

TITLE 14. CRIMES AND PUNISHMENTS

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Elections, criminal violations and penalties, see Title 19, § 12-101 et seq.
Gaming, enforcement provisions, see Title 21, § 11-101 et seq.
Traffic Code, see Title 22, § 1-101 et seq.

United States Code Annotated

Laws governing offenses committed in Indian country, see 18 U.S.C.A. § 1152.

CHAPTER 1. CRIMINAL PROCEDURE

Subchapter

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3. General Procedural Provisions
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Cross References

Jurisdiction, see Title 27, § 1-102.
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Indian Tribal justice support, see 25 U.S.C.A. § 3611 et seq.

SUBCHAPTER 1. DEFINITIONS

Section

1-101. Definitions.

§ 1-101. Definitions

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. "Arrest" means the taking of a person into custody in the manner authorized by law.

B. “Clerk” means the Muscogee (Creek) Nation District Court Clerk.

C. “Constitution” means the Muscogee (Creek) Nation Constitution.

D. “Cross-deputization” means an agreement between the Nation, the Bureau of Indian Affairs (BIA) and/or any other governmental entity, by which the Lighthorse Police are authorized to act as law enforcement officers to enforce the law of another governmental entity within that entity’s territorial jurisdiction, and by which that entity’s law enforcement officers are authorized to act as law enforcement officers to enforce the Muscogee (Creek) Nation’s laws within Muscogee (Creek) Nation Indian Country.

E. “District Court” means the District Court of the Muscogee (Creek) Nation.

F. [Deleted].

G. “Indian Country” means any real property within the Nation’s constitutional boundaries which is: (1) owned by any Indian subject to federal restrictions against alienation, (2) held in trust by the United States for the benefit of any Indian, (3) Any real property owned by the Muscogee (Creek) Nation, (4) held in trust by the United States for the benefit of the Muscogee (Creek) Nation, (5) the Mackey Sandbar site and any other original unallotted fee land owned by the Muscogee (Creek) Nation or (6) any other real property which otherwise constitutes Indian Country as that term is used in 18 U.S.C. § 1151.

H. “Lighthorse Police” means law enforcement officers of the Muscogee (Creek) Nation.

I. “Offense” means: (1) any crime as defined by the laws of the Muscogee (Creek) Nation committed within Muscogee (Creek) Nation Indian country; (2) any offense as defined by the laws of the Muscogee (Creek) Nation involving the property or funds of the Muscogee (Creek) Nation, regardless of where the actions giving rise to the offense occurred; and (3) where applicable, any crime as defined by the laws of another governmental entity committed outside Muscogee (Creek) Nation Indian country.

J. “Other authorized law enforcement officer” means any federal law enforcement officer authorized to enforce federal or Tribal law in Muscogee (Creek) Nation Indian Country or any law enforcement officer of a city, county or state governmental entity who is authorized by a commission received pursuant to a cross-deputization agreement to enforce federal or Tribal law in Muscogee (Creek) Nation Indian Country.

K. “Personal property” means personal property, including documents, books, papers, and any other tangible object.

I. “Supreme Court” means the Supreme Court of the Muscogee (Creek) Nation.

[NCA 01–110, § 101, approved July 6, 2001; amended by NCA 07–179, § 3, eff. July 10, 2007.]

**SUBCHAPTER 2. PROSECUTOR AND INDIGENT
DEFENSE ATTORNEYS**

Section

- 1-201. Prosecutor; general provisions.
- 1-202. Assistant Prosecutor.
- 1-203. Minimum qualifications.
- 1-204. Indigent Defense Attorneys.
- 1-205. Law clerks and legal interns.
- 1-206. Preferences in selection.
- 1-207. Oath of office.
- 1-208. Compensation.

§ 1-201. Prosecutor; general provisions

All offenses committed by a person against the laws of the Muscogee (Creek) Nation shall be prosecuted by a Prosecutor. The Office of the Prosecutor shall be a division of the Muscogee (Creek) Nation Department of Justice. The prosecutor shall maintain an office at a location designated by the Muscogee (Creek) Nation Attorney General, but the Prosecutor shall be empowered to perform his or her duties at any geographic location within or without the Muscogee (Creek) Nation Indian Country, and at any time of the night or day. The Prosecutor shall exercise independent professional judgment related to the investigation, prosecution and sentencing in all criminal and juvenile matters, but shall be subject to the general administrative supervision of the Attorney General with regard to personnel matters and general office procedures. [NCA 01-110, § 102, approved July 6, 2001; amended by 07-179, § 4, eff. July 10, 2007.]

Cross References

Department of Justice, see Title 16, § 3-101.
 Offenses against the person, see Title 14, Ch. 2, subch. 3.
 Property offenses, see Title 14, Ch. 2, subch. 3.
 Obstruction of justice, see Title 14, Ch. 2, subch. 6.
 Crimes against public health and safety, see Title 14, Ch. 2, subch. 7.

Library References

District and Prosecuting Attorneys ⇌ 1.	C.J.S. District and Prosecuting Attorneys §§ 1 to 4.
Indians ⇌ 600.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 131, 209.	

§ 1-202. Assistant Prosecutor

An Assistant Prosecutor may be employed to assist in the performance of the Prosecutor's duties if so authorized by the Attorney General. The Assistant Prosecutor shall possess all of the qualifications required for the Prosecutor set forth in Title 14, § 1-203, and shall have all authority possessed by the Prosecutor, but shall be under the direct supervision of the Prosecutor as to the performance of prosecutorial functions, whose decision regarding the performance of such functions shall be final. The Assistant Prosecutor shall be subject to the general administrative supervision of the Attorney General.

[NCA 01-110, § 103, approved July 6, 2001.]

§ 1–203. Minimum qualifications

The Prosecutor and the Assistant Prosecutor shall possess the following minimum qualifications:

1. Be an attorney who has been licensed to practice law before the highest court of any state for a period of two (2) years or more, and be a member in good standing of the Oklahoma Bar Association and the Muscogee (Creek) Nation Bar, except that the Assistant Prosecutor may have been licensed for a shorter period of time if found to be otherwise qualified for the position;
2. Be at least twenty-one (21) years of age;
3. Have never been convicted of a felony;
4. Have not been convicted of any misdemeanor involving dishonesty or involving alcohol or substance abuse during the two (2) year period preceding his or her appointment, and during said two year period shall not have been subject to supervision of any sort as a result of a conviction of any misdemeanor involving dishonesty or involving alcohol or substance abuse, regardless of actual date of conviction;
5. Not be Attorney General of the Nation, not be a member of the National Council, not be a member of a committee or board of the Nation, and not the holder of any other elective or appointive office of the Nation, provided, that a candidate who is a member of the National Council, or the holder of some other appointive or elective Tribal office, may be appointed and confirmed as Prosecutor, subject to the condition that he or she resign, at which time he or she may be sworn in as Prosecutor and assume the duties of his or her office; and
6. Not be employed on a salary or contract basis by the Nation or by agencies, authorities or other entities of the Nation or by Chartered Indian Communities of the Nation in any capacity other than as an officer of the Court, and not be employed by any business owned or operated by the Nation.

[NCA 01–110, § 105, subsec. A, approved July 6, 2001.]

Cross References

Juvenile adjudication not to disqualify from employment or office, see Title 6, § 1–404.

Library References

District and Prosecuting Attorneys ¶2(3).	C.J.S. District and Prosecuting Attorneys
Indians ¶600.	§§ 5, 11 to 14.
Westlaw Topic Nos. 131, 209.	C.J.S. Indians §§ 151 to 179.

§ 1–204. Indigent Defense Attorneys

Indigent Defense Attorneys shall be hired to represent as counsel anyone who appears at the initial appearance without aid of counsel, and who has been informed by the Judge that it is his or her right to have counsel, and who desires counsel, if such person is determined by the Court to be indigent pursuant to court rules setting standards for indigence. Indigent Defense Attorneys may also be appointed in civil child dependency and neglect cases to represent parents or guardians who are determined by the Court to be indigent pursuant to court rules setting standards for indigence.

[NCA 01–110, § 104, approved July 6, 2001.]

Library References

Indians ⇨638.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1–205. Law clerks and legal interns

The Prosecutor and Assistant Prosecutor may be assisted by law clerks and legal interns who have not yet been licensed to practice law before the highest court of any state; provided that if a legal intern is licensed as an intern pursuant to the rules of a state bar association, the Prosecutor shall ensure that all the requirements related to supervision of legal interns of such state bar association, as well as any requirements of the Muscogee (Creek) Nation Bar, are fully met.

[NCA 01–110, § 105, subsec. A, approved July 6, 2001.]

§ 1–206. Preferences in selection

A hiring preference shall be given, in the following order of preference, to otherwise qualified applicants for the positions of Prosecutor, Assistant Prosecutor, and Indigent Defense Attorney:

- A. First preference: Enrolled members of the Muscogee (Creek) Nation;
- B. Second preference: Enrolled members of any other Indian Tribe.
- C. Third preference: Non-Indians.

[NCA 01–110, § 106, approved July 6, 2001.]

Cross References

Tribal employees, Indian preference, see Title 37, § 3–201 et seq.

Library References

District and Prosecuting Attorneys ⇨2(2).	C.J.S. District and Prosecuting Attorneys §§ 5
Indians ⇨213.	to 7.
Westlaw Topic Nos. 131, 209.	C.J.S. Indians §§ 59 to 61.

§ 1–207. Oath of office

Upon appointment, the Prosecutor, and the Assistant Prosecutor, shall be installed and take office as soon as practical. Prior to installation the Prosecutor and Assistant Prosecutor must take the following Oath of Office:

“I, _____, do solemnly swear (or affirm) that I will faithfully execute the office of the Prosecutor, will enforce the laws of the Muscogee (Creek) Nation in all causes coming before me with integrity and fairness, without regard to the identities of the parties before me, and will to the best of my ability preserve, protect and defend the Constitution of the Muscogee (Creek) Nation of Oklahoma.”

[NCA 01–110, § 107, approved July 6, 2001.]

§ 1–208. Compensation

The compensation of the Prosecutor, and Assistant Prosecutor shall be paid by the Muscogee (Creek) Nation pursuant to the Nation’s personnel or employment contract policies.

[NCA 01–110, § 108, approved July 6, 2001.]

Library References

District and Prosecuting Attorneys ⇌4.
Westlaw Topic No. 131.

C.J.S. District and Prosecuting Attorneys
§§ 64 to 80.

SUBCHAPTER 3. GENERAL PROCEDURAL PROVISIONS

Section

- 1–301. Scope, purpose and construction.
- 1–302. Prosecution of offenses.
- 1–303. Rights of defendant.
- 1–304. Court appointment of counsel a privilege.
- 1–305. Limitation of prosecution.
- 1–306. Search and seizure.
- 1–307. Arrest.
- 1–309. Extradition of defendants subject to other jurisdiction.
- 1–310. Protective custody.

§ 1–301. Scope, purpose and construction

A. Applicability. This Title governs the procedure in all criminal proceedings in the District Court.

B. Criminal proceeding defined. A criminal proceeding includes any proceeding in which a person is charged with a criminal offense of any degree, brought to trial, convicted, or punished.

C. Construction and intent. This Title is intended to provide for the just determination of every criminal proceeding. It shall be construed to secure simplicity in procedure, fairness in administration of justice and the elimination of unjustifiable expense and delay.

D. Other applicable law. In any case wherein provisions which would govern specific procedural issues are not contained in this chapter, the District Court may resort to the Judicial Code or other applicable law of the Nation, subject always to the due process rights of the defendant and the fundamental fairness of the proceedings. If no provisions addressing such procedural issues are contained in the Judicial Code or other applicable law of the Nation, the Court may proceed in a lawful fashion consistent with Muscogee (Creek) Nation laws, the Constitution of the Nation, and the federal Indian Civil Rights Act, subject always to the due process rights of the defendant and the fundamental fairness of the proceedings; provided, that nothing in this section shall be construed as authorizing the applicability of any state or federal procedural or substantive law or statute to criminal proceedings in the Muscogee (Creek) Nation courts.

[NCA 01–110, § 201, approved July 6, 2001.]

Library References

Indians ⇌600.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–302. Prosecution of offenses

A. Punishment. No person shall be punished for an offense except upon a legal conviction, including a plea of guilty or nolo contendere in open court, by

a court of competent jurisdiction, provided, however, that no incarceration or other disposition of one accused of an offense prior to trial in accordance with this title shall be deemed punishment.

B. Plaintiff and defendant. All criminal proceedings shall be prosecuted in the name of the Muscogee (Creek) Nation as plaintiff, against the person charged with an offense, referred to as the defendant.

C. Criminal case number. The District Court Clerk shall assign a case number prefix to criminal actions in a manner approved by the District Court. [NCA 01–110, § 202, approved July 6, 2001.]

Library References

Indians ⇄600, 620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–303. Rights of defendant

In all criminal proceedings, the defendant shall have the following rights:

A. Representation. The defendant shall have the right to appear and represent himself; to be represented by a Indigent Defense Attorney upon application and approval by the Court if found qualified for free representation; to be represented at his or her own expense by any attorney admitted to practice before the District Court.

B. Nature of charges. The defendant shall have the right to be informed of the nature of the charges against him and to have a written copy of the complaint containing all information required by Title 14, § 1–401 herein.

C. Testimony by defendant. The defendant shall have the right to testify in his or her own behalf, or to refuse to testify regarding the charge against him or her, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him or her, he or she shall be deemed to have waived all right to refuse to testify in that immediate criminal proceeding. However, such a waiver in one distinct phase of the criminal trial process, such as a motion hearing, trial or sentencing hearing, shall not be deemed to constitute a waiver of defendant’s right to remain silent in other distinct phases of the criminal trial process.

D. Confront witnesses. The defendant shall have the right to confront and cross-examine all witnesses against him, subject to evidentiary requirements in the Judicial Code or other applicable law of the Muscogee (Creek) Nation.

E. Subpoena. The defendant shall have the right to compel by subpoena the attendance of witnesses on his or her own behalf.

F. Speedy trial. The defendant shall have the right to have a speedy public trial, which shall be held within one-hundred and eighty (180) days of the date of the defendant’s arraignment if he or she has made bail and within ninety (90) days of the date of the defendant’s arraignment if he or she is incarcerated due to his or her failure or inability to make bail, unless the defendant has waived his or her right to a speedy trial, said trial to be held before an impartial judge or jury as provided in this Title or other applicable law of the Nation.

G. Appeal. The defendant shall have the right to appeal in all cases.

H. Spouse’s testimony. The defendant shall have the right to prevent his or her present or former spouse from testifying against him concerning any matter which occurred during such marriage, except that:

1. The defendant’s present or former spouse may testify against him in any case in which the offense charged is alleged to have been committed against the spouse or the immediate family, or the children of either the spouse or the defendant, or against the marital relationship; and

2. Any testimony by the spouse in the defendant’s behalf will be deemed a waiver of this privilege.

I. Double jeopardy. The defendant shall have the right to not be twice put in jeopardy by the Nation for the same offense, provided that nothing herein shall be construed as prohibiting the prosecution in the Muscogee (Creek) Nation Courts of a defendant following a state or federal jeopardy.

[NCA 01–110, § 203, approved July 6, 2001.]

Cross References

Child abuse proceedings, communication not privileged, see Title 6, § 1–506.
 Juvenile proceedings, exclusion of certain statements by alleged delinquent, see Title 6, § 1–407.

Library References

Indians ☞213, 603, 609, 610, 612, 630, 638.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 59 to 61, 151 to 179.

§ 1–304. Court appointment of counsel a privilege

Appointment of free legal counsel for a defendant is a privilege which shall be granted to defendants unable to afford legal counsel by the Court.

[NCA 01–110, § 204, approved July 6, 2001.]

Library References

Indians ☞638.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1–305. Limitation of prosecution

A. Bribery and offenses related to public funds and public property. Prosecutions for the crimes of bribery, embezzlement of public money, assets or property of the Muscogee (Creek) Nation or other subdivision thereof, or of any misappropriation of public money, assets or property of the Muscogee (Creek) Nation or other subdivision thereof, falsification of public records of the Muscogee (Creek) Nation or other subdivision thereof, and conspiracy to defraud the Muscogee (Creek) Nation or other subdivision thereof in any manner or for any purpose shall be commenced within seven (7) years after the discovery of the crime.

B. Tax laws. Prosecutions for criminal violations of any Muscogee (Creek) Nation tax laws shall be commenced within five (5) years after the commission of such violation.

C. Rape and forcible sodomy. Prosecution for the crime of rape or forcible sodomy shall be commenced within seven (7) years after the discovery of the crime.

D. Other offenses. In all other cases a prosecution for a public offense must be commenced within seven (7) years after its commission.

[NCA 01-110, § 205, approved July 6, 2001.]

Library References

Indians ⇐602.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-306. Search and seizure

A. Search warrants. A search warrant is an order directed to any federal law enforcement officer or a Lighthorse Police Officer directing him to search a particular place in Muscogee (Creek) Nation Indian Country for described persons or personal property and if found to seize them.

B. Affidavit. A warrant shall issue only on an affidavit or affidavits sworn to before a District Judge and establishing grounds for issuing the warrant. If the District Judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he or she shall issue a warrant identifying the personal property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part.

C. Contents of search warrants. Every search warrant shall contain the name and address of the Court and the signature of the District Judge issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The warrant shall be directed to any Lighthorse Police Officer or other authorized law enforcement officer. The warrant shall contain the date upon which it was issued and shall command that the search shall be conducted within a specified period of time not to exceed ten (10) days. The warrant shall specify the person or place to be searched and shall specify the objective of the search.

D. Service of search warrants. Search warrants shall be served by any Lighthorse Police Officer or other authorized law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m., unless otherwise directed on the warrant by the District Judge who issued it. A copy of the warrant shall be left with an occupant or owner over sixteen (16) years of age of the place searched if present during said search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the premises. In order to serve the warrant, the officer may break open any outer or inner door or window of a place to be searched, or any part of any place to be searched, or anything thereon, if after notice of the officer's authority and purpose, the officer is denied or refused admittance, or when the premises to be searched are unoccupied at the time of the search, or if it is necessary to liberate himself or a person aiding in the execution of the warrant.

E. Inventory. The officer serving a search warrant shall make a signed inventory of all personal property seized and attached such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen (16) years of age if present during the search or left in a conspicuous place with the search warrant if an occupant is not present during the search.

F. Return of search warrants.

1. The officer shall endorse on the warrant the date, time, and place of service and the signature of the officer serving it.

2. The warrant shall be returned to the Court with an inventory of personal property seized within five (5) days of service, Saturdays, Sundays, and legal holidays excluded.

3. In every case the warrant shall be returned within ten (10) days of the date of issuance, unless return be due on a Saturday, Sunday, or legal holiday, in which case, the return shall be made on the next business day.

G. Personal property subject to seizure. Personal property in Muscogee (Creek) Nation Indian country which is subject to seizure is property in which there is probable cause to believe such property is:

1. Stolen, embezzled, contraband, or otherwise criminally possessed; or
2. Which is or has been used to commit a criminal offense; or
3. Personal property which constitutes evidence of the commission of a criminal offense.

H. Warrantless searches. A Lighthorse Police Officer or other authorized law enforcement officer may conduct a search without a warrant in Muscogee (Creek) Nation Indian country only:

1. Incident to a lawful arrest; or
2. With the consent of the person to be searched, or
3. With the consent of the person having actual possession and control of the property to be searched; or
4. When he has reasonable grounds to believe that the person searched may be armed and dangerous; or
5. When the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains personal property subject to seizure, or upon inventory of such vehicle after impoundment and seizure; or
6. In any other circumstances wherein federal or Tribal case law has held that a search without obtaining a warrant prior to the search in those circumstances would not be unreasonable.

I. Unlawful search and seizure. A person aggrieved by an unlawful search and seizure may move the District Court for the return of the personal property, not contraband, on the ground that he is entitled to lawful possession of the personal property illegally seized. The District Court may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the personal property shall be returned, if not contraband, and shall not be admissible at any hearing or trial.

J. Questioning of person in act of committing offense; frisk search. A Lighthorse Police Officer or other authorized law enforcement officer may stop any person in a public place in Muscogee (Creek) Nation Indian Country whom he or she has reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him his or her name, address, an explanation of his or her actions and may, if he or she has reasonable grounds to believe his or her own safety or the safety of other nearby is endangered, conduct a frisk type search of such person for weapons.

[NCA 01-110, § 206, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 510.

Cross References

Search warrants for the protection of children, see Title 6, § 1-601 et seq.

Library References

Searches and Seizures ¶24, 101, 105, 123, 141, to 193, 199 to 200, 203 to 205, 225 to 243, 246 to 247, 250 to 251, 253 to 255, 272, 274.
 Westlaw Topic No. 349.
 C.J.S. Searches and Seizures §§ 13 to 14, 16, 21, 61, 70 to 71, 172 to 176, 183 to 186, 188

§ 1-307. Arrest

A. Persons authorized to make arrest. An arrest may be made by either a Lighthorse Police Officer or other authorized law enforcement officer or by a private person.

B. Arrest without warrant. A Lighthorse Police Officer or other authorized law enforcement officer may make an arrest in obedience to an arrest warrant, or he or she may, without a warrant, arrest a person:

1. When he or she has probable cause to believe that an offense has been committed in his or her presence.

2. When he or she has probable cause for believing the person has committed an offense, although not in his or he or her presence, and there is reasonable cause for believing that such person before a warrant can be obtained may:

- a. Flee the jurisdiction or conceal himself to avoid arrest, or
- b. Destroy or conceal evidence of the commission of an offense, or
- c. Injure or annoy another person or damage property belonging to another person.

C. Citizen's arrest. A private person may arrest another, for prompt delivery to a Lighthorse Police Officer or other authorized law enforcement officer, when an offense is committed or attempted in his or her presence;

D. Request for assistance in making arrest. Any person making an arrest may orally summon as many persons as he or she deems necessary to help him.

E. Arrest at residence. If the offense charged is an offense in violation of the Federal Major Crimes Act,¹ the arrest may be made at his or her residence at any time of the day or night. Otherwise the arrest pursuant to a warrant can be made at a person's residence only between the hours of 7:00 a.m. and 9:00 p.m. unless otherwise specifically authorized by the issuing Judge. The arrest shall be by a Lighthorse Police Officer or other authorized law enforcement officer pursuant to an arrest warrant, or by a Lighthorse Police Officer or other authorized law enforcement officer for an offense committed in the home in the presence of the officer, or by a Lighthorse Police Officer or other law enforcement officer in continuous pursuit of a person who flees to his or her home to avoid arrest. Arrest at places other than at the residence may be made at any time.

F. Information to be provided to person arrested. Any person, upon making an arrest:

1. Must inform the person to be arrested of his or her intention to arrest him, of the cause or reasons for the arrest, and his or her authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to, commit an offense, or is pursued immediately after its commission or an escape if such is not reasonably possible under the circumstances;

2. Must show the warrant of arrest as soon as is practicable, if such exists and is demanded;

3. If a Lighthorse Police Officer or other authorized law enforcement officer, may use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest, provided that deadly force may be used only when deemed necessary and reasonable for the protection of the public and in accordance with the rights of the suspect under the Indian Civil Rights Act;

4. If a Lighthorse Police Officer or other authorized law enforcement officer, may break open a door or window of a building in which the person to be arrested is, or is reasonable believed to be, after demanding admittance and explaining the purpose of which admittance is desired;

5. May search the person arrested and take from him and put into evidence all weapons he or she may have about his or her person;

6. Shall as soon as is reasonably possible, deliver the person arrested to a police officer or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

[NCA 01-110, § 207, approved July 6, 2001.]

¹ 18 U.S.C.A. § 1153.

Historical and Statutory Notes

Derivation:

NCA 82-30, § 509.

Cross References

Domestic or family violence, arrests, see Title 6, § 3-305.

Library References

Arrest ☞62, 64, 66, 68(5).
Westlaw Topic No. 35.

C.J.S. Arrest §§ 9 to 13, 48 to 49, 52 to 53,
55.

§ 1-308 Arrest in hot pursuit

A. Pursuit outside Muscogee (Creek) Nation Indian Country. Any Lighthouse Police Officer or other law enforcement officer otherwise empowered to arrest a person within Muscogee (Creek) Nation Indian Country may continuously pursue such person from a point of initial contact within the Muscogee (Creek) Nation jurisdiction to any point of arrest within or without Muscogee (Creek) Nation Indian Country and such arrest shall be valid, provided, that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made.

B. Pursuit inside Muscogee (Creek) Nation Indian Country. Any law enforcement officer commissioned by the federal government, any Indian Tribe, or any state, when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction, may validly arrest such person within the Muscogee (Creek) Nation jurisdiction, provided, that any person so arrested shall be forthwith delivered to the Lighthouse Police for a show cause hearing pursuant to the requirements governing extradition set forth in Section 211 of this Title.¹

[NCA 01-110, § 208, approved July 6, 2001.]

¹ So in original; no Section 211 was added by NCA 01-110. See Title 14, § 1-309.

Library References

Arrest ☞66(3).
Westlaw Topic No. 35.
C.J.S. Arrest § 55.

§ 1-309. Extradition of defendants subject to other jurisdiction

[Reserved pursuant to NCA 01-110, § 2, § 209, approved July 6, 2001.]

§ 1-310. Protective custody

Any Indian person who through physical or mental disability or habitual intemperance is unable to care for himself may be taken into protective custody and held in jail without criminal charges for a period not to exceed twenty-four (24) hours.

[NCA 92-14, § 1-603, approved March 4, 1992.]

SUBCHAPTER 4. PROCEEDINGS BEFORE TRIAL**Section**

- 1-401. The complaint.
- 1-402. Arrest warrant or summons to appear.
- 1-403. Criminal citations.
- 1-404. Initial appearance and arraignment.
- 1-405. Plea bargaining.
- 1-406. Withdrawing guilty plea.

Section

- 1-407. Depositions.
- 1-408. Discovery.
- 1-409. Subpoena.

§ 1-401. The complaint

A. Complaint. Every criminal proceeding shall be commenced by the filing of a criminal complaint. The complaint is a sworn written statement of the essential facts charging that a named individual(s) has committed a particular offense.

B. Contents of complaint. The complaint shall contain:

1. The name and address of the court;
2. The name of the defendant; if known or some other name if not known plus whatever description of the defendant is known, including his or her Tribal membership or Tribal affiliation if known;
3. The signature of the Prosecutor or Assistant Prosecutor and his or her typewritten name, title, and office address;
4. A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated;
5. The person against whom or against whose property the offense was committed and the names of the witnesses of the Nation if known, otherwise no statement need be made;
6. The general name and Muscogee (Creek) Nation Code title and section number of the alleged offense; and
7. Verification by a Lighthouse Officer.

C. Error. No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

D. Time of filing complaint. A complaint may be filed at any time within the period prescribed by Title 14, § 1-406, provided, that if an accused has been arrested without a warrant the complaint shall be filed promptly and in no case later than the time of arraignment.

E. Joinder of offenses. Two (2) or more offenses may be charged in one complaint so long as they are set out in separate counts and:

1. They are part of a common scheme or plan, or
2. They arose out of the same transaction.

F. Joinder of defendants. Two (2) or more defendants may be joined in one complaint if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each defendant need not be charged in each count.

G. Dismissal of complaint. The Court, for the furtherance of justice, may either on its own motion or upon the application of the prosecuting attorney,

order an action be dismissed. An order for the dismissal of the action shall not be a bar to any other prosecution for the same offense.

[NCA 01-110, § 301, approved July 6, 2001.]

Cross References

Right of defendant to be informed of nature of charges, see Title 14, § 1-303.

Library References

Indians ↻604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-402. Arrest warrant or summons to appear

A. Summons and arrest warrants. If it appears from the complaint that an offense has been charged against the defendant, a Judge of the District Court may issue a summons to the defendant to bring him before the court in lieu of an arrest warrant. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Nation supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the Judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

B. Contents of summons. A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before a District Judge within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the Court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall be issued.

