

TITLE 4 OFFENSES

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TITLE 4 OFFENSES

CHAPTER 4-1 CRIMINAL OFFENSES

GENERAL PROVISIONS

Introductory Provisions

§4-1-1 Definitions (revised 6/22/99)

(a) "Adult household member" means spouses, former spouses, persons related by blood or marriage, persons who reside or who have resided together, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(b) "Adulterated" means varying from the standard of composition or quality prescribed by any applicable law or commercial usage.

(c) "Affirmative defense" means a new matter in the prosecution of an offense which assuming the complaint to be true constitutes a defense to it.

(d) "Agent" means any director, officer, servant, employee or other person authorized to act in behalf of a corporation or association and, in the case of an unincorporated association, a member of such association.

(e) "To appropriate" when used as a verb means:

(1) to exercise control over property, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit; or

(2) to dispose of the property for the benefit of oneself or a third person.

(f) "Corporation" means any entity incorporated under state or tribal law but does not include an entity organized as or by a governmental agency for the execution of a governmental program.

(g) "Corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of a forbidden act or omission, or to another.

(h) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protect activity is not included, within the meaning of this definition.

(i) "Dangerous device" means any device capable of causing serious bodily injury to human beings.

(j) "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. On the issue of whether an object not commonly known as a dangerous weapon is such a weapon, the character of the object, the

character of the wound produced, if any, and the manner in which the object was used shall be determinative.

(k) "Domestic household member" means spouses, former spouses, persons related by blood or marriage, persons who reside or who have resided together, and persons who have a child in common or are expecting a child together, regardless of whether they have been married or have lived together at any time. For the purpose of this Title, "reside" shall mean one's personal presence at some place of abode with no present intention of leaving and with purpose to remain for an undetermined period of time, but not necessarily combined with the design to stay permanently.

(l) "Domestic violence" means the occurrence of one or more of the following:

- (1) An unlawful attempt, coupled with apparent ability, to commit a violent injury on another domestic household member;
- (2) An intentional, unlawful threat by word or act to do violence to another domestic household member, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other domestic household member that such violence is imminent;
- (3) Willful and unlawful use of force or violence upon the person of another domestic household member;
- (4) Actual, intentional and unlawful touching or striking of another domestic household member against their will;
- (5) Unlawfully and intentionally causing bodily harm to another domestic household member; or
- (6) Causing a domestic household member to engage involuntarily in sexual activity by force, threat of force, or duress.

(m) "Drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in growing, harvesting, manufacturing, compounding, converting, concealing, producing, processing, preparing, storing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this code. It includes but is not limited to: **(Subsection amended by NPTEC 1/24/17)**

- (1) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
- (2) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (3) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (4) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (5) Capsules, balloons, envelopes and other containers used, intended for use,

- or designed for use in packaging small quantities of controlled substances;
- (6) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (7) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (8) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (B) Water pipes;
 - (C) 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;
 - (D) Miniature cocaine spoons, and cocaine vials;
 - (E) Electric pipes;
 - (F) Air-driven pipes;
 - (G) Bongs.

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

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
3. The proximity of the object, in time and space, to a direct violation of this chapter;
4. The proximity of the object to controlled substances;
5. The existence of any residue of controlled substances on the object
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. 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;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community;
14. Expert testimony concerning its use.

(n) "Element of the offense" means:

- (1) the conduct, attenuated circumstances or result of conduct included in the

description of the forbidden act in the definition of the offense; and

- (2) the establishment of the required mental state or culpability described in the offense, if any; but
- (3) an "element of the offense" shall not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with the harm or evil, incident to the prohibited conduct, or the existence of justification or excuse for such conduct.

(o) "Embezzlement" means to willfully take or convert to one's own use, another's money or property in which the wrongdoer lawfully acquired possession by reason of some office, employment or position of trust.

(p) "Enter" means an intrusion by any part of the body, or intrusion by any physical object under control of the actor.

(q) "Fiduciary" means a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization.

(r) "Harass" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress.

(s) "High managerial agent" means an officer of a corporation or an unincorporated association or, in the case of a partnership, a partner, or any other agent of a corporation or association having duties of such responsibility that his conduct may fairly be assumed to represent the policy of the corporation or association.

(t) "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

(u) "Knowingly" means the knowledge that the facts exist which bring an act or omission within the provisions of this chapter. A knowing mental state does not require any knowledge of the unlawfulness of such act or omission.

(v) "Malice aforethought" means an intent at the time of a killing, to willfully take the life of a human being, or an intent to willfully act in callous and wanton disregard of the consequences to human life.

(w) "Maliciously" or "malice" means a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

(x) "Minor or child" means a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

(y) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by any applicable law or commercial usage.

(z) "Negligently", "neglect", "negligence," or "negligent" means a want of such attention to the nature of probable consequences of an act or omission as a prudent person

ordinarily bestows in acting in his own concerns.

(aa) "Obtain" means:

- (1) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and
- (2) in relation to labor or services, to secure the performance thereof.

(bb) "Owner" means any person who has a right to possession of property superior to that of the taker, obtainer or withholder.

(cc) "Possession" means an act in which the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

(dd) "Public assistance" shall have the definition and meaning provided in Title 10, Section 56-201 of the Idaho State Public Assistance and Welfare Code existing as of the date of adoption of this chapter by NPTEC or hereafter amended.

(ee) "Public monies" means all bonds and evidences of indebtedness, and all monies belonging to the Tribe, and all monies, bonds and evidences of indebtedness received or held by Tribal officials in their official capacity.

(ff) "Self-induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know.

(gg) "Sexual contact" means any intentional touching of the genitals, anus, groin, breast, inner thigh or buttocks with intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desires of any person.

(hh) "Social game" means a game, other than a lottery, between players in a private home or private business where no house player, house bank or house odds exist and there is no house income from the operation of the social game.

(ii) "Strict liability" means an element of an offense that exists only when the definition of the offense does not include or involve a culpable mental state.

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

(kk) "Willfully" implies a purpose or willingness to commit a forbidden act or make a forbidden omission. A wilful mental state does not require any intent to violate law, or to injure another or to acquire any advantage.

(ll) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks and other symbols of value, right, privilege, or identification.

§4-1-2 Scope

This chapter shall apply to all criminal provisions of this code.

§4-1-3 Purpose and Construction

The purpose of the criminal provisions of this code are to:

- (a) forbid and prevent the commission of offenses and give fair warning of conduct which is declared to be an offense;
- (b) define adequately the conduct and mental state which constitute each offense and safeguard conduct that is without fault from condemnation;
- (c) prescribe penalties which are proportionate to the seriousness of the offense; and
- (d) prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons.

§4-1-4 Civil Remedies Preserved

This code shall not affect any civil remedy available under the Nez Perce Tribal Code which may arise from any act or omission which is punishable under this chapter. The fact that conduct is found to be an affirmative defense under this chapter does not abolish or impair any remedy for such conduct available in any civil action.

Multiple Prosecutions and Double Jeopardy**§4-1-5 Prosecution for Multiple Offenses**

- (a) When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:
 - (1) one offense is included in the other;
 - (2) one offense consists only of a conspiracy or other form of preparation to commit the other;
 - (3) inconsistent findings of fact are required to establish the commission of the offenses;
 - (4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or
 - (5) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless this code provides that specific periods of such conduct constitute separate offenses.
- (b) Except as provided by Subsection (c) of this section, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the

same criminal episode.

(c) Upon application of either party and when the defendant is charged with two or more offenses based on the same conduct or arising from the same criminal episode, the Court may order any such charge to be tried separately if it is satisfied that justice so requires.

(d) A defendant may be convicted of an offense included in an offense charged in the complaint. An included offense may be:

- (1) established by proof of the same or less than all the facts required to establish the commission of the offense charged;
- (2) an attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or
- (3) different from the offense charge only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(e) The Court shall charge the jury with respect to an included offense if there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

§4-1-6 Double Jeopardy

If a defendant has been prosecuted in the Nez Perce Tribal Court for one or more offenses arising out of the same conduct as the original prosecution, a subsequent prosecution in the Nez Perce Tribal Court for the same or a different offense arising out of the same conduct is barred. The initial prosecution shall have been established in any proceeding in which the jury has been impaneled and sworn in, or, if the matter was to be tried without a jury, once the first witness is sworn.

Burden of Proof

§4-1-7 Burden and Presumption of Innocence

No person may be convicted of an offense unless each element of such offense is proven beyond a reasonable doubt. In the absence of such proof the defendant shall be acquitted.

§4-1-8 Negating Defenses

The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either party, or unless the defense is an affirmative defense and the defendant has presented evidence of it.

GENERAL PRINCIPLES OF LIABILITY

§4-1-9 Acts and Omissions to Act

(a) A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

(b) The following are not voluntary acts with the meaning of this section:

- (1) a reflex or convulsion;
- (2) a bodily movement during unconsciousness or sleep;
- (3) conduct during hypnosis or resulting from hypnotic suggestion;
- (4) a bodily movement that otherwise is not a product of the effort or determination of the actor.

(c) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

- (1) the omission is expressly made sufficient by the definition of the offense; or
- (2) a duty to perform the omitted act is otherwise required by this code.

§4-1-10 Culpability

A person is not guilty of an offense unless he acted with the requisite mental state with respect to each material element of the offense or unless his act constitutes an offense involving strict liability.

§4-1-11 Causal Relationships Between Conduct and Result

(a) Conduct is the cause of a result when:

- (1) the result in question would not have occurred but for the conduct; and
- (2) the relationship between the conduct and result satisfies any additional causal requirements imposed by the code or the definition of the offense.

(b) When a particular mental state is an element of an offense the element is not established if the actual result is not within the purpose or contemplation of the actor or within the risk of which the actor is aware or should be aware unless:

- (1) the actual result differs from that intended, contemplated or the probable result only in the respect that a different person or different property is injured or affected;
- (2) the injury or harm intended or contemplated, or probable would have been more serious or extensive than that caused; or
- (3) the actual result involves the same kind of injury or harm as that designed, contemplated or probable and is not too remote or accidental in its occurrence to have a just bearing on the actor's liability or the gravity of his offense.

§4-1-12 Ignorance or Mistake

(a) Ignorance or mistake as to a matter of fact or law is a defense if:

- (1) it negates the mental state for the offense; or
- (2) this code provides that the state of mind established by such ignorance or mistake constitutes a defense.

(b) Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed.

§4-1-13 Accomplices

(a) A person is an accomplice of another person in the commission of an offense if:

- (1) with the purpose of promoting or facilitating the commission of the offense he:
 - (A) solicits such other person to commit it;
 - (B) aids or agrees or attempts to aid such other person in planning or committing it;
 - (C) having a legal duty to prevent the commission of the offense, fails to make proper effort to do so; or
- (2) his conduct is expressly declared by the code or the definition of the crime to establish his complicity.

(b) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability necessary for the commission of the offense.

(c) A person who is legally incapable of committing a particular offense may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable.

(d) A person is not an accomplice in an offense committed by another person if:

- (1) he is a victim of that offense; or
- (2) he terminates his complicity prior to the commission of the offense; and
 - (A) wholly deprives it of effectiveness; and
 - (B) gives timely warning to the Tribal Police or otherwise makes proper effort to prevent the commission of the offense.

(e) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense or degree of offense, has an immunity to prosecution or conviction or has been acquitted.

§4-1-14 Corporations, Unincorporated Associations and Persons Acting, or Under a Duty to Act, in Their Behalf

(a) A corporation or unincorporated association may be convicted of the commission of an offense if:

- (1) the offense is a violation or the offense is defined by law in which a legislative purpose to impose liability on such entity plainly appears and the conduct is performed by an agent of the corporation or association acting in behalf of the entity within the scope of his office or employment, unless the law defining the offense specifically designates the agents for whose conduct the entity is accountable or the circumstances under which it is accountable;
- (2) the offense consists of an omission to discharge a specific duty to act imposed on such entities by the code or other law; or
- (3) the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the entity within the scope of his office or employment.

(b) When absolute liability is imposed for the commission of an offense, a legislative purpose to impose liability on a corporation or association shall be assumed.

(c) In any prosecution of a corporation or an unincorporated association for the commission of an offense under Subsection (a) of this section, other than an offense for which absolute liability has been imposed, it shall be a defense if the defendant proves by a preponderance of evidence that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission. This paragraph shall not apply if it is plainly inconsistent with the legislative purpose in defining the particular offense.

(d) A person is legally accountable for any conduct he performs or causes to be performed in the name of the corporation or an unincorporated association or in its behalf to the same extent as if it were performed in his own name or behalf.

(e) Whenever a duty to act is imposed by law upon a corporation or an unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon him.

(f) When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the grade and the degree involved.

§4-1-15 Intoxication

(a) Except for intoxication, which is not self-induced, intoxication of the actor is not a defense unless it negates any particular purpose, motive or intent which is a necessary element of the crime.

(b) Intoxication does not, in itself, constitute mental disease within the meaning of this code.

§4-1-16 Duress

(a) It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced by the use of, or a threat to use, unlawful force against his person or the person of another, which a reasonable person in his situation would have been unable to resist.

(b) The defense provided by this section is unavailable if:

- (1) the actor knowingly, willfully or negligently placed himself in a situation in which it was probable that he would be subjected to duress;
- (2) the coerced conduct threatens to cause death or serious bodily harm to some person other than the actor.

§4-1-17 Consent

(a) The consent of the victim to conduct constituting an offense or to the result thereof is a defense if it precludes an element of the offense or the infliction of the harm or evil sought to be prevented by the law defining the offense.

(b) When conduct constitutes an offense because it causes or threatens bodily harm, consent to such conduct is a defense only if:

- (1) the bodily harm consented to or threatened is not serious;
- (2) the conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
- (3) the consent establishes a justification for the conduct.

(c) Assent does not constitute consent if:

- (1) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;
- (2) it is given by a person who by reason of youth, mental disease, defect or intoxication is manifestly or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;
- (3) it is given by a person whose consent is sought to be prevented by the law defining the offense; or

- (4) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

§4-1-18 Entrapment

(a) It shall be a defense if a Tribal Police Officer or a person acting in cooperation with such an official for the purpose of obtaining evidence of the commission of an offense, induces or encourages the defendant to engage in conduct constituting such offense by either:

- (1) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
- (2) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

(b) The defense afforded by this section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

(c) The defendant shall have the burden of proving by a preponderance of evidence the defense of entrapment under this section.

§4-1-19 Mental Disease or Defect Excluding Responsibility

(a) It shall be an affirmative defense to prosecution of an offense if the defendant at the time of the criminal conduct and as a result of mental disease or defect lacks substantial capacity either to appreciate the criminal nature of his conduct or to conform his conduct to the requirements of law. A mental disease or defect does not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct, nor shall it preclude a finding that the defendant is guilty but insane if the possibility of intent is not completely eliminated by the mental disease or defect.

(b) Evidence of mental disease or defect is not admissible unless the defendant, at the time of entering his plea of not guilty or within ten (10) business days thereafter or at such later time as the Court may for good cause permit, files a written notice of his intent to rely on such defense.

§4-1-20 Medical Examination and Institutionalization

(a) Whenever there is reason to doubt the defendant's mental competency to stand trial the Court shall designate a licensed psychiatrist to conduct a competency determination. Upon completion of the evaluation a report shall be submitted to the Court and shall include the following:

- (1) a description of the nature of the evaluation;
- (2) a diagnosis or evaluation of the mental condition of the defendant; and
- (3) an opinion as to the defendant's capacity to understand the proceedings against him and to assist in his own defense.

(b) In the event that the Court determines that following trial the defendant's condition requires commitment to a mental institution or in the event the Court determines that the defendant lacks fitness to proceed, the Court shall direct that the defendant be committed to an appropriate facility for care and treatment.

JUSTIFICATION AND DEFENSES

§4-1-21 Justification Generally; Civil Remedies Unaffected

Justification is an affirmative defense to the prosecution of any offense based on such conduct and may be claimed:

- (a) when the harm or evil sought to be avoided is greater than that sought to be prevented by the law defining the offense charged, no tribal law exists which excludes the justification claimed, and the actor does not knowingly, willfully or negligently bring about the situation requiring his conduct; or
- (b) if the conduct is required or authorized by law.

§4-1-22 Force in Self-Protection or Protection of Others

(a) The use of reasonable force upon or toward another person is justifiable when the actor believes it is immediately necessary for the purpose of protecting himself or a third person against the use of unlawful force. The force used must be reasonably necessary to protect the actor or a third person.

- (b) The use of force is not justifiable under this section:
 - (1) to resist or assist another in resisting arrest which the actor knows is being made by a peace officer, although the arrest is unlawful;
 - (2) if the actor uses deadly force unless the actor believes that such force is necessary to protect himself or a third person against death, serious bodily harm, kidnaping or sexual intercourse compelled by force or threat;
 - (3) if the actor, with the purpose of causing death or serious bodily harm, provoked the use of force against himself or a third person in the same encounter; or
 - (4) if the actor was the aggressor or was engaged in combat by agreement, unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and the other notwithstanding continues or threatens to continue the use of unlawful force.

§4-1-23 Force for the Protection of Property

(a) The use of reasonable force upon or toward another is justifiable when the actor believes that such force is immediately necessary to prevent unlawful entry into or interference with real or personal property which is, or is believed by the actor to be, in his possession or in the possession of another person for whose protection he acts.

(b) The use of deadly force is not justifiable under this section unless the actor reasonably believes that the person against whom the force is used attacks, enters or is

attempting to enter the actor's place of habitation and manifestly:

- (1) intends to commit an offense or other offense involving threat of serious bodily injury therein and the force is necessary to prevent the offense or such injury; or
- (2) intends and attempts in a violent, riotous or tumultuous manner, to attack or enter the dwelling for the purpose of damaging or threatening to damage the dwelling or to any person and the force is necessary to prevent such assault or injury.

(c) The justification afforded by this section extends to the use of a device for the purpose of protecting property from entry or trespass only if:

- (1) the device is not designed to cause or known to create a substantial risk of causing death or serious bodily harm;
- (2) the use of the device is reasonable under the circumstances, as the actor believes them to be; and
- (3) the device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.

