subject, another person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of property rights, or to deny or impede another in the exercise or enjoyment of any right, privilege, power or immunity under law.

(2) It shall be unlawful for any person serving in an official capacity for the Kootenai Tribe, to use his or her position to offer or promise any special privilege to any person, whether or not the offer or promise is fulfilled, or to procure special privileges or exemption from fines, taxes, penalties or any other obligation imposed by law for himself or herself, his or her spouse, children, parents or relation by blood to the second degree.

(3) For purposes of this section, any person who is shown by the prosecution to be an elected, appointed or employed official, board member, employee, consultant, contractor or representative of the Kootenai Tribe of Idaho at the time the alleged conduct takes place, shall be presumed to be acting in his or her official capacity, whether or not the conduct takes place during regular business hours, and the burden of showing that actions were not taken in an official capacity shall be on the person charged with the offense.

4-4.15 Jury Tampering. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, in respect to his or her verdict or decision in any cause pending is guilty of jury tampering.

4-4.16 Misconduct of Jurors. Every juror or person drawn or summoned as a juror, who willfully and corruptly permits any communication to be made to him or her, or receives any book, paper, instrument or other information relating to

any cause or matter pending before him or her, except according to the regular course of proceedings, is guilty of misconduct.

4-4.17 Threats or Intimidation of Members of the Council and Staff. Any person who shall threaten or invoke the use of force or violence against, or threaten harm to, a member of the Council of the Tribe, or to any Tribal staff, for the purpose of interfering with, or influencing the performance of, an official duty, shall be guilty of an offense.

4-4.18 Interference with Performance of Duties. Any person who shall interfere with the duties or activities of a member of the Council of the Tribe while such a member is engaged in performing official duties shall be guilty of an offense.

4-4.19 False Statement. Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Kootenai Tribe of Idaho, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be guilty of the crime of false statement.

4-4.20 Violation of Supplemental Assistance Act. Any person who violates the Supplemental Assistance Act is guilty of a crime and subject to punishment under Section 32-10.

4-4.21 Weapons Prohibited in Tribal Government Buildings. Any person who approaches or enters a Tribal government building carrying a firearm or other dangerous weapon shall be deemed guilty of an offense. This section does not apply to any authorized law enforcement officer.

## **4-5 CRIMES AGAINST PUBLIC ORDER, HEALTH, DECENCY**

4-5.01 Possession of Alcohol. Any person who shall possess, consume or transport any alcoholic beverage on the lands of the Kootenai Tribe of Idaho (except the Kootenai River Inn or other lands specifically excepted by the Council) or the lands of any member thereof, shall be guilty of an offense and upon a first conviction thereof shall be sentenced to pay a fine of not less than five hundred dollars (\$500) and to jail for not more than ninety (90) days or both. Upon a second conviction of this section within one year, the sentence shall be a fine of not less than two thousand dollars (\$2,000) and jail for not more than six (6) months. Upon a third conviction within three years of the first conviction, the fine and jail sentence shall be the maximum allowed under federal law and the Court shall order the defendant to undergo alcohol treatment. Upon any subsequent conviction after the third conviction, the court shall impose the maximum penalty allowed by federal law and the defendant shall be referred to the Council for possible loss of membership privileges for a period set by the Council after a hearing.

4-5.02 Possession of Alcohol for Sale. Any person who shall possess or transport any alcoholic beverage on the lands of the Kootenai Tribe of Idaho (except the Kootenai River Inn) or the lands of any member thereof in excess of two cases of beer, two quarts of liquor or four, 1.5 liter bottles of wine, or any equivalent volumes thereof, shall be guilty of an offense of possession of alcohol for sale and upon a first conviction shall be sentenced to pay a fine of not less than three thousand dollars (\$3,000) and to jail for not more than six months or both. Upon a subsequent conviction of this provision within two years, the defendant shall be sentenced to the maximum penalty allowed by federal law and shall be ordered excluded from the Kootenai Reservation and any other real property owned by the Kootenai Tribe of Idaho for a period not to exceed five (5) years.

4-5.03 Providing Alcohol to Minors, Habitual Offenders. Any person who shall knowingly provide any alcoholic beverage to a minor or to any person who is generally known as an alcohol abuser shall be guilty of an offense and upon a conviction thereof shall be sentenced as set forth in section 4-5.02. For purposes of this section, a minor shall be any person under the legal drinking age in the state of Idaho and an alcohol abuser is

any person who has been convicted of any offense involving alcohol on two previous occasions or who has been through an alcohol treatment program.

4-5.04 Carrying Concealed Weapons. Any person who shall go about in public places armed with a dangerous weapon concealed upon his/her person, unless he/she shall have a permit signed by a Judge of the Tribal Court, shall be deemed guilty of an offense. Upon conviction, the weapons so carried may be confiscated by the Court or may be seized at officers' discretion. This section does not apply to any authorized law enforcement officer.

4-5.05 Disorderly Conduct. Any person who shall knowingly disturb the peace by engaging in the following conduct shall be guilty of the crime of disorderly conduct:

(1) Quarreling, challenging to fight or fighting; or

(2) Transmitting a false report or warning of a fire, impending explosion or other catastrophe in such a place that its occurrence would endanger human life; or

(3) Appearing in a public place or private place in an intoxicated and disorderly condition.