C. Contents of arrest warrants. The warrant of arrest shall be signed by the Judge issuing it, and shall contain the name and address of the Court; the name of the defendant, or if the correct name is unknown, any name by which the defendant is known and the defendant's description; and, a description of the offense charged with a reference to the section of the Muscogee (Creek) Nation Crimes and Punishments Code alleged to have been violated. It shall order and command the defendant be arrested and brought before a Judge of the District Court to enter a plea. When two (2) or more charges are made against the same person only one warrant shall be necessary to commit him to trial.

D. Service of arrest warrants and summons.

1. Warrants for arrest and criminal summons authorized in writing by the Judge may be served by any Lighthorse Police or other authorized law enforcement officer or any adult person at any place within Muscogee (Creek) Nation Indian Country. Warrants for arrest and criminal summons authorized in writing by the Judge may also be served outside Muscogee (Creek) Nation Indian Country by any other law enforcement officer who has a Lighthorse commission pursuant to a cross-deputization agreement or other federal, state

and Tribal law enforcement officer(s) whose assistance has been requested by the Muscogee (Creek) Lighthorse Police.

2. Warrants for arrest and summons are to be served at a person's home only between the hours of 7:00 a.m. and 9:00 p.m., unless an authorization to serve such process at night is placed on the face thereof by a District Judge.

3. The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the Court. A copy, so signed, shall be given to the person served or arrested at the time of arrest if reasonably possible, or as soon thereafter as is reasonably possible.

4. An officer need not have the warrant in his or her possession at the time of arrest, but if not he or she shall inform the defendant of the charge, that a warrant of arrest has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment.

[NCA 01-110, § 302, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 508.

Library References

Indians ⇄604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-403. Criminal citations

A. Issuance of citation. Whenever a Lighthorse Police or other authorized law enforcement officer would be empowered to make an arrest without a warrant for an offense, but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he or she may, in his or her discretion, issue the defendant a citation instead of taking said person into custody. Such citation, signed by the Lighthorse Police or other authorized law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, if endorsed by the Muscogee (Creek) Nation Prosecutor, unless the Court orders that a formal complaint be filed.

B. Contents of citation.

1. The citation shall contain the name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the Lighthorse Police Officer or other authorized law enforcement officer who issued the citation.

2. The citation shall contain an agreement by the defendant to appear before a District Judge within five (5) days or on a day certain to answer to the charge, and the signature of the defendant.

3. The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the Court.

4. The original copy of the citation shall be delivered to the Criminal Prosecutor for review and a legible copy shall be given to the defendant. [NCA 01-110, § 303, approved July 6, 2001.]

§ 1-404. Initial appearance and arraignment

A. Initial appearance: An initial appearance is a hearing at the conclusion of which the District Court shall determine whether a detention after the arrest of an accused person is reasonable. The initial appearance shall be held within forty-eight (48) hours of an accused person's arrest and confinement.

B. Arraignment defined. An arraignment is the bringing of an accused person before the District Court Judge in order to inform him of the charge against him and of his or her rights, receive his or her plea and set bail. The arraignment shall be held in open court upon the appearance of an accused in response to a criminal summons, citation or criminal complaint.

C. Procedure at arraignment. Arraignments shall be conducted in the following order:

1. The District Judge should request the Prosecutor to read the charges.
2. The Prosecutor should read the entire complaint, deliver a copy to the defendant unless he or she has previously received a copy thereof, and state the minimum and maximum authorized penalties.
3. The District Judge should determine that the accused understands the charge against him and explain to the defendant that he or she has the following rights:
 - a. The right to remain silent;
 - b. The right to be tried by a jury upon request; and
 - c. The right to consult with an attorney at his or her own expense and that if he or she desires to consult with an attorney the arraignment will be continued.
4. The District Judge shall ask the defendant if he or she wishes to obtain counsel and, if the defendant so desires, he or she will be given a reasonable time to obtain counsel. If the defendant shows his or her indigence and counsel is available for appointment, an Indigent Defense Attorney may be appointed to serve as counsel.
5. The District Judge should ask the defendant whether he or she wishes to plead "guilty", "nolo contendere", or "not guilty". If the defendant is allowed time to obtain or consult with counsel, the District Court shall enter a plea of "not guilty" on the defendant's behalf.

D. Receipt of plea at arraignment. The defendant shall plead "guilty", "nolo contendere", or "not guilty" to the offense charged, at which time the Judge shall proceed as follows:

1. If the defendant refuses to plead, the Judge shall enter a plea of "not guilty" for him.
2. If the defendant pleads "not guilty", the Judge shall set a trial date and conditions for bail prior to trial.

3. If the defendant pleads “guilty” or “nolo contendere”, the Court shall not accept the plea without first addressing the defendant personally and determining that the defendant understands the nature of the charge, the rights that he or she is waiving, and that he or she is making the plea voluntarily. The Court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea. If the guilty plea is accepted, the Judge may immediately sentence the defendant or order a sentencing hearing. If the Court refuses to accept a plea of guilty or nolo contendere, the Court shall enter a plea of not guilty.

4. The defendant, with the consent of the Court and of the prosecuting attorney, may plead guilty to any lesser offense than that charged which is included in the offense charged in the complaint or to any lesser degree of the offense charged.

[NCA 01-110, § 304, approved July 6, 2001.]

Library References

Indians ⇨605.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-405. Plea bargaining

Whenever the defendant plea guilty as a result of a plea arrangement with the Prosecutor, the full terms of such agreement shall be disclosed to the Judge. The Judge in his or her discretion, is not required to honor such agreement. In the event that the Judge decides not to honor such agreement, he or she should offer the defendant an opportunity to withdraw his or her plea and proceed to trial.

[NCA 01-110, § 305, approved July 6, 2001.]

Library References

Indians ⇨605.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-406. Withdrawing guilty plea

A motion to withdraw a plea of guilty may be made only before a sentence is imposed, deferred, or suspended, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice.

[NCA 01-110, § 306, approved July 6, 2001.]

Library References

Indians ⇨605.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-407. Depositions

A. Depositions—when taken. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the Court may upon motion of

such party and notice to the parties order that testimony of such witness be taken by deposition.

B. Oral deposition of defendant. In no event shall a deposition be taken of a party defendant without the defendant's consent and the scope and manner of such deposition including the examination and cross-examination shall be such as would be allowed in the trial itself. The Nation shall make available to the defendant or defendant's counsel for examination and use at the taking of his or her deposition any statement of a witness which is in their possession to which the defendant would be entitled to at the trial.

C. Notice of taking deposition. The party who is taking the deposition shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined.

D. Depositions—how taken

1. The deposition shall be taken by stenographic means. The Court may upon motion order that a deposition be taken by telephone, video recording or other remote electronic means.

2. A deposition upon oral examination shall not last more than six (6) hours and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a date other than a holiday unless agreed upon by the parties.

E. Objections to deposition. Objections to deposition testimony or evidence or parts thereof shall be stated at the time of the taking of the deposition including stating the grounds for the objection.

F. Use of deposition

1. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, or the witness gives testimony at the trial or hearing inconsistent with that witness' deposition.

2. Any deposition may be used by any party for the purpose of contradicting or impeaching testimony of the deponent as a witness. If only part of the deposition is offered in evidence by a party, an adverse party may require the offering of all of it which is relevant to the part offered; any party may offer other parts.

G. Payment of expenses. The party that is seeking to depose shall pay the cost of the deposition, including travel expense, attorney's fees and the cost of the transcript of the deposition. Whenever a deposition is taken by the defendant who is unable to bear the expense, the Court may direct that the expenses be paid by the Nation.

[NCA 01-110, § 307, approved July 6, 2001.]

Library References

Indians ⇄604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-408. Discovery

A. Requests for discovery. Requests for discovery shall be accompanied by a statement of interrogatories or request for admissions and a list of the documents, if any sought to be produced.

B. Disclosure of evidence by the Nation. Upon request of the defense, the Nation shall disclose the following:

1. The names and address of witnesses which the Nation intends to call at trial, together with their relevant, written or recorded statement, if any, or if none summaries of any oral statement;
2. Any written or recorded statements and the substance of any oral statements made by the accused or made by a co-defendant;
3. Any reports made by experts in connection with the particular case, including results of physical or mental examination and of scientific tests, experiments, or comparisons;
4. Any books, papers, documents, photographs, tangible objects, buildings or places which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belonged to the accused;
5. Any record or prior criminal convictions of the defendant or any co-defendant; and OSBI rap sheet/records check on any witness listed by the Nation who will testify at trial, except that the OSBI report shall not provide date of birth, social security number, home phone number or address.
6. Any evidence favorable to the defendant if such evidence is material to either guilt or punishment.

C. Disclosure of evidence by the defendant. Upon request of the Nation, the defense shall be required to disclose the following:

1. The names and addresses of witnesses which the defense intends to call at trial, together with their relevant written or recorded statement, if any, or if none, summaries of any oral statement;
2. OSBI rap sheet/records check on any witness listed by the defendant who will testify at trial, except that the OSBI report shall not provide date of birth, social security number, home phone number or address.
3. The names and addresses of any witness the defendant will call, other than himself, for testimony relating to any mental disease, mental defect, or other condition bearing upon his or her mental state at the time the offense was allegedly committed, together with the witness' statement of that fact, unless the statement is redacted by the court to preclude disclosure of privileged communication;
4. Upon the prosecuting attorney's request, the defendant shall allow him access at any reasonable times and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made upon any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which:

- a. The defendant intends to offer into evidence, or

b. Is a report or statement as to physical or mental examination or scientific test made in connection with the case prepared by and relating to the anticipated testimony of a person whom the defendant intends to call as a witness, provided the report or statement is not precluded by privileged communication.

D. Information not subject to disclosure

1. This Title does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by the attorney for the Nation or any other government agent investigating or prosecuting the case. Nor does the rule authorize the discovery or inspection of statements made by government witnesses or prospective government witnesses except as provided above in subsection B.

2. The discovery order shall not include discovery of legal work product of either attorney which is deemed to include legal research or those portions of records, correspondence, reports, or memoranda which are only the opinions, theories, or conclusions of the attorney or the attorney's legal staff.

E. Time of discovery. All issues relating to discovery, except as otherwise provided, will be completed at least ten (10) days prior to trial. The court may specify the time, place and manner of making the discovery and may prescribe such terms and conditions as are just.

F. Regulation of discovery

1. Upon motion of the Nation or defendant, the Court may at any time order that specified disclosures be restricted, or make any other protective order. If the Court enters an order restricting specified disclosures, the entire text of the material restricted shall be sealed and preserved in the records of the Court to be made available to the Appellate Court in the event of an appeal.

2. If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this rule, the Court may order such party to permit the discovery or inspection, grant continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

3. Reasonable cost of copying, duplicating, videotaping, developing or any other cost associated with this Code for items requested shall be paid by the party so requesting; however any item which was obtained from the defendant by the Nation of which copies are requested by the defendant shall be paid by the Nation.

[NCA 01-110, § 308, approved July 6, 2001.]

Library References

Indians ⇌604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-409. Subpoena

A. Issuance and return. The defendant and the prosecutor shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued in blank. Subpoenas in criminal cases shall be issued, served and returned as in civil cases.

B. Service. A subpoena may be served any place within or without Muscogee (Creek) Nation Indian Country, as provided for service in civil cases.

C. Civil sanctions for failure to comply with subpoena. Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of Court, and civil enforcement may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the person performing such service. The Court shall determine on a case by case basis whether it possesses sufficient civil jurisdiction over non-Indian persons who have failed to obey a subpoena; such determination shall focus on whether such non-Indian person has sufficient contacts with Muscogee (Creek) Nation Indian Country to justify the exercise of the Nation's civil jurisdiction over such person.

[NCA 01-110, § 309, approved July 6, 2001.]

Library References

Indians ⇄604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

SUBCHAPTER 5. TRIAL

Section

- 1-501. Trial by jury or by Court.
- 1-502. Order of trial.
- 1-503. Judge conflict or disability.
- 1-504. Evidence.
- 1-505. Expert witnesses.
- 1-506. Interpreters.
- 1-507. Motion for judgment of acquittal.
- 1-508. Instructions.
- 1-509. Verdict.

§ 1-501. Trial by jury or by Court

All trials of offenses which are punishable by incarceration shall be by jury unless the defendant and the Muscogee (Creek) Nation waive trial by jury, in which case the proceeding shall be tried by the District Court without a jury. Jurors shall be selected and jury trials shall be conducted in accordance with the provisions governing juries contained in the Judicial Procedures Code of the Muscogee (Creek) Nation.

[NCA 01-110, § 401, approved July 6, 2001.]

Cross References

Jury trials, judicial procedure, see Title 27, § 2-110 et seq.

Library References

Indians ⇄608.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-502. Order of trial

The trial of all criminal offenses shall be conducted in the following manner:

A. Calling case. The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its discretion.

B. Jury selection. If the case is to a jury, the Court should randomly select a potential jury panel in the manner set forth in the Judicial Code of the Muscogee (Creek) Nation. The jury panel shall be seated and sworn in following questioning by the parties and by the Court and following any removals of prospective jurors for cause or due to peremptory challenge, pursuant to procedures set forth in said Code.

C. Court's explanation regarding reading of complaint. After the jury is sworn, the Court shall request the prosecutor to read the criminal complaint and to make his or her opening statement. Prior to reading the complaint, the Court shall explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense charged against the defendant. The Court shall also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

D. Reading of complaint and opening statement. The prosecutor shall then read the complaint, state "to these charges/this charge the defendant has plead not guilty" and briefly present the facts which he or she intends to prove to show the offense. No argument of the facts or law shall be allowed.

E. Opening statement by defense. The defense may then make an opening statement or may reserve their opening statement until the beginning of the presentation of the defense evidence.

F. Presentation of evidence. The prosecutor shall then present his or her evidence followed by the defendant's presentation of his or her defense evidence. After the defendant has presented his or her evidence, the prosecutor may present evidence in rebuttal.

G. Closing arguments. The prosecutor shall then present his or her closing argument and, the defendant his or her closing argument. The prosecution shall be entitled to reserve a portion of the time allocated for the prosecutor's closing arguments for presentation of final closing argument following closing arguments by the defense.

H. Instructions to jury or decision by court. If trial is to a jury, the Judge should give them his or her instructions and they shall retire to decide their verdict. If trial is to the Judge, he or she shall then make his or her decision or announce the time at which he or she will present his or her decision. When making his or her decision, the Judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be embodied in a written decision.

[NCA 01-110, § 402, approved July 6, 2001.]

Library References

Indians ⇨608, 610, 615, 650.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1–503. Judge conflict or disability

A. Disability during trial. If by reason of death, sickness or other disability, the District Judge before whom a jury trial has commenced is unable to proceed with the trial, any other special District Judge may, upon certifying that he or she has familiarized himself with the record of the trial, proceed with the trial.

B. Disability after trial. If by reason of death, sickness or other disability, the District Judge before whom the defendant has been tried is unable to perform the required duties of a District Judge after the verdict or finding of guilt, any other District Judge may perform those duties unless such Judge feels he or she cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

[NCA 01–110, § 403, approved July 6, 2001.]

Library References

Judges ⇨39.
 Westlaw Topic No. 227.
 C.J.S. Judges §§ 220, 224 to 227, 237 to 238.

§ 1–504. Evidence

The admissibility of evidence and the competence and privileges of witnesses in criminal proceedings shall be governed by judicial procedures relating to evidence established in Title 27 of the Code of Laws of the Nation.

[NCA 01–110, § 404, approved July 6, 2001.]

Library References

Indians ⇨610, 612.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1–505. Expert witnesses

Either party may call expert witnesses of their own selection and each bear the cost of such.

[NCA 01–110, § 405, approved July 6, 2001.]

Library References

Indians ⇨610.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1–506. Interpreters

The Court may appoint an interpreter of its own selection and each party may provide his or her own interpreter. An interpreter through whom testimo-

ny is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court. The trial Judge or Clerk may act as interpreter only with the consent of all parties.

[NCA 01-110, § 405, approved July 6, 2001.]

§ 1-507. Motion for judgment of acquittal

A. Acquittal at close of evidence. The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his or her right to present evidence.

B. Reservation of decision on motion for acquittal. If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

[NCA 01-110, § 406, approved July 6, 2001.]

§ 1-508. Instructions

At the close of evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he or she objects and the grounds of the objection. Opportunity shall be given out of the hearing and out of the presence of the jury.

[NCA 01-110, § 407, approved July 6, 2001.]

Library References

Indians ⇐615.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-509. Verdict

A. Return of verdict. The verdict of a jury shall be unanimous. It shall be returned by the jury to the judge in open court. If the jury is unable to agree, the jury may be discharged and the defendant tried again before a new jury.

B. Separate verdicts for separate defendants or charges. If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.

C. Lesser offense. If the evidence is found to support a verdict of a lesser included offense or attempt to commit the crime charged, without having been

formally charged with the lesser included offense or attempt, the defendant may be found guilty of such charge.

D. Jury poll. Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

[NCA 01-110, § 408, approved July 6, 2001.]

Library References

Indians ☞616.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

SUBCHAPTER 6. JUDGMENT AND SENTENCE

Section

- 1-601. Sentence and judgment.
- 1-602. Presentence investigation.
- 1-603. Criminal executions.
- 1-604. Sentence.
- 1-605. Merger of sentence.
- 1-606. Victim's restitution.
- 1-607. Court costs.
- 1-608. Reimbursement of costs of imprisonment.
- 1-609. Deferred judgment procedure.
- 1-610. Suspended sentence procedure.
- 1-611. Revocation of suspended sentence; acceleration of deferred sentence; hearing; review.
- 1-612. Withdrawal of plea on a deferred imposition of sentence.
- 1-613. Entry of judgment.
- 1-614. Jail work release program.
- 1-615. New trial.
- 1-616. Arrest of judgment.
- 1-617. Correction or reduction of sentence.
- 1-618. Clerical mistakes.

§ 1-601. Sentence and judgment

A. 1. If a verdict of acquittal is rendered the defendant must immediately be discharged.

2. After a plea or verdict of guilty, or after judgment against the defendant the Court must designate a time for sentencing, which must be within a reasonable time after the verdict or judgment is rendered. The sentence must be entered in the minutes of the Court as soon as it is imposed.

3. If the defendant pleads guilty, or is convicted either by the Court or by a jury, the Court must impose the sentence imposed by the jury or a sentence in conformity with the law; or sentence the defendant to pay a fine or both.

4. The determination and imposition of sentence shall be the exclusive duty of the Court.

B. When a person has been found guilty of a criminal offense under Title 14, Chapter 2, the Court shall sentence the defendant in accordance with the following subsections of this section, depending upon whether the offense is

denominated a misdemeanor or a felony in the provisions of the offense of which the defendant was convicted, unless the provisions of such offense expressly specify a different punishment:

1. Misdemeanors: fines and imprisonment. Every person who is convicted of any criminal offense set forth in this Title 14, Chapter 2, which is denominated a misdemeanor shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two thousand five hundred dollars (\$2,500.00); or by imprisonment of not less than one (1) day and not more than one (1) year; or by both such a fine and such term of imprisonment. In addition to any punishment provided for in this subsection A, the Court may also order community service and/or counseling as authorized by subsections C and D of this section.

2. Felonies: fines and imprisonment. Every Indian person who is convicted of any criminal offense set forth in this Title 14, Chapter 2, which is denominated a felony shall be punished by a fine of not less than one thousand dollars (\$1,000.00) and not more than five thousand dollars (\$5,000.00); or by imprisonment of not less than thirty (30) days and not more than one (1) year; or by both such a fine and such term of imprisonment. In addition to any punishment provided for in this paragraph 2, the Court may also order community service and/or counseling as authorized by paragraphs 3 and 4 of this section.

3. Community service. In addition to or, at the discretion of the sentencing Judge, in lieu of any fine or any portion thereof or any term of imprisonment or any portion thereof which may be imposed under paragraph 1 and 2 of this subsection, the Court may order that the convicted defendant perform community service as determined by the Court in the sound exercise of its discretion.

4. Counseling. In addition to any fines, imprisonment, community service, restitution and/or other punishment imposed by the Court for violations of this Title 14, Chapter 2, the Court may also order the defendant to receive counseling through Muscogee Nation Behavioral Health or any other counseling service.

5. Multiple convictions; concurrent and consecutive sentencing. Each violation of any provision of Title 14, Chapter 2, shall be a separate offense and shall be punishable as such. Provided, however, when a defendant has been convicted of multiple offenses under Title 14, Chapter 2, the Judge at the time of sentencing shall have the discretion to order that any term of imprisonment for any offense be served concurrently with one or more other terms of imprisonment or consecutively to one or more other terms of imprisonment.

[NCA 92-14, § 9-701, as amended by NCA 99-04, § 107, effective June 1, 1999; NCA 01-110, § 501, approved July 6, 2001; NCA 07-179, § 5, eff. July 10, 2007.]

Historical and Statutory Notes

Derivation:

NCA 82-30, §§ 123, 135.

Cross References

Property subject to forfeiture, see Title 22, § 2-102.

Library References

Indians ⇨616, 619, 620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-602. Presentence investigation

A. Requirement. No defendant who has plead guilty or nolo contendere to a crime or has been convicted of a crime which may result in commitment for three (3) months or more in jail shall be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the Court, unless the Court deems such report unnecessary. The Court may, in its discretion, order a presentence investigation for a defendant sentenced to a lesser period than three (3) months in jail.

B. Content of investigation. Whenever a investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs and potentialities of the defendant; his criminal record and social history; and circumstance of the offense; the time the defendant has been in detention and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish the probation officers on request the defendant's criminal record and other relevant information. The investigation shall include a physical and mental examination of the defendant when it is desirable in the opinion of the court. The presentence investigation shall be filed in the case file and shall constitute a public record.

[NCA 01-110, § 502, approved July 6, 2001.]

Historical and Statutory Notes**Derivation:**

NCA 82-30, § 131.

Library References

Indians ⇨621.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-603. Criminal executions

A. When a judgment for confinement is entered, a certified copy thereof must be delivered to the Chief of the Lighthouse Administration which shall be sufficient warrant for its execution.

B. If judgment is rendered imposing a fine or requirement for the performance of a service only, and the defendant is not detained for any legal cause, he or she must be discharged as soon as judgment is rendered.

C. A judgment that the defendant pay a fine may also direct that defendant be sentenced to incarceration or community service until the fine is paid, in the proportion of one (1) day labor at the current minimum wage for every one dollar (\$1.00) of the fine.

[NCA 01-110, § 503, approved July 6, 2001.]

Historical and Statutory Notes**Derivation:**

NCA 82-30, §§ 126, 134.

Library References

Indians ☞619, 623, 624, 627.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-604. Sentence

A. The Court shall make brief statement of the basic reasons for the sentence the court imposes. If the sentence is a commitment, the District Court Clerk shall forward a copy to the jail where the defendant is or will be incarcerated.

B. The sentence may:

1. Release the defendant on probation;
2. Defer the imposition of sentence for a period not to exceed twelve (12) months;
3. Suspend the execution of the sentence up to the maximum sentence allowed for a particular offense. However, if any restrictions or conditions are violated, any elapsed time shall not be a credit against the sentence, unless the Court shall otherwise order;
4. Impose a fine as provided by law for the offense;
5. Commit the defendant to a jail; or
6. Impose any combination of the above, and the Court may also impose any restrictions or conditions on the above, sentence which it deems necessary.

C. The District Court Judge may upon proper application by the Attorney General, revoke any suspended sentence or accelerate any deferred sentence prior to its expiration.

D. Prior to the revocation or the acceleration of an order suspending or deferring the imposition of sentence, the defendant shall be given a hearing.

[NCA 01-110, § 504, approved July 6, 2001.]

Historical and Statutory Notes**Derivation:**

NCA 82-30, §§ 132, 134.

Cross References

Domestic or family violence, sentence, see Title 6, § 3-3011 et seq.

Library References

Indians ☞620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-605. Merger of sentence

Unless the Judge otherwise orders:

Title 14, § 1-605

CRIMES & PUNISHMENTS

A. When a person serving a term of commitment imposed by a Court in the Tribe is committed for another offense, the shorter term or consecutively shorter remaining term shall be added in the other term; and

B. When a person under suspended or on probation or parole for an offense committed against the Tribe is sentenced for another offense, the period still to be served on suspended sentence, probation or parole shall be added in any new sentence of commitment or probation.

[NCA 82-30, § 136, approved Sept. 13, 1982.]

Library References

Indians ☞620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-606. Victim's restitution

In addition to any fines, terms of imprisonment, community service and/or other punishment imposed by the Court for violations of Title 14, Chapter 2, the Court may also order that the defendant pay monetary restitution to any persons who were victims of offenses committed by the convicted defendant. Such restitution shall be determined by the Court in the use of its sound discretion after a hearing, conducted prior to sentencing, at which the victims may present evidence of loss, damage or expense. Any restitution ordered shall be in an amount sufficient to compensate the victim for the theft, damage or other loss of the victim's property or the cost of medical or other professional services incurred by the victim or victims as a consequence of the convicted defendant's criminal actions. All victims' restitution monies shall be paid to the Court Clerk, who shall then pay the same over to the victim or victims in accordance with the Court's orders. Any award of restitution under this section shall constitute compensation to the victim for the actual damages, losses or other costs suffered or incurred by said victim as a direct result of the defendant's criminal acts, as opposed to a penalty or fine imposed upon the defendant as punishment for committing the crime.

[NCA 92-14, § 9-702, as amended by NCA 99-04, § 107, effective June 1, 1999.]

Library References

Indians ☞626.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-607. Court costs

In addition to any punishment imposed under subsection B of Title 14, § 1-601 or any restitution or costs awarded under Title 14, § 1-606 or Title 14, § 1-608, the Court in its discretion may order the defendant to pay Court costs in the amount of sixty dollars (\$60.00) for each offense of which the defendant was convicted. The Court may also charge a service of process fee of thirty dollars (\$30.00) as reimbursement to the Lighthouse Police for every warrant served.

[NCA 92-14, § 9-703, as amended by NCA 99-04, § 107, effective June 1, 1999.]

Library References

Indians ☞662.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-608. Reimbursement of costs of imprisonment

A. In addition to any fine ordered under subsection B of Title 14, § 1-601 and/or restitution ordered under Title 14, § 1-606, the Court in its discretion may order any person convicted of a crime and sentenced to a term of imprisonment pursuant to the provisions of this chapter to reimburse the Lighthorse Police pursuant to the provisions of this chapter to reimburse the Lighthorse for food and maintenance for each day of imprisonment of said convicted person. The costs assessed to the defendant may not exceed the actual costs paid by the Nation for the costs billed for imprisonment of the defendant. All funds paid pursuant to this section shall be paid to the Court Clerk, who shall in turn reimburse the Lighthorse Police. Any award in this section shall constitute reimbursement to the Lighthorse Police Department for the actual costs incurred by the Lighthorse Police for imprisonment of the defendant, as opposed to a penalty or fine imposed upon the defendant as punishment for committing the crime.

B. All incarceration costs, including medical expenses associated with incarceration, shall be assessed in the prisoner's District Court case. All incarceration costs that are collected by the District Court Clerk, shall be considered program income payable to the Lighthorse Police. The Lighthorse Police shall include in their budget all revenues attributable to incarceration costs.

[NCA 92-14, § 9-704, as amended by NCA 99-04, § 107, effective June 1, 1999; NCA 01-39, § 6, as amended by NCA 02-152, § 2, approved Oct. 30, 2002; NCA 07-179, § 6, eff. July 10, 2007.]