§4-1-24 Force in Law Enforcement

(a) The use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest or preventing an escape and the actor believes that such force is immediately necessary to effect a lawful arrest, prevent an escape or defend himself or another from bodily harm while making an arrest or preventing an escape.

(b) The use of deadly force is justifiable if:

- (1) the person effecting the arrest is authorized to act as a police officer or is assisting a person whom he believes to be authorized to act as a police officer;
- (2) the actor believes that the force employed creates no substantial risk of injury to innocent persons; and
- (3) the actor believes that there is a substantial risk that the person under arrest or to be arrested will cause death or serious bodily harm if his apprehension is delayed; or
- (4) the actor believes such force is necessary to protect himself or another from death or serious bodily injury.

§4-1-25 Force by Persons with Special Responsibility or Care, Discipline or Safety of Others

The use of force upon or toward the person of another is justifiable if:

(a) the force is used for the purpose of safeguarding or promoting the welfare of a minor, including the prevention or punishment of his misconduct; and

(b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme pain, or mental distress.

SENTENCES AND PUNISHMENTS (section amended 1/25/00)

§4-1-26 General Principles

In imposing a sentence for a violation of this chapter, the Court in each case shall consider the protection of the public, the gravity of the offense, the impact of the crime on the victim, and the results of any pre-sentencing reports.

§4-1-27 Sentences and Combinations of Sentences; Civil Penalties

(a) A court may sentence a person adjudged guilty of an offense to any one of the following sentences or a combination of such sentences:

- (1) to pay a fine not to exceed \$5,000;
- (2) imprisonment not to exceed 1 year;
- (3) to probation and/or suspension of sentence on such terms and conditions as the Court may direct, including payment of probation program costs;
- (4) to pay court costs;
- (5) to pay restitution or perform any other act for the benefit of any person or party injured personally or in his property by the person adjudged guilty provided such injuries are fairly attributable to the act or failure to act constituting the offense for which guilt was adjudged;
- (6) to treatment, counseling and/or rehabilitation;
- (7) to perform community service or other work for the benefit of the Tribe, through the Tribal Community Services Program, and pay program costs.

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

§4-1-28 Payment of Fines and Other Monies

Fines shall be paid in cash or certified check. The Court may allow that any fines or other required payments be paid in installments and on conditions tailored to the means of the defendant.

§4-1-29 Decision to Impose a Fine

In determining whether to impose a fine and its amount, the Court should consider:

- (a) the nature of the offense committed and the impact of the offense on the victim and the community;
- (b) the financial resources of the defendant.

§4-1-30 Community Service

The Court may require any person who has been convicted of an offense under this code to engage in community service for the benefit of the Tribe for any period it determines to be appropriate. Defendants receiving community service hours will be referred to the Tribal Community Services Program (CSP) by the Tribal Court and/or Probation Officers within five (5) days after being sentenced and will follow all guidelines of the CSP. Status reports on the defendants will be given to the Court and/or Probation Officers by the CSP.

§4-1-31 Sentencing Proceedings

(a) Sentence shall be imposed without unnecessary delay unless the Court postpones the imposition of sentence in order to conduct a pre-sentencing determination or for a reasonable time to resolve factors important to the sentencing determination which cannot be immediately resolved.

(b) During sentencing and in relation to the appropriate sentence, the Court shall allow the counsel for either party to comment upon any matter including information in mitigation and may allow counsel to call witnesses. The defendant and any victim of the crime committed will be allowed to make a statement before sentence is imposed if he so desires.

(c) After imposing sentence in a case which has gone to trial on a plea of not guilty, the Court shall advise the defendant of the defendant's right to appeal. If the sentence is imposed after a plea of guilty, the Court shall advise the defendant of the right to appeal the sentence.

§4-1-32 Probation

The Court may suspend the defendant's sentence and allow probation upon the terms and conditions determined by the Court. No suspension of a restitution order will be allowed.

§4-1-33 Violation of Terms of Probation

(a) Upon a report of a violation of probation from the Prosecutor or a tribal police officer, the Court may summon the defendant to appear before it or issue a warrant for his arrest. Upon a finding of a probation violation the Court may revoke the probation and shall impose the original sentence or another sentence which the Court deems appropriate.

(b) The Court shall not revoke suspensions or probation except after a hearing. The defendant shall have the right to hear and contest the evidence against him, to offer evidence in his defense and to be represented by counsel of his choice at his own expense.

(c) Whenever a defendant is taken into custody for a violation of probation conditions other than the alleged commission of an offense he shall be entitled to have his sentence considered by the Court within three (3) business days of his confinement, unless he requests further time to prepare his defense.

INCHOATE OFFENSES**§4-1-34 Attempt**

(a) It shall be unlawful for any person acting with the kind of culpability otherwise required for commission of the crime to:

- (1) willfully engage in conduct which would constitute the crime if the attendant circumstances were as he believes them to be;
- (2) do or omit to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part when causing a particular result is an element of the crime; or
- (3) willfully do or omit to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course or conduct planned to culminate in his commission of the crime.

(b) Conduct shall not be held to constitute a substantial step under this section unless it is strongly corroborative of the actor's criminal purpose.

(c) No defense to the offense of attempt shall arise:

- (1) because the offense attempted was actually committed;
- (2) due to factual or legal impossibility of consummating the intended offense if the offense could have been committed had the facts been as the actor believed them to be; or
- (3) that in attempting unsuccessfully to commit a crime, the person accused actually accomplished the commission of another and different crime.

§4-1-35 Criminal Conspiracy

If two (2) or more persons agree to engage in or cause conduct intending that a crime be committed, and one or more of such persons does any act to effect the object of the conduct each shall be punishable upon conviction as if the crime had been committed.

§4-1-36 Solicitation

(a) It shall be unlawful for any person to promote or facilitate the commission of an offense by enticing, advising, inciting, commanding, encouraging or requesting another person to engage in specific conduct which would constitute an offense.

(b) It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime proposed due to:

- (1) legal incapacity or other exemption;
- (2) unawareness of the criminal nature of the conduct solicited or the defendant's criminal purpose;
- (3) other factors precluding the mental state required for the commission of the crime in question.

OFFENSES AGAINST THE PERSON**Assault and Related Offenses****§4-1-37 Simple Assault**

It shall be unlawful for any person:

- (a) with apparent ability, to attempt unlawful contact with another; or
- (b) to intentionally threaten unlawful contact upon another, coupled with an apparent ability to do so, and does some act which creates a well-founded fear in such other person that such contact is imminent.

§4-1-38 Battery

It shall be unlawful for any person to:

- (a) willfully and unlawfully use force or violence to another;
- (b) actually, intentionally and unlawfully touch or strike another person against their will; or
- (c) unlawfully and intentionally causes bodily harm to an individual.

§4-1-39 Aggravated Assault

The act of assault is aggravated if while committing assault a person uses:

- (a) a deadly weapon or instrument without intent to kill;
- (b) any means or force likely to produce great bodily harm; or
- (c) any corrosive acid or a caustic chemical of any kind.

§4-1-40 Aggravated Battery

The act of battery is aggravated if while committing battery a person:

- (a) causes great bodily harm, permanent disability or permanent disfigurement to any person;
- (b) uses a deadly weapon or instrument;
- (c) uses any corrosive acid, or a caustic chemical of any nature; or
- (d) uses any poison or other noxious or destructive substance or liquid.

§4-1-41 Stalking

It shall be unlawful for any person to willfully, maliciously and repeatedly follow or harass another person or member of that person's immediate family.

§4-1-42 Aggravated Stalking

It shall be unlawful for any person to violate the provisions of § 4-1-41 when there is a temporary restraining order or an injunction, or both, in effect prohibiting the behavior described in § 4-1-41 against the same party.

Murder and Related Offenses**§4-1-43 Murder**

It shall be unlawful for any person to kill a human being with malice aforethought.

§4-1-44 Manslaughter

It shall be unlawful for any person to kill a human being:

- (a) voluntarily - upon a sudden quarrel or heat of passion; or
- (b) involuntarily –
 - (1) in the perpetration of or attempt to perpetrate any unlawful act;
 - (2) in the commission of a lawful act which might produce death, in an unlawful manner;
 - (3) without due caution or care; or
 - (4) in the operation of any firearm or dangerous weapon in a reckless, careless or negligent manner which produces death.

KIDNAPING AND RELATED OFFENSES**§4-1-45 Kidnaping**

It shall be unlawful for any person to unlawfully seize, confine, entice, deceive, abduct, or carry away any person for the purpose of holding such person for ransom, reward or otherwise.

§4-1-46 False Imprisonment

It shall be unlawful for any person to willfully and unlawfully restrain another so that he substantially interferes with their personal liberty.

§4-1-47 Child Custodial Interference

(a) It shall be unlawful for any person to intentionally and without lawful authority take or entice away, keep or withhold any minor child from a parent or another having custody, joint custody, visitation or other parental rights, whether such rights arise from a temporary or permanent custody order, or from the equal custodial rights of each parent in the absence of such order.

(b) It shall be an affirmative defense to a violation of the provisions of this section that:

- (1) the action is taken to protect the child from imminent physical harm; or

- (2) the action is taken by a parent fleeing from imminent physical harm to himself.

SEXUAL OFFENSES

§4-1-48 Rape

- (a) It shall be unlawful for any person to engage in sexual intercourse with another:
 - (1) who is incapable, through mental defect or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;
 - (2) who is prevented from resistance by force or threats of immediate bodily harm, accompanied by an apparent ability to carry out such threats or by any intoxicating narcotic, or anesthetic substance administered by the accused;
 - (3) who is at the time, unconscious of the nature of the act and this is known to the accused; or
 - (4) against the will or consent of the other.
- (b) Sexual intercourse occurs when any sexual penetration, however slight takes place.

§4-1-49 Forcible Sexual Penetration with a Foreign Object

It shall be unlawful for any person to intentionally cause the penetration, however slight, of the genitals or anal opening of another person, with any object, instrument or device, against the victim's will by use of force, violence, duress or threats of bodily harm, accompanied by an apparent power of execution.

§4-1-50 Unlawful Sexual Intercourse

It shall be unlawful for any person who is over the age of sixteen (16) to:

- (a) solicit a minor under the age of sixteen (16) years to participate in a sexual act; or
- (b) engage in sexual intercourse with a minor under the age of sixteen (16) years.

§4-1-51 Sexual Assault

It shall be unlawful for any person to have sexual contact with another or cause such other to have sexual contact with him, if:

- (a) he knows that the contact is offensive to the other person;
- (b) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;
- (c) he knows that the other person is unaware that a sexual act is being committed;
- (d) he has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means; or

(e) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

§4-1-52 Sexual Molestation of Minor under Sixteen

It shall be unlawful for any person to engage in sexual contact with another who is under the age of sixteen (16); or involve such person in any act of bestiality, sado-masochistic abuse or exhibition with intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desires of any person.

§4-1-52(a) Enticement of a Child

(a) A person commits the offense of Enticement of a Child if he or she invites or persuades, or attempts to invite or persuade, a child fifteen (15) years old or younger or a person the defendant believes to be fifteen (15) years old or younger to enter any vehicle, building, room, or secluded place with the intent to commit sexual assault or unlawful sexual contact upon said child. It is not necessary to a prosecution for attempt under this subsection that the child has perceived the defendant's act of enticement.

(b) Enticement of a child is punishable by imprisonment not to exceed one year and a fine not to exceed \$5,000.00. It is a considered Aggravated Enticement of a Child, if the defendant has a previous conviction for enticement of a child or sexual assault on a child or for conspiracy to commit or the attempted commission of either offense, or if the enticement of a child results in bodily injury to that child.

§4-1-52(b) Enticing a Child Through Use of the Internet or Other Communication Device

(a) A person commits the offense Enticement of a Child if such person knowingly uses the internet or any device that provides transmission of messages, signals, facsimiles, video images or other communication to solicit, seduce, lure, persuade or entice by words or actions, or both, a person fifteen (15) years old or younger, or a person the defendant believes to be fifteen (15) years old or younger to engage in any sexual act with or against the person where such act would be a violation of Chapter 4-1 of the Nez Perce Tribe Code.

(b) In a prosecution under this section, it is not necessary for the prosecution to show that an act described in Chapter 4-1 under Sexual Offense sections 4-1-48; 4-1-49; 4-1-50; 4-1-57; 4-1-52; 4-1-53 occurred.

(c) For purposes of determining jurisdiction, the offense is committed on the Nez Perce Reservation if the transmission that constitutes the offense either originates on or is received on the Nez Perce Reservation.

(d) Enticement of a child is punishable by imprisonment not to exceed one year and a fine not to exceed \$5,000.00. It is a considered Aggravated Enticement of a Child, if the defendant has a previous conviction for enticement of a child or sexual assault on a child or for conspiracy to commit or the attempted commission of either offense, or if the enticement of a child results in bodily injury to that child. (NPTEC authorized amendment 5/22/18)

§4-1-53 Indecent Exposure

It shall be unlawful for any person to expose his genitals for the purpose of arousing or gratifying his own sexual desire or to any person under circumstances in which he knows his conduct is likely to cause affront or alarm. (NPTEC authorized amendment 2/24/04)

OFFENSES AGAINST PROPERTY**Property Destruction****§4-1-54 Arson**

It shall be unlawful for any person to willfully and maliciously set fire to, burn or cause to be burned any building or structure.

§4-1-55 Aggravated Arson

The act of arson is aggravated if while committing arson:

- (a) any person knows or reasonably should know that one or more persons are present inside of the structure involved or any structure adjacent to the structure involved; or
- (b) any person suffers death, great bodily harm, permanent disability or disfigurement as a result of the fire.

§4-1-56 Causing a Catastrophe

It shall be unlawful for any person to knowingly or willfully by explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means cause wide spread injury or damage.

§4-1-57 Malicious Injury to Property

It shall be unlawful for any person to:

- (a) maliciously injure or destroy any real or personal property not his own; or
- (b) intentionally and unlawfully tamper with the property of another and thereby:
 - (1) endanger human life; or
 - (2) cause or threaten a substantial interruption or impairment of any public utility service.

§4-1-58 Aggravated Vandalism

It shall be unlawful for any person to willfully and maliciously:

- (a) cause or threaten a substantial interruption or impairment of any public utility service, including but not limited to transportation, water supply, gas, or power; or
- (b) cause a substantial interruption or impairment in mass communications service, police, fire, other public service communications or in amateur or citizens band radio communications being used for public service or emergency communications.

BURGLARY AND RELATED OFFENSES**§4-1-59 Burglary**

It shall be unlawful for any person to enter a building or occupied structure with intent to commit an offense therein.

§4-1-60 Burglary of a Vehicle

It shall be unlawful for any person to enter any vehicle with intent to commit an offense therein.

§4-1-61 Trespass

It shall be unlawful for any person to unlawfully:

- (a) refuse to depart from the real property of another, except under a landlord-tenant relationship, after being notified in writing, or verbally by the owner, lawful occupant or authorized agent of the owner of such property, to immediately depart; or
- (b) enter without permission of the owner or the owner's agent, upon the real property of another.

§4-1-62 Aggravated Trespass

The act of trespass shall be aggravated if while committing trespass a person:

- (a) accomplishes entry on the property by an act of force or violence or the use of a key or similar device which provides entry and which device the actor is not authorized or privileged to use for such purpose;
- (b) intends to cause or causes annoyance or injury to any person thereon or damage to any property thereon;
- (c) intends to commit or commits an offense thereon; or
- (d) is in possession of a deadly or dangerous weapon.

§4-1-63 Robbery

(a) It shall be unlawful for any person to take personal property from the possession of another or from the immediate area of another by means of force or intimidation.

(b) As used in this section, the term "intimidation" means the fear of an immediate and unlawful injury to the person or property of the person robbed or of anyone in the company of such person at the time of the robbery.

§4-1-64 Theft

It shall be unlawful for any person if, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from its owner.

§4-1-65 Theft by Deception

It shall be unlawful for any person if, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds another's property by:

- (a) creating or confirming another's impression which is false and which the offender does not believe to be true;
- (b) failing to correct a false impression which the offender previously has created or confirmed;
- (c) preventing another from acquiring information pertinent to the disposition of the property involved;
- (d) selling or otherwise transferring or encumbering property while failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is or is not valid or is or is not a matter of official record.

§4-1-66 Acquiring Lost Property

It shall be unlawful for any person if with the intent to deprive another of such property or to appropriate such property to himself or a third person, he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner.

§4-1-67 Theft by a False Promise

- (a) It shall be unlawful for any person to obtain property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.
- (b) In any prosecution for theft based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are consistent with guilty intent or belief and inconsistent with innocent intent or belief, and excluding every reasonable hypothesis except that of the defendant's intention or belief that the promise would not be performed.

§4-1-68 Extortion

It shall be unlawful for any person to compel or induce another person to deliver property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

- (a) cause physical injury to some person in the future;
- (b) cause damage to property;

- (c) engage in conduct constituting a crime;
- (d) accuse some person of a crime or cause criminal charges to be instituted against him;
- (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;
- (f) cause a strike, boycott or other collective labor group action injurious to some person's business; unless the property is demanded or received for the benefit of the group in whose interest the actor purports to act;
- (g) testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
- (h) use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (i) perform any other act which would not in itself materially benefit the actor, but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

§4-1-69 Receiving Stolen Property

It shall be unlawful for any person to knowingly receive, retain, obtain control over or possess, stolen property, knowing the property to have been stolen by another or under such circumstances as would reasonably induce him to believe that the property was stolen; and

- (a) he intends to deprive the owner permanently of the use or benefit of the property;
- or
- (b) he knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit.

§4-1-70 Theft of Services

It shall be unlawful for any person to obtain for himself or another the labor or services of another which are available only for hire, by means of threat or deception.

§4-1-71 Defenses to Theft and Related Offenses

- (a) It is no defense to a charge of theft of property that the offender has an interest therein, when the owner also has an interest to which the offender is not entitled.
- (b) In any prosecution for theft committed by trespassory taking or embezzlement, it is an affirmative defense that the property was appropriated openly and avowedly, and under a claim of right made in good faith.