4-5.06 Prostitution. Renumbered at Section 4-12.23.

4-5.07 Sexually Transmitted Disease. Any person who shall knowingly expose another person to a sexually transmitted disease through sexual contact or other conduct that could transmit the disease or who is afflicted with any communicable disease of this nature and knowingly neglects or refuses to seek treatment shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement or be ordered to pay a fine, or both jail sentence and fine, and costs.

4-5.08 Desecration of Grave, Cemetery, Headstone, or Place of Burial Prohibited. It shall be unlawful for any person, not acting with authority, to desecrate or molest in any way, any portion of any grave, cemetery, headstone, grave marker, mausoleum, crypt, or other place of burial,



whether of whole bodies or ashes or other evidence of remains of a deceased human body.

4-5.09 Cruelty to Animals. Any person who shall torture or intentionally mistreat any animal, shall be deemed guilty of cruelty to animals. Such person shall be sentenced to labor for a period not to exceed 180 days, and/or to pay a fine not to exceed \$500.00. Such person also shall provide animal care as the Court directs.

4-5.10 Indecent Exposure. Renumbered at Section 4-12.16.

4-5.11 [REPEALED]

4-5.12 Controlled Substances. Any person who shall possess, consume, manufacture, transport or be under the influence of any controlled substance, as defined herein within the boundaries of the Mission or on any tribal lands upon which are located permanent residences of tribal members shall be guilty of an offense and upon a conviction thereof shall be fined in the same manner as fines are imposed for possession, sale and dispensing of alcohol. The Court shall refer to the laws of the State of Idaho to determine if the quantity of controlled substance in possession of the defendant is sufficient to sustain a conviction of the offense of possession of controlled substances for sale. If the quantity is sufficient to support such a conviction, the sentence shall be imposed as though the conviction were for the possession of alcohol for sale.

4-5.13 Tobacco and Non-Tobacco Nicotine Products. Any person or operator violating the provisions of Chapter 10 shall be guilty of an offense and subject to a fine of not less than \$50.00 or more than \$250.00. Any operator committing such violation shall further be subject to the forfeiture of all remaining stock of products distributed under the license issued under Chapter 10 and situated in the tobacco outlet. The Tribal law enforcement officers shall be empowered to seize forfeited goods. The Council is empowered to dispose of forfeited goods.

4-5.14 [REPEALED]

4-5.15 Criminal Conspiracy. If two (2) or more persons agree to engage in or cause conduct intending that a crime be committed, and one or

more of such persons does any act to effect the object of the conduct, each shall be punishable upon conviction as if the crime had been committed.

4-5.16 Persons Under the Influence of Alcohol, Drugs or Any other Intoxicating Substances.

(1) Unlawful Influence.

(a) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.08, as defined in subsection (4) of this section, or more, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a motor vehicle within Kootenai lands.

(b) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.04 or higher but less than 0.08, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a commercial motor vehicle within Kootenai lands.

(c) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.08 or higher, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a commercial motor vehicle within Kootenai lands.

(d) It is unlawful for any person under the age of twenty-one (21) years who has an alcohol concentration of at least 0.02 but less than 0.08, as defined in subsection (4) of this section, to drive or be in actual physical control of a motor vehicle within Kootenai lands. Any person violating this

subsection shall be guilty of a crime and/or regulatory infraction under Tribal law.

(2) Any person having an alcohol concentration of less than 0.08, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, by a test requested by a police officer shall not be prosecuted for driving under the influence of alcohol, except as provided in subsection (3), subsection (1)(b) or subsection (1)(d) of this section. Any person who does not take a test to determine alcohol concentration or whose test result is determined by the court to be unreliable or inadmissible against him, may be prosecuted for driving or being in actual physical control of a motor vehicle while under the influence of alcohol, drugs, or any other intoxicating substances, on other competent evidence.

(3) If the results of the test requested by a police officer show a person's alcohol concentration of less than 0.08, as defined in subsection (4) of this section, such fact may be considered with other competent evidence of drug use other than alcohol in determining the guilt or innocence of the defendant.

(4) For purposes of this chapter, an evidentiary test for alcohol concentration shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath or sixty-seven (67) milliliters of urine. Analysis of blood, urine or breath for the purpose of determining the alcohol concentration shall be performed by any method approved by the Boundary County Sheriff's Office. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory approved by the Boundary County Sheriff's Office shall be admissible in any proceeding in this jurisdiction without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(5) "Actual physical control" as used in this section, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(6) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

(7) The fact that any person charged with a violation of the provisions of this chapter involving being under the influence of any drug, or any combination of drugs with alcohol or any other intoxicating substance, is or has been entitled to use such drug under the laws of this jurisdiction or of any other jurisdiction shall not constitute a defense against any charge of a violation of the provisions of this chapter.

#### 4-5.17 Reckless and/or Inattentive Driving.

(1) Any person who drives or is in actual physical control of any vehicle upon Kootenai Lands, carelessly and heedlessly or without due caution and circumspection, and at a speed or in a manner as to endanger or be likely to endanger any person or property, or who passes when there is a line in his lane indicating a sight distance restriction, shall be guilty of reckless driving and upon conviction shall be punished as provided in subsection (2) of this section.