§ 1-609. Deferred judgment procedure

A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, the Court may, prior to and without entering a judgment of guilt and with the consent of the defendant, defer the finding of guilt and place the defendant on probation under the supervision of the Court of the Muscogee (Creek) Nation upon the conditions of probation prescribed by the Court in the exercise of its sound discretion. As part of the terms of probation, the Court may also consider ordering the defendant to pay a sum of money into the court fund not to exceed the amount of any fine authorized by this title for the crime charged, to pay restitution, perform community service and/or attend counseling.

B. The period of probation under this procedure shall not exceed nine (9) months for any single offense. Where multiple offenses are charged and the judgment on one or more of said offenses is deferred, the Judge at the time of sentencing shall have the discretion to order the probationary period for each offense to be served concurrently with one or more other terms of probation or consecutively to one or more other terms of probation. Upon completion of all periods of probation the defendant shall be discharged by the Court without an entry of judgment of guilt, and the verdict or plea of guilty or plea of nolo

contendere shall be expunged by the Court Clerk from the record and said charge shall be dismissed with prejudice to any further action.

C. Upon proof of any violation of the conditions of probation at a hearing conducted in accordance with Title 14, § 1-611, the Court may enter a judgment of guilt and proceed as provided in said section. The deferred judgment procedure described in this section shall only be available to defendants not having been previously convicted of a crime denominated a felony under the laws of the Muscogee (Creek) Nation or under the laws of the United States of America or any state thereof.

[NCA 92-14, § 9-705, as amended by NCA 99-04, § 107, effective June 1, 1999.]

Library References

Indians ⚡625.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-610. Suspended sentence procedure

A. Upon a verdict or plea of guilty or plea of nolo contendere and a judgment of guilt the Court may suspend in whole or in part the imposition of any term or terms of imprisonment and place the defendant on probation under the supervision of the Court of the Muscogee (Creek) Nation upon the conditions of probation prescribed by the Court in the exercise of its sound discretion.

B. Upon proof of any violation of the conditions of probation at a hearing conducted in accordance with Title 14, § 1-611, the Court shall revoke the suspended sentence. The Court in its discretion may then order that the defendant serve the full sentence or that he serve a portion of said sentence with the remainder to be suspended, subject to the terms and conditions of probation.

[NCA 92-14, § 9-706, as amended by NCA 99-04, § 107, effective June 1, 1999.]

§ 1-611. Revocation of suspended sentence; acceleration of deferred sentence; hearing; review

A. Any sentence the imposition of which has been suspended or deferred by the Court may be revoked or accelerated for any one of the following reasons:

1. The defendant has at any time during the period of his probation committed any act or engaged in any conduct in violation of any of the express terms and conditions of the defendant's probation as set forth in the judgment and sentence or the Court's order deferring judgment and sentence; or

2. The defendant has at any time during the period of his probation failed to do or perform any act or service, including without limitation the payment of any fine or restitution, required to be done or performed under the express terms and conditions of the defendant's probation as set forth in the judgment and sentence or the Court's order deferring judgment and sentence; or

3. The defendant has at any time during the period of his probation committed any act or engaged in any conduct in violation of any of the

provisions of this chapter or in violation of any other Tribal, state or federal criminal law.

B. Proceedings to revoke any suspended sentence or accelerate any deferred sentence shall be initiated by the Attorney General by way of written application requesting same, which application shall be filed in the case wherein the sentence was ordered prior to the expiration of the suspended or deferred sentence. The application shall state the reasons why the suspended sentence should be revoked or why the deferred sentence should be accelerated and shall request that a warrant issue for the arrest of the defendant. Upon being brought before the Court on such warrant, the defendant shall either admit or deny the allegations in the Attorney General's application or he may stand silent, in which case the allegations shall be deemed denied. If the defendant denies or is deemed to have denied the allegations of the Attorney General's application to revoke or accelerate, the Court shall order that the application be set for hearing within twenty (20) days. The Attorney General and the defendant shall have the right to present evidence and testimony at the hearing but the burden of proof shall be on the Attorney General to prove the allegations justifying the revocation or acceleration of the sentence by a preponderance of the evidence. If the defendant admits to the allegations of the application or if, after the hearing on the application, it appears to the satisfaction of the Court that grounds for a revocation or acceleration exist, the Court shall revoke the suspended sentence or accelerate the deferred sentence.

C. Where one of the grounds for the application to revoke the suspended sentence or to accelerate the deferred sentence is the defendant's failure to make timely payment of fines and costs as ordered by the Court, or if at any time during the defendant's period of probation the defendant petitions the Court for a modification of the time for payment of fines or costs, the Court may hear evidence on the cause of such failure to make timely payment, and if it appears to the satisfaction of the Court from such evidence that the terms of the order for payment of fines and costs create a manifest hardship on the defendant or his or her immediate family, the Court may modify the terms or method of payment of same. The burden of proving a change of condition justifying a modification in terms or method of payment shall be on the defendant and the standard shall be by clear and convincing evidence.

D. The defendant whose suspended or deferred sentence is being considered for revocation or acceleration at said hearing shall have the right to be represented by counsel, to present evidence in his own behalf and to be confronted by the witnesses against him. Any order of the Court revoking such suspended sentence, in whole or in part, or accelerating a deferred sentence in whole or part, shall be subject to review on appeal, as in other appeals of criminal cases.

[NCA 92-14, § 9-707, as amended by NCA 99-04, § 107, effective June 1, 1999.]

§ 1-612. Withdrawal of plea on a deferred imposition of sentence

Whenever the Court has deferred the imposition of sentence, and after expiration of the time period during which imposition of sentence has been deferred, the defendant may file a motion for the Court to allow the defendant

to withdraw his or her plea of guilty and order that the charge or charges against him be dismissed and the record expunged.

[NCA 01-110, § 505, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 133.

Library References

Indians ⇨605, 620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-613. Entry of judgment

When a judgment upon a conviction is rendered the Clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of prior convictions (if any) and must, within five (5) days, annex together and file the following papers:

1. The complaint or information and a copy of the minutes of the arraignment, pleas and motions.
2. A copy of the minutes of the trial.
3. The instructions given or refused and the endorsements thereon.
4. A copy of the judgment.

[NCA 01-110, § 506, approved July 6, 2001.]

Library References

Indians ⇨619.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-614. Jail work release program

A. A Court, after having sentenced a person to confinement in a jail may, in its discretion, upon the request of the Attorney General or Chief of Lighthouse Police and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement, with parole during the hours or periods the convicted person is actually employed.

B. Upon the issuance of such an order under this act, the Attorney General or Chief of Lighthouse Police shall arrange for the convicted person to continue his or her regular employment without interruption insofar as is reasonably possible: However, that said prisoner shall be confined in the jail during the hours when he or she is not employed and, to the extent directed by the Court pay the support of his or her dependents, if any, and balance shall be retained until his or her discharge.

C. The Court may, in its discretion, upon request, reduce the sentence of the prisoner up to one-fourth (1/4) of the full term, if in the opinion of the Court, the prisoner's conduct, diligence and general attitude merit such diminution.

D. In cases where the convicted person violates the conditions of said sentence, he or she shall be returned to Court; the Court may then require that

the balance of his or her sentence be spent in full confinement and further; the Court may cancel any diminution of sentence granted under this act.

[NCA 01-110, § 507, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 138.

Library References

Indians ⇨624, 627.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-615. New trial

The Court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If trial was by the Court without a jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one (1) month after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ten (10) days after verdict or finding of guilty or within such further time as the Court may fix during the seven-day period.

[NCA 01-110, § 508, approved July 6, 2001.]

Library References

Indians ⇨618.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-616. Arrest of judgment

The Court, on motion of a defendant, shall dismiss the action if the complaint does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within ten (10) days after verdict or finding of guilty or plea of guilty, or within such further time as the Court may fix during the seven-day period.

[NCA 01-110, § 509, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 129.

§ 1-617. Correction or reduction of sentence

The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within thirty (30) days after the sentence is imposed, or within thirty (30) days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal. The Court may also reduce a sentence upon revocation of probation.

[NCA 01-110, § 510, approved July 6, 2001.]

Library References

Indians ↻620, 637.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1-618. Clerical mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders.

[NCA 01-110, § 511, approved July 6, 2001.]

SUBCHAPTER 7. APPEAL

Section

- 1-701. Right of appeal; how taken.
 1-702. Stay of judgment; relief pending review.
 1-703. Executive order for relief from judgment.

Cross References

Appellate procedure, see Title 27, § 3-101 et seq.
 Tribal Court proceedings, appeal, see Title 27, § 2-120.

§ 1-701. Right of appeal; how taken

A. Defendant's right to appeal. The defendant has the right to appeal from the following:

1. A final judgment of conviction; and the sentence imposed thereon.
2. From an order made, after judgment and sentences, affecting his or her substantial rights.

B. Nation's right to appeal. The Nation has the right to appeal from the following:

1. A judgment of dismissal, upon a motion to dismiss based on any procedural irregularity occurring before trial, or an order excluding evidence in favor of the defendant prior to trial;
2. An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;
3. An order of the Court directing the jury to find for the defendant;
4. An order made after judgment and sentence affecting the substantial rights of the Nation.

C. Notice of appeal. A notice of intent to appeal must be filed within ten (10) days of the entry of the final judgment and sentence or other appealable order and such notice must be served on all parties except the party filing the appeal.

D. Appellate Procedure Code. Such appeals shall be had in accordance with the Muscogee (Creek) Nation Supreme Court Appellate Procedure Rules.¹

[NCA 01-110, § 601, approved July 6, 2001.]

¹ Title 27, Appendix 2, of the Muscogee (Creek) Nation Code.

Library References

Indians ⇨630.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–702. Stay of judgment; relief pending review

A. Stay of sentence of imprisonment. A sentence of imprisonment may be stayed if an appeal is taken and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his or her sentence in the matter under appeal.

B. Stay of sentence to pay fine. A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant, but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirement for paying such.

C. Stay of probation order. An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

[NCA 01–110, § 602, approved July 6, 2001.]

Library References

Indians ⇨628.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–703. Executive order for relief from judgment

A. Authority to pardon. The Principal Chief of the Nation shall recommend to the National Council to pardon, or commute any judgment and sentence imposed for any criminal offense upon a determination that a pardon or commutation of sentence promotes the ends of justice.

B. Approval of pardon. Such pardon or commutation will be entered by filing a copy of the proposed action with the Court Clerk for a period of sixty (60) days after a copy of the proposed executive action has been submitted for approval to each Justice of the Supreme Court and to each member of the National Council. If, within sixty (60) days after the filing thereof, with proof of service, any such Justice or a majority of the National Council voting at a National Council meeting shall disapprove the proposed pardon or commutation with written reasons, in a writing delivered to the Principal Chief and filed with the Court Clerk, such proposed pardon or commutation shall not be approved. Otherwise, upon expiration of the sixty (60) day period, the pardon or commutation may be issued by the Principal Chief of the Nation.

[NCA 01–110, § 603, approved July 6, 2001.]

Library References

Indians ⇨637.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

SUBCHAPTER 8. BAIL AND BONDS

Section

- 1-801. Release prior to arraignment.
- 1-802. Release prior to trial.
- 1-803. Appeal from conditions of release.
- 1-804. Release of flight risk or person who is danger to others.
- 1-805. Penalties for failure to appear.
- 1-806. Authority to act as bail bondsman.
- 1-807. Persons or classes prohibited as bondsmen.

§ 1-801. Release prior to arraignment

A. Posting of jail bond with police. Defendants may be released following arrest after posting jail bond with the police. The purpose of the bond is to guarantee the appearance of any person accused of public offense at his or her hearing and trial with a minimum of inconvenience to him, but with maximum assurance thereof to the public. The bond shall include notice to the defendant that he or she must appear for arraignment on the next Court day, and no other notice of the Court date shall be given to the defendant or bondsmen. The privilege of making bond prior to formal charging and arraignment incorporates the duty to voluntarily and promptly appear for arraignment, where any substitution offered by a bondsman for the “prior approved” jail bond form may be considered by the Judge. The jail bond shall not be used to frustrate the orderly disposition of the case.

B. Schedule. A schedule of appropriate appearance bond shall be provided by the District Court on a jail bond schedule, under which the police are authorized to receive non-cash bonds and release the accused. Licensed bondsmen can post surety bonds with the Lighthorse or Court. Friends or family members may post cash bound with the Court, however, only money orders or cashiers checks, endorsed to the Muscogee (Creek) Nation District Court Clerk, may be posted, with the Lighthorse Police.

[NCA 01-110, § 701, approved July 6, 2001.]

Library References

Indians ↻604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-802. Release prior to trial

A. General recognizance or appearance bond. Any person charged with an offense shall, at his or her appearance before a Judge, be ordered released pending trial on his or her personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the Judge, subject to the condition that such person shall not attempt to influence, injure, tamper with or retaliate against an officer, juror, witness, informant, or victim or violate any other law, unless the judicial officer determines in the exercise of his or her discretion, that such a release will not reasonably assure the appearance of the person as required.

B. Conditions. When such determination is made, the Judge shall, either in lieu of or in addition to release on personal recognizance or execution of an

unsecured appearance bond, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:

1. Place the person in the custody of a designated person or organization agreeing to supervise him;
2. Place restrictions on the travel, association, or place of abode of the person during the period of release;
3. Require the execution of an appearance bond in an amount up to five thousand dollars (\$5,000) for each count, and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed ten percent (10%) of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;
4. Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
5. Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody at a specified hour.

C. Considerations. In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his or her residence in the community, his or her record of convictions, and his or her record of appearance at Court proceedings or of flight to avoid prosecution or failure to appear at Court proceedings.

D. Order of release. A Judge authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his or her release and shall advise him that a warrant for his or her arrest will be issued immediately upon any such violation.

E. Review of conditions of release. A person for whom conditions of release are imposed and who after seventy-two (72) hours from the time of the release hearing continues to be detained as a result of his or her inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he or she return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer of the Court may review such conditions.

F. Amendment of release order. A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his or her order to impose additional or different conditions of release; provided that, if the imposition of such additional or different conditions results in the detention of the person as a result of his or her inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection E shall apply.

G. Information in release order. Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

H. Security. Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the Court by rule from authorizing and establishing a policeman's bail schedule for certain offenses or classes of offenses through which a person arrested may post bail with the police for transmittal to the Court Clerk and obtain his or her release prior to his or her appearance before a judicial officer.

[NCA 01-110, § 702, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 512.

Cross References

Domestic or family violence, conditions for pretrial release, see Title 6, § 3-308.

Library References

Bail ↻41.

Indians ↻604.

Westlaw Topic Nos. 49, 209.

C.J.S. Bail; Release and Detention Pending
§§ 7 to 8, 11 to 60.

C.J.S. Indians §§ 151 to 179.

§ 1-803. Appeal from conditions of release

A. Motion to amend release order. A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his or her application pursuant to subsection E or F of Title 14, § 1-802 by a District Judge, may move the Court to amend the order and have such motion determined by a Judge of the Court. Said motion will be determined promptly.

B. Appeal. In any case in which a person is detained after (1) a District Judge denies a motion, under subsection A above, to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a District Judge, an appeal may be taken to the Supreme Court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is not so supported, the Supreme Court may remand the case for further hearing, or may, with or without additional evidence, order the person released pursuant to Title 14, § 1-802 upon such conditions as the Supreme Court determines to be proper. This appeal shall be determined promptly.

[NCA 01-110, § 703, approved July 6, 2001.]

§ 1–804. Release of flight risk or person who is danger to others

A person who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be treated in accordance with Title 14, § 1–802 unless the Court has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of Title 14, § 1–803 shall not apply to persons described in this section.

[NCA 01–110, § 704, approved July 6, 2001.]

Library References

Bail ☞44.	C.J.S. Bail; Release and Detention Pending
Indians ☞604.	§§ 7 to 8, 39 to 45, 47 to 54, 56 to 60.
Westlaw Topic Nos. 49, 209.	C.J.S. Indians §§ 151 to 179.

§ 1–805. Penalties for failure to appear

Whoever, having been released pursuant to this subchapter willfully fails to appear before the Court as required, shall incur a forfeiture of any security which was given or pledged for his or her release, and in addition, shall be subject to the following penalties:

A. Failure to appear after release following conviction. If the defendant fails to appear after release following conviction of an offense, he or she shall be fined not more than the maximum provided for the offense charged or imprisoned for not more than six (6) months or both; or

B. Failure of material witness to appear after release. If the defendant fails to appear after he or she was released for appearance as a material witness, he or she shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned for not more than three (3) months or both.

[NCA 01–110, § 704–A, approved July 6, 2001.]

Library References

Bail ☞75.3.	C.J.S. Bail; Release and Detention Pending
Indians ☞604.	§§ 253 to 257.
Westlaw Topic Nos. 49, 209.	C.J.S. Indians §§ 151 to 179.

§ 1–806. Authority to act as bail bondsman

Any person authorized to act as bail bondsmen or runners in the federal or state courts shall be qualified to act as bondsmen and runners in the District Court, and shall be liable to the same obligations as in their licensing jurisdiction and comply with all orders of the Supreme Court and District Court. Bondsmen are on constructive notice of all hearings or trial settings. Those in the bonding business are expected to give their clients the kind of service their fee justifies. Bondsmen shall be mailed a copy of all trial dockets, as are advocates, and are expected to have their clients present for hearing as scheduled. If a defendant proves uncooperative, bondsmen are encouraged to advise his or her attorney or advocate, and the prosecutor, and to use all lawful

procedures to surrender him and terminate further responsibility on his or her bail.

[NCA 01–110, § 705, approved July 6, 2001.]

Library References

Bail ⇌60.	C.J.S. Bail; Release and Detention Pending
Westlaw Topic No. 49.	§§ 2 to 5, 160.

§ 1–807. Persons or classes prohibited as bondsmen

The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, District Judges, Special Judges, Court Clerks and any person having the power to arrest or having anything to do with the control of Tribal prisoners.

[NCA 01–110, § 706, approved July 6, 2001.]

Library References

Bail ⇌60.	C.J.S. Bail; Release and Detention Pending
Westlaw Topic No. 49.	§§ 2 to 5, 160.

SUBCHAPTER 9. MISCELLANEOUS

Section

1–901. Procedures for unclaimed property in possession of Lighthouse Police.

§ 1–901. Procedures for unclaimed property in possession of Lighthouse Police

A. Disposition. The Lighthouse Police is authorized to dispose of by public sale, destruction, donation, or retain for departmental use, personal property which has come into its possession, or deposit in a special fund, as hereafter provided, all money or legal tender of the United States which has come into its possession, whether said property or money be stolen, embezzled, lost, abandoned or the owner of said property or money otherwise being unknown or not having claimed the same, and which the Lighthouse Police has held for at least six (6) months, and such property or money, or any part thereof, being no longer needed to be held as evidence or otherwise used in connection with any litigation.

B. Destruction of property. Where personal property held under the circumstances provided in subsection A of this section is determined by Lighthouse Police to be unsuitable for disposition by public sale due to its condition or assessed as having limited or no resale value, it may be destroyed or discarded. Where disposition by destruction, is made of personal property, a report describing the property by category and quantity, and indicating what disposition was made for each item or lot, shall be submitted to the District Court within ten (10) days following the disposition.

C. Application for public sale. Where disposition by public sale is appropriate, the Lighthouse Police shall file an application in the Muscogee (Creek) Nation District Court requesting the authority of said Court to dispose of such

personal property, and shall attach to the application a list describing such property, including all identifying numbers and marks, if any, the date said property came into its possession and the name and address of the owner, if known. The Court shall set said application for hearing not less than ten (10) days nor more than twenty (20) days after filing.

D. Notice. Notice shall be given by the Lighthouse Police of said hearing to each and every owner known and as set forth in said application by certified mail directed to their last-known address at least ten (10) days prior to the date of said hearing. Said notice shall contain a brief description of the property of said owner and the place and date of the hearing. In addition notice of said hearing shall be posted in three public places in the Muscogee (Creek) Nation territorial jurisdiction, one being the courthouse.

E. Authorization for disposing of property. At the hearing, if no owner appears and establishes ownership to said property, the Court shall enter an order authorizing the Lighthouse Police to dispose of the property pursuant to Title 32, § 3-101 et seq.

F. Disposition of money. When the Lighthouse Police has in its possession money or legal tender under the circumstances provided in subsection A of this section, prior to appropriating the same for deposit into a special fund, it shall file an application in the District Court requesting the Court to enter an order authorizing it to so appropriate said money for deposit in said special fund. Said application shall describe the money or legal tender, together with serial numbers, if any, the date the same came into possession of the Lighthouse Police, and the name and address of the owner, if known. Upon filing, said application, which may be joined with an application as described in subsection C of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof, and notice of said hearing shall be given as provided in subsection D of this section. Such notice shall state that, upon no one appearing to prove ownership to said money or legal tender, the same will be ordered by the Court to be deposited in the special fund by the Lighthouse Police. Said notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to said money or legal tender, the Court shall order the same to be deposited by the Lighthouse Police Agency in the special fund, as provided in subsection H of this section.

G. Retention of property. Where the Lighthouse Police has in its possession under the circumstances provided in subsection A of this section, personal property deemed to have potential utility to the Lighthouse Police or another Muscogee (Creek) Nation department, prior to appropriating the personal property for use, the Lighthouse Police shall file an application in the District Court requesting the Court to enter an order authorizing it to so appropriate or transfer the property for use. The application shall describe the property, together with serial numbers, if any, the date the property came into the possession of the Lighthouse Police and the name and address of the owner, if known. Upon filing, the application, which may be joined with an application as described in subsection C of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof. Notice of the hearing shall be given as provided in subsection D of this section.

The notice shall state that, upon no one appearing to prove ownership to the personal property, the property will be ordered by the Court to be delivered for use by the Lighthorse Police or transferred to another Muscogee (Creek) Nation department for its use. The notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to the personal property, the Court shall order the property to be available for use by the Lighthorse Police agency or delivered to another Muscogee (Creek) Nation department.

H. Special fund; use for certain authorized purpose. The money received from the sale of personal property as above provided, after payment of the Court costs and other expenses, if any, together with all money in possession of the Lighthorse Police, which has been ordered by the Court to be deposited in the special fund, shall be deposited in such fund to be expended upon the approval of the Lighthorse Commission for the purchase of equipment, materials or supplies that may be used in crime prevention, education, training or programming. Said fund or any portion of it may be expended in paying the expenses of Lighthorse Police Officers to attend law enforcement or public safety training courses.

I. Firearms. All firearms shall either be appropriated for use by the Lighthorse Police in accordance with subsection G of this section or shall be destroyed. Prior to destruction of firearms the Lighthorse Police shall file an application in the District Court requesting the Court to enter an order authorizing it to destroy the firearms. The application shall describe the property, together with serial numbers, if any, the date the property came into the possession of the Lighthorse Police and the name and address of the owner, if known. Upon filing, the application, which may be joined with an application as described in subsection C of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof. Notice of the hearing shall be given as provided in subsection D of this section. The notice shall state that, upon no one appearing to prove ownership to the personal property, the property will be ordered by the Court to be destroyed. The notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to the personal property, the Court shall order the property destroyed. No firearm shall be returned to an owner who is a convicted felon, who is mentally ill or who is subject to a protective order prohibiting possession of a firearm. Provided, that Lighthorse Police may subsequently release the firearm to another individual with proof of assignment or sale of the firearm by the original owner, so long as that individual is not a convicted felon, mentally ill or subject to a protective order prohibiting possession of a firearm.

[NCA 02-135, § 2, approved Aug. 28, 2002.]

Library References

Searches and Seizures ¶84.
Westlaw Topic No. 349.
C.J.S. Searches and Seizures §§ 276 to 289.

CHAPTER 2. CRIMINAL OFFENSES

Subchapter

1. General; Purpose; Punishments
2. Crimes Arising From Other Crimes or Potential Crimes
3. Crimes Against Person
4. Arson, Burglary and Related Crimes
5. Controlled Dangerous Substances
6. Crimes Against Public Safety
7. Reserved
8. Crimes Related to Licensing, Tribal Officers and Public Records
9. Crimes Involving Family and Children
10. Defenses

SUBCHAPTER 1. GENERAL; PURPOSE; PUNISHMENTS

Section

- 2-101. Title
- 2-102. Purpose.
- 2-103. Definition of crime.
- 2-104. Crimes; punishment.
- 2-105. Contempt, direct and indirect; definition.
- 2-106. Forfeiture of property.
- 2-107. Forfeiture of public office.
- 2-108. Criminal charges controlling.
- 2-109. Conduct constituting more than one crime.
- 2-110. Burden of proof.
- 2-111. Capacity to commit crime.
- 2-112. Civil actions.
- 2-113. Definitions; general.

§ 2-101. Title

This act shall be known and may be cited as the “Criminal Offenses Code of the Muscogee (Creek) Nation”.

[NCA 10-053, approved May 27, 2010.]

§ 2-102. Purpose

The purpose of this Code is to define the conduct constituting crimes and prescribe the punishment for each. The manner of prosecuting and convicting persons accused of crime is prescribed in the Code of Criminal Procedure, MCNCA Title 14.

[NCA 10-053, approved May 27, 2010.]

§ 2-103. Definition of crime

A crime is a social harm which is defined and made punishable by legislative enactment and codified in this Code. This Code does not affect any power conferred by the Nation upon the Courts to find a person liable for contempt or to employ and sanction authorized by the law for the enforcement of an order of a civil judgment or decree.

[NCA 10-053, approved May 27, 2010.]

§ 2–104. Crimes; punishment

A. The sentencing policy of the Court in criminal cases is to strive toward restitution and reconciliation of the offender, the victim and Muscogee (Creek) Nation. While one goal of sentencing is to impress upon the offender the wrong he has committed, the paramount goal is to restore the victim and the Nation to the position that existed prior to the commitment of the offense, and to restore the offender to harmony with the victim and the community by requiring him to right his wrongdoing. These goals shall be considered in sentencing for criminal offenses.

B. All crimes subject to the jurisdiction of the Court are classified as either misdemeanors or felonies and are punishable by a maximum jail term not to exceed one year and/or a fine not to exceed five thousand dollars (\$5,000.00). All persons punished by incarceration after conviction of a crime shall be placed in the custody of an approved jail facility contracted by the Nation to accept custody. All terms of incarceration and the amount of all fines shall be fixed by the Court.

C. Unless the Court determines that the ends of justice will not be served thereby, or that a civil action will more adequately adjudicate damages in the specific case at hand, then in addition to any sentence otherwise provided by law, the Court shall order the offender to pay restitution to the victim, including when the victim is the Muscogee (Creek) Nation.

[NCA 10–053, approved May 27, 2010.]

§ 2–105. Contempt, direct and indirect; definition

Contempt of Court shall be divided into direct and indirect contempt. Direct contempt shall consist of disorderly or insolent behavior committed during the session of the Court and in its immediate view and presence; the unlawful and willful refusal of any person to be sworn as a witness; the refusal to answer any legal or proper question; or any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings. Indirect contempt of Court shall consist of willful disobedience of any process or order lawfully issued or made by Court or resistance willfully offered by any person to the execution of a lawful order or process of a Court. Contempt may be summarily punished by the Court whether direct or indirect.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: Title 14, § 2–610, added by NCA 92–14, § 6–710, amended by NCA 99–04, § 107; NCA 07–179, § 11.
07–179, § 11; NCA 92–14, § 6–711, amended by NCA 99–04, § 107; NCA 07–179, § 11.

Library References

Indians ☞639.	C.J.S. Indians §§ 151 to 179.
Obstructing Justice ☞7.	C.J.S. Obstructing Justice or Governmental Administration §§ 4, 10, 12 to 29, 31 to 32, 38.
Protection of Endangered Persons ☞91.	
Westlaw Topic Nos. 209; 282; 315P.	
C.J.S. Breach of the Peace §§ 18 to 19, 23, 28 to 38.	

§ 2–106. Forfeiture of property

The conviction of a person for any crime shall not cause the forfeiture of property, except when forfeiture is expressly imposed by law of the Muscogee (Creek) Nation.

[NCA 10–053, approved May 27, 2010.]