§4-1-72 Theft of Telephone Services

It shall be unlawful for any person to knowingly, and without consent, use or receive another's telephone services in which a charge or fee is involved with the intent to withhold compensation for the use of such services.

§4-1-73 Unauthorized Use of a Vehicle

It shall be unlawful for any person:

- (a) to knowingly take, operate, exercise control over, ride in or otherwise use another's vehicle, boat or aircraft without consent of the owner;
- (b) having custody of a vehicle, boat or aircraft pursuant to an agreement to perform a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, to intentionally use or operate thereof, without consent of the owner, for his own purpose in a manner constituting a gross deviation from the agreed purpose; or
- (c) having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, to knowingly retain or withhold possession thereof without consent of the owner for so long of time as to render such retention or possession a gross deviation from the agreement.

FORGERY**§4-1-74 Forgery**

It shall be unlawful for any person if with intent to defraud or injure anyone, he:

- (a) alters any writing of another without such person's authority;
- (b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be:
 - (1) the act of another who did not authorize that act;
 - (2) to have been executed at a time or place or in numbered sequence other than was in fact the case;
 - (3) to be a copy of an original when no such original existed; or
- (c) utters or attempts to circulate as genuine any writing which he knows to be forged in the manner specified in this section.

FRAUD**§4-1-75 Criminal Simulation**

It shall be unlawful for any person if, with intent to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters or attempts to circulate or sell as genuine any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

§4-1-76 Fraudulent Handling of Recordable Instruments

It shall be unlawful for any person if, with intent to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording or knowingly records a false or forged instrument.

§4-1-77 Tampering With Records

It shall be unlawful for any person if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with intent to deceive or injure anyone or to conceal any wrongdoing.

§4-1-78 Bad Checks

(a) It shall be unlawful for any person to issue or pass a check or similar sight order for the payment of money, for the purpose of obtaining any money, property, or other thing of value or paying for any services, rent, wages or salary, knowing or believing that it will not be honored by the drawee.

(b) An issuer is presumed to know that the check or order would not be paid if:

- (1) the issuer had no account with the drawee at the time the check or order was issued; or
- (2) payment was refused by the drawee for lack of funds, upon presentation for payment within thirty (30) days of issue, and the issuer failed or was intentionally unavailable to make good within ten (10) days after such refusal and receipt of notice of refusal to pay.

§4-1-79 Deceptive Business Practices

(a) It shall be unlawful for any person in the course of business to:

- (1) use or possess for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;
- (2) sell, offer or expose for sale, or deliver less than the represented quality or quantity of any commodity or service;
- (3) take or attempt to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;
- (4) sell, offer or expose for sale adulterated or mislabeled commodities;
- (5) makes a false or misleading statement in any advertisement with the intent of promoting the purchase or sale of property or services;
- (6) makes a false or misleading statement for the purpose of obtaining property or credit; or
- (7) makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to

be disclosed in written documents relating to securities.

(b) It is an affirmative defense to prosecution under this section if the defendant proves by clear convincing evidence that his conduct was not intentionally, knowingly or willfully deceptive.

§4-1-80 Fraudulent Use of Credit Card

It shall be unlawful for any person to use with the intention of obtaining money, goods, services or any other thing of value a credit card or credit card account which he knows is forged, expired, canceled, revoked, stolen, or retained without consent of the card or account holder.

§4-1-81 Rigging a Contest

It shall be unlawful for any person who:

(a) with a purpose to prevent a contest from being conducted in accordance with the rules and usages purporting to govern it, he:

- (1) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest;
- (2) tampers with any person, animal, or thing associated with the contest;
- (3) knowingly solicits, accepts or agrees to accept any benefit from a participant, official or other person associated with the contest; or

(b) knowingly engages in, sponsors, produces, judges, or otherwise participates in a contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct unlawful under this section.

§4-1-82 Defrauding Creditors

It shall be unlawful for any person:

(a) to destroy, remove, conceal, encumber, transfer, or otherwise deal with property subject to a security interest with purpose to hinder enforcement of that interest;

(b) knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors, to:

- (1) destroy, remove, encumber, transfer, or otherwise deal with any property with purpose to defeat or obstruct the operation of any law relating to administration of such property for the benefit of creditors;
- (2) knowingly falsify any writing or record relating to the property; or
- (3) knowingly misrepresent or refuse to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor is legally required to furnish in relation to such administration.

§4-1-83 Unlawful Dealing With Property By a Fiduciary

It shall be unlawful for any person to deal with property that has been entrusted to him as a fiduciary, or property of the Tribe or government or of a financial institution, in a manner which he knows or should know is a violation of his duty and which involves a substantial loss or risk of loss to the owner or to a person for whose benefit the property was entrusted.

§4-1-84 Making a False Credit Report

It shall be unlawful for any person to knowingly make a materially false or misleading statement to obtain property or credit for himself or another or to keep some other person from obtaining credit.

OFFENSES AGAINST THE FAMILY**Marital Violations****§4-1-85 Bigamy**

It shall be unlawful for any person if, knowing that he or she has a husband or wife or knowing the other person has a husband or wife, he purports to marry or cohabit with such other person. It shall be a defense to bigamy if the defendant proves by a preponderance of the evidence that he reasonably believed he and the other person were eligible to marry.

§4-1-86 Incest

(a) It shall be unlawful for any parent and child, ancestor and descendant of any degree, siblings of the half or whole blood, uncle and niece or nephew, aunt and niece or nephew, or first cousins to intermarry or to engage in sexual intercourse.

(b) Minors, incompetents or non-consenting parties may not be found guilty of incest.

§4-1-87 Criminal Nonsupport

(a) It shall be unlawful for any person:

- (1) who is the parent, guardian or legal guardian of any minor dependent upon him or her for care, education or support, to desert such child in any manner whatever with intent to abandon him or her;
- (2) to willfully omit, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his child, ward or spouse. The practice of a parent or guardian who chooses for his child or ward treatment by prayer or spiritual means alone shall not for that reason alone be construed to be a violation of duty of care to such child or ward.

(b) Proof of the desertion of a spouse, child or children in destitute or necessitous circumstances or of neglect to furnish such wife, child, or children necessary and proper food, clothing or shelter is prima facie evidence that such desertion or neglect is wilful.

§4-1-88 Domestic Violence (revised 6/22/99)

(a) It shall be unlawful for any domestic household member to commit:

- (1) an assault as defined in § 4-1-37 of the Nez Perce Tribal Code, upon any other domestic household member;
- (2) an aggravated assault as defined in § 4-1-39 of the Nez Perce Tribal Code, upon any other domestic household member;
- (3) a battery as defined in § 4-1-38 of the Nez Perce Tribal Code, upon any other domestic household member;
- (4) an aggravated battery as defined in § 4-1-40 of the Nez Perce Tribal Code, upon any other domestic household member;
- (5) a rape as defined in § 4-1-48 of the Nez Perce Tribal Code, upon any other domestic household member.

(b) A conviction for domestic violence is punishable by imprisonment for a term not to exceed One (1) year or by a fine not to exceed Five Thousand Dollars (\$5,000) or by both a fine and imprisonment or any other sentence the Court may deem appropriate.

- (1) Any person who pleads guilty or is found guilty of a violation of this section shall undergo, at the person's own expense, an evaluation by a person, organization, or agency approved by the Court to determine whether the defendant should be required to obtain batterers treatment or other appropriate treatment. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling and/or treatment considered appropriate for the defendant and shall recommend any other suitable alternative counseling or treatment programs.
- (2) If the evaluation recommends counseling or other treatment, the Court shall order the person to complete the counseling or other treatment, at the person's own expense, in addition to any other sentence which may be imposed. If the Court determines that counseling or treatment would be inappropriate or undesirable, the Court shall enter findings articulating the reasons for such determination on the record. The Court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation within the time allowed by the Court, at the person's own expense.

(c) In addition to any other penalty imposed for a violation of this section, the Tribal Court may grant any other civil or equitable remedy.

§4-1-89 Abuse of Vulnerable Adults (amended 12/14/99)

- (a) It shall be unlawful for any person:
 - (1) to willfully or negligently inflict physical or mental pain or injury on a vulnerable adult;
 - (2) to willfully or negligently misuse the funds, property or resources of a vulnerable adult for profit or advantage; or

- (3) who is responsible for the care of a vulnerable adult, to willfully or negligently fail to provide food, clothing, shelter, medical care or other services reasonably necessary to sustain the life and health of a vulnerable adult.

(b) In addition to any other penalty imposed for a violation of this section, the Tribal Court may grant any other civil or equitable remedy.

§4-1-90 Child Abuse (revised 6/22/99)

(a) It shall be unlawful for any person:

- (1) to willfully cause or permit any child to suffer or inflict thereon unjustifiable physical pain or mental suffering;
- (2) having the care or custody of any child, to willfully cause or permit the person or health of such child to be injured;
- (3) to willfully cause or permit any child to be placed in such situation that his person or health is seriously endangered.
- (4) (Subsection is now §4-1-91(b) – authorized by NPTEC 1/24/17)

(b) The practice of a parent or guardian who chooses for his child treatment solely by prayer or spiritual means shall not for that reason alone be construed to have violated the duty of care to such child.

(c) It shall be unlawful for any person to knowingly, recklessly, or intentionally cause or permit a child to be exposed to, illegal alcohol use, or to intentionally cause or permit a child to ingest or inhale, or have contact with any controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, methamphetamines, cocaine, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812(c). This section shall not preclude: (Subsection c added per NPTEC 1/28/14)

- (1) the possession, purchase, consumption, obtaining, ingestion, distribution or sale of peyote for bona fide Native American religious ceremonies; or
- (2) any controlled substances provided by lawful prescription for the child and administered to the child in accordance with the prescription instructions provided with the controlled substance.

§4-1-91 Endangering the Welfare of a Minor

(a) It shall be unlawful for any person to knowingly:

- (1) induce, cause or permit an unmarried person under eighteen (18) years of age to witness a sexual act;
- (2) permit a person under eighteen (18) years of age to enter or remain in a place where unlawful narcotic or illicit drug activity is maintained or conducted;

- (3) induce, cause or permit a person under eighteen (18) years of age to participate in gambling other than a social game;
- (4) sell, cause to be sold or provide tobacco, alcohol or harmful drugs or narcotics in any form to a person under eighteen (18) years of age; or
- (5) sell, cause to be sold or provide tobacco in any form to a person under eighteen (18) years of age;
- (6) to commit a crime involving domestic violence in the presence of a child. For the purpose of this subsection, Ain the presence of a child@ shall mean in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic violence (Was §4-1-90(4), amendment authorized by NPTEC 1/24/17)
- (7) otherwise threaten serious harm to the physical, emotional or mental wellbeing of the minor.

(b) For the purposes of this section, traditional Indian games including, but not limited to, "Stick Games" shall be considered social games.

§4-1-92 Contributing to the Delinquency of a Minor

(a) It shall be unlawful for any person by any act or omission to willfully aid, encourage or cause or attempt to aid, encourage or cause any child to:

- (1) become or remain delinquent;
- (2) do or perform any act or follow any course of conduct which would cause or manifestly tend to cause such child to become or remain delinquent; or
- (3) cause a child to become or remain a runaway.

(b) In addition to any other penalties imposed for a violation of this section, the Court may require the juvenile and his parent or guardian to perform community service, participate in counseling, or issue such other orders designed to contribute to the rehabilitation of the juvenile or to the ability of the parent or guardian to provide proper parental care and supervision.

OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT

Bribery and Corrupt Influences

§4-1-93 Definitions

As used in this part:

(a) "Benefit" means a gain or advantage, or anything regarded by the beneficiary as a gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(b) "Government" includes any branch, subdivision or agency of the government of any state, the United States or any locality within such entities;

(c) "Harm" means loss, disadvantage or injury, or anything regarded as such by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested;

(d) "Official proceeding" means a proceeding heard or which may be heard before any tribal legislative, judicial, administrative body or any tribal agency or official authorized to take evidence under oath;

(e) "Party official" means a person who holds an elective or appointive post in a political party by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility;

(f) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else of which the primary significance of which is economic gain;

(g) "Public servant" means any officer or employee of the Tribe or government, including Executive Committee members and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a function for the Tribe or government; but the term does not include witnesses;

(h) "Administrative proceeding" means any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

§4-1-94 Bribery in Official Matters

(a) It is unlawful for any person to offer, confer or agree to confer upon another, or to solicit, accept or agree to accept from another:

- (1) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or
- (2) any benefit as consideration for a violation of a known legal duty as public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way for any reason.

§4-1-95 Threats and Other Improper Influence in Official Matters

(a) It shall be unlawful for any person to:

- (1) threaten unlawful harm to any person with intent to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter;
- (2) threaten harm to any public servant or party official with intent to influence him to violate his known legal duty; or
- (3) privately address to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation,

entreaty, argument or other communication with intent to influence the outcome on the basis of considerations other than those authorized by law.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction or for any other reason.

§4-1-96 Compensation for Past Official Behavior

It shall be unlawful for any person to:

(a) solicit, accept, or agree to accept any pecuniary benefit as compensation for having as a public servant, given a decision, opinion, recommendation or vote favorable to another or for having otherwise exercised discretion in such other person's favor, or for having violated his duty; or

(b) offer, confer or agree to confer, compensation for the above purposes.

§4-1-97 Retaliation for Past Official Action

It shall be unlawful for any person to harm another by any unlawful acts in retaliation for anything lawfully done by the latter in the capacity of public servant.

§4-1-98 Improper Gifts to Public Servants

(a) It shall be unlawful for any person who:

- (1) being a public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations or carrying on civil or criminal litigation on behalf of the Tribe or government, or having custody of prisoners, solicits, accepts or agrees to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated;
- (2) being a public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the Tribe or government solicits, accepts or agrees to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction;
- (3) being a public servant having judicial or administrative authority or employed by court or other tribunal having such authority, or participating in the enforcement of its decisions, solicits, accepts or agrees to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is association;
- (4) being a Nez Perce Tribal Executive Committee member or public servant employed by the Executive Committee or by any subcommittee or agency

thereof solicits, accepts or agrees to accept any pecuniary benefit from any person known to be interested in a matter, transaction or proceeding, pending or contemplated before the Executive Committee or any sub-committee or agency thereof; or

- (5) knowingly confers or agrees to confer any benefit prohibited by the above sections.

(b) This section shall not apply to:

- (1) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled;
- (2) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or
- (3) trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

ABUSE OF OFFICE

§4-1-99 Official Misconduct

It shall be unlawful for any person who:

(a) being a public servant, and with intent to benefit himself or another or harm another, he willfully commits an unauthorized act which purports to be an act of his office, or refrains from performing a nondiscretionary duty imposed on him by law or clearly inherent in the nature of his office; or

(b) being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:

- (1) acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or
- (2) speculates or wagers on the basis of such action or information; or knowingly aids another in doing any of the foregoing.

§4-1-100 Interference with Tribal Court

No officer of the General Council or member of NPTEC shall interfere with or attempt to influence, any decision of the Tribal Court or the investigation, prosecution, or settlement of any case.

§4-1-101 Official Oppression

It shall be unlawful for any person who, when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, and knowing that his conduct is illegal, he:

- (a) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or
- (b) denies or impedes another in the exercise or enjoyment of any right, power, or immunity.

§4-1-102 Misuse of Public Money

It shall be unlawful for any person who is a public servant or other person charged with the receipt, safe keeping, transfer or disbursement of public moneys:

- (a) without authority of law, to appropriate such money or any portion thereof to his own use, or to the use of another;
- (b) to loan such money or any portion thereof;
- (c) having the possession or control of any public money, to make a profit out of, or use the same for any purpose not authorized by law;
- (d) to fail to keep such money in his possession until disbursed or paid out by authority of law;
- (e) to deposit such money or any portion thereof in any bank, or with any banker or other person, otherwise than on special deposit, or as otherwise authorized by law;
- (f) to change or convert any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law;
- (g) to knowingly keep any false account, or make any false entry or erasure in any account of or relating to the same;
- (h) to fraudulently alter, falsify, conceal, destroy or obliterate any such account;
- (i) to willfully refuse or omit to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such moneys by competent authority;
- (j) to willfully omit to transfer or pay over any money when such transfer is required by law; or
- (k) to misuse or misappropriate any contract or program monies.

FALSIFICATION IN OFFICIAL MATTERS**§4-1-103 Perjury**

(a) It shall be unlawful for any person who, while under oath before any competent tribunal, officer, or person in any official proceeding, willfully and contrary to such oath, states as true any material matter which he knows to be false.

(b) It is no defense to a prosecution under this section that:

- (1) the oath or affirmation was administered or taken in an irregular manner;
- (2) the accused was not competent to give the testimony, deposition, certificate or affirmation of which falsehood is alleged;
- (3) the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made.

(c) It is a defense to prosecution under this section that the defendant retracted his false statement:

- (1) in a manner showing a complete and voluntary retraction of the statement;
- (2) during the course of the same proceeding in which it was made; and
- (3) before the subject matter of the proceeding is submitted to the ultimate trier of fact or decision maker.

(d) As used in this section, the term "competent" shall refer to sufficient qualification for testifying on particular subject matter and not mental capacity or ability.

§4-1-104 False Swearing

(a) It shall be unlawful for any person to make a false sworn statement, knowing it to be false.

(b) It is no defense to a prosecution under this section that:

- (1) the oath or affirmation was administered or taken in an irregular manner;
- (2) the accused was not competent to give the sworn statement of which falsehood is alleged;
- (3) the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made.

(c) It is a defense to prosecution under this section that the defendant retracted his false statement:

- (1) in a manner showing a complete and voluntary retraction of the statement;

- (2) during the course of the same proceeding in which it was made; and
- (3) before the subject matter of the proceeding is submitted to the ultimate trier of fact or decision maker.