(2) Every person who pleads guilty to or is found guilty of reckless driving for the first time is guilty of a misdemeanor and may be sentenced to jail for not more than six (6) months or may be fined not more than one thousand dollars (\$1,000), or may be punished by both fine and imprisonment. Every person who pleads guilty to or is found guilty of reckless driving, who has previously been found guilty of or has pled guilty to reckless driving, or any substantially conforming foreign criminal violation within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a misdemeanor and may be sentenced to jail for not more than one (1) year or may be fined not more than two thousand dollars (\$2,000), or may be punished by both fine and imprisonment.

(3) Inattentive driving shall be considered a lesser offense than reckless driving and shall be applicable in those circumstances where the conduct of the operator has been inattentive,

careless or imprudent, in light of the circumstances then existing, rather than heedless or wanton, or in those cases where the danger to persons or property by the motor vehicle operator's conduct is slight. Every person convicted of inattentive driving under this section shall be guilty of a misdemeanor and may be sentenced to jail for not more than ninety (90) days or may be fined not more than three hundred dollars (\$300), or may be punished by both fine and imprisonment.

4-5.18 Hunting, Fishing or Gathering. Any person who knowingly hunts, fishes or gathers on the Kootenai Indian Reservation or other area under the jurisdiction of the Kootenai Tribe of Idaho in contravention of Kootenai Code Chapter 40 shall be guilty of a crime and subject to three months in prison and a \$500 fine.

#### **4-6 CRIMES INVOLVING MINORS OR DEPENDENT PERSONS**

4-6.01 Failure to Support and Care for Dependent Persons. Any person who, for any reason, knowingly refuses to furnish food, shelter, or proper care which he/she can provide to any person dependent upon him/her, including any dependent children born out of wedlock, or knowingly endangers the health, welfare or emotional well being of any child, shall be deemed guilty of failure to support or care for a dependent. Upon conviction, he/she must be charged with the maintenance of any dependents in a manner directed by the Tribal Court.

4-6.02 Failure to Send Children to School. Any person who, without good cause, neglects the education of a school-aged child in his or her custody by refusing to send the child to school or by failing to provide equivalent instruction elsewhere shall be deemed guilty of an offense. Upon conviction, he/she shall be sentenced to labor for a period not to exceed sixty (60) days, and/or a fine not to exceed \$100.00, or give bond up to \$100.00 to guarantee attendance.

4-6.03 Contributing to the Delinquency of a Minor. Any person who knowingly encourages the delinquency of a minor shall be deemed guilty of contributing to the delinquency of a minor. Such person may also be liable as a principal in any offense.

#### **4-6.04 Curfew.**

(1) [REPEALED]

(2) Any parent or guardian or custodian, whose children fail to obey the curfew regulations, shall be deemed guilty of curfew violation. Upon conviction, he or she shall be sentenced to labor for a period not to exceed thirty (30) days, and/or a fine not to exceed \$50.00

#### **4-7 ATTEMPTS TO COMMIT CRIMES**

4-7.01 (1) A person commits the offense of attempt when he/she knowingly and intentionally with the purpose to commit a specific offense, does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of misunderstanding of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A sentence for any person convicted of attempt shall not exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section, if under circumstances manifesting a voluntary and complete renunciation of his/her criminal purpose, he/she avoided the commission of the offense by abandoning his/her criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

#### **4-8 PARTIES TO CRIMES**

4-8.01 Classification of Parties. The parties to crimes are classified as: (1) Principals and (2) Accessories.

4-8.02 Principals Defined. All Indian persons concerned in the commission of a crime, and whether they directly commit the act constituting the offense or aid and abet in its commission, or, not being present, have advised and encouraged its commission and all persons counseling, advising, or encouraging children under the age of 18 years to commit any crime, or who, by fraud,

contrivance, or force, occasion the drunkenness of another for the purpose of causing him or her to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed.

**4-8.03 Accessories Defined.** All persons who, after full knowledge that a crime has been committed, conceal it from law enforcement personnel or the Court, or harbor and protect the person charged with or convicted thereof, are accessories.

**4-8.04 Punishment of Accessories.** An accessory is punishable by imprisonment or fine not to exceed the limits set for the principal perpetrator of the crime as enumerated herein.

## **4-9 DEFENSES**

**4-9.01 Intoxication No Defense.** An intoxicated or drugged person is criminally responsible for conduct unless such condition is involuntarily produced and deprives him/her of his/her capacity to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense.

**4-9.02 Mental Illness as a Defense.** A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect, he or she lacks substantial capacity either to appreciate the wrongfulness of his or her conduct or to act in a lawful manner. As used in this chapter, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

**4-9.03 Lack of Capacity.** No person who, as a result of mental disease or defect, lacks the capacity to understand the proceedings against him or her to assist in his or her own defense, shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures.

**4-9.04 Self Defense.**

(1) A person is justified in the use of the force or threat to use force against another when and to the extent that he/she reasonably believes that such force is necessary to:

- (a) defend himself/herself or another person against another's imminent use of unlawful force;
- (b) prevent another person's trespass on, or tortious or criminal interference with, real or personal property which he/she or his/her family owns, possesses or has the legal duty to protect.

(2) however, a person is justified in the use of force likely to cause death or serious bodily harm only if he/she reasonably believes that such force is necessary to prevent imminent death or serious bodily injury to himself/herself or another person.