§ 2–107. Forfeiture of public office

The omission to specify in this Code any grounds for forfeiture of a public office, other trust or special authority conferred by law does not affect such forfeiture. In addition, the omission to specify in this Code any grounds for impeachment, removal or suspension of any public officer or other person holding any trust, appointment or other special authority conferred by law does not affect such impeachment, removal or suspension.

[NCA 10–053, approved May 27, 2010.]

§ 2–108. Criminal charges controlling

If two crimes in this Code cover all the facts in a particular occurrence, the crime that is the most specific shall control and serve as the basis for the proper criminal charge.

[NCA 10–053, approved May 27, 2010.]

§ 2–109. Conduct constituting more than one crime

The method of prosecution to be used when conduct constitutes more than one crime is as follows:

A. When the same conduct of a defendant may establish the commission of more than one crime, the defendant may be prosecuted for each crime. The defendant may not, however; be convicted of more than one crime if:

1. All of the elements of one crime are included in the other;
2. Inconsistent finding of fact is required to establish the commission of the crimes;
3. The crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other prohibits a specific instance of such conduct; or
4. The crime is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate crimes.

B. Except as provided in subsection C of this section, a defendant shall not be subject to separate trials for multiple crimes based on the same conduct or arising from the same criminal episode, if such crimes are known to the Prosecutor at the time of the commencement of the first trial and are within the jurisdiction of the Court.

C. When a defendant is charged with two (2) or more crimes based on the same conduct or arising from the same episode, the Court on application of the

Title 14, § 2-109

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Nation or defendant, may order any such charge to be tried separately, if it is satisfied that justice so requires.

D. A defendant may be convicted of a crime included in any crime charged in the complaint and information. A crime is so included when:

1. It is established by proof of the same or less elements required to establish the commission of the crime charged; or
2. It consists of an attempt to commit the crime charges or to commit a crime otherwise included therein.

E. The Court shall not be obligated to charge the jury with respect to any included crime, unless there is a rational basis for a verdict acquitting the defendant of the crime charged and convicting the defendant of the included crime.

[NCA 10-053, approved May 27, 2010.]

§ 2-110. Burden of proof

A. No person may be convicted of a crime unless each element of such crime is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is presumed.

B. Subsection A of this section does not require the disproof of an affirmative defense unless there is sufficient evidence supporting such defense. If some evidence of an affirmative defense has been introduced, the Prosecutor must disprove that affirmative defense beyond a reasonable doubt.

C. A ground of defense is affirmative, within the meaning of subsection B of this section, when:

1. It arises under a section of this Code that so provides; or
2. It involves a matter of excuse or justification peculiarly within the knowledge of the defendant on which the defendant can fairly be required to present evidence.

[NCA 10-053, approved May 27, 2010.]

§ 2-111. Capacity to commit crime

All persons are capable of committing crimes except:

- A. Children under seven (7) years of age; and
- B. Children over the age of seven (7) years and under the age of fourteen (14) years when there is an absence of proof that at the time of committing the act or committing to act or omitting the act, the child knew its conduct was wrong.

[NCA 10-053, approved May 27, 2010.]

§ 2-112. Civil actions

The omission of this Code to refer to any damages, penalty, forfeiture or other remedy imposed by law and allowed to be recovered or enforced in any civil

action for any act or omission declared punishable herein does not affect any right to recover or enforce the same.

[NCA 10-053, approved May 27, 2010.]

§ 2-113. Definitions; general

In this Code, unless a different meaning is specified in reference to a particular crime the following words and phrases shall have the following meanings:

A. "Actor" means the person who allegedly committed or omitted the act or acts constituting the crime.

B. "Bodily injury" means a person suffers physical pain, illness or any impairment of physical condition.

C. "Carries away" means removing an article of the slightest distance. It is more than a mere change of position. It is a movement for the purpose of permanent relocation.

D. "Child", "children" or "minor" means a person or person under eighteen (18) years of age.

E. "Coercion" means a threat, however communicated, to:

1. Physically injure the person threatened or any other person, which by its terms will not be, or based on the circumstances cannot be, carried out at substantially the same time as its utterance or receipt;

2. Physically injure the person threatened or any other person which is not made in the presence of the person threatened, but which may be capable of substantially contemporaneous execution;

3. Injure the property of the person threatened or the property of one with whom such person has a family, social, business or other similar relationship;

4. Accuse the person threatened of a crime or to so accuse one with whom such person has a family, social, business or other similar relationship;

5. Expose the person threatened to hatred, contempt, ridicule or disgrace, or to so expose one with whom such person has a family, social, business or other similar relationship;

6. Take or withhold action as a public official or employee, or to cause a public official or employee to take or withhold action; or

7. Expose any secret, fact, report or information sought to be concealed by the person threatened.

F. "Court" or "District Court" shall mean the District Court of the Muscogee (Creek) Nation.

G. "Criminal negligence" or "criminally negligent" means a gross deviation from the standard of care that a reasonable person would observe in the Actor's situation.

H. "Dangerous weapon" or "deadly weapon" means any firearm, whether loaded or unloaded, or any other instrument, material or substance, whether animate or inanimate, which is likely to produce death or serious bodily injury in the manner it is used or attempted to be used.

I. “Duty of care” means that one has a legal duty to render aid.

J. “Extreme indifference to the value of human life” means that a person acts in total disregard of the consequences to others by unjustifiably creating what a reasonable person would realize in an inordinately high degree of risk of death to others.

K. “Force” means any touching, no matter how slight, of a person or any property on the persons body. Such touching must be known to a conscious victim at the time of the touching.

L. “Incapacitated” means any person who by reason of mental or physical illness is disabled to the extent that the person lacks the ability to effectively engage in self-protection.

M. “Intent” or “intentionally” means that in addition to doing the acts or failing to act which caused the harm, the Actor acted with the specific purpose of accomplishing that harm.

N. “In the commission of” means the performance of an act which is an inseparable part of a crime or necessary for its completion, or which is performed in the process of fleeing from the immediate scene of the crime before a position of relative safety has been reached.

O. “Know”, “knows”, “knowing”, “knowingly” or “known” means in addition to doing the acts or failing to act which caused the harm, the Actor has a subjective belief that something exists. Proof of actual or direct knowledge is not required. It is sufficient if the facts and circumstances are such to cause an actual belief on the part of the Actor. Of course, ignorance of the law is not an excuse.

P. “Law enforcement official” means any federal, state or Tribal police officer, sheriff, deputy sheriff, highway patrol officer, investigator or similar public officer or official.

Q. “Legal duty to render aid” means one or more of the following is present:

1. A law imposes a duty to care for another;
2. One is in a spousal relationship to another or is the parent, guardian or other person having custody of a child;
3. One has assumed a contractual duty to care for another; or
4. One has voluntarily assumed the care of another person who acts in reliance on that care. The recipient is or becomes helpless and is in a situation where others cannot reasonably render aid.

R. “Malicious”, “maliciously” or “with malice” means that, in addition to doing the acts or failing to act which caused the harm, the Actor either had specific intent to cause the harm or had a wanton disregard of the pain and strong likelihood of causing that harm.

S. “Motor vehicle” or “motor powered vehicle” means any self-propelled instrumentality in, upon, or by which a person or property may be transported.

T. “Nation” means the Muscogee (Creek) Nation, including all of its agencies, boards and commissions, but not including its communities.

U. “Official proceeding” means a proceeding before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

V. “Omission” means a failure to act in circumstances where a legal duty to act exists.

W. “Person” means a human being who is a member of a federally recognized Indian Tribe or a human being who is eligible to be a member of a federally recognized Indian Tribe.

X. “Personal property” means chattels and includes such things as money, goods, evidences of rights in action, and written instruments effecting a monetary obligation or right to title or property. The value of the property is immaterial.

Y. “Public servant” means any officer or employee of the Nation, including legislators and judges and any person performing an authorized governmental duty.

Z. “Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

AA. “Unlawfully” means not authorized by law.

BB. “Witness” means any person who:

1. Has knowledge of the existence or nonexistence of facts relating to any crime or claim or any other matter which is or may be the subject of an official proceeding or investigation;

2. Has made a statement under oath which has been or may be received as evidence in an official proceeding or investigation;

3. Has been legally served with a subpoena issued under the legal authority of the District Court; or

4. Would be believed by a reasonable person to be a person described in this paragraph.

[NCA 10-053, approved May 27, 2010.]

Derivation:

Title 14, § 2-101, added by NCA 92-14, § 1-701; amended by NCA 99-04, § 107; NCA 07-179, § 7.

**SUBCHAPTER 2. CRIMES ARISING FROM OTHER
CRIMES OR POTENTIAL CRIMES**

Section

2-201. Classification of parties.

2-202. Classification of persons aiding and abetting.

2-203. Accessory to crime.

2-204. Attempts.

Section

2–205. Conspiracy crimes; definitions.

§ 2–201. Classification of parties

All parties to crimes are classified as Principals or Accessories.

[NCA 10–053, approved May 27, 2010.]

§ 2–202. Classification of persons aiding and abetting

All persons concerned in the commission of a crime, whether they directly commit the act constituting the crime or aid and abet in its commission, although not present, are Principals.

[NCA 10–053, approved May 27, 2010.]

§ 2–203. Accessory to crime

The crime of accessory occurs when a person unlawfully conceals or aids another person who has committed a crime knowing that the other person has committed a crime. The aiding or concealing must be done with the intent that the other person avoid or escape from arrest, trial, conviction or punishment.

[NCA 10–053, approved May 27, 2010.]

§ 2–204. Attempts

An attempt to commit a crime occurs when a person performs an act or acts toward the commission of a particular crime and that crime was not completed either because the person was prevented from completing the crime or was intercepted before its completion or withdrew. The person must:

- A. Have the specific intent to commit that crime; and
- B. Have committed a perpetrating act toward the commission of the particular crime. To have a perpetrating act there must be apparent proximity both as to time and space. If the attempt is an effort to physically harm a person, that penetrating act must be in dangerous proximity to completion. In all other situations, the perpetrating act must not be too remote from completion of the attempted crime.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–202, added by NCA 92–14, § 2–702; amended by NCA 99–04, § 107; NCA 07–179, § 8.

Library References

Criminal Law ¶44.
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 148 to 158.

§ 2–205. Conspiracy crimes; definitions

A. The crime of conspiracy occurs when a person enters into an agreement with another person or persons to commit a crime with the intent that the

crime be committed and any one of the persons does an overt act in furtherance of that agreement.

B. In this section, “overt act” means any act performed by any member of the conspiracy which is done for the purpose of furthering or carrying out the ultimate intent of the agreement, or which would naturally accomplish the object of the conspiracy.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-203, added by NCA 92-14, § 2-703; amended by NCA 99-04, § 107; NCA 07-179, § 8.

Library References

Conspiracy Ⓒ23.
Westlaw Topic No. 91.

C.J.S. Conspiracy §§ 96 to 98, 100 to 126,
204.

SUBCHAPTER 3. CRIMES AGAINST PERSON

Section

- 2-301. Homicide
- 2-302. Assault.
- 2-303. Battery.
- 2-304. Use of vehicle to facilitate discharge of weapon in conscious disregard to safety of others.
- 2-305. Owner of mischievous animal which kills or severely injures person.
- 2-306. Willfully poisoning food, drink, medicine, patent or proprietary medicine.
- 2-307. Unlawful use of dangerous weapon.
- 2-308. Harassment.
- 2-309. Stalking.
- 2-310. Robbery; definitions.
- 2-311. False imprisonment.
- 2-312. Interference with custody of committed or entrusted person.
- 2-313. Exposing others to sexually transmitted disease.
- 2-314. Rape.
- 2-315. Rape by instrumentation.
- 2-316. Offensive sexual contact.
- 2-317. Indecent exposure.
- 2-318. False imprisonment.
- 2-319. Kidnapping/abduction.
- 2-320. Physical abuse of a child.
- 2-321. Sexual abuse of a person under the age of sixteen.
- 2-322. Incest.

§ 2-301. Homicide

The crime of homicide is the killing of one human being by the act, procurement or culpable negligence of a person; unless it is committed under such circumstances as constitute excusable or justifiable homicide. Homicide is a felony. A homicide includes the following:

- A. When perpetrated with premeditation;
- B. When perpetrated without a design to effect death by a person while engaged in the commission of a crime;

Title 14, § 2-301

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C. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous or deadly weapon; or

D. When perpetrated without a design to effect death by a person engaged in reckless disregard of the safety of others.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: 07-179, § 9; NCA 92-14, § 3-709, amended by
Title 14, § 2-308, added by NCA 92-14, NCA 99-04, § 107; NCA 07-179, § 9.
§ 3-708, amended by NCA 99-04, § 107; NCA

Library References

Homicide Ⓒ525, 656.
Westlaw Topic No. 203.
C.J.S. Homicide §§ 36 to 3798 to 99, 125.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-302. Assault

A. The crime of assault occurs when a person makes an unlawful attempt to batter another person or unlawfully places another person in reasonable apprehension of receiving an immediate battery. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. The crime of aggravated assault occurs when a person, through the use of a dangerous or deadly weapon makes an unlawful attempt to commit a serious bodily injury to another person. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: 07-179, § 9; NCA 92-14, § 3-702, amended by
Title 14, § 2-301, added by NCA 92-14, NCA 99-04, § 107; NCA 07-179, § 9.
§ 3-701, amended by NCA 99-04, § 107; NCA

Library References

Assault and Battery Ⓒ47, 54. C.J.S. Robbery § 108.
Westlaw Topic No. 37.
C.J.S. Assault and Battery §§ 1 to 3, 73, 78 to
88, 95 to 96, 98.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-303. Battery

A. The crime of simple battery occurs when a person unlawfully applies force to another person. Any person convicted of committing battery shall be guilty of a misdemeanor.

B. The crime of protected status battery is a felony and occurs when all of the elements of battery are present and, in addition, it is knowingly committed against:

1. Law enforcement officials, referees or umpires, teachers or school officials, during performance of or related to their duties;
2. A child under fifteen (15) years of age;
3. A person sixty-two (62) years of age or older;
4. An incapacitated person;
5. Any person because of that person's race, religion, ancestry, national origin, sexual orientation or disability.

Any person convicted of committing protected status battery shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: Title 14, § 2-303, added by NCA 92-14, § 3-703, amended by NCA 99-04, § 107; NCA 07-179, § 9; NCA 92-14, § 1-527, amended by NCA 92-141, § 201. NCA 99-04, § 107; NCA 07-179, § 9; NCA 92-14, § 3-704, amended by

Cross References

Protection of Tribal elders, see Title 20, § 3-101 et seq.

Library References

Assault and Battery ☞47, 54.	C.J.S. Assault and Battery §§ 1 to 3, 73, 78 to 88, 95 to 96, 98.
Protection of Endangered Persons ☞4.	
Westlaw Topic Nos. 37, 315P.	C.J.S. Robbery § 108.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-304. Use of vehicle to facilitate discharge of weapon in conscious disregard to safety of others

It is a crime for a person to use a vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of another person or persons. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-305. Owner of mischievous animal which kills or severely injures person

It is a crime for a person who is the owner of a mischievous animal, knowing its propensities, to allow the animal to go at large, or keep it without ordinary care, when such animal, while so at large or not confined, kills, or causes serious bodily injury to any human being who has taken all the precautions which the circumstances permitted, to avoid such animal. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-306. Willfully poisoning food, drink, medicine, patent or proprietary medicine

A. It is a crime for a person to willfully mingle any poison or Schedule I through V drug or sharp object, or any other object or substance which if used in a manner which is not customary or usual is harmful to human life, with any food, drink, medicine, patent or proprietary medicine with intent that the same shall be taken, consumed, applied or used in any manner by a human being to his injury. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. It is a crime for a person to willfully poison or place any Schedule I through V drug or any other object or substance which is used in a manner which is not customary or usual is harmful to human life in any spring, well or reservoir of water, unless specifically allowed by law. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-307. Unlawful use of dangerous weapon

It is a crime for a person to unlawfully use a dangerous weapon by placing another person in reasonable apprehension of serious bodily injury. The Actor must know or should know that such apprehension will result. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-305, added by NCA 92-14, § 3-705; amended by NCA 99-04, § 107; NCA 07-179, § 9.

Library References

Assault and Battery ☞47.

C.J.S. Robbery § 108.

Westlaw Topic No. 37.

C.J.S. Assault and Battery §§ 1 to 3, 73, 78 to 85, 98.

§ 2-308. Harassment

It is a crime for a person to seriously alarm or annoy another person and cause that person substantial emotional distress through a knowing and willful course of pattern of conduct directed at a specific person which serves no legitimate purpose. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-307, added by NCA 92-14, § 3-707, amended by NCA 99-04, § 107; NCA 07-179, § 9.

Library References

Extortion and Threats ⇨25.
Westlaw Topic No. 165.

C.J.S. Threats and Unlawful Communications
§§ 1 to 39.

§ 2–309. Stalking

It is a crime for a person to willfully, maliciously and repeatedly follow a person with the intent of placing that person in reasonable fear of death or great bodily injury. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–310. Robbery; definitions

A. In this section, “fear” means the placing of a robbery victim in reasonable apprehension of an immediate personal bodily injury or a bodily injury to anyone in the immediate vicinity at the time of the robbery.

B. The crime of robbery occurs when a person wrongfully takes and carries away the personal property of another from the other’s person or immediate presence through means of force or fear with the intent to permanently deprive the other person of the property. Any person convicted of violating the foregoing provision shall be guilty of a felony.

C. The crime of aggravated robbery occurs when all of the elements of robbery are present and, in addition:

1. A dangerous weapon is used in the commission of the robbery; or
2. Serious bodily injury is inflicted upon a person as a result of the commission of the robbery.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–402, added by NCA 92–14,
§ 4–702, amended by NCA 99–04, § 107; NCA
07–179, § 10.

Library References

Robbery ⇨1.
Westlaw Topic No. 342.

C.J.S. Robbery §§ 1 to 3, 17 to 18, 106 to 107,
109, 126 to 127, 133.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–311. False imprisonment

The crime of false imprisonment occurs when a person knowingly and unlawfully restrains another person so as to substantially interfere with that persons liberty. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–310, NCA 92–14, § 3–710,
amended by NCA 99–04, § 107; NCA 07–179,
§ 9.

Library References

Kidnapping ⇌10.
Westlaw Topic No. 231E.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–312. Interference with custody of committed or entrusted person

The crime of interference with custody of a committed or entrusted person occurs when a person unlawfully takes or entices away any person who has been committed or entrusted by authority of law to the custody of a third person or agency. The taking or enticement must be done with the intent to conceal and detain that person from the agency or third person to whom commitment or entrustment was granted. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–312, added by NCA 92–14,
§ 3–712, amended by NCA 99–04, § 107; NCA
07–179, § 9.

Library References

Kidnapping ⇌23.
Westlaw Topic No. 231E.

§ 2–313. Exposing others to sexually transmitted disease

The crime of exposing others to a sexually transmitted disease occurs when a person who is infected with a sexually transmitted disease engages in sexual intercourse or sodomy with another person with the intent to infect that person with the sexually transmitted disease or when a person who is infected with the Human Immunodeficiency Virus engages in sexual intercourse, sodomy, donating blood, transferring blood through the skin or membrane of another person or biting another person. To be guilty, the person must act without using proper barrier protection and without informing the other person of the presence of the Human Immunodeficiency Virus and the act or acts must be done with the intent to infect any other person with the Human Immunodeficiency Virus. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–314. Rape

A. The crime of rape occurs when a person commits an act of sexual intercourse involving vaginal or anal penetration and that act is accomplished

with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under the age of sixteen (16) years of age or younger and the perpetrator is at least two (2) years older than the victim;
2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another;
4. Where there victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;
5. When the victim is at the time unconscious of the nature of the fact and this is known to the accused;
6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused; or
7. Where the victim is under the legal custody of the Muscogee (Creek) Nation and engages in sexual intercourse with an employee of the Muscogee (Creek) Nation or employee of a contractor of the Muscogee (Creek) Nation that exercises authority over the victim.

B. The crime of rape occurs when a person commits an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-314, added by NCA 92-14, § 3-714, amended by NCA 99-04, § 107; NCA 07-179, § 9.

Library References

Rape ⇌1.
Westlaw Topic No. 321.
C.J.S. Rape §§ 1 to 3, 15.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-315. Rape by instrumentation

The crime of rape by instrumentation occurs when a person commits an act within or without the bonds of matrimony in which an inanimate object or any part of the human body, not amounting to sexual intercourse is used in the

carnal knowledge of another person and penetration of the anus or vagina occurs to that person. Provided, further, that at least one of the circumstances enumerated in the crime of rape has been met. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–316. Offensive sexual contact

The crime of offensive sexual contact occurs when any person intentionally touches the breasts, buttocks or genitalia of another person in a lewd and lascivious manner and without the consent of that person. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–317. Indecent exposure

The crime of indecent exposure occurs when any person intentionally displays or exhibits that person’s genitals in a lewd or lascivious manner where that person knows or should know that the conduct is likely to cause offense or alarm. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–317, added by NCA 92–14, § 3–717, amended by NCA 99–04, § 107; NCA 07–179, § 9.

Library References

Obscenity Ⓒ3.
Westlaw Topic No. 281.
C.J.S. Obscenity §§ 9 to 10.

§ 2–318. False imprisonment

It shall be unlawful for any person to confine a person, or cause a person to be confined, without his or her valid consent and without lawful authority or justification. Such unlawful confinement shall result from:

- A. Any unlawful exercise or show of force by which a person is compelled to remain in any place where they do not wish to remain;
- B. Any unlawful restriction of any person’s freedom by means of causing that person to be in any place without that person’s consent and without a reasonable means of escape; or
- C. Any unlawful arrest, detention or imprisonment of another person or persons.

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–310, NCA 92–14, § 3–710,
amended by NCA 99–04, § 107; NCA 07–179,
§ 9.

Library References

False Imprisonment ⇔43.
Westlaw Topic No. 168.
C.J.S. False Imprisonment §§ 92 to 95.

§ 2–319. Kidnapping/abduction

It shall be unlawful for any person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, with intent, either:

A. To cause such other person to be confined or imprisoned in this state against the will of the other person;

B. To cause such other person to be sent out of this state against the will of the other person; or

C. To cause such person to be sold as a slave, or in any way held to service against the will of such person.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–311, NCA 92–14, § 3–711,
amended by NCA 99–04, § 107; NCA 07–179,
§ 9.

Library References

Kidnapping ⇔10.
Westlaw Topic No. 231E.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–320. Physical abuse of a child

Any person who causes or permits any harmful or offensive contact to a child's body; or, any communication or transaction of any kind which humiliates, shames, or frightens the child;

A. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a felony.

B. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–313, added by NCA 92–14, § 3–713, amended by NCA 99–04, § 107; NCA 07–179, § 9.

Cross References

Abuse and neglect reporting requirements, see Title 6, § 1–501 et seq.

Library References

Assault and Battery ⇌47.	C.J.S. Indians §§ 150, 177 to 187, 191 to 194.
Indians ⇌133, 260.	C.J.S. Mayhem §§ 1 to 12.
Mayhem ⇌1.	C.J.S. Robbery § 108.
Westlaw Topic Nos. 37, 209, 256.	
C.J.S. Assault and Battery §§ 1 to 3, 73, 78 to 85, 98.	

§ 2–321. Sexual abuse of a person under the age of sixteen

It shall be unlawful for a person to knowingly and intentionally:

A. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age for the child to have unlawful sexual relations or sexual intercourse with any person;

B. Look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law;

C. Ask, invite, entice, or persuade any child under sixteen (16) years of age to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child;

D. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or

E. In a lewd and lascivious manner and for the purpose of sexual gratification, urinate or defecate upon a child under sixteen (16) years of age or ejaculate upon or in the presence of a child, or force or require a child to look upon the body or private parts of another person or upon sexual acts performed in the presence of the child or force or require a child to touch or feel the body or private parts of said child or another person.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–315, added by NCA 92–14, § 3–715, amended by NCA 99–04, § 107; NCA 07–179, § 9.

Cross References

Abuse and neglect reporting requirements, see Title 6, § 1–501 et seq.

Library References

Rape ☞13.
Westlaw Topic No. 321.
C.J.S. Rape §§ 1, 18, 21.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–322. Incest

It shall be unlawful for any person who marries or engages in sexual activity, whether consensual or not, with another person within the degrees of consanguinity within which marriages are, by the laws of the Muscogee (Creek) Nation, declared incestuous and void. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–316, added by NCA 92–14,
§ 3–716, amended by NCA 99–04, § 107; NCA
07–179, § 9.

Library References

Incest ☞1.
Indians ☞260.
Westlaw Topic Nos. 207, 209.
C.J.S. Incest §§ 1, 4 to 6.
C.J.S. Indians §§ 177 to 187, 191 to 194.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

**SUBCHAPTER 4. ARSON, BURGLARY
AND RELATED CRIMES**

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§ 2-401. Arson, burglary and related crimes; definitions

In this subchapter, the following words and phrases shall have the following meanings:

- A. "Breaks" means any act of physical force, however slight, by which obstructions to entering are removed. It also means entry immediately gained through the use of trickery, deceit, fraud or threat.
- B. "Burns" means the slightest ignition which results in any damage.
- C. "Dwelling" means any house, similar structure or motor home, any part of which is the residence of any person.
- D. "Enters" means the insertion of any part of a persons body into a dwelling, building, similar structure or vehicle. If an inanimate object is used and inserted without any part of the person going into the structure of vehicle, it is an entry only if the inanimate object is capable of completing the Actors intended purpose.

[NCA 10-053, approved May 27, 2010.]

§ 2-402. Arson

It is a crime for a person to willfully and maliciously set fire to or burn by the use of any explosive device, accelerant, ignition device, heat-producing device or substance destroy in whole or in part, or cause to be burned or destroyed, or aid, counsel or procure the burning or destruction of:

- 1. any building, dwelling or structure or contents thereof, whether inhabited or uninhabited and whether occupied or unoccupied;

2. any property whatsoever, including automobiles, trucks, trailers, motorcycles, boats, standing farm crops, pasture lands, forest lands, or any property not herein specifically named, such property being worth more than fifty dollars; or

3. another person.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-420, added by NCA 92-14, § 4-720, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Arson ☞1.
Westlaw Topic No. 36.
C.J.S. Arson §§ 1 to 4, 9 to 29.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-403. Breaking and entering

The crime of breaking and entering occurs when a person breaks and enters a building, structure or vehicle of another person. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-424, added by NCA 92-14, § 4-724, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Burglary ☞9.
Westlaw Topic No. 67.
C.J.S. Burglary §§ 1 to 4, 11 to 24.

§ 2-404. Burglary

A. The crime of burglary occurs when a person breaks and enters any building, similar structure, or vehicle of another person with the intent to commit a crime. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. The crime of aggravated burglary occurs when a person breaks and enters the dwelling of another person with the intent to commit any crime when a human being is present. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–419, added by NCA 92–14, § 4–719, amended by NCA 99–04, § 107; NCA 07–179, § 10.

Library References

Burglary ☞1.
Westlaw Topic No. 67.
C.J.S. Burglary §§ 1 to 4, 11 to 24, 28 to 48.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–405. Carrying burglar’s tools

The crime of carrying burglar’s tools occurs when a person knowingly carries upon or about the person the following tools; a channel-lock, a chisel, a pick-lock, a pry bar, a sledgehammer, bolt cutters or other tool capable of achieving the same result; provided, the carrying must occur with the intent to commit a burglary. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

§ 2–406. Criminal trespass

A. The crime of criminal trespass occurs when a person unlawfully and knowingly crossed the boundary of or remains upon the real property of another person after receiving notice that such crossing or remaining is forbidden by:

1. Actual express communication to the Actor; or
2. Posting in a manner reasonably likely to be noticed and which forbids crossing the boundary.