(d) As used in this section, the term "competent" shall refer to sufficient qualification for testifying on particular subject matter and not mental capacity or ability.

§4-1-105 Unsworn Falsification

(a) It shall be unlawful for any person to knowingly make any false written statement in an attempt to gain any benefit.

(b) It is no defense to a prosecution under this section that:

- (1) the oath or affirmation was administered or taken in an irregular manner;
- (2) the accused was not competent to give the written statement of which falsehood is alleged;
- (3) the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made.

(c) It is a defense to prosecution under this section that the defendant retracted his false statement:

- (1) in a manner showing a complete and voluntary retraction of the statement;
- (2) during the course of the same proceeding in which it was made; and
- (3) before the subject matter of the proceeding is submitted to the ultimate trier of fact or decision maker.

(d) As used in this section, the term "competent" shall refer to sufficient qualification for testifying on particular subject matter and not mental capacity or ability.

§4-1-106 Tampering with Physical Evidence

It is unlawful for any person to:

- (a) present evidence as genuine or true which he knows has been forged or fraudulently altered;
- (b) prepare any false or fraudulently altered physical evidence for any fraudulent or deceitful purpose; or
- (c) knowingly destroy, alter or conceal the same.

§4-1-107 Tampering with Public Records

It shall be unlawful for any person, who does not have the authority, to willfully destroy, alter, falsify or remove any record kept as part of the official governmental records of the Tribe or government.

§4-1-108 Tampering with a Witness

(a) It shall be unlawful for any person to willfully intimidate, influence, impede, deter, threaten, harass, obstruct or prevent a witness, or any person he believes has been or may be called as a witness in any proceeding from testifying freely, fully or truthfully in that proceeding.

(b) The fact that a witness was not actually prevented from testifying or influenced shall not be a defense to a charge brought under this section.

§4-1-109 Bribing Witnesses

It shall be unlawful for any person to offer, or promise to give, to a witness any bribe, or attempt by any other means fraudulently to induce any witness to give false or withhold true testimony.

§4-1-110 Receiving Bribes in Exchange for Testimony

It shall be unlawful for any person to receive or offer to receive any bribe in exchange for false or altered testimony.

§4-1-111 Simulating Legal Process

It shall be unlawful for any person to knowingly issue or deliver to another any document that in form and substance falsely purports to represent a civil or criminal process.

§4-1-112 Criminal Impersonation

It shall be unlawful for any person to unlawfully exercise or attempt to exercise the functions of or hold himself out to anyone as a public servant.

§4-1-113 Welfare Offense

(a) It shall be unlawful for any person to:

- (1) give false information to another for the purpose of obtaining or retaining public assistance;
- (2) knowingly fail to correct misinformation which enables him to obtain or retain public assistance;
- (3) continue to accept and use for his own benefit or the benefit of another, public assistance to which he knows he is not entitled;

- (4) use or expend money or commodities granted him as public assistance in an improper manner or in a manner which does not proportionately benefit each of those persons intended to benefit by the grant; or
- (5) knowingly use public assistance in a manner contrary to the regulations relating thereto.

OBSTRUCTING GOVERNMENT FUNCTION

§4-1-114 Resisting and Obstructing Officers

- (a) It shall be unlawful for any person to:
 - (1) willfully resist, delay, obstruct or otherwise endeavor to prevent with or without actual force any public officer, in the discharge, or attempt to discharge, of any duty of his office; or
 - (2) knowingly give a false report to any peace officer.

(b) "Resists" as used in this section means the use of or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person or that justifies or requires substantial force to overcome.

§4-1-115 Hindering Prosecution

It shall be unlawful for any person, with intent to hinder the apprehension, prosecution, conviction or punishment of a person who has committed a crime or with the intent to assist a person who has committed a crime in profiting or benefitting from the commission of the crime to:

- (a) harbor or conceal such person;
- (b) warn such person of impending discovery or apprehension, except if such warning is given in an attempt to get the other person to comply with the law;
- (c) provide or aid in providing such person with money, transportation, any weapon, disguise or other means of avoiding discovery or apprehension;
- (d) prevent or obstruct, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person;
- (e) suppress by any act of concealment, alteration or destruction of physical evidence which might aid in the discovery, apprehension, prosecution or conviction of such person; or
- (f) aid such person in securing or protecting the proceeds of the crime.

§4-1-116 Escape

It shall be unlawful for any person:

- (a) while being in the custody of any jail, prison, or officer, to escape or attempt to escape from custody;
- (b) to aid or attempt to aid another in escaping from jail, prison or from any officer;

or

(c) with intent to facilitate such escape, to provide another with anything useful to aid in making his escape from jail, prison or from any officer.

§4-1-117 Providing Contraband

It is unlawful for any person to provide a person in official detention with any alcoholic beverage, drug, weapon, implement of escape or any other thing or substance which is unlawful for the detainee to possess.

§4-1-118 Bail Jumping

It is unlawful for any person having been released on bail or on his own recognizance upon condition that he subsequently appear, to fail to appear at the time and place which have been lawfully designated for his appearance.

§4-1-119 Failure to Obey an Order of the Court (revised 6/22/99)

(a) It shall be unlawful for any person to fail to obey an order, subpoena, or warrant issued by the Tribal Court.

(b) It shall be unlawful for any person to violate domestic protection orders issued in accordance with § 7-3-4 or § 7-3-5 of the Nez Perce Tribal Code.

§4-1-120 Default on Fine

It shall be unlawful for a person, who being convicted of any offense under this code, defaults in the payment of a fine imposed or any installment thereof.

§4-1-121 Riot

It is unlawful for any person acting together with two or more persons in the course of conducting any act in a violent, boisterous, tumultuous or threatening manner to:

- (a) physically injure another person;
- (b) damage or destroy public or private property; or
- (c) disturb the public peace.

§4-1-122 Obstructing the Administration of Justice (added 12/14/99)

It shall be unlawful for any person to:

(a) by threat or force, or by any threatening letter or communication, endeavor to influence, intimidate, or impede any juror, officer of the Court, officer who may be serving at any examination or other proceeding before the Court, or member or support staff of the Nez Perce Tribal Executive Committee in the discharge of his duty;

(b) injure any such juror, officer of the Court, officer who may be serving at any examination or other proceeding before the Court, or member or support staff of the Nez Perce

Tribal Executive Committee in his person or property on account of any verdict or judgment assented to by him;

(c) injure any officer of the Court, officer who may be serving at any examination or other proceeding before the Court, or member or support staff of the Nez Perce Tribal Executive Committee in his person or property on account of the performance of his official duties; or

(d) corruptly or by threats or force, or by any threatening letter or communication, attempt to influence, obstruct, or impede the due administration of justice.

(e) As used in this section, "Officer of the Court" shall include all persons connected with the administration of the judicial process and/or whose duty it is to serve the process of the Court.

OFFENSES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE

§4-1-123 Prostitution

It shall be unlawful for any person to:

(a) engage in or offer or agree to engage in sexual intercourse or sexual contact with another person in return for a fee;

(b) pay or offer or agree to pay another person a fee for the purpose of engaging in an act of sexual intercourse or sexual contact;

(c) own, control or otherwise maintain any place or aid or abet in the same for the purpose of prostitution;

(d) induce or cause a person to engage in prostitution or remain in a place of prostitution or aid or assist another in such an act; or

(e) knowingly accept, receive or appropriate any money, property or other benefit from the proceeds or earnings of any person engaged in prostitution.

§4-1-124 Spreading Sexually Transmitted Disease

It shall be unlawful for any person knowing or having reason to believe he is infected with a sexually transmitted disease, to infect another with such disease.

§4-1-125 Setting a Dangerous Device

It shall be unlawful for any person to place or set any dangerous device with intent to frighten, confine, deter or injure any person in any place where it may be exploded, discharged or otherwise triggered by the contact or movement of any person.

§4-1-126 Weapons Offense

(a) It shall be unlawful for any person:

(1) Who has been convicted of a felony or has been declared mentally incompetent in any court of law of competent jurisdiction, to own or have

in her or his possession or under her or his custody or control a dangerous weapon; (amended by NPTEC 2/14/17)

- (A) A person who has been convicted of a felony offense does not commit a weapons offense as defined by this section if she or he possesses, or has under her or his custody or control, a hunting bow, as defined in §3-1-1, solely for the purpose of exercising her or his treaty hunting right. This exception does not apply to any other weapons offense listed in §4-1-126.
- (2) being intoxicated or otherwise under the influence of alcohol beverages or other intoxicating substance, drug, or medicine, to have a dangerous weapon in his possession;
- (3) to have on his person a concealed dangerous weapon without proper authority;
- (4) to bring a firearm, concealed or in plain view, into any Tribal Government or Tribal Enterprise Building, the Nimiipuu Health Department, or the offices of the Nez Perce Tribal Housing Authority, unless authorized by the Nez Perce Tribal Executive Committee. (Subsection added by NPTEC approval 3/11/14)
- (5) to point or aim any dangerous weapon at or toward any other person within range of the weapon except in self-defense;
- (6) to discharge any kind of dangerous weapon from a motor vehicle, from, upon or across any public highway without lawful authority;
- (7) to have in his possession any dangerous weapon with intent to assault another;
- (8) to provide to any minor under the age of sixteen (16) a dangerous weapon without consent of parent or guardian; or
- (9) subject to a domestic protection order, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. (added 6/22/99)

(b) As used in this section, proper authority to carry a concealed weapon shall include the authority granted to any law enforcement officer or a permit issued by a duly authorized tribal, federal or state entity. (amended by NPTEC 3/11/14)

§4-1-127 Committing an Offense While Armed

It shall be unlawful for any person to commit or attempt to commit any offense while armed with any dangerous or deadly weapon.

§4-1-128 Abuse of Corpse

It shall be unlawful for any person to intentionally and unlawfully desecrate, remove, destroy or molest in any way any part of human remains.

DRUG AND ALCOHOL RELATED OFFENSES, GANGS**§4-1-129 Drug Promotion** (amended by NPTEC 1/24/12)

It shall be unlawful for any person to be present at or on premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away.

§4-1-130 Possession and/or Consumption of a Controlled Substance (amended by NPTEC 2/11/14)

(a) It shall be unlawful for any person to possess, purchase, consume, obtain, ingest, inject, inhale, distribute, manufacture, or sell any controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, synthetic drugs, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812. The controlled substances listed in 21 U.S.C. § 812 are included by whatever official, common, usual, chemical, or trade name designated.

(b) This section shall not preclude:

- (1) the possession, purchase, consumption, obtaining, ingestion, distribution or sale of peyote for bona fide Native American religious ceremonies; or
- (2) any substances as prescribed by a duly licensed physician.

§4-1-131 Abuse of Psychotoxic Chemical Solvents (amended by NPTEC 2/11/14)

(a) It shall be unlawful for a person:

- (1) for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, to intentionally;
 - (A) inject, ingest, inhale, or otherwise introduce into the human body any psychotoxic chemical solvent;
 - (B) possess, purchase or attempt to possess or purchase any psychotoxic chemical solvent; or
- (2) knowing or believing that the purchaser of another intends to use a psychotoxic chemical solvent in violation of this section, to sell or offer to sell any psychotoxic chemical solvent.

(b) This section shall not apply to the inhalation of prescribed anesthesia for medical or dental purposes.

(c) As used in this section, "psychotoxic chemical solvents" includes any glue,

cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, mephedrone, MDPV, methylone, synthetic cannabinoids, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of consuming, ingesting, injecting, or inhaling them. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

§4-1-132 Possession of Drug Paraphernalia (amended by NPTEC 2/11/14)

(a) It shall be unlawful for any person to use, or possess with intent to use, drug paraphernalia to cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, synthetic drugs, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812. (Amended by NPTEC 1/24/17)

(b) This section shall not preclude the possession or purchase of any item/object traditionally used in bona fide Native American religious ceremonies or used as prescribed by a licensed physician.

§4-1-133 Possession of Alcohol by a Person Under Twenty-One

(a) A person commits the offense of possession of alcohol by a person under the age of twenty-one (21) if while being under the age of twenty-one (21), he shall possess, purchase, consume, obtain, or sell, or is found under the influence, of any beer, wine, ale, whiskey or any substance whatsoever which produces alcoholic intoxication, or misrepresents his age for the purpose of buying or otherwise obtaining an alcoholic beverage. (amended 6/22/99)

(b) It shall be unlawful for a person under the age of twenty-one (21) years of age to provide false identification or make any false statement regarding their age in an attempt to obtain any alcoholic beverage, including any distilled spirits, beer or wine. (section added by NPTEC 1/24/12)

§4-1-134 Possession, Distribution or Use of Cigarettes or Other Tobacco Products by a Person under the Age of Twenty-One (21) (section approved by NPTEC 1/8/08) (updated by NPTEC 1/14/20)

(a) Except as provided in paragraph (c), it shall be unlawful for a person under the age of twenty-one (21) to possess, receive, purchase, sell, distribute, use or consume cigarettes or other tobacco products as defined in Section 6-7-1 of the Nez Perce Tribal Code or to attempt any of the foregoing.

(b) It shall be unlawful for a person under the age of twenty-one (21) to provide false identification or make any false statement regarding their age in an attempt to obtain cigarettes or other tobacco products.

(c) This section shall not apply to possession or use of tobacco by enrolled members

of a federally recognized Indian Tribe when used in connection with recognized ceremony or event.

§4-1-135 Public Intoxication (amended 12/14/99)

It shall be unlawful for any person to create, any disturbance in a public place while intoxicated or under the influence of an intoxicating drink or drug.

§4-1-136 Dispensing of Alcohol to Person Under the Age of Twenty-one Years (section added by NPTEC 1/24/12)

It shall be unlawful for any person who is eighteen (18) years of age or older to sell, give, or furnish, or cause to be sold, given, or furnished any alcoholic beverage, including any distilled spirits, beer or wine, to a person under the age of twenty-one (21).

§4-1-137 Open Container (section added by NPTEC 1/24/12)

No person may possess an open or unsealed container of any alcoholic beverage while operating or riding in or upon a motor vehicle upon a public highway, or in a public place within the exterior boundaries of the Reservation.

§4-1-138 Gangs (section added by NPTEC 10/8/19, Resolution NP 20-013)

(a) Definitions

- (1) “Gang” means any group of two or more persons whose purpose include the commission of illegal acts. It may include any combination of persons organized formally or informally, so constructed that the organization will continue in operation even if individual members enter or leave the organization, which:
 - a. Has a common name or identifying symbol;
 - b. Has a particular conduct, status, and customs indicative of it; and
 - c. Has one of its common activities engaging in criminal activity punishable as an offense under the Nez Perce Tribe Law and Order Code.
- (2) “Graffiti” means any unauthorized inscription word figure or design that is marked, etched, scratched, drawn, painted on or affixed to any public or private property (real or personal) or another which defaces the property.
- (3) “Law Enforcement Officer” means a commissioned Nez Perce Tribe Police Officer.

(b) Prohibited Activity

- (1) No person, while on the Nez Perce Reservation shall:
 - a. Wear, possess, use, distribute, display or sell any clothing, jewelry, emblem, badge, symbol, sign or other things which are evidence of membership in or affiliation with a gang;

- b. Commit any act or omission in furtherance of the interest of gang related activity, including but not limited to:
 - i. Soliciting others for membership in any gangs;
 - ii. Requesting any person to pay protection or otherwise intimidating or threatening any person;
 - iii. Inciting other persons to act with physical violence upon any other person;
 - iv. Place graffiti on or otherwise deface property; or
 - v. Commit any other illegal act or violation of the Nez Perce Tribe Law and Order Code.

A person does not violate this provision if they are in possession of any clothing, jewelry, emblem, badge, symbol or sign referenced in subsection (1) (a) of this section for legitimate and lawful purposes. A person charged with violating this provision shall have the burden of establishing the legitimate and lawful possession of such clothing, jewelry, emblem, badge, symbol, or sign. A person may not be arrested or charged with violating this section unless there is probable cause to believe that such person possessed such clothing, jewelry, emblem, badge, symbol, or sign for gang purposes.

(c) Identification of a Gang Member

- (1) Individuals that meet two or more of the following will be documented as a criminal gang member:
 - a. Non-custodial admission to gang membership;
 - b. Written or electronic correspondence indicating gang membership;
 - c. Paraphernalia or photographs indicating gang membership;
 - d. Seen displaying gang hand signs or signals;
 - e. Resides in or frequents a particular gang's area and adopts its style of dress, use of hand signs, or tattoos and associates with known gang members;
 - f. Has been arrested more than once in the company of identified gang members for offenses that are consistent with usual gang activity;
 - g. Has been stopped in the company of known gang members three or more times.

SEX OFFENDER REGISTRATION

Repealed - §4-1-140 thru §4-1-147 and §4-1-149 thru §4-1-150 - repealed 5/24/11 by NPTEC - replaced by Chapter 4-6 Sex Offender Registration Code

§4-1-148 Penalty (amended by NPTEC 5/24/11)

(a) Any person who is required to register under the provisions of the Nez Perce Tribe Sex Offender Registration Code contained in Sections 4-6-1 through 4-6-39 of the Nez Perce Tribal Code and fails to do so pursuant to the provisions contained in the Nez Perce Tribe Sex Offender Registration Code shall be guilty of the offense of failure to register as a sex offender.

(b) Criminal penalty. Each violation of a provision of the Nez Perce Tribal Sex Offender Registration Code by a sex offender as defined in that act who is an Indian shall be considered a crime and subject to a period of imprisonment for a period not to exceed one (1) years and a fine not to exceed five thousand dollars (\$5,000.00).

(c) Exclusion. Any person convicted under this section may also be subject to Exclusion pursuant to Chapter 4-4 of the Nez Perce Tribal Code

(d) Hindrance of sex offender registration

(1) A person is guilty of an offense if they:

- (A) Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of the Nez Perce Tribal Sex Offender Registration Code;
- (B) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of the Nez Perce Tribal Sex Offender Registration Code; or
- (C) Provides information to law enforcement agency regarding a sex offender which the person knows to be false.