**4-9.05 Good Samaritan Overdose Protection.**

(1) A person acting in good faith who seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to § 4-5.12, if the evidence for the charge of possession of a controlled substance was obtained as a result of the person seeking medical assistance.

(2) A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to § 4-5.12, if the evidence for the charge of possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.

(3) The protection in this section from prosecution for possession crimes under § 4-5.12 shall not be grounds for suppression of evidence in other criminal charges.

## **4-10 EXCLUDED DEFENSES**

**4-10.01 Quantity of Controlled Substance.** In a prosecution for the possession of a controlled substance listed in this Chapter, it is not a defense

that the substance was possessed in less than a usable quantity. It is sufficient to support a conviction that there is a sufficient quantity of the substance to permit accurate identification.

#### 4-11 MAJOR CRIMES

4-11.01 Assault with a Deadly Weapon. Every person having upon him any deadly weapon with intent to assault another is guilty of the crime of assault with a deadly weapon.

#### 4-12 SEX OFFENSES

4-12.01 Rape. Every person who by threat, force, violence, threat of force or violence, or misrepresentation, has sexual intercourse with a person shall be deemed guilty of rape.

4-12.02 Forcible Penetration by Use of Foreign Object. Any person who willfully causes the penetration, however slight, of the genital or anal opening of another person, by any object, instrument or device:

- (1) Against the victim's will by:
  - (a) Use of force or violence; or
  - (b) Duress; or
  - (c) Threats of immediate and great bodily harm, accompanied by apparent power of execution; or
- (2) Where the victim is incapable, through any unsoundness of mind, whether temporary or permanent, of giving legal consent; or
- (3) Where the victim is prevented from resistance by any intoxicating narcotic or anesthetic substance; or
- (4) Where the victim is at the time unconscious of the nature of the act because the victim:
  - (a) Was unconscious or asleep; or

(b) Was not aware, knowing, perceiving or cognizant that the act occurred; shall be guilty of a felony and punishable up to the maximum amount allowed by law.

The provisions of this section shall not apply to bona fide medical, health care or hygiene procedures.

4-12.03 Assault with Intent to Commit a Serious Felony (Minor Child). An assault upon a minor child with the intent to commit rape or lewd and lascivious conduct is an assault with the intent to commit a serious felony and punishable up to the maximum amount allowed by law.

4-12.04 Battery with the Intent to Commit Serious Felony (Minor Child). Any battery committed against a minor child with the intent to commit rape or lewd and lascivious conduct is a battery with the intent to commit a serious felony and punishable up to the maximum amount allowed by law.

4-12.05 Sexual Battery. Sexual battery is any willful physical contact, over or under the clothing, with the intimate parts of any person, when the physical contact is done without consent and with the intent to degrade, humiliate or demean the person touched or with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of the actor or any other person. For purposes of this section, "intimate parts" means the genital area, groin, inner thighs, buttocks or breasts. Sexual battery is punishable up to one year in jail or a fine of up to two-thousand dollars (\$2,000), or both.

4-12.06 Sexual Exploitation by a Medical Care Provider.

(1) Any person acting or holding himself or herself out as a physician, surgeon, dentist, psychotherapist, chiropractor, nurse or other medical care provider as defined in this section, who engages in an act of sexual contact with a patient or client, is guilty of sexual exploitation by a medical care provider. For purposes of this section, consent of the patient or client receiving medical care or treatment shall not be a defense. This section does not apply to sexual contact between a medical care provider and the provider's spouse, or a person in a domestic relationship who is also a patient or client. Violation of this section is punishable by up

to one year in jail or a fine up to one-thousand dollars (\$1,000), or both.

(2) For purposes of this section:

(a) "Intimate part" means the sexual organ, anus, or groin of any person, and the breast of a female.

(b) "Medical care provider" means a person who gains the trust and confidence of a patient or client for the examination and/or treatment of a medical or psychological condition, and thereby gains the ability to treat, examine and physically touch the patient or client.

(c) "Sexual contact" means the touching of an intimate part of a patient or client for the purpose of sexual arousal, gratification, or abuse, and/or the touching of an intimate part of a patient or client outside the scope of a medical examination or treatment.

(d) "Touching" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

**4-12.07 Sexual Abuse and Exploitation of a Vulnerable Adult.** It is a felony for any person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such person, a vulnerable adult or a third party, to:

(1) Commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult, including, but not limited to: genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact;

(2) Involve a vulnerable adult in any act of bestiality or sadomasochism; or

(3) Cause or have sexual contact with a vulnerable adult, not amounting to lewd contact as defined in paragraph (1) of this subsection.

(4) For purposes of this section:

(a) "Commercial purpose" means the intention, objective, anticipation or expectation of monetary gain or other material consideration, compensation, remuneration or profit.

(b) "Sexual contact" means any physical contact between a vulnerable adult and any person or between vulnerable adults, which is caused by the actor, or the actor causing the vulnerable adult to have self-contact.

(c) "Sexually exploitive material" means any image, photograph, motion picture, video, print, negative, slide or other mechanically, electronically, digitally or chemically produced or reproduced visual material that shows a vulnerable adult engaged in, participating in, observing or being used for explicit sexual conduct, or showing a vulnerable adult engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling; and

(d) "Vulnerable adult" means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding

his person, funds, property or resources.