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. The crime of criminal trespass of a gaming facility occurs when a person enters a gaming facility or premises after having been banned by the Office of Public Gaming or the gaming facility’s management or its duly authorized representative or enters in violation of Muscogee (Creek) Nation gaming laws or regulations. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–909, added by NCA 92–14, § 8–709, amended by NCA 99–04, § 107; NCA 07–179, § 14.

Cross References

Enforcement of Temporary Banishment Notice and Final Banishment Order, see Title 21, § 11–108.

Trespass, see Title 23, § 2–303.

Library References

Trespass ☞76.
Westlaw Topic No. 386.
C.J.S. Trespass §§ 172, 174 to 177, 191.

§ 2–407. Illegal dumping

The crime of illegal dumping occurs when a person places or discards any waste, debris or other similar substance on a roadway or the real property of another person without the consent of that person. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–910, added by NCA 92–14, § 8–710, amended by NCA 99–04, § 107; NCA 07–179, § 14.

Library References

Environmental Law ☞746.
Westlaw Topic No. 149E.
C.J.S. Health and Environment § 160.

§ 2–408. Forgery and related crimes; definitions

In this subchapter, the following words and phrases shall have the following meanings:

A. “Apparent legal significance” means that it seems to be legal. Such an instrument need not create a valid and enforceable obligation. It is sufficient that the instrument could deceive another person.

B. “Defraud” means to misrepresent the validity of a writing.

C. “False writing” means one which was false from its inception or which became false through tampering with what was originally genuine. It is not a true and genuine instrument which merely contains false statements. A false writing includes all forms of printing.

D. “Making” means to create, sign, procure to be signed or to falsify by materially altering, erasing, marking or obliterating.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–406, added by NCA 92–14, § 4–706, amended by NCA 99–04, § 107; NCA 07–179, § 10.

Library References

False Pretenses ☞1.
Westlaw Topic No. 170.
C.J.S. False Pretenses §§ 1 to 6.

§ 2-409. Forgery

The crime of forgery occurs when a person makes a false writing which has apparent legal significance and is made with the intent to defraud. Any person convicted of violating the foregoing provision shall be guilty of a felony. [NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-409, added by NCA 92-14, § 4-709, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Forgery ⇌1.
Westlaw Topic No. 181.
C.J.S. Forgery §§ 1 to 3.

§ 2-410. Uttering a forged instrument

The crime of uttering a forged instrument occurs when a person offers as genuine a false writing which the Actor knows is false and which is offered with the intent to defraud. Any person convicted of violating the foregoing provision shall be guilty of a felony when the amount of the check written is equal to or greater than five hundred dollars (\$500) and shall be guilty of a misdemeanor when the amount of the check written is less than five hundred dollars (\$500). [NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-317, added by NCA 92-14, § 4-710, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Forgery ⇌16.
Westlaw Topic No. 181.
C.J.S. Forgery §§ 30 to 34.

§ 2-411. Tampering with identity of personal property and related crimes; definitions

In this subchapter, the following words and phrases shall have the following meanings:

- A. "Alter" means to counterfeit, cover, deface, destroy, disassemble, disguise, dismantle, erase, falsify, forge, obliterate, reassemble, remove, store or supplant and replace.
- B. "Identification mark" means any factory serial or identification number, trademark, a vehicle identification number or any other number or mark placed on personal property by any person for the purpose of identifying such property or its owner.
- C. "Vehicle identification number" means a vehicle license plate or any identifying number, serial number, engine number or other distinguishing

number or mark placed upon a motor vehicle or part thereof by the manufacturer or used by a state, for the purpose of identifying such motor vehicle or the parts thereof.

[NCA 10-053, approved May 27, 2010.]

§ 2-412. Tampering with identity of personal property

The crime of tampering with the identity of personal property occurs when a person alters an identification mark placed upon any personal property or alters the appearance of any personal property with the intent to deprive another person of a lawful interest in that personal property or with the intent to prevent the detection of a crime. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-413. Promoting tampering with identity of personal property

A. The crime of promoting tampering with the identity of personal property occurs when a person:

1. Buys, receives, acquires, sells, gives, pawns, uses or receives as security for a loan, or otherwise disposes of any item of personal property knowing that its identity or any identification mark on it has been altered. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor; or

2. Sells or otherwise transfers any item of personal property to, or transports any item of personal property to or from, any location knowing it to be a place where tampering with the identity of personal property is conducted. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. The crime of aggravated promoting tampering with the identity of personal property occurs when a person owns, controls, manages, supervises or otherwise keeps any facility knowing that tampering with the identity of personal property is being conducted. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-414. Exceptions to tampering with identity of personal property

The following are exceptions to tampering with the identity of personal property:

A. A motor vehicle scrap processor, acting in good faith in the normal and legal course of business, who processes a motor vehicle or a motor vehicle part, provided that no vehicle identification number is removed from the motor vehicle or motor vehicle part to such processing;

B. Any owner or other person resuming lawful possession of a motor vehicle or motor vehicle part or other personal property which has been recovered and returned to such person by law enforcement authorities after having been the subject of a violation of Section 2-412 or 2-413 of this Act;

C. Any person who violates Section 2-412 or 2-413 of this Act by engaging in good faith in any act of or in compliance with the laws or regulations of the United States or of any state or territory of the United States; or

D. The placement or any change of identification marks authorized and made by the original manufacturer in the regular course of business.

[NCA 10-053, approved May 27, 2010.]

§ 2-415. Malicious mischief

The crime of malicious mischief occurs when a person maliciously damages, defaces or destroys any property of another person.

1. If the value of property is less than five hundred dollars (\$500.00), then the crime is a misdemeanor.

2. If the value of property is equal to or more than five hundred dollars (\$500.00), then the crime is a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-413, added by NCA 92-14, § 4-713, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Malicious Mischief ⇌ 1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 2-416. Theft; definition

In this subchapter, the following words and phrases shall have the following meanings:

A. “Appropriate” means:

1. In relation to property, to take, obtain, conceal or to bring about a transfer or purported transfer of title or interest;

2. In relation to property other than real property, to use in a manner not authorized by the true owner or possessor or to exercise control over the property;

3. In relation to property other than real property, to receive, retain or dispose of property which the Actor knows or should know was stolen or otherwise illegally obtained;

4. In relation to property that has been lost or mislaid, such property is appropriated if the circumstances give the finder knowledge or reasonable means of inquiry as to the person entitled to have the property and the finder fails to make a reasonable effort to find the person entitled to have the property and restore the property to that person; or

5. In relation to services, to secure performance of services, or to use in a manner not authorized by the person entitled to the services, or to use in a manner not authorized by the person providing the services.

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Title 14, § 2-417

B. “Deception” means making a false representation of a past or present fact.

C. “Permanently deprive” means:

1. To withhold forever property from the person entitled to have the property or for such a period of time that a major portion of the value or enjoyment of the property is lost to that person;

2. To use or dispose of property in a manner that makes recovery of the property unlikely by the person entitled to have the property; or

3. To accept or use services without giving proper consideration in return and without reasonable justification or excuse for not giving proper consideration.

D. “Property” means any real or personal property of value including the following:

1. Property severed from the land;

2. Cancellation of a legal obligation;

3. Checks, credit cards, debit cards, money or documents;

4. Animals, birds and fish and which are not free in nature;

5. Trade secrets;

6. Computer data in any form;

7. The rights to record or authorize the recording of any live or broadcast performance not yet fixed in a tangible medium of expression; or

8. The master or original of any sound or audiovisual recording or other material now known or later developed on which sounds or images are or can be recorded or otherwise stored.

E. “Services” includes labor, professional assistance, public utilities, telephone services, transportation, food, drink, entertainment, lodging or leased premises, cable television or other similar services.

[NCA 10-053, approved May 27, 2010.]

§ 2-417. Theft

The crime of theft occurs when a person appropriates the property or services of another person without the other’s consent or with consent obtained through deception. It must be with the intent to permanently deprive the other person of the property or services or in the alternative, with the intent to convert entrusted property to a use not authorized by the other person. Any person convicted of violating the foregoing provision when the value of the property is in excess of five hundred dollars (\$500) shall be guilty of a felony and shall be guilty of a misdemeanor when the value of the property is five hundred dollars (\$500) or less.

[NCA 10-053, approved May 27, 2010.]

Title 14, § 2-417

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Historical and Statutory Notes

Derivation: 07-179, § 10; Title 14, § 2-417, NCA 92-14,
Title 14, § 2-405, added by NCA 92-14, § 4-718, amended by NCA 99-04, § 107; NCA
§ 4-705, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Automobiles ☞339. C.J.S. Embezzlement §§ 1 to 2, 5.
Embezzlement ☞1. C.J.S. Motor Vehicles §§ 1511 to 1523.
Westlaw Topic Nos. 48A, 146.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-418. Intent to permanently deprive another person of property or services

A. For the purposes of Section 2-417, the following circumstances are prima facie evidence of intent to permanently deprive another person of property or services when payment is made by check or similar order other than post-dated check or similar order:

1. When the person issuing the check had no account with the bank or other drawee at the time the check or similar order was issued; or

2. When payment is refused by the bank or other drawee for lack of funds, insufficient funds or a closed account, on presentation within thirty (30) days after issue, and the person issuing the check fails to pay the holder the full amount of the check within ten (10) days after receiving notice by either the bank, drawee or payee of that refusal.

B. Nothing in this section prevents the establishment of the requisite by direct evidence.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:
Title 14, § 2-407, added by NCA 92-14,
§ 4-707, amended by NCA 99-04, § 107; NCA
07-179, § 10.

§ 2-419. Theft of the Nation's funds, Program Income or other federal funds

It is a crime for a person who is an officer, director, agent or employee of, or connected in any capacity with the Muscogee (Creek) Nation, including without limitation all contractors receiving payment from Native American Housing Assistance Self-Determination Act funds, CDBG funds, IHBG funds, Program Income, IHS funds and all other persons that conduct business with the Muscogee (Creek) Nation to embezzle, willfully misapply, steal or obtain by fraud any Tribal, IHBG funds, Program Income, or other federal money, funds, assets or property held or administered by the Nation. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-501, added by NCA 92-14, § 5-701, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Embezzlement \S 1, 3 to 21.
Westlaw Topic No. 146.

C.J.S. Embezzlement $\S\S$ 1 to 2, 5, 8 to 19, 23 to 35.

United States Code Annotated

Embezzlement and theft from Indian tribal organizations, see 18 U.S.C.A. § 1163.

§ 2-420. Cutting down trees

A. It is a crime for a person to willfully, maliciously and with intent to do harm unlawfully enter upon the lands of another, cut down, injure, remove or destroy any live tree or trees planted or growing for ornament, shelter, shade or profit in any forest, woods, woodland, town, village, city, avenue, yard, garden, orchard or plantation, or remove or destroy any logs without the permission of the owner or his/her authorized representative. The necessary trimming and removal of said trees or logs to permit the construction, repair, maintenance, cleanup and operations of utility lines and appurtenances of public utilities, public service corporations, and to aid registered land surveyors and professional engineers in the performance of their professional services, and municipalities, and pipeline companies, or lawful operators and product purchasers of oil and gas shall not be deemed a willful and intentional cutting down, injuring, removing or destroying of said trees or logs. The necessary trimming and removal of trees or logs for construction, maintenance and repair of streets, roads and highways or for the control and regulation of traffic thereon by the Nation, the State of Oklahoma or its political subdivisions or registered land surveyors and professional engineers shall not be deemed a willful and intentional cutting down, injuring, removing or destroying of said trees or logs. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. In addition to the punishment prescribed in subsection A of this section, said person is liable in treble damages for the injury done, said damages to be recovered in a civil action by the owner of the property or the public officer having charge of the property; provided no governmental entity shall be liable for treble damages.

[NCA 10-053, approved May 27, 2010.]

§ 2-421. Failure to return certain leased or rented property

It is a crime for a person having any item of personal property in his possession or under his control by virtue of a lease, rental agreement or rental-purchase agreement to willfully and fraudulently fail to return said item of personal property within ten (10) days after the lease, rental agreement or rental-purchase agreement has expired, or to fraudulently secrete or appropriate said property to any use or purpose not within the due and lawful execution

of his/her lease, rental agreement or rental-purchase agreement. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-422. Defrauding casinos, hotels, inns, restaurants

It is a crime for a person to obtain food, lodging, services or other accommodations at any casino, hotel, inn, restaurant, boarding house, rooming house, motel or auto camp, with intent to defraud the owner or keeper thereof or to obtain shelter, lodging or any other services at any apartment house, apartment, rental unit, rental house or trailer camp, with intent to defraud the owner or keeper thereof. Proof that such accommodations were obtained by false pretense or by false fictitious show or pretense of any baggage or other property, or that the Actor gave a check on which payment was refused, or that the Actor left the casino, hotel, inn, restaurant, boarding house, rooming house, motel, apartment house, apartment, rental unit or rental house, trailer camp or auto camp, without payment or offering to pay for such food, lodging, services or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, or that he registered under a fictitious name, shall be prima facie proof of the intent to defraud mentioned in this section; but this act shall not apply where there has been an agreement in writing for the delay in payment. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-423. False making or embossing of credit or debit card

It is a crime for a person, with intent to defraud (1) a purported issuer, (2) a person or organization providing money, goods, services or anything else of value; or (3) any other person, to falsely make or falsely emboss a purported credit card or debit card or utter such a credit card or debit card.

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

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

3. A person “falsely embosses” a credit card or debit card when, without the authorization of the named issuer, he completes a credit card or debit card by adding any of the matter, other than the signature of the cardholder, which an issuer required to appear on the credit card or debit card before it can be used by a cardholder. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-424. Signing of card; possession of signed or unsigned card

A. It is a crime for a person other than the cardholder or a person authorized by him/her to, with intent to defraud (1) the issuer, (2) a person or organization providing money, goods, services or anything else of value, or (3) any other person, sign a credit card or debit card. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. It is a crime for a person, other than the cardholder or a person authorized by him/her, to possess any credit card or debit card which is signed or not signed. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-425. Forged or revoked card

It is a crime for a person to, with intent to defraud (a) the issuer; (b) a person or organization providing money, goods, services or anything else of value; or (c) any other person, use for the purposes of obtaining money, goods, services or anything else of value a credit card or debit card obtained or retained in violation of any provision of Title 14 herein or a credit card or debit card which the Actor knows is forged or revoked, or to obtain money, goods, services or anything of value representing, without the consent of the cardholder, that the Actor is the holder of a specified card or to represent that the Actor is the holder of a card and such card has in fact not been issued. Knowledge of revocation shall be presumed to have been received by a cardholder fourteen (14) days after it has been mailed to him/her at the address set forth on the credit card application or at his/her last-known address by registered or certified mail, return receipt requested. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-408, added by NCA 92-14, § 4-708, amended by NCA 99-04, § 107; NCA 07-179, § 10.

§ 2-426. Poisoning animals

It is a crime for a person to willfully administer poison to any animal which is the property of another, or to maliciously expose any poisonous substance with intent that the same shall be taken by any such animal. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-416, added by NCA 92-14, § 4-716, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Animals ☞45, 86.
 Westlaw Topic No. 28.
 C.J.S. Animals §§ 343, 474 to 498.

§ 2–427. Cruelty to animals

It is a crime for a person to willfully or maliciously overdrive, overload, torture, destroy, kill, cruelly beat, injure, maim or mutilate, any animal in subjugation or captivity, whether wild or tame, and whether belonging to himself/herself or to another, or deprive any such animal of necessary food, drink or shelter; or who shall cause, procure or permit any such animal to over driven, overloaded, tortured, destroyed, killed or cruelly beaten or injured, maimed or mutilated or deprived necessary food, drink or shelter; or to willfully set on foot, instigate, engage in, or in any way further any act of cruelty to any animal, or any act tending to produce such cruelty; and any officer finding an animal so mistreated or abused shall cause the same to be taken care of, and the charges shall be a lien upon such animal, to be collected thereon as upon a pledge or lien. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–416, added by NCA 92–14,
 § 4–716, amended by NCA 99–04, § 107; NCA
 07–179, § 10.

Library References

Animals ☞45, 86.
 Westlaw Topic No. 28.
 C.J.S. Animals §§ 343, 474 to 498.

§ 2–428. Instigate fight between animals/keeping place for fighting animals

A. It is a crime for a person to maliciously, or for any bet, stake or reward, instigate or encourage any fight between animals or instigate or encourage any animal to attack, bite, wound or worry another. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. It is a crime for a person to keep any house, pit or other place to be used in permitting any fight between animals or in any other violation of subparagraph four of this chapter. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

C. Forfeiture. Upon a conviction, plea of guilty or plea of nolo contendere for a crime under this subsection, all animals or equipment used in violation of this Act shall be forfeited to the Nation.

[NCA 10–053, approved May 27, 2010.]

§ 2–429. Cockfighting

A. Definitions.

1. "Cockfight" or "cockfighting" is a fight between birds, whether or not fitted with spurs, knives or gaffs and whether or not bets or wagers are made on the outcome of the fight and includes any training fight in which birds are intended or encouraged to attack or fight with one another.

2. Equipment used for training or handling a fighting bird includes, but is not limited to, knives or gaffs, cages, pens, feeding apparatuses, training pens and other related devices and equipment.

B. Criminal offenses. It shall be unlawful to:

1. willfully instigate or encourage any cockfight; keep a pit or other place for the purpose of cockfighting;

2. knowingly provide any equipment or facility to be used for cockfighting;

3. further or facilitate any cockfight, including such activities as promotion, refereeing, advertising or serving as a stakes holder of any money wagered;

4. own, possess, keep or train any bird with the intent that such bird shall be engaged in a cockfight. It shall be presumed that the possession of only male birds or the possession of predominately male birds is possession with the intent to engage in cockfighting;

5. be present as a spectator at any place, building or other site where preparations are being made for cockfighting with the intent to be present at a cockfight.

C. Punishment. Any person convicted of violating this section shall be guilty of a misdemeanor.

D. Forfeiture. Upon a conviction, plea of guilty or plea of nolo contendere for a crime under this section, all birds, knives, gaffs or other equipment used in violation of this law shall be forfeited to the Nation.

E. Hunting. Nothing in this section shall prohibit the hunting of birds or fowl in accordance with MCNCA Title 23 or the agricultural production of fowl for human consumption.

[NCA 10-053, approved May 27, 2010.]

§ 2-430. Receiving stolen property; presumption

A. It is a crime for a person to buy or receive in any manner, upon any consideration, any personal property of any value that has been stolen, embezzled, obtained by false pretense or robbery, knowing or having reasonable cause to believe the same to have been stolen, embezzled, obtained by false pretense or robbery, or to conceal, withhold or aid in concealing or withholding such property from the owner. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. Any person who without making reasonable inquiry buys, receives, conceals, withholds or aids in concealing or withholding any property which has been stolen, embezzled, obtained by false pretense or robbery, or otherwise criminally obtained, under such circumstances as should cause such person to make reasonable inquiry to ascertain that the person from whom such property was bought or received has the legal right to sell or deliver it shall be presumed to have bought or received such property knowing it to have been so stolen or

wrongfully obtained. This presumption may, however, be rebutted by proof. Any person convicted of violating the foregoing provision shall be guilty of a felony.
[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-411, added by NCA 92-14,
§ 4-711, amended by NCA 99-04, § 107; NCA
07-179, § 10.

Library References

Receiving Stolen Goods ⇐1.
Westlaw Topic No. 324.

C.J.S. Receiving and Transporting Stolen
Goods and Related Offenses §§ 1 to 3, 14 to
16, 20 to 22.

§ 2-431. Larceny of domestic animals

It is a crime for a person to steal any horse, jackass, jennet, mule, cow, hog, sheep or goat. The word horse as used herein shall include all animals of the equine species and the word cow shall include all animals of the bovine species. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-432. Tapping pipeline

It is a crime for a person to unlawfully make or cause to be made any connection with or any way tap or cause to be tapped, or drill or cause to be drilled a hole in any pipe or pipeline or tank laid or used for the conduct or storage of crude oil, naphtha, gas or casing head gas or any of the manufactured or natural products thereof, with intent to deprive the owner thereof of any of said crude oil, naphtha, gas, casing head gas or any of the manufactured or natural products thereof. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-433. Chattels encumbered by mortgage, conditional sales contract or security agreement; removal or destruction

It is a crime for a person, who is also a mortgagor or conditional sales contract vendee or pledgor or debtor or his legal representative under a security agreement of personal property to, while such mortgage, security agreement or conditional sales contract remains in force and unsatisfied, conceal, sell, or in any manner dispose of such property, or any part thereof, or remove such property, or any part thereof, or materially injure or willfully destroy such property, or any part thereof, without the written consent of the holder of such mortgage or conditional sales contract, secured party or pledgee under a security agreement; provided, that the writing containing the consent of the holder of the mortgage or conditional sales contract, secured party or pledgee under a security agreement, as before specified, shall be the only competent evidence of such consent, unless it appears that such writing has

been lost or destroyed. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-434. Trafficking in telecommunication theft devices

The crime of trafficking in telecommunication theft devices occurs when a person knowingly manufactures or possesses with the intent to sell any device or equipment designed to be used to commit theft of telecommunication services, or adapts any device or equipment with the intent that it be used to commit theft of telecommunication services. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-435. Unauthorized use of vehicle or boat

The crime of unauthorized use of a vehicle or boat occurs when a person appropriates the vehicle or boat of another person without the other's consent and with the intent to deprive the other person of the vehicle or boat, either temporarily or otherwise. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-436. Extortion

The crime of extortion occurs when a person appropriates the property or services of another person by consent obtained through coercion with the intent to permanently deprive the other person of the property or services. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-404, added by NCA 92-14, § 4-704, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Extortion and Threats ◊25.
Westlaw Topic No. 165.

C.J.S. Threats and Unlawful Communications
§§ 1 to 39.

§ 2-437. Unlawful removal of dead body or damage to casket or burial vault

A. It is a crime for a person to intentionally remove the dead body of a human being or any part thereof from the initial site where such dead body is located for any purpose, unless such removal is duly authorized (i.e., by the Prosecutor, Assistant Prosecutor, his or her authorized representative, or by a state or county medical examiner, his or her authorized representative). The Prosecutor having jurisdiction may refuse to prosecute a violation of the subsection if the Prosecutor determines that circumstances existed which would justify such removal or that such removal was not an act of malice or

wantonness. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. It is a crime for a person to remove any part of the dead body of a human being from any grave or other place where the same had been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same or to dissect it without authority of law, or with malice or wantonness. Any person convicted of violating the foregoing provision shall be guilty of a felony.

C. It is a crime for a person to willfully or with malicious intent to violate or cause damage to the casket or burial value holding deceased human remains. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-415, added by NCA 92-14, § 4-715, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Cemeteries ☞22.

Indians ☞144.

Westlaw Topic Nos. 71, 209.

C.J.S. Cemeteries §§ 33 to 34.

C.J.S. Indians §§ 46 to 50, 53.

§ 2-438. Unlawful interference with place of burial

It is a crime for a person to open any grave or any place of burial, temporary or otherwise, or to break upon any building wherein a dead body of a human being is deposited while awaiting burial, with intent either to remove the dead body of a human being for the purpose of selling the same or for the purpose of dissecting or stealing the coffin, or any part thereof, anything attached thereto or connected therewith, or the vestments or other articles buried with the same. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-439. Unauthorized use of the Great Seal of the Muscogee (Creek) Nation

It shall be unlawful for any person or entity majority-owned or controlled by persons to use the Great Seal of the Muscogee (Creek) Nation or any pattern, imitation or presentment thereof, either by printing the Great Seal on or attaching or affixing it to any advertisement, product or device, for the purpose of personal or private gain or profit or as a trademark, service mark or label without having first received permission of the Muscogee (Creek) Nation by way of a duly adopted law or Tribal resolution. This section shall not apply to the non-commercial use of said Great Seal by any agency or Chartered Community of the Muscogee (Creek) Nation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-504, added by NCA 92-14,
§ 5-704, amended by NCA 99-04, § 107; NCA
07-179, § 10.

Cross References

Great seal and official flag, see Title 37, § 1-101 et seq.
Official seal, see Const. Art. I, § 3.

§ 2-440. Tax evasion

It shall be unlawful for any person to willfully, intentionally and knowingly solicit sales or engage in the business of selling goods or time for which they are required to collect sales tax on behalf of the Muscogee (Creek) Nation and failing to collect and remit said sales tax to the Muscogee (Creek) Nation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-505, added by NCA 92-14, § 103; NCA 07-179, § 10.
§ 5-705, amended by NCA 99-04, § 107; NCA
92-14, § 5-705, amended by NCA 00-148,

Library References

Indians ¶225, 264.
Westlaw Topic No. 209.

C.J.S. Indians §§ 140 to 149, 177 to 180, 183
to 187, 191 to 194.

§ 2-441. Misuse of Tribal Vendor's Sales License

It shall be unlawful for any person to willfully and intentionally display a false or expired Vendor's Sales License. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-506, added by NCA 92-14, § 103; NCA 07-179, § 10.
§ 5-706, amended by NCA 99-04, § 107; NCA
92-14, § 5-706, amended by NCA 00-148,

SUBCHAPTER 5. CONTROLLED DANGEROUS SUBSTANCES

Section

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§ 2-501. Uniform dangerous substances; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. “Administer” means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient, animal or the research subject by a practitioner, or by the patient, the research subject, or another person in the presence and at the direction of the practitioner.

B. “Agent” means a law enforcement official or peace officer, who acts on behalf of a Tribal, federal or state agency assisting in enforcement of Tribal, state or federal laws. It also means an authorized person who acts on behalf or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers, or uses for scientific purposes controlled dangerous substances. It does not include a common or contract carrier, public warehouseman or employee thereof, or any person required to register pursuant to applicable Tribal, state or federal law regarding dangerous substance violations.

C. “Coca leaves” includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine.

D. “Control” means to add, remove or change the placement of a drug, substance or immediate precursor as defined by this subchapter.

E. “Controlled dangerous substance” means any drug, substance or its immediate precursor named in Schedules I through V in this subchapter.

F. “Controlled dangerous substance analogue” means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled dangerous substance classified in Schedule I or Schedule II, in which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled dangerous substance; classified in Schedule I or Schedule II; or with respect to a particular person, which such person represents or intends to have

a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled dangerous substance classified in Schedule I or Schedule II. Controlled dangerous substance analogue does not include a controlled dangerous substance, any substance for which there is an approved new drug application, with respect to a particular person, any substance if an exemption is in effect for investigational use for that person under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 355, to the extent conduct with respect to such substance is pursuant to such exemption, or any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance. A controlled dangerous substance analogue shall to the extent intended for human consumption be treated for purposes of this subchapter as a controlled dangerous substance classified in Schedule I.

G. "Counterfeit substance" means a controlled dangerous substance or the container or labeling of which without authorization bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof, of a manufacturer, distributor or dispenser other than that of the actual manufacturer, distributor or dispenser thereof.

H. "Cultivate" means to sow, tend, grow, raise or harvest plants in any location.

I. "Deliver" or "delivery" means the actual or constructive transfer from one person to another, whether or not an agency relationship exists.

J. "Dispense" means to deliver a controlled dangerous substance to an ultimate user, patient or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

K. "Dispenser" means a practitioner who dispenses.

L. "Distribute" means to deliver a controlled dangerous substance other than by administering or dispensing.

M. "Drug" means:

1. Substances recognized in the official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

2. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

3. Substances other than food intended to affect the structure or any function of the human body or other animals; or

4. Substances intended for use as a component of any substance specified above. It does not include devices or their components, parts or accessories.

N. "Drug dependent person" means a person who is using a controlled dangerous substance on a continuous basis and as a result of its continuous use is in a state of psychic or physical dependence or both. Drug dependence is characterized by behavioral and other responses which include a strong com-

pulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort of its absence.

O. “Drug Enforcement Administration” means the Drug Enforcement Administration of the United States Department of Justice or any successor agency.