FISH AND WILDLIFE OFFENSES (adopted by NPTEC 7/8/03)**§4-1-151 Drug Promotion**

It shall be unlawful for any person to knowingly maintain, frequent or remain at a place:

(a) resorted to by drug users for the purpose of unlawfully using narcotic or dangerous drugs; or

(b) which is used for the unlawful keeping or sale of narcotic or dangerous drugs.

§4-1-152 Possession and/or Consumption of a Controlled Substance

(a) It shall be unlawful for any person to possess, purchase, consume, obtain, ingest, inject, distribute, manufacture, or sell any controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812.

(b) This section shall not preclude:

- (1) the possession, purchase, consumption, obtaining, ingestion, distribution or sale of peyote for bona fide Native American religious ceremonies; or
- (2) any substances as prescribed by a duly licensed physician.

§4-1-153 Abuse of Psychotoxic Chemical Solvents

(a) It shall be unlawful for a person:

- (1) for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, to intentionally;
 - (A) smell or inhale the fumes of any psychotoxic chemical solvent;
 - (B) possess, purchase or attempt to possess or purchase any psychotoxic chemical solvent; or
- (2) knowing or believing that the purchaser of another intends to use a psychotoxic chemical solvent in violation of this section, to sell or offer to sell any psychotoxic chemical solvent.

(b) This section shall not apply to the inhalation of prescribed anesthesia for medical or dental purposes.

(c) As used in this section, "psychotoxic chemical solvents" includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

§4-1-154 Possession of Drug Paraphernalia

(a) It shall be unlawful for any person to use, or possess with intent to use, drug paraphernalia to cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances as defined in Chapter 13, Title 21 U.S.C. §

812. (Amended by NPTEC 1/24/17)

(b) This section shall not preclude the possession or purchase of any item/object traditionally used in bona fide Native American religious ceremonies or used as prescribed by a licensed physician.

§4-1-155 Possession of Alcohol by a Person Under Twenty-One

A person commits the offense of possession of alcohol by a person under the age of twenty-one (21) if while being under the age of twenty-one (21), he shall possess, purchase, consume, obtain, or sell, or is found under the influence, of any beer, wine, ale, whiskey or any substance whatsoever which produces alcoholic intoxication, or misrepresents his age for the purpose of buying or otherwise obtaining an alcoholic beverage.

§4-1-156 Public Intoxication

It shall be unlawful for any person to create, any disturbance in a public place while intoxicated or under the influence of an intoxicating drink or drug.

§4-1-157 Disorderly Conduct

A person commits the offense of disorderly conduct if he causes public inconvenience, annoyance or alarm or creates a risk thereof by: **(clerical error corrected effective 10-25-05)**

- (a) engaging in fighting or threatening, or in violent or tumultuous behavior;
- (b) making unreasonable noise or an offensively coarse utterance, gesture or display, or addresses abusive language to any person present;
- (c) creating a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor; or
- (d) threatening, quarreling, challenging to fight or fighting.

§4-1-158 Resisting and Obstructing Officers

- (a) It shall be unlawful for any person to:
 - (1) willfully resist, delay, obstruct or otherwise endeavor to prevent with or without actual force any public officer, in the discharge, or attempt to discharge, of any duty of his office; or
 - (2) knowingly give a false report to any peace officer.
- (b) "Resists" as used in this section means the use of or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person or that justifies or requires substantial force to overcome.

§4-1-170 thru §4-1-199 reserved

PUBLIC ORDER

§4-1-200 Disorderly Conduct (effective 10/25/05, replaces § 4-3-22)

A person commits the offense of disorderly conduct if he causes public inconvenience, annoyance or alarm or creates a risk thereof by:

- (a) engaging in fighting or threatening, or in violent or tumultuous behavior;
- (b) making unreasonable noise or an offensively coarse utterance, gesture or display, or addresses abusive language to any person present;
- (c) creating a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor; or
- (d) threatening, quarreling, challenging to fight or fighting.

§4-1-201 Unreasonable Noise (NPTEC authorized addition 8/28/07)

- (a) A person commits the violation of unreasonable noise by causing, creating, assisting, or permitting the continuance of any unreasonable noise.
- (b) An unreasonable noise is any sound which would, because of volume level, duration, character or time of day, annoy, disturb, injure, or endanger the comfort, repose, health, safety, or peace of a reasonable person.
- (c) Subject to 4-1-201(d), the following are declared to be violations of this section, but this enumeration shall not be construed to be exclusive:

- (1) Common Firework. Noise caused or created by any common firework, as defined in 6-3-4, other than: between the hours of 9:00a.m. and 10:00p.m., or on July 4th and December 31st, or after fireworks season closes. (NPTEC authorized amendment 10/23/12)
- (2) Amplification device or equipment. The use of any loud amplification device or equipment designed or used for sound production, reproduction, or amplification, including but not limited to: any speaker, radio, television, phonograph, musical instrument, stereo, amplifier, or other comparable sound broadcasting system, in a manner that causes or creates an unreasonable noise;
- (3) Vehicle or engine. The use of any vehicle or engine, including but not limited to: any automobile, truck, motorcycle, snowmobile, three or four wheeled vehicle, airplane or any other vehicle driven by use of a motor or engine either stationary or moving, so operated as to cause or create an unreasonable noise; and
- (d) The following shall be exempt from the noise regulations set forth in this chapter:
 - (1) Nez Perce Tribe, City, County, or Local Government authorized or

sponsored activity or event. Any activity or event that is authorized or sponsored by the Nez Perce Tribe.

- (2) In the interest of public welfare and safety. Any siren, whistle, bell, warning device, or other noise lawfully made by any law enforcement or emergency vehicle or personnel. Any warning devices required by any applicable local or federal safety regulations.
- (3) School District event. Any local school sponsored event, other than between the hours of 11:30p.m. and 7:00a.m.
- (4) Bell or chime. Any bell or chime from any building clock, school, or church.

§4-1-202 Animal Fighting (adopted 1/13/09) (number correction authorized 1/27/09)

(a) Every person who knowingly owns, possesses, keeps, trains, buys or sells any animals for the purpose of a public or private display of combat between two (2) or more animals in which the fighting, killing, maiming or injuring of animals is a significant feature is guilty of a criminal offense.

(b) Every person who knowingly advertises, promotes, organizes, participates or knowingly has a monetary interest in a public or private display of combat between two (2) or more animals in which the fighting, killing, maiming or injuring of animals is a significant feature is guilty of a criminal offense.

(c) Every person who is knowingly present as a spectator at any place where preparations are being made for an exhibition of the fighting of animals with the intent to be present at such preparations or to be knowingly present at such exhibition shall be guilty of a criminal offense.

(d) Nothing in this section prohibits: demonstrations of the hunting, herding, working or tracking skills of dogs or the lawful use of dogs for hunting, herding, working, tracking or self and property protection; the use of dogs in the management of livestock or the training, raising, breeding or keeping of animals for any purpose not prohibited by law. Animal fighting shall not be construed to mean the type of confrontation that happens unintentionally because of a chance encounter between two (2) or more uncontrolled dogs.

§4-1-203 Cruelty to Animals (adopted 5/24/11)

(a) A person commits the infraction of cruelty to animals if he:

- (1) maliciously kills, maims or wounds any animal;
- (2) overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly beats, or mutilates or cruelly kills any animal;
- (3) has custody of or is responsible for an animal and willfully subjects the animal to needless suffering or inflicts any unnecessary cruelty upon the same;
- (4) transports or carries any animal in a cruel and inhumane manner;

- (5) causes any animal to fight for his amusement or betting or waging permits the same to be done on any premises or is present at such fight; or
 - (6) negligently causes any of the above results.
- (b) A person commits a violation under Criminal Offenses Chapter 4-1, §4-1-202 if he:
 - (1) causes any animal to fight for his amusement, betting or waging; or
 - (2) permits the same to be done on any premises or is present at such fight.
- (c) It may be a defense to a prosecution under this section if the actor was:
 - (1) involved in an accepted veterinary practice or any scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university; or
 - (2) engaged in hunting or fishing in accordance with the provisions of this code.

§4-1-204 Persistent or Habitual Violations of the Dog Ordinance (adopted 5/24/11)

A person who persistently or habitually violates the provisions of Chapter 6-8, Dog Ordinance may be cited under this subsection for a criminal offense. As stated in § 6-8-9 any person or persons in violation of any section of the Dog Ordinance in excess of two (2) occasions shall be deemed a persistent or habitual violator.

**TITLE 4
OFFENSES**

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CHAPTER 4-2 TRAFFIC

GENERAL PROVISIONS

§4-2-1 Definitions

- (a) "Defendant" means the person against whom an action is filed, regardless of whether the action is civil or criminal.
- (b) "The Department" means the Idaho State Department of Transportation.
- (c) "Intoxicant" means liquor, a narcotic drug, or any other drug or substance which renders a person incapable of safely operating a motor vehicle.
- (d) "Probable cause" exists under this chapter when an officer has substantial objective basis for believing that a person has committed an infraction or a crime. In determining whether probable cause exists, the officer may take into account all information which a prudent officer would deem relevant to the likelihood that an infraction or crime has been committed and that the person to be cited or arrested has committed it.
- (e) "Traffic infraction" means a civil offense which is not a crime and the punishment imposed shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.

§4-2-2 Duties of Officers; Warrant not Required

It shall be the duty of tribal police officers to enforce the provisions of this chapter without the necessity of procuring a warrant.

§4-2-3 License Suspension - Revocation

- (a) Information regarding convictions for traffic infractions or crimes shall be forwarded to the Department in such form and at such times as may be requested.
- (b) In addition to the penalties for traffic violations provided by this chapter, the Department is hereby authorized to maintain records and assess points based upon the records of traffic violations submitted by the Tribal Court and to make such records available through the interstate non-residential compact program to jurisdictions where traffic violators reside.

§4-2-4 Disposition of Fines

All fines and penalties for violations of any of the provisions of this chapter shall be paid to the Clerk of the Court who shall issue a receipt and shall deliver daily the funds received and copies of receipts to the Finance Department of the Nez Perce Tribe.

§4-2-5 Seizure of Stolen Vessels, Motor and Other Vehicles

A tribal police officer, with or without a warrant, may seize and take possession of any vehicle, trailer or vessel or any part thereof, which he has probable cause to believe is stolen. Any tribal police officer so seizing a vehicle, vessel or parts thereof shall immediately notify the jurisdiction where the vehicle is registered and shall make every reasonable effort to determine ownership of the vehicle, vessel or equipment and to notify the rightful owner that the vehicle has been seized.

§4-2-6 Severability

If any provision of this chapter or its applicability to any person or circumstances is held invalid, the remainder of this chapter or its application to other persons or circumstances is not affected.

OFFENSES**§4-2-7 Crimes**

(a) All laws defining and punishing criminal acts involving motor vehicles identified in Title 49 Sections 49-101 - 49-2446 and any other such criminal acts listed under the Idaho Code, and any amendments, are hereby adopted as the traffic laws of the Nez Perce Tribe.
(amended 8/14/07)

(b) A violation of any provision of this section shall be treated as a criminal offense and shall be prosecuted under the Nez Perce Tribal Rules of Criminal Procedure. The penalty for a violation of this section shall be:

- (1) a fine of up to \$2500 and imprisonment up to six (6) months if the act is listed as a "misdemeanor" in the provisions of the Idaho Motor Vehicle Code incorporated herein; (revised 6/22/99)
- (2) a fine of up to \$5,000 and imprisonment for up to one (1) year if the act is listed as a "felony" in the provisions of the Idaho Motor Vehicle Code incorporated herein; or
- (3) a fine of up to \$1,000 and imprisonment for up to six (6) months for all other acts.

(c) The punishments provided by this section shall be the sole penalty provided for criminal traffic violations notwithstanding those provided by the provisions of the Idaho Motor Vehicle Code incorporated herein, except that the jurisdiction where a traffic violator resides is authorized to assess points and revoke or suspend driving privileges or assess fines or fees related to the revocation or suspension of driving privileges in accordance with local law.

§4-2-8 Arrests for Serious Offenses; Appearance before Tribal Court

(a) A tribal police officer shall arrest any person charged with:

- (1) negligent homicide; or
- (2) driving or being in actual physical control of a vehicle while under the influence of an intoxicant.

(b) A tribal police officer may in his discretion issue either a traffic citation as provided in this chapter or arrest any person who:

- (1) fails to stop, fails to give information, or fails to render reasonable assistance, in the event of an accident resulting in death or personal injury, damage to a vehicle, to fixtures or other property legally upon or adjacent to a highway;

- (2) is charged with fleeing or attempting to elude a peace officer; or
- (3) is charged with reckless driving.

§4-2-9 Infractions

(a) All traffic infractions identified under Title 49 Sections 49-101 - 49-2446 and any amendments or other traffic infractions listed under the Idaho Code are hereby adopted as the traffic laws of the Nez Perce Tribe. (amended 8/14/07)

(b) The punishments provided by this code shall be the sole penalties provided for traffic infractions notwithstanding those provided by the provisions of the Idaho Motor Vehicle Code incorporated herein, except that the jurisdiction where a traffic violator resides is authorized to assess points and revoke or suspend driving privileges or assess fines or fees related to the revocation or suspension of driving privileges in accordance with local law. For purposes of identifying traffic infractions on citation forms and otherwise, citations shall be identical to those used in the Idaho State Code.

TITLE 4 OFFENSES

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CHAPTER 4-3 CIVIL INFRACTIONS

GENERAL PROVISIONS

§4-3-1 Definitions

(a) "Infraction" means a civil offense which is not a crime and the remedy imposed therefor shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.

(b) "Probable cause" exists under this chapter when an officer has substantial objective basis for believing a fact or situation exists. In determining whether probable cause exists, the officer may take into account all information which a prudent officer would deem relevant to the likelihood that a fact or situation exists.

(c) "Defendant" means the person against whom an action is filed under this section.

(d) "Public" means a location to which the public or a substantial group has access, or those individuals present in such location. A "public" place includes highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

§4-3-2 Duties of Officers; Warrant not Required

It shall be the duty of tribal police officers to enforce the provisions of this chapter without the necessity of procuring a warrant.

§4-3-3 Disposition of Fines

All fines and penalties for violations of any of the provisions of this chapter shall be paid to the clerk of the court who shall issue a receipt and deliver the funds to the Nez Perce Finance Department.

§4-3-4 Officers

(a) A tribal police officer is authorized to arrest any person who resists, delays, prevents or obstructs any such officer, in the discharge, or attempt to discharge, of any duty under this chapter or gives a false report to any peace officer.

(b) Any person arrested for a violation of this section who is subject to the criminal jurisdiction of the Nez Perce Tribe shall be prosecuted under the Nez Perce criminal laws as provided by this code. Any person arrested for a violation of this section who is not subject to the criminal jurisdiction of the tribe shall be delivered without unnecessary delay to the nearest authority for the state of Idaho.

OFFENSES

Property

§4-3-5 Trespass (reinstated by NPTEC 6/10-11/03)

A person commits the infraction of trespass if he:

(a) refuses to depart from the real property of another, except under a landlord-tenant relationship, after being notified in writing, or verbally by the owner, lawful occupant or authorized agent of the owner of such property, to immediately depart; or

(b) enters without permission of the owner or the owner's agent, upon the real property of another.

§4-3-6 Vandalism

A person commits the infraction of vandalism if he:

(a) injures, defaces, damages or destroys:

- (1) private property in which any other person has an interest without the consent of such other person;
- (2) tribal or other public property without the lawful consent of the appropriate governing body; or
- (3) a recognized place of burial.

(b) deposits, throws, or propels any substance upon any highway, roadway, runway, or railroad track, or any vehicle while such vehicle is either in motion or stationary.

§4-3-7 Shoplifting/Retail Theft

A person commits the infraction of shoplifting if he knowingly removes merchandise from a merchant's premises without paying therefore, knowingly conceals merchandise to avoid paying therefore, and the sales price of such merchandise taken or concealed is under \$50.00. The person shall further be civilly liable to the merchant for the sales price of any merchandise not recovered undamaged plus damages of not less than \$50.00 nor more than \$150.00.

§4-3-8 Liability for Acts of Minors (section amended eff. 11/12/02)

The parent or legal guardian of a minor who commits the civil infraction/status offense shall be civilly liable to the merchant for the sales price of any merchandise not recovered undamaged plus damages of not less than \$50.00 nor more than \$150.00. Recovery under this section is not limited by any other provision of the Nez Perce Tribal Code which limits the liability of the parent or legal guardian for the tortious conduct of the minor. The liability of the parent or legal guardian and of the minor under this section is joint and several.

§4-3-9 Nuisance Abatement (adopted by NPTEC 1/27/04)

(a) Definitions

- (1) "Nuisance Abatement" the removal or termination or destruction of something that has been found to be a nuisance.
- (2) "Owner" shall mean any person who, alone or jointly or severally with others:
 - (A) has a record of legal title to any dwelling or dwelling units, with or without accompanying actual possession thereof;

- (B) acts as the agent of the person holding the record of legal title of any dwelling or dwelling unit; or
 - (C) is the personal representative or fiduciary of an estate through which the record of legal title to the real property is administered.
 - (3) "Public Nuisance" as defined under Nez Perce Tribal Code § 4-3-51.
 - (4) "Reservation Sanitarian" shall mean an Environmental Health Officer, or other appropriate designate, at the Department of Health & Human Services, Spokane District Office, Indian Health Service, 1919 E. Francis Avenue, Spokane, WA 99207.
- (b) Statement of Purpose and Intent
- (1) There currently exist within the Nez Perce Reservation unsanitary, unsafe, and uninhabitable dwellings, including eyesores as a result of abandoned materials or debris of any kind, including substances that have accumulated as the result of fires, vandalism, or similar causes, affecting the public health, comfort, safety, and welfare, which are hereby declared public nuisances. These nuisances are causing an increase in crime and constitute a menace to the health and safety of surrounding neighbors and residents. Therefore, a need exists for a nuisance abatement process and enforcement thereof on the Nez Perce Reservation.
 - (2) Any resident of the Nez Perce Reservation who believes that a nuisance exists, as defined in Section 1 above and/or NPTC § 4-3-51, may file a complaint to that effect with the Chairman of the Law & Order Subcommittee. The Law & Order Chairman shall bring such complaint before the next meeting of the Nez Perce Tribal Executive Committee, which shall determine whether the complaint warrants investigation. If the Nez Perce Tribal Executive Committee deems it necessary, they may then request an environmental health assessment inspection of the property. The environmental health assessment inspection of the property in question shall be made by the Reservation Sanitarian. If, after inspection and assessment of the property, a nuisance is found to exist, or the property is deemed unsafe, unsanitary, or uninhabitable, the owner of the tract, his agent, or other persons having an interest therein, shall promptly be ordered by the Nez Perce Tribal Executive Committee to cause the nuisance to be abated, remedied, or removed, as may be necessary.
 - (3) The person or persons so notified shall be allowed until 12:00 Noon of the seventh (7th) day following the service of such notice to commence the abatement, remedy, or removal of the nuisance, and he or they shall employ sufficient labor to abate, remedy or remove such nuisance as expeditiously as possible.
 - (4) Any owner who has been served with a nuisance abatement order and who believes such order to have been unjustified may apply to the Nez Perce Tribal Court (within the 7 days mentioned in Section 3 above) for an order to cancel the nuisance abatement order. The Nez Perce Tribal Court may,

after affording the opportunity for a hearing, affirm, modify, or vacate the nuisance abatement order and its decision shall be final.