(5) Sexual abuse of a vulnerable adult is a felony and shall be punishable up to the maximum amount allowed by law. It shall be a felony for any person to commit sexual exploitation of a vulnerable adult if, for any commercial purpose, he knowingly:

(a) Causes, induces or permits a vulnerable adult to engage in or be used in any explicit sexual conduct; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses or distributes sexually exploitative material.

(c) The possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.

(d) Sexual exploitation of a vulnerable adult shall be punishable by imprisonment in the state prison for a period not to exceed fifteen (15) years or by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both such fine and imprisonment.

**4-12.08 Sexual Abuse of a Child Under the Age of Sixteen Years.** It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to:

(1) Solicit a minor child under the age of sixteen (16) years to participate in a sexual act;

(2) Cause or have sexual contact with such minor child, not amounting to lewd conduct;

(3) Make any photographic or electronic recording of such minor child; or

(4) Induce, cause or permit a minor child to witness an act of sexual conduct.

(5) For the purposes of this section:

(a) "Solicit" means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

(b) "Sexual contact" means any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact.

(c) "Sexual conduct" means human masturbation, sexual intercourse, sadomasochistic abuse, or any touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(6) Any person guilty of a violation of the provisions of this section shall be punished up to the maximum amount allowed by law.

**4-12.09 Sexual Exploitation of a Child.**

(1) As used in this section, unless the context otherwise requires:

(a) "Bestiality" means a sexual connection in any manner between a human being and any animal.

(b) "Child" means a person who is less than eighteen (18) years of age.

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(e) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.

(f) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the

person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) "Sadomasochism" means:

(i) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(ii) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(j) "Sexually exploitative material" means any image, photograph, motion picture, video, print, negative, slide, or other mechanically, electronically, digitally or chemically produced or reproduced visual material which shows a child engaged in, participating in, observing, or being used for explicit sexual conduct, or showing a child engaging in, participating in,



observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling.

(2) A person commits sexual exploitation of a child if he knowingly and willfully:

(a) Possesses or accesses through any means including, but not limited to, the internet, any sexually exploitative material; or

(b) Causes, induces or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing or making sexually exploitative material; or

(c) Promotes, prepares, publishes, produces, makes, finances, offers, exhibits or advertises any sexually exploitative material; or

(d) Distributes through any means including, but not limited to, mail, physical delivery or exchange, use of a computer or any other electronic or digital method, any sexually exploitative material. Distribution of sexually exploitative material does not require a pecuniary transaction or exchange of interests in order to complete the offense.

(3) The sexual exploitation of a child pursuant to subsection (2) of this section is a felony and shall be punishable by up to the maximum amount allowed by law.

(4) Notwithstanding any other provisions of this section, a person eighteen (18) years of age or older who is found to be in knowing and willful possession of content created and distributed under circumstances defined in Section 4-12.10, is guilty of a misdemeanor provided that:

(a) The minor depicted in the content distributed the content in such a way that the minor

intended the person found to be in possession to receive it;

(b) The minor depicted in the content is not greater than three (3) years younger than the person found to be in possession; and

(c) The person found to be in possession of the content did not use coercion, manipulation or fraud to obtain possession of the content.

(5) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

#### 4-12.10 Sexual Exploitation of a Child by Electronic Means.

(1) A minor child who, without being induced by coercion, manipulation or fraud, creates or causes to be created any photographic, electronic or video content of said minor child that would be characterized under any of the classifications defined in Section 4-12.09(1)(c) through (j), and knowingly and willfully distributes it to another person or persons through electronic or other means or causes it to appear in a form where the distributing minor has reason to believe another will view it is guilty of a misdemeanor provided that the image was communicated in a form that there was a single recipient.

(2) A minor child who, without being induced by coercion, manipulation or fraud, creates or causes to be created any photographic, electronic or video content of said minor child that would be characterized under any of the classifications defined in Section 4-12.09(1)(c) through (j), and knowingly and willfully distributes it in such a way and through such a medium that the minor intended or had reason to believe that multiple parties would receive or have access to the image:

(a) Is guilty of a misdemeanor on the first adjudicated offense; and

(b) Is guilty of a felony on the second or subsequent adjudicated offense.

(3) A minor who is found to be in knowing and willful possession of the content created and sent as described in subsection (1) or (2) of this section is guilty of a misdemeanor if the content depicts a minor who is not greater than three (3) years younger than the minor who is found to be in possession. A minor who is found to be in knowing and willful possession of content described in this subsection that depicts a minor greater than three (3) years younger than themselves is guilty of a violation of Section 4-12.09(2)(a).

(4) A minor who is found to be in possession of content described in subsection (1) or (2) of this section who knowingly and willfully transmits or displays the image to one (1) or more third parties:

(a) Is guilty of a misdemeanor on the first adjudicated offense; and

(b) Is guilty of a felony on any second or subsequent adjudicated offense.

(5) A minor who receives content under circumstances described in subsection (1) or (2) of this section and distributes or threatens to distribute the image for the purposes of coercing any action, causing any embarrassment or otherwise controlling or manipulating the sender is guilty of a felony.