P. “Drug paraphernalia” means all equipment, products and material of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance. 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 dangerous substance or from which a controlled dangerous substance can be derived;
2. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing a controlled dangerous substance;
3. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance;
4. Testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of a controlled dangerous substance;
5. Scales and balances used or intended for use in weighing or measuring a controlled dangerous substance;
6. Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose used or intended for use in cutting a controlled dangerous substance;
7. Separation gins and sifters used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;
8. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances;
9. Capsules, balloons, envelopes, plastic bags and any other containers used or intended for use in packaging small quantities of controlled dangerous substances;
10. Container and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body;
11. Hypodermic syringes, needles and other objects used or intended for use in parenterally injected controlled dangerous substances into the human body;
12. Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls, water pipes, carburetion tubes and devices, smoking and carburetion masks, 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,

miniature cocaine spoons and cocaine vials, chamber pipes, carburetor pipes, electric pipes, air-driven pipes, chillums, bongs, ice pipes or chillers.

Q. “Hazardous materials” means substances, whether solid, liquid or gas, which are toxic to human, animal, aquatic or plant life, and the disposal of which is controlled by applicable Tribal, federal or state regulation.

R. “Illegal plant” means any species of plant from which a controlled dangerous substance classified in Schedule I or Schedule II may be derived.

S. “Immediate precursor” means a substance that is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture.

T. “Isomer” means the optical isomer, unless otherwise expressly including the positional or geometric isomer.

U. “Laboratory” means a state or Tribally approved facility as proper to be entrusted with the custody of controlled dangerous substances and the use of controlled dangerous substances for scientific and medical purposes and for purposes of instruction.

V. “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled dangerous substance, either directly or indirectly, by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis, including any packaging, repackaging of the substance or labeling or re-labeling of its container. Manufacture does not include preparing, compounding, packaging or labeling of a controlled dangerous substance by a practitioner, or an authorized person under a practitioner’s supervision, which is incident to the course of each practitioner’s professional practice or for the purpose of, or incident to, research, teaching or chemical analysis and not for sale.

W. “Marijuana” means all parts of the plant *Cannabis Sativa*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture sale derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination. The substance *Cannabis Sativa L.* includes all forms, varieties and species of the plant genus, *Cannabis*.

X. “Medical purpose” means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition, not in violation of any Tribal, state or federal law and not for the purpose of satisfying physiological dependence or other abuse.

Y. “Narcotic drug” means any of the following, whether produced directly or indirectly, by extraction from substances of vegetable origin, independently by means of chemical synthesis or by combination of extraction and chemical synthesis:

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1. Opium, coca leaves and opiates;
2. A compound, manufacture, salt, derivative or preparation of opium, coca leaves, or opiates;
3. Cocaine, its salts, optical and geometric isomers and salts of isomers;
4. Cocaine base;
5. Ecgonine, its derivatives, their salts, isomers and salts of isomers; or
6. A substance, and any compound, manufacture, salt, derivative or preparation thereof which is chemically identical with any of the substances referred to in paragraphs (1) through (5) of this subsection, except the words narcotic drug as used in this Title shall not include decocainized coca leaves or extracts of coca leaves which extracts do not contain cocaine or ecgonine.

Z. "Nitrite" means butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite or mixtures containing any of the preceding substances or any of their esters, isomers or analogues, or any other similar compound.

AA. "Opiate" means any substance having an addiction forming or addiction sustaining liability similar to morphine or being capable of conversion into a drug having such addiction forming or addiction sustaining liability. It does not include the dextrorotatory isomer of 3-methoxy-n-methyl morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

BB. "Opium poppy" means the plant of the species *Papaver Somniferum*, except its seeds.

CC. "Poppy straw" means all parts except the seeds of the opium poppy after mowing;

DD. "Possession" means:

1. Actual physical control of, or
2. Knowledge of the presence of a substance or an article together with the intent to control its use or disposition.

EE. "Practitioner" means:

1. A physician, dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to deliver, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in a state or Tribe; or

2. A pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to deliver, dispense, conduct research with respect to, use for scientific purposes, or administer a controlled dangerous substance in the course of a professional practice or research in a state or Tribe.

FF. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance.

GG. "Registrant" means a person who has a current registration from the State Bureau pursuant to applicable state law.

HH. "State" means the State of Oklahoma or any other state of the United States. The following terms are also used herein with regard to Oklahoma entities and officials involved in dangerous substances enforcement outside of Indian Country:

1. "State Board" means the Advisory Board to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, or any successor agency;

2. "State Bureau" means the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or its successor agency;

3. "State Commission" means the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission;

4. "State Director" means the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

II. "Tetrahydrocannabinol" means any substance which has been chemically synthesized to emulate the tetrahydrocannabinol of marijuana.

JJ. "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for such person's own use or the use of a member of such person's household or for administration to an animal owned by such person or be a member of such person's household.

KK. "Use" means to employ, hire, persuade, induce, entice or coerce a person to violate or assist in avoiding detection or apprehension for a violation of this subchapter.

LL. "Youth center" means any recreational facility or gymnasium intended primarily for use by children which regularly provides athletic, civic or cultural activities.

[NCA 10-053, approved May 27, 2010.]

§ 2-502. Schedule I characteristics

Schedule I includes substances with the following characteristics:

1. High potential for abuse; and
2. No accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision.

[NCA 10-053, approved May 27, 2010.]

§ 2-503. Schedule I

The controlled substances listed in this section are considered Schedule I;

A. Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically excepted, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetylmethadol;
2. Allylprodine;
3. Alphacetylmethadol;

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4. Alphameprodine;
5. Alphamethadol;
6. Benzethidine;
7. Betacetylmethadol;
8. Betameprodine;
9. Betamethadol;
10. Betaprodine;
11. Clonitazene;
12. Dextromoramide;
13. Dextrorphan (except its methyl ether);
14. Diampromide;
15. Diethylthisambutene;
16. Dimenoxadol
17. Dimepheptanol;
18. Dimethylthiambutene;
19. Dioxaphetyl butyrate;
20. Dipipanone;
21. Ethylmethylthiambutene;
22. Etonitazene;
23. Etoxidine;
24. Furethidine;
25. Flunitrazepam;
26. Hydroxypethidine;
27. Ketobemidone;
28. Levomoramide;
29. Levophenacetylmorphan;
30. Morpheridine;
31. Moracymethadol;
32. Norlevorphanol;
33. Normethadone;
34. Norpipanone;
35. Phenadoxone;
36. Phenampromide;
37. Phenomorphan;
38. Phenoperidine;
39. Piritramide;
40. Proheptazine;

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41. Ppproperidine;
42. Racemoramide; and
43. Trimeperidine.

B. Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine;
2. Acetyldihydrocodeine;
3. Benzylmorphine;
4. Codeine Methylbromide;
5. Codeine-N-Oxide;
6. Cyprenorphine;
7. Desomorphine;
8. Dihydromorphine;
9. Etorphine;
10. Heroin;
11. Hydromorphinol;
12. Methyl-desorphine;
13. Methylhydromorphine;
14. Morphine Methylbromide;
15. Morphine Methylsulfonate;
16. Morphine-N-Oxide;
17. Myrophione;
18. Nicocodeine;
19. Nicomorphine;
20. Normorphine;
21. Phoclodine; and
22. Thebacon.

C. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation;

1. Methcathinone;
2. 3, 4-Methylenedioxy amphetamine;
3. 3, 4-Methylenedioxy methamphetamine;
4. 5-Methoxy-3, 4-Methylenedioxy Amphetamine;
5. 3, 4, 5-Trimethoxy Amphetamine;

6. Bufotenine;
7. Diethyltryptamine;
8. Dimethyltryptamine;
9. 4-Methyl-2, 5-Dimethoxyamphetamine;
10. Ibogaine;
11. Lysergic Acid Diethylamide;
12. Marijuana;
13. Mescaline;
14. N-Ethyl-3-Piperidyl Benzilate;
15. N-Methyl-3-Piperidyl Benzilate;
16. Psilocybin;
17. Psilocin;
18. 2, 5 Dimethoxyamphetamine;
19. 4 Bromo-2, 5-Dimethoxyamphetamine;
20. 4 Methoxyamphetamine;
21. Cyclohexamine;
22. Thiophene analog of Phencyclidine. Also known as; 1-(1-(2-Thienyl) Cyclohexyl) Piperidine; 2-Thienyl Analog of Phencyclidine; TCP, TCP;
23. Phencyclidine (PCP); and
24. Pyrrolidine analog for Phencyclidine. Also known as 1-(1-Phenylcyclohexyl) Pyrrolidine, PCPy, PHP.

D. Unless specifically excepted or unless listed in a different schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system;

1. Fenethylamine;
2. Mecloqualone;
3. N-ethylamphetamine;
4. Methaqualone;
5. Gammahydroxybutyrate (GHB); and
6. Gamma-Butyrolactone (GBL) as packaged, marketed, manufactured or promoted for human consumption.

E. The following industrial uses of Gamma-Butyrolactone are excluded from all schedules of controlled substance under this title:

1. Pesticides;
2. Photochemical etching;
3. Electrolytes of small batteries or capacitors;
4. Viscosity modifiers in polyurethane;
5. Surface etching of metal coated plastics;

6. Organic paint disbursements for water soluble inks;
7. pH regulators in the dyeing of wool and polyamide fibers;
8. Foundry chemistry as a catalyst during curing; and
9. Curing agents in many coating systems based on urethanes and amides.

[NCA 10-053, approved May 27, 2010.]

§ 2-504. Schedule II characteristics

Schedule II includes substances with the following characteristics:

1. High potential for abuse;
2. Currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and
3. The abuse of the substance may lead to severe psychological or physical dependence.

[NCA 10-053, approved May 27, 2010.]

§ 2-505. Schedule II

The controlled substances listed in this section are considered Schedule II;

A. Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
2. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subsection, but not including the isoquinoline alkaloids of opium;
3. Opium poppy and poppy straw; and
4. Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers and salts of isomers; or any compound, mixture or preparation which contains any quantity of any of the substances referred to in this paragraph.

B. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Alphaprodine;
2. Anileridine;
3. Bezitramide;
4. Dihydrocodeine;
5. Diphenoxylate;

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6. Fentanyl;
 7. Isomethadone;
 8. Levomethorphan;
 9. Levorphanol;
 10. Metazocine;
 11. Methadone;
 12. Methadone-Intermediate, 4–Cyano–2–Dimethylamino–4, 4–Diphenyl Butane;
 13. Moramide-Intermediate, 2–Methyl–3–Morpholine–1, 1–Diphenyl–Propane–Carboxylic Acid;
 14. Pethidine. Meperidine;
 15. Pethidine-Intermediate-A, 4–Cyano–1–Methyl–4–Phenylpiperidine;
 16. Pethidine-Intermediate-B, Ethyl–4–Phenylpiperidine–4–Carboxylate;
 17. Pethidine-Intermediate-C, 1–Methyl–4–Phenylpiperidine–4–Carboxylic Acid;
 18. Phenazocine;
 19. Piminodine;
 20. Racemethorphan;
 21. Racemorphan;
 22. Etorphine Hydrochloride salt only;
 23. Alfentanil Hydrochloride; and
 24. Levo–Alphacetylmethadol.
- C. Any substance which contains any quantity of:
1. Methamphetamine, including its salts, isomers and salts of isomers; and
 2. Amphetamine, its salts, optical isomers and salts of its optical isomer.
- D. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:
1. Phenmetazine and its salts;
 2. Methylphenidate;
 3. Amobarbital;
 4. Pentobarbital;
 5. Secobarbital; and
 6. Tetrahydrocannabinols.

[NCA 10–053, approved May 27, 2010.]

§ 2–506. Schedule III characteristics

Schedule III includes substances with the following characteristics:

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1. A potential for abuse less than the substances listed in Schedules I and II;
2. Currently accepted medical use in treatment in the United States; and
3. Abuse may lead to moderate or low physical dependence or high psychological dependence.

[NCA 10-053, approved May 27, 2010.]

§ 2-507. Schedule III

The controlled substances listed in this section are considered Schedule III;

A. Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances or any other substance having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

1. Any substance which contains any quantity of a derivative or barbituric acid, or any salt of a derivative of barbituric acid unless specifically excepted or unless listed in another schedule;
2. Chlorhexadol;
3. Glutethimide;
4. Lysergic Acid;
5. Lysergic Acid Amide;
6. Methyprylon;
7. Sulfondiethylmethane;
8. Sulfonethylmethane;
9. Sulfonmethane;
10. Benzphetamine and its salts;
11. Chlorphentermine and its salts;
12. Clortermine;
13. Mazindol;
14. Phendimetrazine;
15. Phenylacetone (P2P);
16. 1-Phenycyclohexylamine;
17. 1-Piperidinocyclohexanecarbo Nitrile (PCC);
18. Ketamine, its salts, isomer and salts of isomers;
19. Any material, compound, mixture, or preparation which contains any quantity of the following hormonal substances or steroids, including their salts, isomers, esters and salts of isomers and esters, when the existence of these salts, isomers, esters, and salts of isomers and esters is possible within the specific chemical designation:
 - a. Boldenone;
 - b. Chlorotestosterone;
 - c. Clostebol;

- d. Dehydrochlormethyltestosterone;
- e. Dihydrotestosterone;
- f. Drostanolone;
- g. Ethylestrenol;
- h. Fluoxymesterone;
- i. Formebolone;
- j. Mesterolone;
- k. Methandienone;
- l. Methandranone;
- m. Methandriol;
- n. Methandrostenolone;
- o. Methenolone;
- p. Methyltestosterone, except as provided in subsection E of this section;
- q. Mibolerone;
- r. Nandrolone;
- s. Norethandrolone;
- t. Oxandrolone;
- u. Oxymesterone;
- v. Oxymetholone;
- w. Stanolone;
- x. Stanozolol;
- y. Testolactone;
- z. Testosterone, except as provided in subsection E of this section, and
- aa. Trenbolone. Livestock implants as regulated by the Federal Food and Drug Administration shall be exempt.

B. Nalorphine.

C. Unless listed in another Schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:

1. Not more than one and eight-tenths (1.8) grams of Codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an Isoquinoline Alkaloid of Opium;

2. Not more than one and eight-tenths (1.8) grams of Codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

3. Not more than three hundred (300) milligrams of Dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15)

milligrams per dosage unit, with a fourfold or greater quantity of an Isoquinoline Alkaloid of Opium;

4. Not more than three hundred (300) milligrams of Dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

5. Not more than one and eight-tenths (1.8) grams of Dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

6. Not more than three hundred (300) milligrams of Ethyl Morphine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

7. Not more than five hundred (500) milligrams of Opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

8. Not more than fifty (50) milligrams of Morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

D. A compound, mixture or preparation containing any stimulant or depressant substance listed in subsections A and B of this section may be excepted from the application of all or any part of this Code if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixture are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

E. The following hormonal substances or steroids are exempt from classification as Schedule III controlled dangerous substances:

1. Estratest, containing 1.25 mg esterified estrogens and 2.5 mg Methyltestosterone;

2. Estratest HS, containing 0.625 mg esterified estrogens and 1.25 mg Methyltestosterone;

3. Preparing with Methyltestosterone, containing 1.25 mg conjugated estrogens and 10.0 mg Methyltestosterone;

4. Preparing with Methyltestosterone, containing 0.625 mg conjugated estrogens and 5.0 mg Methyltestosterone;

5. Testosterone Ciliolate-Estropdiol Cypionate injection, containing 50 mg/ml Testosterone Cypionate; and

6. Testosterone Enanthate-Estradiol Valerate injection, containing 90 mg/ml Testosterone Enanthate and 4 mg/ml Estadiol Valerate.

[NCA 10-053, approved May 27, 2010.]

§ 2-508. Schedule IV characteristics

Schedule IV includes substances with the following characteristics:

1. Low potential for abuse relative to substances listed in Schedule III;
 2. Currently accepted medical use in treatment in the United States; and
 3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule III.
- [NCA 10-053, approved May 27, 2010.]

§ 2-509. Schedule IV

The controlled substances listed in this section are considered Schedule IV.

A. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

1. Chloral betaine;
2. Chloral hydrate;
3. Ethchlorvynol;
4. Ethinamate;
5. Meprobamate;
6. Paraldehyde;
7. Petrichloral;
8. Diethylpropion;
9. Phentermine;
10. Pemoline;
11. Chlordiazepoxide;
12. Chlordiazepoxide and its salts, but not including Chlordiazepoxide Hydrochloride and Clidinium Bromide or Chlordiazepoxide and water-soluble esterified estrogens;
13. Diazepam;
14. Oxazepam;
15. Clorazepate;
16. Flurazepam and its salts;
17. Clonazepam;
18. Barbital;
19. Mebutamate;
20. Methohexital;
21. Methylphenobarbital;
22. Phenobarbital;
23. Fenfluramine;
24. Pentazocine;

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25. Dextropropoxyphene;
26. Butorphanol;
27. Alprazolam;
28. Halazepam;
29. Lorazepam;
30. Prazepam;
31. Temazepam;
32. Triazolam;
33. Carisoprodol;
34. Ephedrine, its, salts, optical isomers and salts of optical isomers as the only active ingredient, or in combination with other active ingredients; or
35. Dichloralphenazone.

B. The following non-narcotic substances, which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301), be lawfully sold over the counter without a prescription, are excluded from all schedules of controlled substances under this title:

1. Breathe-Aid;
2. BronCare;
3. Bronchial Congestion;
4. Bronkaid Tablets;
5. Bronkaid Dual Action Caplets;
6. Bronkolixir;
7. Bronkotabs;
8. NeoRespin;
9. Pazo Hemorrhoid Ointment and Suppositories;
10. Primatene Tablets;
11. Primatene Dual Action Formula;
12. Quelidrine;
13. Resp, and
14. Vatronal Nose Drops.

C. A compound, mixture, or preparation containing any depressant substance listed in subsection A of this section may be excepted from the application of all or any part of this subchapter, if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

[NCA 10-053, approved May 27, 2010.]

§ 2-510. Schedule V characteristics

Schedule V includes substances with the following characteristics:

1. Low potential for abuse relative to the controlled substances listed in Schedule IV;
2. Currently accepted medical use in treatment in the United States; and
3. Limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

[NCA 10-053, approved May 27, 2010.]

§ 2-511. Schedule V

The controlled substances listed in this section are considered Schedule V:

1. Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone;
2. Not more than two hundred (200) milligrams of Codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;
3. Not more than one hundred (100) milligrams of Dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;
4. Not more than one hundred (100) milligrams of Ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;
5. Not more than two and five-tenths (2.5) milligrams of Diphenoxylate, and not less than twenty-five (25) micrograms of Atropine Sulfate per dosage unit; and
6. Not more than one hundred (100) milligrams of Opium per one hundred (100) milliliters or per one hundred (100) grams.

[NCA 10-053, approved May 27, 2010.]

§ 2-512. Possession of controlled dangerous substances

The crime of possession of controlled dangerous substances occurs when a person knowingly possesses any substance listed in Schedule I, II, III, IV or V. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-701, added by NCA 92-14, § 7-701, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Controlled Substances 24.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 274 to 287,
304, 306, 308 to 309, 314.

§ 2-513. Trafficking in controlled dangerous substances

A. The crime of trafficking in controlled dangerous substances occurs when a person knowingly:

1. Manufactures a controlled dangerous substance;
2. Distributes a controlled dangerous substance; or
3. Possesses a controlled dangerous substance with the intent to manufacture or distribute a controlled dangerous substance;

B. It shall be presumed that a person in possession of the following quantities of controlled dangerous substances or marijuana are trafficking:

Marijuana	25 lbs or more
Cocaine or coca leaves	28 lbs or more
Heroin	10 g or more
Amphetamine or Methamphetamine	20 g or more
Lysergic Acid Diethylamide (LSD)	50 dosage units or more
Phencyclidine (PCP)	1 oz or more
Cocaine base	5 g or more

C. Any person convicted of trafficking in controlled dangerous substances shall be guilty of a felony and shall not be subject to statutory provisions for deferred judgments.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: 07-179, § 12; NCA 92-14, § 7-704, amended by Title 14, § 2-702, added by NCA 92-14, NCA 99-04, § 107; NCA 07-179, § 12. § 7-702, amended by NCA 99-04, § 107; NCA

Library References

Controlled Substances \S 31, 32.	C.J.S. Drugs and Narcotics $\S\S$ 265 to 266, 270 to 271, 288 to 295, 304, 307, 311 to 313, 316.
Westlaw Topic No. 96H.	

§ 2-514. Trafficking in counterfeit substances

The crime of trafficking in counterfeit substances occurs when a person knowingly:

1. Manufactures a counterfeit substance;
2. Distributes a counterfeit substance; or
3. Possesses a controlled dangerous substance with the intent to manufacture or distribute any counterfeit substance.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-515. Trafficking in imitation controlled dangerous substances

A. The crime of trafficking in imitation controlled dangerous substances occurs when a person knowingly delivers or possesses with the intent to deliver, a non-controlled substance:

Title 14, § 2-515

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1. Representing it to be a controlled dangerous substance;
2. With the intent that it be used or distributed as a controlled dangerous substance; or
3. Under circumstances in which the person knows or should know that the non-controlled substance will be used or distributed.

B. This section shall not apply to any person authorized by subchapter five or by the Food and Drug Administration of the United States Department of Health and Human Services to do any of the acts otherwise prohibited by this section.

C. It is not a defense to this section that the accused believed the imitation controlled substance to be to a controlled dangerous substance.

D. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-516. Trafficking in controlled dangerous substances by distributing to or using a child

The crime of trafficking in controlled dangerous substances by distributing to or using a child occurs when a person knowingly:

1. Distributes a controlled dangerous substance to a person whom the actor knows or should know is a child; or
2. Uses a person whom the actor knows or should know is a child to;
 - a. Manufacture a controlled dangerous substance
 - b. Distribute a controlled dangerous substance; or
 - c. Possess a controlled dangerous substance with the intent to manufacture or distribute a controlled dangerous substance.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-706, added by NCA 92-14, § 7-705, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Controlled Substances ⌘42.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 221 to 224,
323.

§ 2-517. Possessing or trafficking in drug paraphernalia

A. The crime of possessing or trafficking in drug paraphernalia occurs when a person knowingly;

1. Uses tincture of Opium, tincture of Opium Camphorated or any derivatives thereof by the hypodermic method, with or without a medical prescription therefore;

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Title 14, § 2-517

2. Uses or possesses with the intent to use drug paraphernalia to cultivate, manufacture, store, conceal or introduce in any manner into the human body a controlled dangerous substance; or

3. Possesses, delivers or manufactures drug paraphernalia with knowledge that it will be used to cultivate, manufacture, store, conceal or introduce in any manner into the human body a controlled dangerous substance.

B. This section shall not apply to any person whose conduct is authorized by subchapter five.

C. In determining whether an object is drug paraphernalia, as defined in subchapter five, the Court shall consider in addition to all other relevant evidence the following:

1. Statements by an owner or by anyone in control of the object concerning its use;

2. The proximity of the object, in time and space, to a violation of subchapter five;

3. The proximity of the object to controlled dangerous substances;

4. The existence of any residue of controlled dangerous substances on the object;

5. Direct or circumstantial evidence of the intent of any owner or of anyone in control of the object to deliver it to persons intended to use the object to facilitate a violation of subchapter five. The innocence of an owner or of anyone in control of the subject, as to violations of subchapter five shall not prevent a finding that the object is drug paraphernalia.

6. Instructions, oral or written, provided with the object which either state directly or imply that the object is to be used for the consumption of controlled dangerous substances;

7. Descriptive materials accompanying the object which explain or depict its use as an object for the consumption of controlled dangerous substances;

8. The manner in which the object is displayed for sale;

9. Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

10. Direct or circumstantial evidence of the rate of sales of the object or objects to the total sales of the business enterprise;

11. The existence and scope of legitimate use for the object in the community; and

12. Expert testimony concerning its use.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-705, added by NCA 92-14,
§ 7-705, amended by NCA 99-04, § 107; NCA
07-179, § 12.

Library References

Controlled Substances Ⓒ42.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 221 to 224,
323.

§ 2-518. Unlawful use of proceeds or illegal investments

A. The crime of unlawful use of proceeds or illegal investments occurs when a person knowingly:

1. Gives, receives, obtains, conceals, transports or engages in any transaction with, or transfer of proceeds known to be derived from a violation of subchapter five;

2. Gives, sells, transfers, trades, invests, conceals, transports or maintains an interest in or otherwise makes available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any violation of subchapter five;

3. Directs, plans, organizes, initiates, finances, manages, supervises or facilitates the transportation or transfer of proceeds known to be derived from any violation of subchapter five; or

4. Conducts a financial transaction involving proceeds derived from a violation of subchapter five, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds known to be derived from a violation of subchapter five or to avoid a transaction reporting requirement under applicable Tribal, federal or state law. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. This section does not apply to any transaction between a person and the counsel of the person necessary to preserve any right of representation of the person which may be guaranteed by the Constitution of the Muscogee (Creek) Nation or the federal Indian Civil Rights Act. The exception does not create any presumption against or prohibition of the right of the Nation to seek and obtain forfeiture of any proceeds derived from a violation of this Code.

[NCA 10-053, approved May 27, 2010.]

§ 2-519. Cultivation of illegal plants

The crime of cultivation of illegal plants occurs when a person knowingly:

1. Cultivates or produces an illegal plant;

2. Permits the cultivation or production of an illegal plant on or use in any property owned or controlled by that person; or

3. Fails to notify a law enforcement official of the existence of or fails to destroy any illegal plant growing, by human effort or wildy, on or in any property owned or controlled by that person.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-520. Trafficking in nitrites or ethylchloride

A. The crime of trafficking in Nitrites or Ethylchloride occurs when a person knowingly possesses, buys, sells or otherwise transfers any compound, liquid or chemical containing ethylchloride or nitrite, or mixtures containing any nitrite, with the intent to induce or aid any other person to inhale or ingest such substance.

B. This section shall not apply to persons:

1. Possessing and using a nitrite as part of the care or treatment by a state licensed physician of disease, condition, or injury, or pursuant to a prescription of a state licensed physician; or

2. Possessing a nitrite as part of a known manufacturing process or industrial operation when the possessor has obtained a permit from the State Department of Health. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-521. Solicitation to violate controlled dangerous substances laws

The crime of solicitation to violate controlled dangerous substances laws occurs when a person with the intent to cause a violation of subchapter five urges, requests or commands another person to violate subchapter five. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-522. Facilitating trafficking in controlled dangerous substances

The crime of facilitating trafficking in controlled dangerous substances occurs when a person knowingly keeps, maintains, manages, controls, rents, leases or makes available for use any store, shop, warehouse, dwelling, building, vehicle, vessel, aircraft, room, enclosure or any other structure or place which such person knows is resorted to for the purpose of distributing, unlawfully possessing or manufacturing, or up-keeping or transporting for distribution any controlled dangerous substance. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-523. Possession/sale or manufacture of precursor substances

A. It shall be a crime for a person, individually or through their business, to possess, sell, manufacture, transfer or otherwise furnish any of the following precursor substances without first having a permit or license issued by the Nation or State Director.

1. D-Lysergic Acid;
2. Ergotamine and its salts;

3. Ergo ovine and its salts;
4. Methylamine;
5. Ethylamine;
6. Phenyl-2-Propanone;
7. Phenylacetic acid and its salts;
8. Ephedrine, its salts, optical isomers and salts of optical isomers;
9. Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
10. Phenylpropanolamine, its salts, optical isomers and salts of optical isomers;
11. Benzyl cyanide;
12. N-metyephedrine, its salts, optical isomers and salts of optical isomers;
13. Pseudoephedrine, its salts, optical isomers and salts of optical isomers;
14. Chloroephedrine, its salts, optical isomers and salts of optical isomers;
15. Piperodine and its salts;
16. Pyrrolidine and its salts;
17. Propionic anhydride;
18. Isosafrole;
19. Pirperonal; and
20. Red Phosphorus.