- (5) In a case where the public health, comfort, safety or welfare requires immediate action or where the owner, agent, or other persons having an interest in the tract on which the Nez Perce Tribal Executive Committee has determined there exists a nuisance, have failed to comply with an abatement order, the Nez Perce Tribal Executive Committee may enter upon the tract, with such workmen and assistance as may be necessary and cause the nuisance to be abated, remedied, or removed without delay.
- (6) The Nez Perce Tribal Executive Committee shall determine the cost and expense of any work performed under the authority of subsection (b)(5) and shall assess such cost and expense on the owner of the tract upon which such nuisance existed. Any owner of a tract upon which such assessment has been made who is dissatisfied with such determination may apply to the Nez Perce Tribal Court for review of the determination. The Nez Perce Tribal Court may, after affording the opportunity for a hearing on the matter, affirm, modify, or vacate the determination and its decision shall be final.

Public Order

§4-3-20 Refusing Assistance to Officers

Any person neglecting or refusing to aid and assist a tribal police officer in the performance of his official duties after being requested to do so by such officer commits the infraction of refusing assistance to officers.

§4-3-21 False Reporting

A person commits the infraction of false reporting if he initiates a false alarm or report which is transmitted to a fire department, law enforcement agency or other organization that responds to emergencies involving danger to life or property.

§4-3-22 *Disorderly Conduct* (effective 10/25/05 replaced by §4-1-200)

§4-3-23 Loitering

A person commits the infraction of loitering if he remains in a public place without apparent reason and under circumstances which warrant justifiable alarm for the safety of persons or property in the vicinity, and upon inquiry by a peace officer, refuses to identify himself and give a reasonable credible account of his presence and purposes.

§4-3-24 Harassment

A person commits the infraction of harassment if, with intent to annoy or alarm another he:

- (a) subjects another to offensive physical contact;
- (b) publicly insults another by abusive or obscene words or gestures in a manner likely to provoke a violent or disorderly response; or

(c) communicates with a person, anonymously or otherwise, by telephone, mail or other form of written communication in a manner likely to cause annoyance or alarm.

§4-3-25 Abuse of Corpse

A person commits the infraction of abuse of corpse if he unlawfully disinters, removes or carries away a corpse that has been buried or otherwise interred.

§4-3-26 Cruelty to Animals

- (a) A person commits the infraction of cruelty to animals if he:
- (1) maliciously kills, maims or wounds any animal;
 - (2) overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly beats, or mutilates or cruelly kills any animal;
 - (3) has custody of or is responsible for an animal and willfully subjects the animal to needless suffering or inflicts any unnecessary cruelty upon the same;
 - (4) transports or carries any animal in a cruel and inhumane manner;
 - (5) causes any animal to fight for his amusement or betting or waging permits the same to be done on any premises or is present at such fight; or
 - (6) negligently causes any of the above results.
- (b) A person commits a violation under Criminal Offenses Chapter 4-1, §4-1-202 if he:
- (1) causes any animal to fight for his amusement, betting or waging; or
 - (2) permits the same to be done on any premises or is present at such fight.
(amended 1/13/09)
- (c) It may be a defense to a prosecution under this section if the actor was:
- (1) involved in an accepted veterinary practice or any scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university; or
 - (2) engaged in hunting or fishing in accordance with the provisions of this code.

Drugs and Alcohol

§4-3-40 Possession of Alcohol by a Person Under Twenty-One *(offense changed to a crime 6/22/99)*

Public Health, Safety and Welfare

§4-3-50 Waters Infraction

- (a) A person commits a waters infraction if he:

- (1) uses, interferes with or alters the flow of water in any stream, river, ditch, canal or lateral without any lawful authority to do so and in violation of any right held by the Nez Perce Tribe or another person;
- (2) breaks, injures, alters or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so;
- (3) takes irrigation water out of turn or in excess amount without lawful authority to do so and in violation of the rights of the Nez Perce Tribe or any other person; or
- (4) pollutes or befouls any water in any of the following ways:
 - (A) constructs or maintains a livestock enclosure, chicken coop, or other offensive yard or outhouse where the water or drainage therefrom shall flow directly into any source of water used for domestic purposes including any stream, well, spring, etc...;
 - (B) deposits, piles, unloads or leaves any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into any source of water used for domestic purposes including any stream, well, spring, etc...;
 - (C) constructs, establishes or maintains any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes or which flows through a city or town, so that the waste, refuse or filth therefrom find their way into said source of water;
 - (D) knowingly causes or allows any substance harmful or potentially harmful to human health to enter into a source of water used for domestic purposes; or
 - (E) operates a point source or non-point source as defined in the Federal Clean Water Act 33 U.S.C. §§ 1251 - 1387, in a manner which interferes with any right of the Nez Perce Tribe or another person.
- (5) The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

§4-3-51 Public Nuisance

(a) A person commits a public nuisance infraction if without lawful authority to do so, he does any act or fails to do any duty, which act or omission either:

- (1) unreasonably annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;

- (2) offends public decency;
- (3) unlawfully interferes with, obstructs, or tends to obstruct, or render dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, highway or road; or
- (4) in any way unreasonably renders three or more persons insecure in life or the use of property.

(b) An act or omission to act which affects three (3) or more persons in the ways specified in this section is still a nuisance regardless that the extent of the annoyance or damage inflicted on the individuals is unequal.

(c) The presence of a lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

(d) The commission by act or omission of a public nuisance shall not be punished under this section if the same conduct constitutes another offense which has also been charged against a defendant.

§4-3-52 Curfew Infraction - Persons Under Eighteen (18) Years

(a) A person fourteen (14) years and under, commits a curfew infraction if he is on the streets, highways, or any place open to the public:

- (1) between the weekday hours of 9:00 p.m. to 6:00 a.m.; and
- (2) between the weekend hours of 10:00 p.m. to 6:00 a.m.

(b) A person fifteen (15) years to eighteen (18), commits a curfew infraction if he is on the streets, highways, or any place open to the public:

- (1) between the weekday hours of 10:00 p.m. to 6:00 a.m.; and
- (2) between weekend hours of 12:00 midnight to 6:00 a.m.

(c) Weekday hours are defined as beginning at 6:00 p.m. Sunday through Friday at 6:00 p.m.

(d) It may be a defense to a prosecution under this section upon a showing of good cause for the violation, including written parental consent to be out past the stated curfew for a specific reason and at a specific place.

(e) Beginning June 1 through August 31 of each year the weekday curfew hours will be extended one (1) hour at night for all minors. Under no circumstances, except those listed in (d), will minors be allowed on the streets, highways, or any place open to the public before 6:00 a.m.

§4-3-53 Curfew Infraction - Parental Violation

(a) A person commits a curfew infraction if he permits his minor child or a minor child under his care to be on the streets, highways or any place open to the public:

- (1) between the weekday hours of 9:00 p.m. to 6:00 a.m. and weekend hours of 10:00 p.m. to 6:00 a.m. if the minor is under the age of fourteen (14); or
- (2) between the weekday hours of 10:00 p.m. and 6:00 a.m. and weekend hours of 12:00 midnight to 6:00 a.m. if the minor is fourteen (14) to seventeen (17) years of age.

(b) It may be a defense to a prosecution under this section upon a showing of good cause for the violation.

§4-3-53(a) Truancy - Persons Under Eighteen (18) Years (subsection added eff. 11/12/02)

(a) A person under the age of eighteen (18) years commits a truancy infraction if he willfully and unjustifiably fails to attend school when he is required to attend.

Except as provided herein:

- (1) All juveniles of school age are required to attend school unless excused from attendance for that day by school authorities. "School age" is defined as including all juveniles between the ages of five (5) and eighteen (18) years. For purposes of this section, the age of five (5) years shall be attained when the fifth anniversary of birth occurs on or before the first day of September of the school year in which the child is to enroll in kindergarten;
- (2) The school attended may be a public school, an alternative school, an alternative course of instruction, or a private parochial school so long as the source of instruction is accredited by either the State or the Tribe.

§4-3-53(b) Truancy Infraction - Parental Violation (subsection added eff. 11/12/02)

(a) A person commits a truancy infraction if he permits his minor child or a minor child under his care to willfully and unjustifiably fail to attend school when he is required to attend.

(b) It may be a defense to prosecution under this section upon a showing of good cause for the violation.

§4-3-53(c) Runaway - Persons Under Eighteen (18) Years (subsection added eff. 11/12/02)

A person under eighteen (18) years commits a runaway infraction if he runs away from the control of his parent(s), guardian or custodian.

(a) It may be a defense to prosecution under this section upon a showing of good cause for the violation.

§4-3-53(d) Runaway Infraction - Parental Violation (subsection added eff. 11/12/02)

(a) A person commits a runaway infraction if he permits his minor child or a minor child under his care to run away from his control as the parent(s), guardian or custodian.

(b) It may be a defense to a prosecution under this section upon a showing of good cause for the violation.

§4-3-54 Littering

A person commits the infraction of littering if he deposits upon any public or private property within the Nez Perce Reservation any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, cans, barbed wire, boards, trash, garbage, lighted material or waste substances on any place without authorization from the Tribe or the owner of the property affected.

§4-3-55 Livestock Infraction

(a) A person commits a livestock infraction if he:

- (1) willfully refuses or fails to mark or brand his livestock when required in the interest of livestock identification or directed by tribal or government officials;
- (2) alters, obliterates, or removes a brand or mark, or misbrands or mismarks livestock with a purpose to deceive another for any reason;
- (3) knowingly permits his livestock to graze or trespass on the property of another or of the tribe without permission to do so or in excess of permitted time or amount;
- (4) knowingly refuses to sell, dispose of, or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock;
- (5) knowingly fails to treat or dispose of a sick animal where there is a substantial danger of infecting other animals;
- (6) fails to dip, inoculate or otherwise treat livestock in the manner which the Tribal Executive Committee or its designated representative shall direct or required by law;
- (7) makes a false report of livestock owned;
- (8) purposely obstructs or interferes with a lawfully conducted roundup; or
- (9) fails to pay a lease or other fee as provided in the lease or permit agreement for the use of tribal property or resources.

(b) Except in cases in which the owner or person having custody of livestock believed to be in violation of this section cannot be found after reasonable search, the owner or person having custody of the livestock involved shall be given forty-eight (48) hours written notice of his alleged violation before a citation can be issued for the violation.

(c) Livestock may be impounded at or before the issuance of a citation without prior notice to the owner if probable cause exists that such animal(s) seriously threaten the property of the tribe or another or the health of other livestock on the Reservation and that immediate action is necessary to protect such interests from serious harm. Once an animal is so impounded, the owner shall be immediately notified of the impoundment and any potential violations of this section. A reasonable fee for the care of such animal(s) may be collected prior to their release.

Immunity From Suit**§4-3-56 Immunity of Persons Giving First Aid From Damage Claim** (added 6/22/99)

No action shall lie or be maintained for civil damages in the Nez Perce Tribal Court against any person or persons, or group of persons, who in good faith, being at, or stopping at the scene of an accident, offers and administers first aid or medical attention to any person or persons injured in such accident unless it can be shown that the person or persons offering or administering first aid is guilty of gross negligence in the care or treatment of said injured person or persons or has treated them in a grossly negligent manner. The immunity described herein shall cease upon delivery of the injured person to either a generally recognized hospital for treatment of ill or injured persons, or upon assumption of treatment in the office or facility of any person undertaking to treat said injured person or persons, or upon delivery of said injured person or persons into custody of an ambulance attendant.

§4-3-57 Immunity of Volunteer Ambulance Attendant (added 6/22/99)

No action shall lie or be maintained for civil damages in the Nez Perce Tribal Court against any person or persons, or group of persons, including volunteer ambulance attendants, who offers and administers first aid or emergency medical attention as a part of his volunteer service as an ambulance attendant to any person or persons utilizing the volunteer services and facilities, unless it can be shown that the person or persons offering or administering first aid or emergency medical attention is guilty of gross negligence in the care or treatment offered or administered, or has treated them in a grossly negligent manner. The immunity described herein shall cease upon delivery of the injured person to either a generally recognized hospital for treatment of ill or injured persons, or upon assumption of treatment in the office or facility of any person undertaking to treat said injured person or persons, or upon delivery of said injured person or persons.

Administration of Government**§4-3-70 Interference with Judicial Process**

A person commits the infraction of interference with judicial process if he:

(a) interferes with or attempts to influence any decision of the Tribal court or investigation, prosecution, or settlement of any case; or

(b) unlawfully detains or otherwise interferes with a witness or party to an action while such person is going to or from a court proceeding or attending court.

§4-3-71 Dog Ordinance (adopted 8/24/99)

A person commits the offense of violation of the Nez Perce Dog Ordinance by:

(a) Any person owning, harboring, or in any way responsible for any dog(s) not licensing said dog(s);

(b) Any person owning, harboring, or in any way responsible for any dog(s) not affixing a durable collar to said dog(s) with the license mentioned in (a) above;

(c) Any person owning, harboring, or in any way responsible for any dog(s) not keeping such animal(s) confined or on a leash and at all other times in complete control;

(d) Any person who hinders, molests, or interferes with the Dog Marshall;

(e) Any person owning, harboring, or in any way responsible for any female dog(s) not keeping such animal(s) shut up or fenced in when in heat;

(f) Any person owning, harboring, or in any way responsible for any vicious dog(s) or dog(s) having mange or any other apparent and contagious disease not keeping such animal(s) from running at large; or

(g) Any person owning, harboring, or in any way responsible for any vicious dog(s) keeping such animal(s) within the Nez Perce reservation after receiving either written or oral notice from the Dog Marshall that such dog has exhibited vicious tendencies. (subsection amended by NPTEC 5/24/11)

§4-3-72 Firework Ordinance (adopted 7/27/99, amended by NPTEC 12/8/15)

A person commits the offense or violation of the Nez Perce Fireworks Ordinance if he:

- (a) As a retail or wholesale operator, fails to obtain a firework's license;
- (b) As a wholesaler attempts to or sells fireworks to an unlicensed person;
- (c) As a retailer purchases, receives, or attempts to purchase or receive fireworks from an unlicensed wholesaler;
- (d) Any person knowingly submitting a license application containing false information;
- (e) As a retail or wholesale operator, stocks or sells any fireworks that are not authorized under the Ordinance;
- (f) As a retailer attempts to or sells fireworks, other than "safe and sane" fireworks to any person under eighteen (18) years of age;
- (g) As a retailer knowingly attempts to or sells fireworks to any intoxicated person;
- (h) As a retailer attempts to or sells, distributes, or discharges fireworks while intoxicated or under the influence of drugs;
- (i) As a retailer fails to stock two functioning fire extinguishers in the selling area;
- (j) As a retailer fails to display "Notice of Unlawful Acts";
- (k) As a retail operator, fails to remove all temporary structures, as well as any signs on and off the retail site, and debris and waste resulting from retailer's use of the retail site within five (5) days of the end of fireworks season; or
- (l) As a retail operator, utilize more than four (4) signs or any sign in excess of thirty-two (32) square feet.
- (m) As a retail operator, fails to affix Retail Operator's Permit number to signs used to advertise or identify a Fireworks Retail Outlet.
- (n) Any person discharging fireworks after the Nez Perce Tribal Executive Committee imposes a ban as authorized under §6-3-8. (Adopted by NPTEC 9/8/15)

§4-3-73 Fuel Tax Ordinance (addition authorized 10/9/01)

A person commits a violation of the Nez Perce Fuel Tax Ordinance by:

- (a) As a retail operator or distributor, fails to obtain a distributor or retail license to buy or sell fuel;
- (b) As a distributor attempts to or sells fuel to an unlicensed person;
- (c) As a retailer purchases, receives, or attempts to purchase or receive fuel from an unlicensed distributor;
- (d) Any person knowingly submitting a license application containing false information;
- (e) As a retail operator or distributor fails to follow federal health and safety regulations with regard to fuel receipt, dispensing and distribution.

§4-3-74 Tobacco and Liquor Ordinance Violations (adopted by NPTEC 12/9/03) (updated by NPTEC 1/14/20)

A person commits a violation of the Nez Perce Tobacco and Liquor Ordinance by:

- (a) As an operator or distributor, fails to obtain a tobacco or liquor license;
- (b) As an operator or distributor, attempts to or sells tobacco or liquor without a license;
- (c) As an operator or distributor, fails to submit a report as required by the Tobacco and Liquor Ordinance.
- (d) As a distributor, attempts to or sells tobacco or liquor to an unlicensed operator;
- (e) As an operator, purchases, receives, or attempts to purchase or receive tobacco or liquor from an unlicensed distributor;
- (f) As a tobacco distributor or tobacco outlet, sells unstamped cigarettes;
- (g) Any person knowingly submitting a license application containing false information;
- (h) As a tobacco operator, attempts to or sells tobacco products to any person under twenty-one (21) years of age;
- (i) As a liquor operator, attempts to or sells liquor products to any person under twenty-one (21) years of age;
- (j) As a tobacco distributor or operator, attempts to sell more than 48 cartons of cigarettes to a non-licensed non-resident person/entity.