(6) A minor who receives content under circumstances described in subsection (1) or (2) of this section and distributes the image to a parent, guardian, one having custody of the minor or a law enforcement official for the purpose of reporting the activity is not guilty of a crime under the provisions of this section.

4-12.11 Lewd Conduct with Minor Child Under Sixteen. Any person who shall commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor child under the age of sixteen (16) years, including but not limited

to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of bestiality or sadomasochism as defined in Section 4-12.09, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or third party, shall be guilty of a felony punishable up to the maximum amount allowed by law.

4-12.12 Sexual Battery of a Minor Child Sixteen or Seventeen Years of Age.

(1) It is a felony for any person at least five (5) years of age older than a minor child who is sixteen (16) or seventeen (17) years of age, who, with the intent of arousing, appealing to or gratifying the lust, passion, or sexual desires of such person, minor child, or third party, to:

(a) Commit any lewd or lascivious act or acts upon or with the body or any part or any member thereof of such minor child including, but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of explicit sexual conduct as defined in Section 4-12.09; or

(b) Solicit such minor child to participate in a sexual act; or

(c) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in paragraph (a) of this subsection; or

(d) Make any photographic or electronic recording of such minor child.

(2) For the purpose of subsection (b) of this section, "solicit" means any written, verbal

or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

(3) For the purpose of this section, "sexual contact" means any physical contact between such minor child and any person or between such minor children which is caused by the actor, or the actor causing such minor child to have self contact.

(4) Any person guilty of a violation of the provisions of this section shall be up to the maximum amount allowed by law.

#### 4-12.13 Enticing a Child.

(1) A person aged eighteen (18) years or older shall be guilty of a felony if such person knowingly uses the internet or any device that provides transmission of messages, signals, facsimiles, video images or other communication to solicit, seduce, lure, persuade or entice by words or actions, or both, a person under the age of sixteen (16) years or a person the defendant believes to be under the age of sixteen (16) years to engage in any sexual act with or against the person where such act would be a violation of Section 4-12.

(2) Any person who is convicted of a violation of this section shall be punished by up to the maximum amount allowed by law.

(3) It shall not constitute a defense against any charge or violation of this section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this section.

(4) In a prosecution under this section, it is not necessary for the prosecution to show that an unlawful act described in Section 4-12, actually occurred.

(5) The offense is committed on the Reservation for purposes of determining jurisdiction if the transmission that constitutes the offense either originates in or is received on the Reservation.

#### 4-12.14 Disseminating Material Harmful to Minors.

A. The following definitions are applicable to this Section:

(1) "Minor" means any person less than eighteen (18) years of age.

(2) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(3) "Sexual conduct" means any act of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, the breast.

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

(5) "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.

(6) "Harmful to minors" includes in its meaning one or both of the following:

(a) The quality of any material or of any performance or of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:

(i) appeals to the prurient interest of minors as judged by the average person, applying contemporary community standards; and

(ii) depicts or describes representations or descriptions of

nudity, sexual conduct, sexual excitement, or sado-masochistic abuse which are patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors and includes, but is not limited to, patently offensive representations or descriptions of:

1. intimate sexual acts, normal or perverted, actual or simulated; or

2. masturbation, excretory functions or lewd exhibition of the genitals or genital area. Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in context in which it is used, possesses serious literary, artistic, political or scientific value for minors, according to prevailing standards in the adult community, with respect to what is suitable for minors.

(b) The quality of any material or of any performance, or of any description or representation, in whatever form, which, as a whole, has the dominant effect of substantially arousing sexual desires in persons under the age of eighteen (18) years.

(7) "Material" means anything tangible which is harmful to minors, whether derived through the medium of reading, observation or sound.

(8) "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

(9) "Promote" means to manufacture, issue, sell, give, provide, deliver, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

(10) "Knowingly" means having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry.

B. A person is guilty of disseminating material harmful to minors when:

(1) He/She knowingly gives or makes available to a minor or promotes or possesses with intent to promote to minors, or he knowingly sells or loans to a minor for monetary consideration:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors; or

(c) Any other material harmful to minors.

(2) With reference to a motion picture, show or other presentation which depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he knowingly:

(a) Exhibits such motion picture, show or other presentation to a minor for a monetary consideration; or

(b) Sells to a minor an admission ticket or pass to premises whereon there is

exhibited or to be exhibited such motion picture, show or other presentation; or

(c) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture, show or other presentation; or

(d) Exhibits such motion picture, show or other presentation to a minor not for a monetary consideration; or

(e) Gives without monetary consideration to a minor an admission ticket or pass to premises where there is exhibited or to be exhibited such motion picture, show, or other presentation.

C. Disseminating material harmful to minors is a misdemeanor punishable by confinement in jail not to exceed one (1) year, or by a fine not to exceed one thousand dollars (\$1,000), or by both such fine and jail sentence.

D. Defenses. In any prosecution for disseminating material harmful to minors, it is an affirmative defense that:

(1) The defendant had reasonable cause to believe that the minor involved was eighteen (18) years old or more, or such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older.

(2) The minor involved was accompanied by his parent or legal guardian, or by an adult and the adult represented that he was the minor's parent or guardian or an adult and signed a written statement to that effect.

(3) The defendant was the parent or guardian of the minor involved.