B. This law shall not apply to the sale or transfer of a non-narcotic product that includes a precursor substance defined above, if the product may be sold lawfully with a prescription or over the counter without a prescription pursuant to the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq., or a rule adopted pursuant thereto. Furthermore, this law shall not apply to common carriers in the transaction of business.

C. It shall be unlawful for any person to knowingly sell, transfer, distribute, or dispense any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows that the purchaser will use the product as a precursor to manufacture Methamphetamine or another controlled illegal substance or if the person sells, transfers, distributes or dispenses the product with reckless disregard as to how the product will be used. Any person convicted of violating the foregoing provision shall be guilty of a felony.

D. Any person who sells, transfers, distributes, dispenses or in any manner furnishes any product containing Pseudoephedrine or Phenylpropanolamine, or their salts, isomers or salts of isomers in a negligent manner, with knowledge or reason to know that the product will be used as a precursor to manufacture Methamphetamine or any other illegal controlled substance, or with reckless disregard as to how the product will be used, shall be liable for all damages, whether directly or indirectly caused by the sale, transfer, distribution, dispensation, or furnishing.

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Title 14, § 2-523

1. Such damages may include, but are not limited to, any and all costs of detecting, investigating, and cleaning up or remediating clandestine or other unlawfully operated or maintained laboratories where controlled dangerous substances are manufactured, any and all costs of prosecuting criminal cases arising from such manufacture, and any and all consequential and punitive damages otherwise allowed by law.

2. A civil action to recover damages against persons, corporations or other entities violating this subsection may be brought only by the Attorney General. Any funds recovered from such an action shall be used for payment or reimbursement of costs arising from investigating or prosecuting criminal or civil cases involving the manufacture of controlled dangerous substances, for drug education programs, or for payment or reimbursement of remediating contaminated methamphetamine laboratory sites.

Any person who offers, solicits, attempts, endeavors, or conspires to commit any offense defined in the Uniform Controlled Dangerous Substances Act, § 2-501 et seq. of this Title, shall be subject to the penalty prescribed for the offense, the commission of which was the object of the offer, solicitation, attempt, endeavor or conspiracy.

[NCA 10-053, approved May 27, 2010.]

SUBCHAPTER 6. CRIMES AGAINST PUBLIC SAFETY

Section

- 2-601. Definitions.
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- 2-604. Exceptions to waste crimes.
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§ 2-601. Definitions

In this subchapter the following words and phrases shall have the following meanings:

A. "Hazardous waste" shall mean waste whether solid, liquid or gas which is toxic to human, animal, aquatic or plant life, and the disposal of which is controlled by Tribal, or federal statute or regulation.

B. "Health care professional" means a physician, resident, intern, physician's assistant or registered nurse.

C. "Incapacitated person" means a person who by reason of mental illness, mental deficiency, or intoxication is disabled to such an extent that the person is incapable of making a rational decision.

D. "Mind altering condition" means a change, distortion or disturbance of a person's senses, emotions, thought processes, judgment, balance, mobility, or coordination.

E. "Substance" means gasoline, glue, fingernail polish, adhesive cement, mucilage, dope, paint dispensed from pressurized containers or any other substance or combination of substances containing solvents releasing toxic vapors. It does not include alcoholic beverages or any substance consumed pursuant to the lawful direction of prescription of a physician as defined by state law.

F. "Waste" means at least twenty-eight (28) gallons or two hundred twenty (220) pounds, whether liquid or solid, of discarded material and by-products, including trash, refuse, garbage, biomedical waste, sewage, ash, sludge, deleterious substances, oil field wastes, commercial and industrial waste and chemical waste.

[NCA 10-053, approved May 27, 2010.]

§ 2-602. Unlawful disposal of hazardous waste

The crime of unlawful disposal of hazardous waste occurs when a person without a lawful permit or authorization knowingly disposes of hazardous waste:

1. Into a sanitary sewer system without appropriate pretreatment; or
2. At a solid waste landfill, transfer station, processing facility or at any site without a permit for hazardous waste. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-603. Exposing others to concealed hazardous waste

The crime of exposing others to concealed hazardous waste occurs when a person exposes another person to hazardous waste by knowingly:

1. Concealing the unlawful disposal of hazardous waste;
2. Concealing the fact that hazardous waste is being transported; or
3. Misrepresenting the type of hazardous waste that is being transported.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-604. Exceptions to waste crimes

Exceptions to waste crimes are as follows:

1. The discharge of household domestic sewage into a sanitary sewer system or into an individual sewer disposal system that has been approved by a federal or Tribal agency;
2. The placement of household domestic trash, refuse or garbage in a collection system used for solid waste disposal;
3. The disposal of one's personal household or farm wastes on one's own property;
4. The discharge of domestic sewage and waste from business or industry into a sanitary sewer system or into a publicly or privately owned industrial treatment works in compliance with a permit or specific authorization from a governmental agency;
5. The placement of trash, refuse and garbage, other than hazardous waste, from business or industry in a collection system for solid waste disposal; and
6. The recycling of waste, other than hazardous waste, by resource, separating scrap material for collection and processing as industrial raw materials.

[NCA 10-053, approved May 27, 2010.]

§ 2-605. Consuming a mind-altering common substance

The crime of consuming a mind-altering common substance occurs when a person inhales or ingests any substance containing ketones, aldehydes, organic acetones, ether, chlorinated hydrocarbon, or metallic powders, knowing that the substance contains an intoxicant. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-707, added by NCA 92-14, § 7-707, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Chemical Dependents ☞4.

Controlled Substances ☞38.

Westlaw Topic Nos. 76A, 96H.
C.J.S. Chemical Dependents §§ 7 to 12.
C.J.S. Drugs and Narcotics §§ 264, 304.

§ 2-606. Selling a mind-altering common substance to an intoxicated person

The crime of selling a mind-altering common substance to an intoxicated person occurs when a person, knowing that another person is intoxicated, sells or otherwise provides to that person any substance containing ketones, aldehydes, organic acetones, ether, chlorinated hydrocarbon or metallic powders, knowing that the substance contains an intoxicant. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-607. Furnishing alcoholic beverage to youth or incapacitated person

The crime of furnishing alcoholic beverage to a youth or incapacitated person occurs when a person sells or otherwise provides a beverage containing greater than one-half of one percent (of 1%) of alcohol by weight to a person who the Actor knows or should know is under twenty-one (21) years of age or is incapacitated. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-608. Possession of alcohol on Muscogee (Creek) Nation properties or ceremonial grounds

It is a crime for a person to possess beer or alcohol on property owned by the Muscogee (Creek) Nation; property held in trust by the United States for the benefit of the Muscogee (Creek) Nation; or on Muscogee (Creek) Nation ceremonial grounds unless the sale of alcohol on the property has been approved pursuant to a license granted by the Muscogee (Creek) Nation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-609. Sale of liquor and/or beer

It shall be unlawful for a person to sell or offer to sell liquor and/or beer to any other person, unless said sale or offer is authorized under separate laws of the Nation. For purposes of this section, the term liquor shall mean the four (4) varieties of liquor, commonly referred to as alcohol, spirits, wine and beer in excess of five percent (5%) of alcohol, and all fermented, spirituous, vinous or malt liquors or any other intoxicating liquid, solid, semi-solid or other substance patented or not, containing alcohol, spirits, wine or beer, in excess of five percent (5%) of alcohol and is intended for oral consumption. In addition for purposes of this section, the term beer shall mean any beverage containing more than three and two-tenths percent (3.2%) alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction or pure hops, pure extract of barley or other grain, malt, sugar or similar product. Provided, however, nothing in this section shall be construed to authorize the sale of

liquor or beer within Indian Country, unless said sale or offer is authorized under separate laws of the Nation. Every person convicted of violating this section shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-708, added by NCA 92-14, § 7-708, amended by NCA 99-04, § 107; NCA 06-136, § 1; NCA 07-179, § 12.

Library References

Indians ↻323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

United States Code Annotated

Intoxicants dispensed in Indian country, see 18 U.S.C.A. § 1154

§ 2-610. Smoking where prohibited

The crime of smoking where prohibited occurs when a person knowingly possesses a lit tobacco product in any of the following public places in which are posted one or more “No Smoking” signs in sufficient quantity to be visible from all sections of the no smoking area and intentionally refuses to extinguish it upon request by any person: public elevator, indoor theater, courtroom, health care facility, educational facility or in the offices of the Muscogee (Creek) Nation and its agencies. Any person convicted of violating the forgoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-611. Sale or delivery of tobacco products to a child

A. It shall be unlawful for a person to sell, deliver or otherwise furnish any tobacco product to a child, or to purchase in any manner any tobacco product on behalf of any such child.

B. It shall be unlawful for any person engaged in the sale or distribution of tobacco or any tobacco products to sell or deliver tobacco products to any person without first demanding and verifying that the person attempting to purchase tobacco is at least eighteen (18) years of age if such person reasonably appears to be twenty-five (25) years of age or younger. Verification of the person’s age may be done by any government issued photograph identification card.

C. Every person convicted of violating any of the provisions of this section shall be guilty of a misdemeanor and shall be subject to the following penalties:

1. Upon the first conviction, a fine of not more than five hundred dollars (\$500).
2. Upon the second conviction, a fine of not more than one thousand dollars (\$1,000) and up to ten (10) days in jail.

[NCA 10-053, approved May 27, 2010.]

Title 14, § 2-611

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Historical and Statutory Notes

Derivation:

Title 14, § 2-710, added by NCA 92-14, § 7-710, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Indians ☞133.	C.J.S. Indians § 150.
Infants ☞13.	C.J.S. Infants §§ 110 to 114, 118 to 121.
Westlaw Topic Nos. 209, 211.	

§ 2-612. Sale of tobacco products by a child

It shall be unlawful for any person who is an owner, manager or other supervisory employee of any smoke shop or business where tobacco products are sold to allow any child to sell or deliver tobacco products in or from such shop or business to any person. Every person convicted of violating this section shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-711, added by NCA 92-14, § 7-711, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Indians ☞133.	C.J.S. Indians § 150.
Infants ☞13.	C.J.S. Infants §§ 110 to 114, 118 to 121.
Westlaw Topic Nos. 209, 211.	

§ 2-613. Prostitution

It shall be unlawful for any person to engage in, solicit for or make any arrangements, plans or dealings for any act of sexual intercourse with another person who is not then said person's spouse, or have any other lewd or sexual contact with such person, in exchange for money or anything of value. Every person convicted of violating this section shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-712, added by NCA 92-14, § 7-712, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Prostitution ☞10, 15.	C.J.S. Prostitution and Related Offenses §§ 3 to 9, 26, 31 to 33.
Westlaw Topic No. 315H.	

§ 2-614. Failure to report criminally injurious conduct

The crime of failure to report criminally injurious conduct occurs when a person who is a health care professional, examines, attends or treats a person who the health care professional knows or should know has suffered a gunshot

wound or serious bodily injury from a weapon and fails to promptly report the fact of such wound or injury to a law enforcement official. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor. [NCA 10-053, approved May 27, 2010.]

§ 2-615. Disorderly conduct

A. Definitions. In this subchapter the following words and phrases shall have the following meanings:

1. “Excessive noise” means an unreasonably loud or harsh sound to the extent that it would be offensive to a person of common sensibilities.
2. “Obstruct” means to block, impede or hinder. The obstruction must be physical.
3. “Official order” means one issued by an identified law enforcement official, firefighter, other official or paramedic.
4. “Security guard” means a person engaged for hire to protect persons or property. It does not include a law enforcement official while in the performance of official duties.

B. Disorderly conduct. The crime of disorderly conduct occurs when a person unlawfully causes reasonable public inconvenience or alarm by:

1. Being obviously intoxicated from the consumption of alcohol or other drugs;
2. Continuing to make excessive noise after having been warned to stop such by a law enforcement official, security guard or other person in authority at that location;
3. Engaging in fighting;
4. Refusing to obey a lawful official order to disperse issued to maintain public safety; or
5. Improperly obstructing vehicular traffic or continuing to improperly obstruct pedestrian traffic after having been warned by a law enforcement official to stop such conduct.

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: Title 14, § 2-422, added by NCA 92-14, § 4-722, amended by NCA 99-04, § 107; NCA 07-179, § 14; NCA 92-14, § 8-704, amended by NCA 99-04, § 107; NCA 07-179, § 14. NCA 92-14, § 8-703, amended by

Cross References

Disorderly conduct, civil offense, see Title 22, § 2-101.

Library References

Disorderly Conduct ☞ 103, 104.
Nuisance ☞ 59, 95.

Westlaw Topic Nos. 129, 279.

Title 14, § 2–615

CRIMES & PUNISHMENT

C.J.S. Disorderly Conduct §§ 1 to 4.
C.J.S. Nuisances §§ 4, 20, 157.

§ 2–616. Peeping Tom

A person who shall peep secretly into any room occupied by another person shall be guilty of a misdemeanor. Unless covered by another provision of law providing greater punishment, any person who secretly or surreptitiously peeps underneath or through the clothing being worn by another person, through the use of a mirror or other device, for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent shall be guilty of a misdemeanor.

For purposes of this section:

1. The term “photographic image” means any photograph or photographic reproduction, still or moving, or any videotape, motion picture or live television transmission or any digital image of any individual.
2. The term “room” shall include, but is not limited to, a bedroom, a rest room, a bathroom, a shower and a dressing room.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: 07–179, § 9; NCA 92–14, § 8–705, amended by
Title 14, § 2–317, added by NCA 92–14, NCA 99–04, § 107; NCA 07–179, § 14.
§ 3–717, amended by NCA 99–04, § 107; NCA

Library References

Disorderly Conduct ⇌123.
Westlaw Topic No. 129.
C.J.S. Disorderly Conduct §§ 1 to 4.

§ 2–617. Terroristic threats

It is a crime for a person to make a false report of a crime, fire, bomb threat or other catastrophe to the appropriate public authority or threaten to commit any crime of violence with the purpose to:

1. Terrorize another;
2. Cause evacuation of a building, place of assembly or facility of public transportation; or
3. Otherwise cause serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–618. Riot

The crime of riot occurs when a person, acting in conjunction with five (5) or more other persons together unlawfully use force or violence or threaten to unlawfully use force or violence if accompanied by immediate power of

execution. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-619. Weapons crimes; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. "Automatic firearm" means any firearm designed or specifically adapted to fire a succession of cartridges with a single function of the trigger.

B. "Chemical dispensing device" means a mechanism or tool that is designed, made or adapted for the purpose of causing an adverse physiological effect on a human being. It does not include a pocket sized chemical dispenser such as is sold commercially for personal protection.

C. "Explosive device" means an explosive, incendiary, poison gas bomb or similar device designed or adapted for the purpose of inflicting death, serious physical injury or substantial property damage.

D. "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant and includes an unloaded firearm and any firearm which is inoperable but which can be readily made operable.

E. "Illegal knife" means any:

1. Hand instrument that has a blade that folds, closes or retracts into the handle or sheath and that:

a. Opens automatically by pressure applied to a button or other device located on the handle;

b. Opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force;

c. Has a blade which is greater than five (5) inches in length; or

2. Hand instrument with a detachable blade that is propelled by a spring operated mechanism.

F. "Knuckles" means any instrument that consists of finger rings or guard made of a hard substance that is designed or adapted for the purpose of inflicting serious bodily injury or death.

G. "Prohibited weapon" means any automatic firearm, chemical dispensing device, explosive device, restricted bullet, sawed-off firearm, silencer, spring gun or any other similar weapon which is not adapted for hunting, fishing or other lawful purpose.

H. "Projectile weapon" means any bow, crossbow, pellet gun, slingshot or other weapon that is not a firearm that is capable of expelling or propelling a projectile that could inflict serious bodily injury or death.

I. "Public gathering" means where people are assembled in any courtroom, the National Council chamber or school. It also means where people are assembled for public worship, entertainment, athletic events, educational or scientific purposes, cultural, employment or a political convention or other

similar event. It does not include events where people are assembled for lawful hunting, shooting or displaying weapons; provided the weapon is appropriate for the hunt, shooting or display of weapons.

J. "Restricted bullet" means a round or elongated missile with a core of less than sixty percent (60%) lead and having a fluorocarbon coating, which is designed to travel at a high velocity and is capable of penetrating a vest or shirt of ten (10) piles or more of bullet resistant material, as defined by the Office of Development, Testing and Dissemination, a division of the United States Department of Justice.

K. "Sawed off firearm" means a shotgun with a barrel or barrels less than eighteen (18) inches long or a rifle with a barrel or barrels less than sixteen (16) inches long. The firearm must be less than twenty-six (26) inches in overall length.

L. "School property" means any real property used by any private or public school, Eufaula Dormitory, childcare or Headstart Program and any school bus or other means of transporting students owned or operated by or for any private school or public school, Eufaula Dormitory, childcare or Headstart Program.

M. "Secured", as it related to firearms, means:

1. That no round of ammunition is present in the chamber and that the firearm is:

- a. Closed in the trunk or non-passenger part of the vehicle;
- b. Placed in a closed and locked container;
- c. Rendered inoperative by the use of a trigger, hammer, cylinder, slide or barrel locking device that renders the firearm incapable of firing until the device is unlocked and removed; or
- d. So disassembled or disabled as to be rendered incapable of firing.

2. An unloaded shotgun or rifle in plain view.

N. "Silencer" means any device designed or adapted to substantially reduce the noise made by firing any firearm.

O. "Spring gun" means any fused, timed or non-manually controlled trap or device designed or adapted to set off an explosion for the purpose of inflicting serious bodily injury or death.

[NCA 10-053, approved May 27, 2010.]

§ 2-620. Carrying concealed weapon

It shall be unlawful for any person to carry and conceal on or about his person any firearm, pistol, rifle or other deadly weapon whether loaded or unloaded. Provided, that this section will not be applicable to law enforcement officers and security guards duly authorized or certified to carry arms or persons issued a valid Concealed Weapons Permit or licensed by another Indian Tribe, state or the federal government in accordance with the provisions of MCNCA Title 16, § 4-114. Provided, nothing in this section shall authorize a carrier of a Concealed Weapons Permit or license to carry weapons into gaming establishments, said authorization which is governed by MCNCA Title

21. Provided further, nothing in this section shall prohibit the carrying of firearms for the lawful purpose of hunting game in areas designated for such purpose in accordance with the hunting and fishing laws of the Muscogee (Creek) Nation; provided the carrier is not a prohibited person under § 2-623 of this Title. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-317, added by NCA 92-14, § 8-706, amended by NCA 99-04, § 107; NCA 05-291, § 1; NCA 07-179, § 14.

Library References

Weapons ⇌168.
Westlaw Topic No. 406.

§ 2-621. Carrying weapons in or about buildings located on Tribal lands

It shall be unlawful for any person to carry on or about his person any firearm, pistol, rifle or other deadly weapon whether loaded or unloaded within any building or within one-quarter mile of any building located on lands owned by or held in trust by the United States for the benefit of the Muscogee (Creek) Nation or within any public building or store located on lands subject to federal restrictions against alienation. Provided, that this section will not be applicable to law enforcement officers and security guards duly authorized or certified to carry arms and persons issued a valid Concealed Weapons Permit or license by another Indian Tribe, state or the federal government in accordance with the provisions of MCNCA Title 16, § 4-114. Provided, nothing in this section shall authorize a carrier of a Concealed Weapons Permit or license to carry weapons into gaming establishments, said authorization which is governed by MCNCA Title 21. Provided further, nothing in this section shall prohibit the carrying of firearms for the lawful purpose of hunting game in areas designated for such purpose in accordance with the hunting and fishing laws of the Muscogee (Creek) Nation; provided the carrier is not a prohibited person under § 2-623 of this Title. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: Title 14, § 2-317, added by NCA 92-14, § 8-706, amended by NCA 99-04, § 107; NCA 05-291, § 1; NCA 07-179, § 14; NCA 92-14, § 8-707, amended by NCA 99-04, § 107; NCA 05-291, § 2; NCA 07-179, § 14.

Library References

Weapons ⇌162, 171.
Westlaw Topic No. 406.

§ 2-622. Unlawful control of illegal weapon

The crime of unlawful control of an illegal weapon occurs when a person unlawfully and knowingly possesses, manufactures, transports, repairs or sells

any knuckles, illegal knife or prohibited weapon. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-623. Unlawful possession of firearm

The crime of unlawful possession of a firearm occurs when a person unlawfully and knowingly possesses or has within that person's immediate control any firearm and:

1. The person has been convicted of a felony by a court of competent jurisdiction;
2. The person has been ordered not to possess firearms by a protective order issued by a court of competent jurisdiction;
3. The person has been convicted of violation of a protective order or domestic assault and battery by a court of competent jurisdiction;
4. The person is under adjudication of mental incompetency, has been declared mentally defective or is committed to a mental health facility when the commitment was based on finding of dangerousness to the defendant or others; or
5. The person has been dishonorably discharged from the armed forces.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-908, added by NCA 92-14, § 8-708, amended by NCA 99-04, § 107; NCA 07-179, § 14.

Cross References

Juvenile adjudication not to impose civil disability, see Title 6, § 1-404.

Library References

Weapons ⇄173.
Westlaw Topic No. 406.

§ 2-624. Unlawful transactions in firearms

The crime of unlawful transactions in firearms occurs when a person knowingly sells, gives, lends, trades or otherwise causes the transfer of any firearm to:

1. Any person prohibited from possessing firearms, in § 2-622 of this Title; or
2. A child, unless the transferor is the parent, guardian or other person having custody or control of the child.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-625. Unlawful transportation of firearm

The crime of unlawful transportation of a firearm occurs when a person unlawfully and knowingly carries in any motor vehicle a firearm which is not secured. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-908, added by NCA 92-14, § 8-708, amended by NCA 99-04, § 107; NCA 07-179, § 14.

Cross References

Juvenile adjudication not to impose civil disability, see Title 6, § 1-404.

Library References

Weapons ⇄173.
Westlaw Topic No. 406.

§ 2-626. Exceptions to weapons crimes

The following are exceptions to weapons crimes:

A. In reference to unlawful control of an illegal weapon, displaying any weapon in a museum or public exhibition;

B. In reference to aggravated unlawful control of an illegal weapon, when dealing with a prohibited weapon solely as a curio, ornament or keepsake; provided it is inoperable; that is, it must be in such non-functioning condition that it cannot readily be made operable;

C. In reference to unlawful control of an illegal weapon, a person or entity which has a weapons license from the United States Secretary of the Treasury or if the weapon has been designated a collectors item by the United States Secretary of Treasury;

D. In reference to carrying a dangerous weapon and unlawful transportation of a firearm, any firearm manufactured in 1898 or before and any firearm that uses ammunition that is obsolete or otherwise not readily available;

E. When dealing with a weapon in a manner reasonably related to the making of a commercial film, or to participation in a rodeo or dramatic performance;

F. The possession or use of a restricted bullet by a law enforcement agency;

G. On-duty law enforcement officer, including cross-commissioned officers when carrying their cross-commission card; and

H. An off-duty, full-time law enforcement officer certified by the Council on Law Enforcement Education and Training (C.L.E.E.T.) pursuant to the requirements of state law or certified by the Indian Police Academy (IPA) with respect to carrying a weapon certified and approved by the officers employing agency when the officer is not on active duty. If the off-duty officer is not wearing a law

enforcement uniform prescribed by the employing agency, the officer must both:

1. Have in such officer's possession at all times when carrying the weapon the officer's official badge, commission card and C.L.E.E.T. or IPA certification card, and
2. Keep the weapon concealed from view at all times other than when it is being used within the guidelines, rules and regulations by the employing agency.

[NCA 10-053, approved May 27, 2010.]

§ 2-627. Federal law applicable to purchase of weapons

A. Residents of Indian Country in the Muscogee (Creek) Nation may purchase rifles, shotguns, ammunition, cartridge and shotgun shell hand loading components and equipment outside the Muscogee (Creek) Nation, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968¹, as amended, and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in the Muscogee (Creek) Nation and in the contiguous state in which the purchase is made.

B. Residents of the State of Oklahoma may purchase rifles, shotguns, ammunition, cartridge, shotgun shell hand loading components and equipment in Indian Country in the Muscogee (Creek) Nation provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968, as amended, and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such resident conform to the provisions of law applicable to such purchase in the Muscogee (Creek) Nation and in the State of Oklahoma.

[NCA 10-053, approved May 27, 2010.]

¹ 26 U.S.C.A. § 5801 et seq.

§ 2-628. Vehicle crimes; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. "Actual physical control" means that a person has immediate possession of a motor vehicle not then being driven but capable of present operation and the vehicle is on the travel portion of a public roadway, any portion of a public right-of-way, or a public parking lot.

B. "Blood" or "breath alcohol concentration" means grams of alcohol per one hundred (100) milliliters of blood, if the blood was tested, or grams of alcohol per two hundred ten (210) liters of breath if the breath was tested.

C. "Drive" means to operate a motor vehicle while it is in motion on a public roadway, any portion of a public right-of-way or in a public parking lot.

D. "Impaired" means that at the time of a test administered within two (2) hours of the arrest of the person for blood or breath alcohol concentration, the person has a blood or breath alcohol concentration of more than five hun-

dredths of one percent (0.05%), but less than eight hundredths of one percent (0.08%). (There must be additional evidence that the driver's ability to operate the vehicle is affected by alcohol to the extent that public health and safety is threatened or that the driver has violated a law in the operation of a motor vehicle).

E. "Intoxicating beverage" means any beverage containing more than three and two-tenths percent (3.2%) alcohol by weight.

F. "Non-intoxicating beverage" means any beverage containing more than one-half of one percent (.5%) alcohol by volume and not more than three and two-tenths percent (3.2%) alcohol by weight.

G. "Other intoxicants" means:

1. Any controlled dangerous substance as defined in this Title; or
2. Any substance which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor function of the human body.

H. "Pilots" or "piloting" means:

1. As to boats: Sailing, guiding, directing, steering or controlling in any manner the course of a boat.
2. As to aircraft: To set in motion or manipulate any of the levers, the starting mechanism, the brakes or other mechanism or device of an aircraft.
3. "Reasonable time or distance" means at the first opportunity which is both safe and practicable given the speed, road and other conditions.

I. "Roadblock" means any obstacle placed on or near a public street, highway, turnpike, or other area accessible to motor vehicles, at which one or more law enforcement officers is present and directing approaching motor vehicles to stop or to proceed.

J. "Secured" means that the container in which the intoxicating or non-intoxicating beverage is held in the original, unopened container with the original cap and seal in place or is in the trunk or non-passenger part of the vehicle or is otherwise inaccessible to the driver in the vehicle while it is motion.

K. "Under the influence" means that a person is affected by alcohol or any other intoxicant to such a degree that the person is rendered incapable of safely piloting a boat or aircraft or driving a motor vehicle, as would a prudent person using reasonable care.

[NCA 10-053, approved May 27, 2010.]

§ 2-629. Reckless driving

The crime of reckless driving occurs when a person drives a motor vehicle or pilots a boat in a negligent manner and, in addition:

1. Disregards the safety of other persons or property; or
2. Fails to attain or exceeds the speed that a reasonable person would have considered safe.

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-630. Driving under the influence

A. It is a crime for a person to drive, operate or be in actual physical control of a motor vehicle when that person:

1. Has a blood or breath alcohol concentration of eight-hundredths of one percent (0.08%) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;
2. Is under the influence of alcohol;
3. Is under the influence of any other intoxicating substance; or
4. Is under the combined influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle.

Any person convicted of violating any of the foregoing provisions shall be guilty of a misdemeanor.

B. The fact that any person charged with the violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

[NCA 10-053, approved May 27, 2010.]

§ 2-631. Driving while license under suspension or revocation while disqualified

A. It is a crime for a person to operate a motor vehicle upon the roads or streets in Indian Country without having first produced a driver's license from the Oklahoma Department of Public Safety or other agency which is granted reciprocity to the Oklahoma Department of Public Safety except as herein specifically exempted.