§4-3-75 Official Nez Perce Tribal Executive Committee Actions Enforceable (adopted 9/12/06)

Any resolution officially adopted by the Nez Perce Tribal Executive Committee

pertaining to the tribal judicial system is hereby recognized as the law of the land and fully enforceable by the Nez Perce Tribal Court.

§4-3-76 Violation of Sex Offender Registration Code (section adopted 5/24/11)

Civil Penalty. Each violation of a provision of the Nez Perce Tribal Sex Offender Registration Code (Code) contained in Chapter 4-6 by a sex offender as defined in that Code who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, and civil contempt.

§4-3-77 Violation of Forest Product Harvesting Policy

- (a) A person commits a violation of the Forest Product Harvesting Policy (FPHP) by:
- (1) Cutting and removing forest products in violation of the FPHP. (Forest products allowed to be harvested are corral poles, tee pee poles, posts, fuel wood, and Christmas trees.)
 - (2) Cutting and removing forest products in excess of that allowed under the FPHP.
 - (3) Cutting a tree, other than a tree for teepee poles or a Christmas tree, that is not dead. (Green trees are trees with green needles on it, or any Western Larch Tree (Tamarack) with or without needles).
 - (4) Selling, trading or exchanging harvested forest products outside of the Tribe.
 - (5) Cutting and removing a Christmas tree larger than 6" in diameter at the stump.
 - (6) Girdling a tree for the purpose of killing the tree for future harvest.
- (NPTEC authorized amendment 5/22/18)

§4-3-78 Noncompliance with Nez Perce Tribal Building and Electrical Code

A person commits a violation of the Commercial Building and Electrical Code by:

- (a) willfully failing to secure a permit before initiation of construction or failing to secure an Electrical Inspection Verification prior to energizing an electrical installation, as required by the Commercial Building and Electrical Code. (NPTEC authorized amendment 5/22/18)

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CHAPTER 4-4

EXCLUSION AND REMOVAL

§4-4-1 Definitions

(a) "Exclusion and removal" means the temporary or permanent banishment or expulsion of an individual from within the boundaries of the Nez Perce Reservation.

(b) "Fraud" means a false representation of a matter of fact by words, conduct, false or misleading allegations, or by concealment of a fact which should have been disclosed which is intended to and does in fact deceive another to his legal injury or detriment.

§4-4-2 Persons Subject to Exclusion and Removal

All persons except those authorized by federal law to be present on tribal land and persons with interests in real property on the reservation may be excluded or removed from the Nez Perce Reservation.

§4-4-3 Grounds for Exclusion and Removal

In addition to any remedy or penalty provided by this code, a person subject to removal and exclusion under this chapter may be subject to a civil proceeding for exclusion or removal from the Nez Perce Reservation upon any one or more of the following grounds:

(a) doing or attempting to do any act upon the reservation which unlawfully threatens the peace, health, safety, morals or general welfare of the tribe, its members, or other persons;

(b) any act causing serious physical loss or damage of any nature to the property of the tribe or any reservation resident;

(c) entering an area in violation of any order of the Nez Perce Tribal Executive Committee designating such area as closed;

(d) failing or refusing to pay any taxes, rents or other charges justly due the Nez Perce Tribe or any entity of the tribe, after reasonable notice and an opportunity to pay, unless such charges or fees are related to an interest in real property;

(e) mining, prospecting, cutting timber or vegetation or other use, abuse, taking of or damage to tribal property without authorization;

(f) committing a fraud;

(g) trading or conducting business within the reservation in violation of tribal law;

(h) hunting, fishing or trapping without lawful authority or permission or in violation of tribal or federal law;

(i) disturbing or excavating items, sites or locations of religious, historic or scientific significance without the authority of the tribe or in violation of tribal or federal law; or

(j) failing to obey an order of the Tribal Court.

§4-4-4 Proceedings for Exclusion

The prosecutor may bring an exclusion action pursuant to this chapter on behalf of the tribe by filing a complaint in Tribal Court. Before filing a complaint, the prosecutor shall cause any proposed exclusion and removal under this chapter to be investigated sufficiently to determine whether, in his discretion, an exclusion action shall be filed on behalf of the tribe. The filing of a complaint under this chapter shall constitute a civil cause of action.

§4-4-5 Hearing on Exclusion and Removal

(a) Upon the filing of a complaint for exclusion, the tribal prosecutor shall promptly cause notice and a copy of the complaint to be served personally or by registered mail upon the respondent. The notice shall state the time and place at which a tribal court hearing will be held on the complaint and that the respondent may appear with counsel, if he desires, and present evidence in his own behalf.

(b) The burden of proof shall be upon the tribal prosecutor to prove by a preponderance of the evidence that the respondent committed one or more of the acts set forth in this chapter. If the respondent is found to have committed such act(s), the Court shall issue an order of exclusion and removal which shall include the duration of the exclusion. If the respondent is not present at such hearing or if a decision is not rendered until after the hearing, appropriate notice shall be served on the respondent in the manner provided above informing him of the action of the Tribal Court and such notice shall include a copy of any order or exclusion and/or removal.

§4-4-6 Appeals

Any person upon whom an order of exclusion and removal is issued under this chapter may appeal such order to the Nez Perce Court of Appeals as provided by this code.

§4-4-7 Enforcement of Orders of Exclusion and Removal

If any person ordered excluded from the Nez Perce Reservation under this title does not obey such order, the Tribal Court shall issue one or more of the following orders:

(a) direct any tribal police officer to remove the respondent from the reservation or portions of the reservation covered by the exclusion order at the respondent's expense;

(b) direct any tribal police officer to prevent the respondent from reentry onto any reservation lands covered by the exclusion order for so long as the order remains in effect;

(c) find the respondent in contempt.

§4-4-8 Emergency Exclusion and Removal Without Prior Hearing (adopted 10/12-13/99)

(a) Whenever the Tribal Court finds that there is an immediate need to order the exclusion and/or removal of a person from the Nez Perce Reservation and that the granting of notice and opportunity to be heard to such persons prior to making such order would cause a delay seriously detrimental to the interests of the Tribe, its members, or the other residents of the reservation, the Tribal Court shall immediately order such exclusion and/or removal and provide the notice and opportunity for review of such decision outlined below.

(b) Whenever the exclusion and/or removal of a person is ordered without a prior hearing as provided herein, the person shall be served with a notice of such action. Such notice shall state the nature and extent of the exclusion and/or removal so ordered, shall state the reasons why no prior hearing was held, shall inform the person that once he has complied with the order, he may immediately petition the Tribal Court for a hearing to reconsider the order, that he may be represented by counsel at his own expense at the hearing and present evidence in his own defense, and shall inform him that his compliance with such order shall be enforced by Tribal Law Enforcement Officers. A copy of the order shall be served with the notice and such service may be accomplished by personal service or, if personal service is not reasonably possible, by mailing to the person by United States registered mail, return receipt requested, at his last known address.

(c) Upon receipt of a petition for a hearing as provided in § 4-4-8(b), the Tribal Court shall schedule a hearing to allow the person to present evidence. Such hearing shall be held within ten business days of receipt of the petition, provided, however, that the order of exclusion and/or removal shall remain in force pending hearing and a decision thereon, except for the limited purpose of attending a hearing.

(d) The Tribal court shall, as a result of such hearing, either affirm, modify or rescind its previous order, and shall give the person notice of such decision in the same manner as provided for service of the notice in § 4-4-8(b).

(e) Nothing in this Section shall in any way limit Tribal Law Enforcement's authority to detain and eject any non-Indian offender.

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CHAPTER 4-5 DOMESTIC RELATIONS

INTRODUCTORY PROVISIONS

§4-5-1 **Definitions** (amended by NPTEC 7/8/03)

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (a) "Annulment" or "nullity" means the act of declaring a marriage void.
- (b) "Business day" means a day on which Nez Perce tribal offices are open for regular business
- (c) "Child Support Enforcement Program (CSEP)" means the Nez Perce Tribe Child Support Enforcement Program.
- (d) "Current support" means the present month's required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.
- (e) "Delinquency" means the amount of unpaid support that has accrued from the date a child support order is entered or an amount due on a judgment for support for a prior period.
- (f) "Dependent child" means any child for whom a support order has been established or for whom a duty of support is owed.
- (g) "Dissolution" or "divorce" means the act of terminating a marriage not including annulment.
- (h) "Duty of support" means the duty to provide for the needs of a dependent child, which may include the costs of necessary food, clothing, shelter, education, and health care including health insurance premiums for the child. The duty includes any obligation to make monetary payment, to pay expenses or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.
- (i) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.
- (j) "Employer" includes the Nez Perce Tribe and any person or entity who pays or owes income to the obligor.
- (k) "Estate" means the total property of any kind owned by a deceased person prior to the distribution of that property in accordance with the terms of a will, or, when there is no will, by the laws of inheritance in the state of domicile of the deceased.
- (l) "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to, wages, salary, bonus, commission, compensation for services rendered or goods sold, compensation as an independent contractor; and notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic

payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

- (1) Unemployment compensation payments made under chapter 13, title 72, Idaho Code or under the jurisdiction of any other state or tribe, shall be exempt from the provisions of this chapter;
- (2) Worker's compensation payments made under chapter 8, title 72, Idaho Code or under the jurisdiction of any other state or tribe, shall be exempt from the provisions of this chapter;
- (3) Public assistance payments made under the Tribal TANF or General Assistance Program, or title 56, Idaho Code, shall be exempt from the provisions of this chapter.

(m) "In-Kind Payments" as permitted by the trier of fact includes, but is not limited to, the provision of traditional foods and services.

(n) "Maintenance" means the furnishing by one person to another of support, for the means of living including food, clothing, shelter and other reasonable needs.

(o) "Marriage" means the civil status, condition or relation of a man and woman considered united in law as husband and wife.

(p) "Minor" or "Child" means any person under the age of eighteen (18).

(q) "Obligee" means any person, tribal agency, state agency or bureau entitled by order to receive child support payments or child and spousal support payments, or the person or agency to whom the right to receive or collect support has been assigned.

(r) "Obligor" means any person obligated by order to pay child or spousal support.

(s) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(t) "Support order" means a judgment, decree, or order issued by the Nez Perce Tribal Court creating a duty of support for a minor child, spouse or former spouse, as herein defined; or a judgment, decree, order or administrative ruling issued by a court or agency of competent jurisdiction of another tribe, state or country, creating a duty of support for a minor child, spouse or former spouse, as herein defined, which has been registered or otherwise made enforceable by this tribe.

§4-5-2 Scope

(a) This chapter will apply to the creation and dissolution of a marriage of which at least one party to the marriage is an Indian.

(b) Marriages performed under this chapter may be performed within or without the exterior boundaries of the Nez Perce reservation. (amended 9/12/06)

§4-5-3 Enforcement

(a) In addition to any other applicable remedy or penalty provided by this code, any person who violates the provisions of this chapter or misrepresents any fact required to be stated on a certificate form or marriage license may be subject to fine for a civil infraction. The Tribal Court may require reasonable security for a party's payments required under this chapter and may enforce such security by any applicable remedy.

(b) Child Support Enforcement Program Authorized to Act on Behalf of Tribe. Having properly received and processed an application by a custodial or non-custodial parent, Child Support Enforcement Program may enforce child support actions or orders, including temporary child support actions, on behalf of the Nez Perce Tribe, pursuant to any provisions or amendments provided for by the Nez Perce Tribal Code. (section added by NPTEC 10/13/09)

A filing fee shall not be assessed in cases brought on behalf of the Nez Perce Tribe.

§4-5-4 Marriage License

(a) The Clerk of Court may issue a marriage license form to parties:

- (1) who reasonably appear eligible to marry; and
- (2) upon payment of a fee to be established by the Court.

(b) No person shall conduct a marriage ceremony without first requesting that the parties submit a marriage license. Once the marriage ceremony is complete, such person shall properly endorse the license and return it to the court clerk for filing. Upon receipt and filing of the marriage license the clerk shall issue a marriage certificate to the parties involved.

§4-5-5 Marriage Ceremony (amended by NPTEC 6/23/15)

(a) The marriage ceremony may be conducted by:

- (1) a certified member of the clergy having authority to marry;
- (2) a current judge of the Nez Perce Tribal Court; or
- (3) the current Chairman of NPTEC.
- (4) a person recognized by the community as spiritual leader and whose status has been determined by the Nez Perce Tribal Executive Committee according to the Policy for Approving Officials to Conduct Marriage Ceremonies.

(b) The person conducting the marriage ceremony must be reasonably assured of:

- (1) the identity of the parties;
- (2) the real and full names and places of residence of the parties; and
- (3) that the parties have a right to marry in accordance with this chapter.

(c) No particular form for the ceremony of a marriage is required, but the parties must declare, in the presence of at least two (2) witnesses and the person solemnizing the marriage that they take each other as husband and wife.

ANNULMENT

§4-5-6 Void and Voidable Marriages

A marriage is illegal and void from the beginning if:

- (a) either party is less than eighteen (18) years old unless such party:
 - (1) has the written and properly notarized consent of his parent or guardian to marry; or
 - (2) if after obtaining the age of eighteen (18), freely cohabits with the other as husband or wife.
- (b) either party was of unsound mind unless after coming to reason, such party freely cohabits with the other as husband or wife;
- (c) the consent of either party is obtained by fraud or duress unless such party afterward, with full knowledge of the facts constituting the fraud or regardless of the duress used, freely cohabited with the other as husband or wife;
- (d) the marriage is between parents and children, ancestors and descendants of every degree, brothers and sisters of the half as well as the whole blood, uncles and nieces, or aunts and nephews or first cousins whether the relationship is legitimate or illegitimate;
- (e) the marriage is contracted by a person during the time he is legally married to another unless the actor believes the original spouse to be dead at the time.

§4-5-7 Annulment Actions/Judgment

- (a) An action to obtain a decree of nullity of marriage may be commenced if:
 - (1) the marriage is in violation of the age requirements of this chapter and the action is brought by the under aged party to the marriage within four (4) years after arriving at the age of eighteen (18), or by a parent, guardian, or other person having charge of such party, at any time before such party reaches the age of eighteen (18);
 - (2) either party is legally married to another and the action is brought by either party or by such original spouse;
 - (3) either party was of unsound mind and the action is brought by such party, or a relative or guardian of such party;
 - (4) the marriage is between relatives and the action is brought by another relative of the parties or the tribe;
 - (5) consent of either party was obtained by fraud and the action is brought by the party injured, within four (4) years after the discovery of the facts constituting the fraud; or

- (6) consent of either party was obtained by force and the action is brought by the party injured, within four (4) years after the marriage.

§4-5-8 Legitimacy of Children

It shall be a rebuttable presumption that children conceived during a marriage are legitimate and have rights to the estate of both parents. The Tribal Court may at any time issue necessary orders for the support of children as the circumstances require.

DISSOLUTION

§4-5-9 Dissolution of Marriage

A marriage is dissolved by:

- (a) the death of one of the parties; or
- (b) the judgment of the Tribal Court or any other court of competent jurisdiction decreeing a dissolution and restoring the parties to the state of unmarried persons.

§4-5-10 Grounds for Dissolution

A dissolution may be granted if one or other of the parties alleges irreconcilable differences in the marriage.

§4-5-11 Proceedings

- (a) Dissolution proceedings shall be initiated by the filing of a petition. No decree of dissolution shall be granted except after hearing before the Court.
- (b) Unless determined otherwise by the Court, or upon agreement by both parties, no hearing on the petition for dissolution shall be held until at least twenty (20) business days after the filing of the petition. At any time prior to hearing, the Court upon application of one of the parties, may require conference of the parties in order to determine whether or not reconciliation is practicable. The Court may allow additional parties to attend the meeting as it determines appropriate. If the Court determines that as a result of the meeting, reconciliation is practicable and it is in the best interest of the parties and children, if any, it may stay the proceedings for up to ninety (90) days.

SEPARATE MAINTENANCE/CHILD SUPPORT (section amended by NPTEC 7/8/03 and moved to end of Chapter)

§4-5-12 *Temporary Alimony/Child Support (now §4-5-50)*

§4-5-13 *Maintenance/Child Support (now §4-5-51)*

PROPERTY RIGHTS

§4-5-14 Property Settlement Agreement

This chapter shall govern the property rights of married persons, subject to a written property settlement agreement between such persons entered into prior to or during the marriage. Such an agreement must be recorded in the office of the recorder of every county and/or Bureau of Indian Affairs (BIA) for property held in trust by the BIA for the benefit of either of the parties in which any real estate affected by the agreement is located. The effect of recording or non-recording of such agreement shall be the same as if the agreement were a conveyance of real

property.

§4-5-15 Separate Property

(a) The sole and separate property of married persons shall include all property of a husband or wife:

- (1) owned by him or her before marriage or acquired after marriage by either gift, bequest, devise or descent; or
- (2) acquired with the proceeds of his or her separate property.

(b) During the marriage, a party has the management, control and sole authority to dispose of his separate property and the separate property of one spouse shall not be liable for debts contracted to with the separate property of the other.

§4-5-16 Community Property

(a) All other property acquired after marriage by either husband or wife is community property. The income of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income from all or the specifically designated property shall be the separate property of one of the spouses or the income from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

(b) Property conveyed by one spouse to the other shall be presumed to be the sole and separate estate of the grantee and only the grantor spouse need execute and acknowledge the deed or other instrument of conveyance notwithstanding the provisions of section 4-5-17; provided, however, that the income from such property shall not be the separate property of the grantee spouse unless this fact is specifically stated in the instrument of conveyance.