(4) The defendant was a bona fide school, college, university, museum or public library, or was acting in his capacity as an

employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

#### 4-12.15 Crime of Video Voyeurism.

(1) As used in this Section:

(a) "Broadcast" means the electronic transmittal of a visual image with the intent that it be viewed by a person or persons.

(b) "Disseminate" means to make available by any means to any person.

(c) "Imaging device" means any instrument capable of recording, storing, viewing or transmitting visual images.

(d) "Intimate areas" means the nude genitals, nude pubic area, nude buttocks or nude female nipple.

(e) "Person" means any natural person, corporation, partnership, firm, association, joint venture or any other recognized legal entity or any agent or servant thereof.

(f) "Place where a person has a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he could undress, be undressed or engage in sexual activity in privacy, without concern that he is being viewed, photographed, filmed or otherwise recorded by an imaging device; or

(ii) A place where a person might reasonably expect to be safe from casual or hostile surveillance by an imaging device; or

(iii) Any public place where a person, by taking reasonable steps to conceal intimate areas, should be free from the viewing, recording, storing or transmitting of images obtained by imaging devices designed to overcome the barriers created by a person's covering of intimate areas.

(g) "Publish" means to:

(i) Disseminate with the intent that such image or images be made available by any means to any person; or

(ii) Disseminate with the intent that such images be sold by another person; or

(iii) Post, present, display, exhibit, circulate, advertise or allow access by any means so as to make an image or images available to the public; or

(iv) Disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means and to make such image or images available to the public.

(h) "Sell" means to disseminate to another person, or to publish, in exchange for something of value.

(i) "Sexual act" includes, but is not limited to, masturbation; genital, anal or oral sex; sexual penetration with an object; or the transfer or transmission of semen upon any part of the depicted person's body.

(2) A person is guilty of video voyeurism when, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of such person or another person, or for his own or another person's lascivious

entertainment or satisfaction of prurient interest, or for the purpose of sexually degrading or abusing any other person, he uses, installs or permits the use or installation of an imaging device at a place where a person would have a reasonable expectation of privacy, without the knowledge or consent of the person using such place.

(3) A person is guilty of video voyeurism when:

(a) With the intent to annoy, terrify, threaten, intimidate, harass, offend, humiliate or degrade, he intentionally disseminates, publishes or sells or conspires to disseminate, publish or sell any image of another person who is identifiable from the image itself or information displayed in connection with the image and whose intimate areas are exposed, in whole or in part, or who is engaged in a sexual act;

(b) He/She knew or reasonably should have known that the person depicted in the image understood that the image should remain private; and

(c) He/She knew or reasonably should have known that the person depicted in the image did not consent to the dissemination, publication or sale of the image.

(4) A violation of this section is a felony.

(5) This section does not apply to:

(a) An interactive computer service, as defined in 47 U.S.C. 230(f)(2), an information service, as defined in 47 U.S.C. 153 or a telecommunication service, as defined in Idaho Code Section 61-121(2) or 62-1203(13), for content provided by another person, unless the provider

intentionally aids or abets video voyeurism;

(b) Images involving voluntary exposure in public or commercial settings; or

(c) Disclosures made in the public interest including, but not limited to, the reporting of unlawful conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceedings or medical treatment.

4-12.16 Indecent Exposure. Every person who willfully and lewdly, either:

(1) Exposes his or her genitals, in any public place, or in any place where there is present another person or persons who are offended or annoyed thereby; or

(2) Procures, counsels, or assists any person so to expose his or her genitals, where there is present another person or persons who are offended or annoyed thereby is guilty of a misdemeanor.

(3) Any person who pleads guilty to or is found guilty of a violation of subsection (1) or (2) of this Section or a similar statute in another jurisdiction for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a felony punishable up to the maximum amount allowed by law.

(4) The provisions of this section shall not apply to the breastfeeding of a child or the expression of breast milk for the purpose of feeding a child.

4-12.17 Detention for Prostitution. Anyone who holds, detains, or restrains, or who attempts to hold, detain or restrain another person for the purpose of compelling such person to engage in prostitution shall be guilty of a felony punishable up to the maximum amount allowed by law.

4-12.18 Inducing a Person Under Eighteen Years of Age into Prostitution. Every person who induces or attempts to induce a person under the

age of eighteen (18) years to engage in prostitution shall be guilty of a felony punishable up to the maximum amount allowed by law.

4-12.19 Utilizing a Person Under Eighteen Years of Age for Prostitution.

(1) Every person who exchanges or offers to exchange anything of value for sexual conduct or sexual contact with a person under the age of eighteen (18) years shall be guilty of a felony punishable up to the maximum amount allowed by law.

(2) As used in this section:

(a) "Sexual conduct" means sexual intercourse or deviate sexual intercourse.

(b) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.

(c) "Anything of value" includes, but is not limited to, a fee, food, shelter, clothing, medical care or membership in a criminal gang.

4-12.2 Inducing a Person Under Eighteen Years of Age to Patronize a Prostitute. Any person who induces or attempts to induce a person under the age of eighteen (18) years to patronize a prostitute shall be guilty of a felony.

4-12.21 Procurement of Prostitution.

(1) Any person who induces, compels, entices, or procures another person to engage in acts as a prostitute shall be guilty of a felony punishable up to the maximum amount allowed by law.