B. It is a crime for a person to operate a motor vehicle upon the roads or streets in Indian Country without the jurisdiction of the District Court at a time when his privilege to do so is cancelled, denied, suspended or revoked or at a time when he is disqualified from so doing. Each act of driving on the public streets or roads as prohibited shall constitute a separate offense.

Any person convicted of violating the foregoing provisions shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-632. Accidents involving injury

A. The driver of any vehicle involved in an accident resulting in injury to any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until relevant information is ex-

changed between parties involved and law enforcement officers arrive. Every such stop shall be made without obstructing traffic more than is necessary.

B. It is a crime for a person to willfully or maliciously fail to stop to avoid detection or prosecution with said requirements under such circumstances. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-633. Unlawfully transporting a regulated beverage

The crime of unlawfully transporting a regulated beverage occurs when a person drives any motor vehicle and knowingly carries any intoxicating or non-intoxicating beverage which is not secured. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-634. Eluding law enforcement officer

The crime of eluding a law enforcement officer occurs when a person who is operating a motor vehicle knowing that a law enforcement officer has signaled for the person to stop:

1. Fails to bring the vehicle to stop in a reasonable time or distance;
2. Takes any other action with the intent to evade the law enforcement officer; or
3. Approaches a roadblock and knowingly proceeds through the roadblock without stopping or without receiving permission to proceed from a law enforcement officer.

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-635. Resisting arrest

The crime of resisting arrest occurs when a person physically resists a person known to the actor to be a law enforcement officer affecting an arrest. Any person convicted under this section shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-609, added by NCA 92-14, § 6-709, amended by NCA 99-04, § 107; NCA 07-179, § 11.

Library References

Obstructing Justice ☞3.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 18 to 29.

CRIMES & PUNISHMENT

SUBCHAPTER 7. RESERVED

SUBCHAPTER 8. CRIMES RELATED TO LICENSING, TRIBAL OFFICERS AND PUBLIC RECORDS

Section

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- 2-825. Unlawful use of radio sets capable of receiving on police frequencies.

§ 2-801. Definitions

In this subchapter, the following words and phrases shall have the following meanings:

A. “Benefit” means any gain or advantage or anything regarded by the beneficiary as gain or advantage, including gain or advantage to another person or entity in whose welfare the beneficiary is interested. In bribery of a Tribal officer, benefit does not include remuneration, wages, salary, reimbursement of expenses or other compensation paid to a Tribal Official by the government as provided by law governing the Tribal official’s compensation, nor does it include a political exchange. In commercial bribery, benefit does not include remuneration, wages, salary, reimbursement of expenses or other compensation paid to an agent, employee or fiduciary by such person’s principal, employer or beneficiary.

B. “Official act” means a decision, award of contract, judgment, opinion, report, recommendation, vote or other exercise of discretion of the performance of a legal duty by a Tribal official.

C. “Political exchange” means:

1. Arrangements among legislators for reciprocal support or commitments on matters of public policy, which arrangements do not include any financial gain or advantage to such legislators; or

2. An advantage promised or general commitment made with respect to a public issue by a candidate in the course of seeking votes in an election, which is made generally to a large enough number of people so as to make the promise or commitment essentially a matter of public record.

D. “Board of the Muscogee (Creek) Nation”, shall include the following boards: Election Board, Citizenship Board, Gaming Operations Authority Board, Muscogee (Creek) Nation Business Enterprise Board, Tribal Trade and Commerce Authority Board, Board of Regents of the College of the Muscogee (Creek) Nation and any other governing board created by law.

E. “Tribal official” shall mean any individual who has been duly elected or appointed to the following positions within the Muscogee (Creek) Nation; Principal Chief, Second Chief, Justice of the Supreme Court, Judge of the District Court, Attorney General, Secretary of the Nation, Chief of Staff, Executive Director, Director, Controller, Tax Commissioner, Public Gaming Commissioner, Lighthorse Chief and National Council Representatives.

[NCA 10-053, approved May 27, 2010.]

§ 2-802. Bribery

A. It is a crime for a person, having corrupt or deceitful intent, to give or offer to give any benefit, money, property or other thing of value to a Tribal official, member of a Board of the Muscogee (Creek) Nation, employee of the Muscogee (Creek) Nation or employee of any Board of the Muscogee (Creek) Nation, in exchange for or to induce the performance of any act which is within the scope of or is in any manner related to his official duties or responsibilities. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. It is a crime for a person, who is a Tribal official, member of a Board of the Muscogee (Creek) Nation, employee of the Muscogee (Creek) Nation or employee of any Board of the Muscogee (Creek) Nation and having corrupt or deceitful intent, to accept or agree to accept any benefit, money, property or other thing of value in exchange for the performance of any act which is within the scope of or is in any manner related to his or her official duties or responsibilities as such an official or employee. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-503, added by NCA 92-14,
§ 5-703, amended by NCA 99-04, § 107; NCA
07-179, § 10.

Library References

Bribery ⇔1.
Westlaw Topic No. 63.
C.J.S. Bribery §§ 1 to 3, 5 to 14.

§ 2-803. Prevent or attempt to prevent performance of official acts

It is a crime for a person who alone or in concert with others, willfully either by force, physical interference, fraud, intimidation, threats of violence or by means of any independently unlawful act, prevents or attempts to prevent any Tribal official, member of a Board of the Muscogee (Creek) Nation, employee of the Muscogee (Creek) Nation and/or employee of Board of the Muscogee (Creek) Nation from performing any official act, function, power or duty imposed upon such individual by law. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-804. Conflict of interest by Tribal official

The crime of conflict of interest by a Tribal official occurs when a Tribal official knowingly received any consideration:

A. In exchange for furnishing any person property or transferring any real property to or for the use of the entity with which the Tribal official is associated. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Beyond the person's approved salary and benefits in exchange for furnishing services or information to or for use of the entity with which the Tribal official is associated. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-805. Crimes related to jury proceedings

The crime of listening, observing or recording jury proceedings occurs when:

A. A person, other than a juror in the case under deliberation, knowingly listens to, observes or records by means of any device, the deliberations of voting of any jury. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. A person who is a juror records jury proceedings, other than by taking notes to assist in the jury's deliberations, with the intent to violate the juror's oath. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-806. Crimes related to witnesses

In this subchapter the following words and phrases shall have the following meanings:

A. "Persuasion" means to prevail upon another person by means other than bribery, coercion or deception.

B. "Unlawful harm" means loss, disadvantage or injury which does not constitute a crime but which would be the basis of a civil action.

[NCA 10-053, approved May 27, 2010.]

§ 2–807. Tampering with a witness

The crime of tampering with a witness occurs when a person knowingly induces a witness through deception or persuasion to give false testimony or information or to withhold unprivileged testimony, information or physical evidence. The tampering must be done with the intent to subvert an official proceeding or investigation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–604, added by NCA 92–14, § 6–704, amended by NCA 99–04, § 107; NCA 07–179, § 11.

Library References

Obstructing Justice ☞4.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 30, 33 to 36.

§ 2–808. Preventing witness from appearing

The crime of preventing a witness from appearing occurs when a person knowingly prevents a witness from appearing at an official proceeding or investigation, either by obstructing service of process summoning the witness to testify or supply evidence, or by causing the witness to be absent from an official proceeding or investigation to which the witness has been legally summoned. The prevention must be done with the intent to subvert an official proceeding or investigation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–608, added by NCA 92–14, § 6–708, amended by NCA 99–04, § 107; NCA 07–179, § 11.

Library References

Obstructing Justice ☞4.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 30, 33 to 36.

§ 2–809. Retaliation against witness

The crime of retaliation against a witness occurs when a person knowingly inflicts unlawful harm upon a witness or upon another person with whom the witness has a family, social, business or other similar relationship and the harm is done with the intent to retaliate for any unlawful act done by a person as a witness. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–810. Suppressing evidence

The crime of suppressing evidence occurs when a person maliciously and through fraud, deceit or intimidation prevents any party to an official proceeding from:

A. Obtaining any article which may be physical evidence in that proceeding. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Procuring the attendance or testimony of any witness in that proceeding. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

§ 2–811. Tampering with physical evidence

The crime of tampering with physical evidence occurs when a person knowingly alters, damages, destroys, conceals, or removes any physical evidence with the intent to impair or prevent its use in an official proceeding or investigation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: 07–179, § 11; NCA 92–14, § 6–707, amended by Title 14, § 2–606, added by NCA 92–14, NCA 99–04, § 107; NCA 07–179, § 11. § 6–706, amended by NCA 99–04, § 107; NCA

Library References

Obstructing Justice ☞5.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 30 to 38.

§ 2–812. Escape

A. The crime of escape occurs when a person knowingly:

1. Departs without authorization from official custody. Any person convicted of violating the foregoing provision shall be guilty of a felony.

2. Fails to return to official custody following a temporary authorized leave. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. “Official custody” means arrest, detention in a facility for custody of person charged with or convicted of a crime or alleged or found to be delinquent, or detention while awaiting extradition or deportation or detention for any other law enforcement purpose. It does not include supervision of persons on probation or parole or conditions attached to a suspended sentence or to release pending appearance at proceedings.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–603, added by NCA 92–14,
§ 6–703, amended by NCA 99–04, § 107; NCA
07–179, § 11.

Library References

Obstructing Justice ☞7.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 4, 10, 12 to 29, 31 to 32,
38.

§ 2–813. Default in court appearance

The crime of default in court appearance occurs when a person intentionally fails to appear or surrender knowing such appearance or surrender is required by the conditions of release from official custody by court order. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor. [NCA 10–053, approved May 27, 2010.]

§ 2–814. Perjury and related crimes; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. “Oath” means a promise or affirmation to tell the truth, administered according to law.

B. “Statement” means any oral or written representation of a fact.

[NCA 10–053, approved May 27, 2010.]

§ 2–815. Perjury

The crime of perjury occurs when a person in an official proceeding or official proceedings knowingly:

A. Makes a false statement under oath. Any person convicted of violating the foregoing provision shall be guilty of a felony;

B. Swears to confirm the truth of a previously made false statement. Any person convicted of violating the foregoing provision shall be guilty of a felony.

C. Makes inconsistent statements under oath when at least one of the statements is false. In a prosecution under this section, the prosecutor need not allege or prove which of the statements is false, by only that one or the other was known by the actor to be false. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–803, added by NCA 92–14,
§ 1–601.03, amended by NCA 98–07, § 103;

NCA 07–179, § 13; NCA 92–14, § 1–601.04,
amended by NCA 98–07, § 103.

Library References

Indians ☞620.
Perjury ☞1.

Westlaw Topic Nos. 209, 297.
C.J.S. Indians §§ 151 to 179.

Title 14, § 2–815

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C.J.S. Perjury §§ 1 to 3, 5 to 10, 33 to 34.

§ 2–816. False swearing

The crime of false swearing occurs when a person in other than an official proceeding:

A. Makes a false statement under oath with the intent to mislead a Tribal official from performing an official duty. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. Knowingly makes a false statement under oath when the statement is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths. Any person convicted of violating the foregoing provision shall be guilty of a felony.

C. Swears to or reaffirms the truth of a false statement previously made with the intent to mislead a Tribal official in performing an official duty. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–602, added by NCA 92–14, § 6–702, amended by NCA 99–04, § 107; NCA 07–179, § 11.

Library References

Obstructing Justice ☞1, 7.
Westlaw Topic No. 282.

C.J.S. Escape and Related Offenses; Rescue
§ 32.

C.J.S. Obstructing Justice or Governmental
Administration §§ 1, 3 to 33, 35 to 36, 38.

§ 2–817. Unsworn falsification

The crime of unsworn falsification occurs when a person communicates with a Tribal official in the performance of the Tribal official's official duty by:

A. Making a false statement in writing with the intent to mislead the Tribal official. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Omitting information from a written application for any benefit knowing that such information is necessary to prevent statements therein from being misleading. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

C. Making use of any writing or object knowing that it is not authentic or that it is false. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–507, added by NCA 92–14, § 5–707, amended by NCA 99–04, § 107; NCA 07–179, § 10.

Library References

Fraud ☞68.10.
Westlaw Topic No. 184.
C.J.S. Fraud §§ 125 to 132.

§ 2–818. Impersonation of Tribal official

A. The crime of impersonation of Tribal official occurs when a person falsely poses as a Tribal official with the intent to induce another person to submit to such pretended official authority or otherwise to act in reliance on such pretense and:

1. the actor performs any act in the pretended capacity; or
2. another person acts in reliance upon such pretense.

B. “Falsely poses” means to misrepresent oneself in any manner as a Tribal official, including wearing or displaying without authority any uniform, badge, insignia, identification, card, or any other token by which a Tribal official is distinguished.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–819. Obstructing an officer in the performance of duties

It is a crime for a person with the purpose to hinder the apprehension, prosecution, conviction or punishment of another for a crime, to harbor or conceal the other, provide a weapon, transportation, disguise or other means of escape, warn the other of impending discovery or volunteer false information to a law enforcement officer. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–602, added by NCA 92–14, § 6–702, amended by NCA 99–04, § 107; NCA 07–179, § 11.

Library References

Obstructing Justice ☞1, 7.
Westlaw Topic No. 282.
C.J.S. Escape and Related Offenses; Rescue § 32.
C.J.S. Obstructing Justice or Governmental Administration §§ 1, 3 to 33, 35 to 36, 38.

§ 2–820. Obstructing fire fighting

The crime of obstructing fire fighting occurs when a person engages in any conduct with the intent to prevent or dissuade any person, other than a law

enforcement official, fire fighter or other similar official, from extinguishing a fire. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–902, added by NCA 92–14, § 8–702, as amended by NCA 99–04, § 107; NCA 07–179, § 14.

§ 2–821. Fraud crimes; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. “Adulterated” means failing to meet the standard of composition or quality prescribed by statute or set by established commercial usage.

B. “Health care profession” means any occupation which consists of the diagnosis, cure, treatment of physical disease or injury or mental illness or conditions, as well as any support personnel requiring licensure offering direct patient care.

C. “License”, in addition to its usual meaning, with respect to hazardous waste, means a registration, manifest or disposal plan approved pursuant to applicable federal law or law of the Muscogee (Creek) Nation, or a permit or authorization from a federal agency or from the Muscogee (Creek) Nation.

D. “Misabeled” means failing to meet the standard of truth or disclosure in labeling prescribed by statute or set by established commercial usage.

E. “Misrepresentation” means a false representation of a past or present fact or omission to provide a past or present fact which the actor had a duty to provide.

F. “Practices” means to represent oneself to be a practitioner of an occupation or profession and:

1. To perform any act in that capacity, or
2. To cause another person to act in reliance upon that representation.

[NCA 10–053, approved May 27, 2010.]

§ 2–822. Commercial fraud

The crime of commercial fraud occurs when a person in the course of business knowingly:

A. Possesses for use a false weight or measure or any other device for falsely determining or recording any quantity or quality. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Offers or exposes for sale, less than the represented quantity of commodities or services or other than the represented kind or variety of a commodity. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

C. Offers or exposes for sale as an auctioneer any damaged property representing that such property is sound. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

D. Removes any tag, seal or mark placed pursuant to law, or required to be placed by law, on any property without the prior written authorization of the proper authority. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

E. Offers or exposes for sale, any adulterated or mislabeled commodity. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor; or

F. Makes a false, misleading or deceptive statement of fact in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting or increasing the sale of property or services. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-823. Criminal fraud

The crime of criminal fraud occurs when a person under circumstances not constituting theft knowingly makes a material misrepresentation to another person which either causes that person to suffer financial loss or which is made with the intent to violate a law of the Muscogee (Creek) Nation. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-824. Licensure fraud

The crime of licensure fraud occurs:

A. When a person engages in the practice of law and represents himself as an attorney, knowing that he has no Tribal licensure or that his Tribal licensure has expired. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. When a person engages in the practice of medicine and represents himself as a doctor, knowing that he has no state license or that his state license has expired, provided that no licensure fraud shall be deemed committed by a person who practices Indian medicine. Any person convicted of violating the foregoing provision shall be guilty of a felony.

When a person knowingly and without a license engages in any activity which requires a license from the Muscogee (Creek) Nation or an agency of the Muscogee (Creek) Nation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-825. Unlawful use of radio sets capable of receiving on police frequencies

It is a crime for a person to operate a mobile radio capable of receiving transmission made by any law enforcement agency for illegal purposes or while

in the commission of a crime. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

**SUBCHAPTER 9. CRIMES INVOLVING
FAMILY AND CHILDREN**

Section

- 2-901. Bigamy.
- 2-902. Children; definitions.
- 2-903. Contributing to the delinquency of child.
- 2-904. Abandonment; definitions.
- 2-905. Abandonment of child.
- 2-906. Abandonment of incapacitated spouse.
- 2-907. Interference of custody of child.
- 2-908. Failure to report child abuse.
- 2-909. Neglect of a child.
- 2-910. Child abuse.

§ 2-901. Bigamy

The crime of bigamy occurs when:

A. A married person enters into an apparent marriage with another person and knowing that he or she is ineligible to remarry. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. A person knowingly enters into two or more marriages with other persons simultaneously. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-902. Children; definitions

For purposes of this subchapter words and phrases shall be as defined in the Children's Code, MCNCA, Title 6.

[NCA 10-053, approved May 27, 2010.]

§ 2-903. Contributing to the delinquency of child

The crime of contributing to the delinquency of a child occurs when a person:

A. Who is the person or the guardian of a child, knowingly permits that child to have access to a loaded firearm or an unloaded firearm with available ammunition, without active and immediate supervision by the parent, guardian, or other appropriate adult supervision. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Knowingly sells or furnishes to a child less than eighteen (18) years of age, tobacco in any form. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

C. Knowingly causes or permits a child to enter or remain in a place where unlawful activity involving a controlled dangerous substance is maintained or

conducted or where prostitution, unlawful gambling or the manufacture or production of pornography takes place. Any person convicted of violating the foregoing provision shall be guilty of a felony.

D. Knowingly causes or encourages a child to become or remain a delinquent child or a child in need of supervision. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-901, added by NCA 92-14,
§ 8-701, amended by NCA 99-04, § 107; NCA
07-179, § 14.

Library References

Indians ⇨133.

Infants ⇨13.

Westlaw Topic Nos. 209, 211.

C.J.S. Indians § 150.

C.J.S. Infants §§ 110 to 114, 118 to 121.

§ 2-904. Abandonment; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. “Abandons” means to permanently and completely forsake the performance of the duty of care, protection and support owed to the child or incapacitated spouse without court approval.

B. “Incapacitated spouse” means a married person who by reason of mental or physical illness is disabled to such an extent that the person lacks the ability to provide for that person’s own needs.

[NCA 10-053, approved May 27, 2010.]

§ 2-905. Abandonment of child

The crime of abandonment of a child occurs when a parent, guardian or other person having custody or control of a child less than fifteen (15) years of age:

A. Knowingly abandons the child. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Persistently fails to provide support which he or she can provide and which he or she is legally obliged to provide to a child or other dependent. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-906. Abandonment of incapacitated spouse

The crime of abandonment of an incapacitated spouse occurs when a person knowingly abandons an incapacitated spouse or persistently fails to provide support which he or she can provide and which he or she is legally obliged to

provide to that spouse. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-907. Interference of custody of child

The crime of interference with custody of child occurs when a parent or other person violates an order of a court of competent jurisdiction which grants the custody of the child to a person, agency or institution. Such violation must be committed with the intent to deprive the custodian of the custody of that child. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-908. Failure to report child abuse

The crime of failure to report child abuse occurs when a person who is required under provisions of MCNCA, Title 6 to report suspected instances of child abuse knowingly fails to make that report. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-612, added by NCA 92-14, § 6-712, amended by NCA 99-04, § 107; NCA 07-179, § 11.

Library References

Indians ⇄133.

Infants ⇄7.

Westlaw Topic Nos. 209, 211.

C.J.S. Indians § 150.

C.J.S. Infants § 144.

§ 2-909. Neglect of a child

The crime of neglect of a child occurs when a parent, guardian or other person supervising the welfare of a child:

A. Knowingly endangers the child's welfare by violating a duty of care, protection or support. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Omits to do an act which places the child's welfare at substantial risk. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

C. Neglects or refuses to send the child to school. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-910. Child abuse

The crime of child abuse occurs when a parent, guardian or other person responsible for the welfare of a child willfully or maliciously injures, bruises,

strikes, beats, kicks, bites, physically tortures, maims or uses any other form of unreasonable force upon a child or causes or procures any of said acts to be committed upon a child by another person. Provided, that this section shall not prohibit any parent, guardian or other person responsible for the child's health or welfare from using reasonable, ordinary force as a means of discipline, including but not limited to spanking; provided said disciplinary action does not cause unreasonable harm or injury to the child.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

SUBCHAPTER 10. DEFENSES

Section

- 2-1001. Effect of affirmative defense.
- 2-1002. Other consistent defenses.
- 2-1003. Defenses cumulative.
- 2-1004. Defenses; definitions.
- 2-1005. Exculpating affirmative defense.
- 2-1006. Defense of ceremonial use of substances.

§ 2-1001. Effect of affirmative defense

The effect of an affirmative defense is to allocate to the defendant the burden of producing sufficient evidence to support a finding that the facts giving rise to the defense exist.

[NCA 10-053, approved May 27, 2010.]

§ 2-1002. Other consistent defenses

The provisions of this Code shall not be construed as precluding a court from recognizing other defenses not inconsistent with these provisions.

[NCA 10-053, approved May 27, 2010.]

§ 2-1003. Defenses cumulative

The defenses in this Code are cumulative. Unless otherwise indicated, the unavailability of one defense does not preclude the possible availability of any other defense.

[NCA 10-053, approved May 27, 2010.]

§ 2-1004. Defenses; definitions

In this Code, unless a different meaning is specified in reference to a particular defense:

A. "Deadly force" means force that is intended or known by the actor to cause or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

B. "Force" means any bodily impact, restraint or confinement that is employed without the consent of the person against whom it is directed.

C. “Great bodily harm” means serious and severe bodily harm. Such harm must be of a greater degree than a non-aggravated battery.

D. “Involuntary intoxication” means a disturbance of mental and physical capacities resulting from the introduction of substances into the body that results from:

1. Fraud, trickery or duress of another;
2. Force of another;
3. Accident or mistake on the actor’s part;
4. A pathological condition; or
5. Ignorance as to the effects of prescribed medication.

E. “Mental illness” means a psychiatric disorder which substantially disturbs a person’s thinking, feelings or behavior and impairs the person’s ability to function. Mental illness also includes any mental retardation or organic brain damage.

[NCA 10–053, approved May 27, 2010.]

§ 2–1005. Exculpating affirmative defense

A. Defense of another by use of deadly force. An exculpating affirmative defense is a complete defense. The following are included in exculpating defenses:

1. The defense of another by the use of deadly force is a defense when the crime charged involves the use of deadly force and the defendant believes the use of deadly force is immediately necessary to protect another person from danger of death or great bodily harm;

2. The defense of another by use of deadly force is not available if the defendant knows, at the time of committing the act of force, that the defendant could avoid the necessity of using deadly force, with complete personal safety and with complete safety as to others, by causing the person protected to retreat. The defense is available if the person protected is not the aggressor and is on premises which the person protected owns or leases;

3. The defense of another by use of deadly force is not available if the person protected is the aggressor, provokes the other person with the intent to cause the altercation or voluntarily enters into mutual combat. The defense is available if the person protected withdraws or attempts to withdraw from the altercation;

4. The defense of another by use of deadly force is not available to the defendant if the person protected enters the land of another without consent or refuses to leave the land of another after lawful request to leave. The defense is available if the person protected takes advantage or attempts to take advantage of an opportunity to retreat with complete safety from an imminent danger of injury before repelling or attempting to repel an unlawful attack; and

5. The defense of another by the use of deadly force is a defense when the crime involves the use of non-deadly force and the degree of force is reasonable and appropriate under the circumstances as viewed by a reasonable person in

the defendant's situation and the defendant reasonably believes such use of force is immediately necessary to protect a third person from bodily injury.

a. This defense is not available to protect a person who is the aggressor, who provokes another person with the intent to cause the altercation or who voluntarily enters into mutual combat. The defense is available if the person protected withdraws or attempts to withdraw from the altercation, and

b. The defense is not available to protect a person who enters the land of another person without consent, or who refuses to leave the land of another after lawful request to leave. The defense is available if the person protected takes advantage or attempts to take advantage of an opportunity to retreat with complete safety from an imminent danger of injury before the defendant repels or attempts to repel an unlawful attack.

B. Duress. The defense of duress is a defense when the defendant engages in acts or omissions constituting the crime charged under compulsion or threat of imminent infliction of death or serious bodily injury, if the defendant reasonably believes that death or serious bodily injury will be inflicted upon the defendant or a member of the defendant's immediate family. The defense is not available to a defendant who fails to use a reasonably safe opportunity to escape from imminent danger of death or serious bodily injury.

C. Entrapment. The defense of entrapment is a defense when the defendant engages in the conduct charged because the defendant is induced or persuaded to do so by a law enforcement official or by a person acting in cooperation with a law enforcement official. The defendant must have no predisposition to commit the alleged crime prior to being so induced or persuaded.

D. Habitation. The defense of habitation is a defense when the defendant is lawfully present in a dwelling and uses force of a degree which the defendant reasonably believes is immediately necessary to use against another person who has made an unlawful entry into that dwelling, and the defendant has a reasonable belief that such other person will use physical force, no matter how slight, against any occupant of the dwelling.

E. Law enforcement officer using deadly force. The defense of a law enforcement officer who uses deadly force is a defense available when the defendant is a law enforcement official or when the defendant is a person acting at the direction of the law enforcement official while in aid and assistance of such official in the reasonable belief that such official's actions are lawful. It is a defense when the defendant reasonably believes that such deadly force is immediately necessary to effect an arrest or prevent an escape from custody following arrest and the defendant reasonably believes that both:

1. Such force is necessary to prevent the arrest from being defeated by resistance or escape; and

2. There is probable cause to believe that the person to be arrested has committed a crime involving the infliction or threatened infliction of serious bodily injury, or the person to be arrested is attempting to escape through the use of a dangerous weapon.

F. Law enforcement officer using non-deadly force. The defense of a law enforcement officer who uses non-deadly force is a defense when the defendant

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is a law enforcement official or is a person acting at the direction of a law enforcement official, or is a person aiding and assisting a law enforcement official, and the crime charged involves the use of non-deadly force against another which the defendant believes is reasonable and appropriate under the circumstances as viewed by a reasonable person in the defendant's situation. The defense is available to a defendant, who reasonably believes the force used is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing an escape after arrest, if:

1. The defendant has probable cause to believe the arrest or search is lawful or, if the arrest or search is made under warrant, the defendant reasonably believes the warrant is valid; and

2. Before using force, the defendant manifests the purpose of arresting or searching and provides identification as a law enforcement official or as one acting at a law enforcement official's direction, unless the defendant reasonably believes the defendant's purpose and identity are already known by, or cannot be made known to the person arrested.

G. Defense of property. The defense of property is a defense when the crime charged involves the use of non-deadly force against another and the defendant believes the degree of force used is reasonable and appropriate under the circumstances. The defense of property is a defense when a defendant, lawfully in possession of real or personal property, uses non-deadly force against another which the defendant reasonably believes is necessary to prevent or attempt to prevent an imminent taking or harm to the property.

[NCA 10–053, approved May 27, 2010.]

§ 2–1006. Defense of ceremonial use of substances

Nothing herein shall prohibit the use of tobacco by adults or minors at ceremonial grounds strictly for ceremonial purposes. In addition, nothing herein shall prohibit the use of peyote or its derivatives by official members of the Native American Church strictly for ceremonial purposes of the Native American Church.

[NCA 10–053, approved May 27, 2010.]