(2) Any person who knowingly receives money or any object of value to procure a prostitute shall be guilty of a felony punishable by imprisonment for a period of not less than two (2) years nor more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000)

nor more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

(3) Any person who pays another money or any object of value to procure a third person to engage in prostitution shall be guilty of a felony punishable up to the maximum amount allowed by law.

4-12.22 Harboring Prostitutes. Any person maintaining, controlling or supporting a house of prostitution as defined in this chapter, shall be guilty of a felony punishable up to the maximum amount allowed by law.

4-12.23 Prostitution.

(1) A person is guilty of prostitution when he or she:

(a) engages in or offers or agrees to engage in sexual conduct, or sexual contact with another person in return for a fee; or

(b) is an inmate of a house of prostitution; or

(c) loiters in or within view of any public place for the purpose of being hired to engage in sexual conduct or sexual contact.

(2) Prostitution is a misdemeanor, provided, however, that on a third or subsequent conviction for prostitution, it shall be a felony.

(3) Definitions:

(a) "Sexual conduct" means sexual intercourse or deviate sexual intercourse.

(b) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.

(c) "House of prostitution" means a place where prostitution or promotion of prostitution is

regularly carried on by one (1) or more persons under the control, management or supervision of another.

(d) "Inmate" means a person who engages in prostitution in or through an agency of a house of prostitution.

(e) "Public place" means any place to which the public or any substantial group thereof has access.

4-12.24 Patronizing a Prostitute.

(1) A person is guilty of patronizing a prostitute when he or she:

(a) Pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual conduct or sexual contact;

(b) Enters or remains in a house of prostitution for the purpose of engaging in sexual conduct or sexual contact.

(2) Patronizing a prostitute is a misdemeanor, provided that a third or subsequent conviction therefor shall be a felony.

[4-12.25 – 4-12.30 Reserved]

4-12.31 Human Trafficking.

A. DEFINITIONS.

(1)(a) "Human trafficking" means:

(i) Sex trafficking in which commercial sexual activity is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age; or

(ii) The recruitment, harboring, transportation, provision, or obtaining of a person



for labor or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(b) Human trafficking may include, but is not limited to, the use of the following types of force, fraud, or coercion:

(i) Threatening serious harm to, or physical restraint against, that person or a third person;

(ii) Destroying, concealing, removing, or confiscating any passport, immigration document, or other government-issued identification document;

(iii) Abusing or threatening abuse of the law or legal process against the person or a third person;

(iv) Using a condition of a person being a debtor due to a pledge of the debtor's personal services or the personal services of a person under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined; or

(v) Using a condition of servitude by means of any scheme, plan, or pattern intended to cause a reasonable person to believe that if the person did not enter into or continue in a condition of servitude, that person or a third person would suffer serious harm or physical restraint or would be threatened with abuse of legal process.

(c) "Sex trafficking" includes all forms of commercial sexual activity, which may include the following conduct:

(i) Sexual conduct, as defined in Section 4-12.19(2)(a);

(ii) Sexual contact, as defined in Section 4-12.19(2)(b);

(iii) Sexually explicit performance;

(iv) Prostitution; or

(v) Participation in the production of pornography.

(2) "Commercial sexual activity" means sexual conduct or sexual contact in exchange for anything of value, illicit or legal, given to, received by, or promised to any person.

## B. PENALTIES.

Notwithstanding any other law to the contrary, any person who commits the crime of human trafficking shall be punished up to the maximum amount allowed by law.

## C. RESTITUTION, REHABILITATION.

(1) In addition to any other amount of loss resulting from a human trafficking violation, the court shall order restitution, as applicable, including the greater of:

(a) The gross income or value to the defendant of the victim's labor or services; or

(b) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Federal Fair Labor Standards Act.

(2) In addition to any order for restitution as provided in this section, the court shall order the defendant to pay an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.

D. SAFE HARBOR PROVISIONS.

(1) Diversion of minor victim.

(a) When a minor is alleged to have committed any offense not considered violent, such as but not limited to, assault, battery, rape, forcible penetration, felony indecent exposure, enticing of children, sexual abuse of children under sixteen years of age, sexual exploitation of a child or firearms violations, a prosecutor shall divert the offense if the minor committed the offense as a direct and immediate result of being a victim of human trafficking.

(b) If a minor has an offense diverted pursuant to paragraph (a) of this subsection, the minor shall be placed in a residential facility that provides a comprehensive rehabilitative program with access to:

(i) Comprehensive case management;

(ii) Integrated mental health and chemical dependency

services, including specialized trauma recovery services;

(iii) Education and employment training services; and

(iv) Off-site specialized services, as appropriate.

(c) A diversion agreement under this subsection may extend for up to twelve (12) months.

(d) Diversion shall only be available pursuant to this Section if the minor expresses a willingness to cooperate and receive specialized services. If the minor is unwilling to cooperate with specialized services, continuation of the diversion shall be at the discretion of the court.

(2) A person charged with any offense not considered violent, such as but not limited to, assault, battery, rape, forcible penetration, felony indecent exposure, enticing of children, sexual abuse of children under sixteen years of age, sexual exploitation of a child or firearms violations, committed as a direct and immediate result of being a victim of human trafficking may assert an affirmative defense that the person is a victim of human trafficking.