§4-5-17 Management of Community Property

Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract, except that neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing and acknowledging the deed or other instrument of conveyance, by which the real estate is sold, conveyed or encumbered, and any community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; provided, however, that the husband or wife may by express power of attorney give to the other the complete power to sell, convey or encumber community property, either real or personal.

§4-5-18 Disposition of Property

(a) Unless there are compelling reasons otherwise, in the event a dissolution is granted, the Court shall dispose of the community property of the parties in substantially equal division in value or assign the property in such proportions as it deems just. In making its

determination, the Court shall consider all the facts of the case and the condition of the parties.

(b) If real property is involved in the disposition of property from a decree of dissolution, its disposition shall be consistent with the just apportionment of the property and may be assigned to either party either absolutely or for a limited period subject to future disposition by the Court or sold and the proceeds divided.

CUSTODY OF CHILDREN

§4-5-19 Care and Custody of Children (amended by NPTEC 3/25/03)

(a) Unless otherwise provided by this code or court order, the parents of an unmarried child(ren) are equally entitled to his custody and responsible for his care and support. If either the father or mother is deceased, or has been determined to have abandoned the family or to be unable or to have refused to take custody of the child(ren), his or her rights and responsibilities shall transfer to the other parent or grandparent(s) if neither parent is willing and able to care for the child(ren).

(b) In cases where the parents of a child(ren) are not married to each other, either parent may petition for an order of custody and child support.

(c) In cases where the parent(s) of a child(ren) are unable to provide a suitable home or for reasons proved to a court, in a separate Minor in Need of Care hearing or similar hearings in another jurisdiction are unfit to have custody of child(ren), the grandparent(s) may petition the court for the legal/physical custody of the child(ren).

(d) The judge shall consider, the child(ren)'s wishes as to with whom he should reside.

§4-5-20 Emancipation

The rights of the parents shall be surrendered and their duties to provide care and support terminated upon the marriage or emancipation of the child. Emancipation shall be initiated by the filing of a petition with the Court by the child requesting emancipation who is over the age of sixteen (16). The Court may grant such status when the child proves that he is capable of functioning as an independent and responsible member of the community.

§4-5-21 Proceedings (amended by NPTEC 3/25/03)

(a) The Court shall provide or remand physical/legal custody, care, and education, when it is deemed in the best interest of said child(ren).

(b) In reaching a decision on custody, and placement and visitation of a child(ren) the Court shall consider all relevant factors including:

- (1) the wishes of the child(ren) as to his custody and the older the child(ren), the more weight shall be given by the trier of fact;
- (2) the wishes of the biological/legal parent(s);
- (3) the relationship between the child(ren) and his parent(s) and siblings;
- (4) the child(ren)'s adjustment or lack of adjustment, to a new home, school,

or community;

- (5) the need to promote continuity and stability in the life of the child(ren).

CHILD CUSTODY JURISDICTION

§4-5-22 Purposes of this Sub-title - Construction of Provisions

Solely for purposes of this sub-title, the Nez Perce Reservation shall be considered a "state".

- (a) The general purposes of this sub-title are to:

- (1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
- (2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;
- (3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;
- (4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;
- (5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;
- (6) avoid relitigation of custody decisions of other states in this state insofar as feasible;
- (7) facilitate the enforcement of custody decrees of other states;
- (8) promote and expand the exchange in information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and
- (9) make uniform the law of those states which enact it.

- (b) This sub-title shall be construed to promote the general purposes stated in this section.

§4-5-23 Definitions

As used in this sub-title:

- (a) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(b) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(c) "Custody proceeding" means proceedings in which a custody determination is one of several issues, and includes child neglect and dependency proceedings;

(d) "Decree" or "custody decree" means a custody determination contained in a judicial decree made in a custody proceeding, and includes an initial decree and a modification decree;

(e) "Home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six (6) consecutive months, and in the case of a child less than six (6) months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six (6) month or other period;

(f) "Initial decree" means the first custody decree concerning a particular child;

(g) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the Court which rendered the prior decree or by another court;

(h) "Physical custody" means when a child resides with or is under the care and supervision of a parent or party;

(i) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(j) "State" means the Nez Perce Reservation, any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

§4-5-24 Jurisdiction

(a) The Tribal Court has jurisdiction to make a child custody determination by initial or modification decree if:

(1) the state:

(A) is the home state of the child at the time of commencement of the proceeding; or

(B) had been the child's home state within six (6) months before commencement of the proceeding and the child is sent from the state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(2) it is in the best interest of the child that the Court assume jurisdiction because:

(A) the child and his parents, or the child and at least one contestant,

have a significant connection with this state; and

(B) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationship;

(3) the child is physically present in this state and:

(A) the child has been abandoned; or

(B) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(4)

(A) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3) of this section, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child; and

(B) it is in the best interest of the child that the Tribal Court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a) of this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on the Court to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

§4-5-25 Notice and Opportunity to be Heard

Before making a decree under this sub-title, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to section 4-5-26.

§4-5-26 Notice to Persons Outside this State -- Submission to Jurisdiction

(a) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) by personal delivery outside this state in a manner prescribed for service of process within this state;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt; or

- (4) as directed by the Court, including publication, if other means of notification are ineffective.

(b) Notice shall be served, mailed, delivered, or last published at least twenty (20) days before any hearing.

(c) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the Court.

§4-5-27 Simultaneous Proceedings in other States

(a) The Court shall not exercise its jurisdiction under this sub-title if at the time of filing the petition of proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this subtitle, unless the proceeding is stayed by the Court of another state because the Tribal Court is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the Court shall examine the pleadings and other information supplied by the parties under section 4-5-30 and shall consult the child custody registry established under section 4-5-38, concerning the pendency of proceedings with respect to the child in other states. If the Court has reason to believe that proceedings may be pending in another state it shall direct any inquiry to the state court administrator or other appropriate official of the other state.

(c) If the Court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the Court assumed jurisdiction it shall stay the proceeding and communicate with the Court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 4-5-41 through 4-5-44. If the Court has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the Court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the most appropriate forum.

§4-5-28 Inconvenient Forum

(a) If the Court has jurisdiction under this sub-title to make an initial or modification decree, it may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the Court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the Court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose, it may take into

account the following factors, among others:

- (1) if another state is or recently was the child's home state;
- (2) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;
- (3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
- (4) if the parties have agreed on another forum which is no less appropriate; and
- (5) if the exercise of jurisdiction by the Court would contravene any of the purposes stated in §4-5-22.

(d) Before determining whether to decline or retain jurisdiction the Court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the most appropriate court and that a forum will be available to the parties.

(e) If the Court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(f) The Court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the Court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the Court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the Tribal Court shall inform the Court found to be the more appropriate forum of this fact, or if the Court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the Court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing the Tribal Court of a finding of inconvenient forum because the Court is the more appropriate forum shall be filed with the clerk of the Court. Upon assuming jurisdiction, the Court shall inform the original court of this fact.

§4-5-29 Jurisdiction Declined by Reason of Conduct

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the Court may decline to exercise

jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child and subject to subsection (a) of section 4-5-35, the Court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the Court subject to subsection (a) of section 4-5-35, may decline to exercise jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

§4-5-30 Information Under Oath to be Submitted to the Court

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath if:

- (1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;
- (2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and
- (3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the Court. The Court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the Court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the Court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

§4-5-31 Additional Parties

If the Court learns from information furnished by the parties pursuant to section 4-5-30, or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside the reservation he shall be served with process or otherwise notified in accordance with section 4-5-26.

§4-5-32 Appearance of Parties and the Child

(a) The Court may order any party to the proceeding who is in this state to appear personally before the Court. If that party has physical custody of the child, the Court may order that he appear personally with the child.

(b) If a party to the proceeding whose presence is desired by the Court is outside this state with or without the child the Court may order that the notice given under section 4-5-26, include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this state is directed to appear under subsection (b) of this section or desires to appear personally before the Court with or without the child, the Court may require another party to pay to the clerk of the Court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

§4-5-33 Binding Force and Res Judicata Effect of Custody Decree

A custody decree rendered by the Court binds all parties who have been served or notified in accordance with section 4-5-26, or who have submitted to the jurisdiction of the Court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this sub-title.

§4-5-34 Recognition of Out-of-State Custody Decrees

The Court shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

§4-5-35 Modification of Custody Decree of Another State (amended by NPTEC 7/8/03)

(a) If a court of another state has made a custody decree, the Court shall not modify that decree unless:

- (1) the decree concerns child support and is from the State of Idaho or the State of Washington and the terms of the inter-governmental child support agreements between those states and the Nez Perce Tribe apply, in which case such terms shall supersede the process set forth in this chapter.

§4-5-36 Time and Standard for Modifying Custody Decree

(a) No motion to modify a custody decree may be made earlier than two (2) years after its date, unless the Court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health; except that nothing in this section shall be construed to prevent the Court from reconsidering a custody decree entered upon legal separation in the event of application before

the expiration of two (2) years by either party for a decree terminating the marriage.

(b) No modification decree shall be entered except upon a showing that a permanent material change has occurred since the prior decree and that it is in the best interests of the child that the decree be modified.

§4-5-37 Filing and Enforcement of Custody Decree of Another State

(a) A certified copy of a custody decree of another state may be filed in the office of the clerk. The clerk shall treat the decree in the same manner as a custody decree of the Tribal Court. A custody decree so filed has the same effect and shall be enforced in a like manner as a custody decree rendered by the Court.

§4-5-38 Registry of Out-of-State Custody Decrees and Proceedings

The clerk of the Court shall maintain a registry in which he shall enter the following:

- (a) certified copies of custody decrees of other states received for filing;
- (b) communications as to the pendency of custody proceedings in other states;
- (c) communications concerning a finding of inconvenient forum by a court of another state; and
- (d) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of the Court or the disposition to be made by it in a custody proceeding.

§4-5-39 Certified Copies of Custody Decree

The clerk of the Court, at the request of the Court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

§4-5-40 Testimony by Deposition in Another State

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The Court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

§4-5-41 Hearings and Studies in Another State

(a) The Court may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the Court; and to forward to the Court certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties.

(b) The Court may request the appropriate court of another state to order a party to custody proceedings pending in the Court to appear in the proceedings, and if that party has

physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

§4-5-42 Assistance to Courts of Other States

(a) Upon request of the Court of another state the Court may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced shall be forwarded by the clerk of the Court to the requesting court.

(b) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(c) Upon request of the Court of another state the Court may order a person in this state to appear alone or with the child in a custody proceeding in another state. The Court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

§4-5-43 Preservation of Documents for use in Other States

In any custody proceeding the Court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches eighteen (18) years of age. Upon appropriate request of the Court of another state the Court shall forward to the other court certified copies of any or all of such documents.

§4-5-44 Request for Court Records of Another State

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in the Tribal Court, the Court upon taking jurisdiction of the case shall request of the Court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 4-5-43.

§4-5-45 International Application

The general policies of this sub-title extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

§4-5-46 Priority

Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this sub-title the case shall be given calendar priority and handled expeditiously.

SEPARATE MAINTENANCE/CHILD SUPPORT

§4-5-50 Temporary Spousal/Child Support (section was formerly § 4-1-12 renumbered and amended by NPTEC 7/8/03) (section amended 2/26/08)

(a) While an action for dissolution is pending and upon consideration of the financial

status of the parties, the court may order the payment by one party to the other:

- (1) of temporary maintenance in an amount and according to appropriate terms under the circumstances;
- (2) of temporary support of a child based on the child support guidelines;
- (3) of a reasonable amount for the cost of maintaining or defending any dissolution proceedings.

(b) In those instances where the Court deems it necessary, it may appoint a guardian ad litem to represent a minor or dependent child with respect to his support, custody and visitation. Any costs or fees for such representation shall be borne by either or both of the child's parents.

§4-5-51 Maintenance/Child Support (formerly 4-5-13 renumbered and amended by NPTEC 7/8/03)

(a) Action for separate maintenance and/or child support may be maintained by one spouse who is living separate from the other.

(b) Where a dissolution is granted and after considering all relevant factors, the Court may order separate maintenance for either spouse in such amounts and for such period of time the Court deems just. Separate maintenance may be awarded to a spouse only if such spouse:

- (1) lacks sufficient property to provide for his or her reasonable needs; and
- (2) is unable to support himself or herself through employment.

(c) The court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for such child's support. (subsection amended 2/26/08)

- (1) The Tribe shall establish guidelines for determining the amount of child support. The amount resulting from the application of these guidelines is the amount of child support ordered unless a written finding is made, based on criteria approved by the Tribe, that application of the guidelines would be inappropriate or unjust in a particular case. The Tribe shall review the guidelines at least once every four (4) years to ensure that their application results in the determination of appropriate child support amounts. The Tribe shall base the guidelines and criteria for deviation from them on all relevant factors, including:

- (A) The financial resources and needs of the child.
- (B) The financial resources and needs of the custodial party.
- (C) The standard of living the child would have enjoyed had the marriage not been dissolved.
- (D) The physical and emotional condition of the child and the child's educational needs.
- (E) The financial resources and needs of the noncustodial parent.

- (2) The child support guidelines shall be used in determining the ability to pay child support and the amount of payments. The obligation to pay child support is primary and other financial obligations are secondary.
 - (A) There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of the child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate.
 - (B) If the court determines that the circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specified finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court
 - (C) In-kind payments may be permitted to satisfy a support obligation provided that the court order:
 - (i) states the specific dollar amount of the support obligation, and
 - (ii) describes the type of in-kind payment that is being allowed to satisfy the specific dollar amount of the support order, and
 - (iii) prohibits the in-kind payment from satisfying any assigned support obligations.
- (3) The court may order either parent to name any child under eighteen as a beneficiary of any medical or dental or benefit plan carried by such parent or available to such parent on a group basis through employment.

MANDATORY INCOME WITHHOLDING FOR CHILD SUPPORT (§§ 4-5-52 - 4-5-66 adopted by NPTEC 7/8/03)

§4-5-52 Remedies in Addition to Other Remedies

- (a) The remedies provided in this chapter are in addition to, and not in substitution for, any other remedies provided by law.
- (b) The provisions of this chapter apply to any dependent child, whether born before or after the effective date of this act, and regardless of the past or current marital status of the parents.

§4-5-53 Income Withholding

- (a) The CSEP may enforce a support order which is, or has been issued or modified against a noncustodial parent by withholding:
 - (1) as much of his/her income as is necessary to pay the current monthly support amount and if needed an additional amount to be applied toward any arrearage. The total amount may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Act (15 U.S.C.

1673 (b));

(b) The CSEP will comply with all procedural due process requirements of the Nez Perce Tribe.

(c) Income Withholding does not apply to in-kind payments.

(d) Mistake of fact is the only basis for contesting income withholding.

§4-5-54 Notice of Immediate Income Withholding

(a) The court shall order income withholding in all support orders effective the date of the order unless an exception is granted by the court pursuant to subsection (b) of this section. All support orders shall notify the obligor that income withholding shall be enforced by a withholding order issued to the obligor's employer, without additional notice to the obligor.

(b) Immediate income withholding shall not be ordered if

(1) One of the parties demonstrates and the court makes a specific written finding that there is good cause not to require immediate income withholding. A finding of good cause by the court must be based on, at a minimum:

(A) A written determination and explanation of why implementing immediate withholding would not be in the best interests of the child; and

(B) Proof of timely payment of previously ordered support in cases involving the modification of support orders; or

(2) A written agreement is reached between the obligor and obligee and the CSEP in cases where the CSEP is providing child support services, which provides for an alternative arrangement, and such agreement is determined by the court to be in the best interests of the child.

(c) Failure to provide for income withholding does not affect the validity of the support order.

§4-5-55 Income Withholding Upon a Delinquency

If a support order does not include immediate income withholding, the obligor is subject to income withholding upon a delinquency at least equal to the child support payment for one (1) month, without the need for a judicial or administrative hearing.

§4-5-56 Judicial Proceedings for Income Withholding

(a) A proceeding to enforce a duty of support is commenced by:

(1) filing a petition or complaint for an original action; or

(2) motion in an existing action or under an existing case number.

(b) Venue for the action is in the tribal court or county district court where the dependent child resides or is present, where the obligor resides, or where the prior support order was entered. The petition or motion may be filed by the obligee, the tribe or any agency providing care or support to the dependent child.

(c) A filing fee shall not be assessed in cases brought on behalf of the Nez Perce Tribe.

(d) A petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, pursuant to § 4-5-54 or § 4-5-55, and:

- (1) The name, address, and social security number of the obligor;
- (2) A copy of the support order;
- (3) The name and address of the obligor's employer;
- (4) The amount of any delinquency; and
- (5) Whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s).

(e) Upon receipt of a petition or motion, the court shall issue an income withholding order pursuant to § 4-5-54 or § 4-5-55 using the form prescribed by the U.S. Federal Office of Child Support Enforcement, to the employer. The court shall also order the employer to remit the amount withheld to the person or entity designated in the income withholding order within seven (7) business days after the date the amount would have been paid or credited to the obligor. The income withholding shall include: **(subsection amended 2/26/08)**

- (1) The maximum amount of current support, if any, to be withheld from the obligor's earnings each month, or from each earnings disbursement;
- (2) The total amount of the arrearage or reimbursement judgment previously entered by the court, if any, if any; and
- (3) The amount of arrearage payment specified in the support order, if any.

(f) If the petition or motion indicates the obligee has received public assistance from any source on behalf of a minor child, the clerk shall immediately forward a copy of the petition or the motion to the CSEP.

(g) The court retains continuing jurisdiction under this chapter until all duties of support of the obligor, including any delinquency, have been satisfied or until the order is otherwise unenforceable.

(h) An order originating in or recognized by the Nez Perce Tribal Court for child support shall become unenforceable ten years after the eighteen birthday or emancipation of the youngest child named in the child support order, whichever last occurs. **(subsection added 1/13/15)**

(i) The statute of limitations for enforcement of child support may be tolled upon an evidentiary finding that fraud or willful concealment has taken place by a party to the case. **(subsection added 1/13/15)**

§4-5-57 Service of Income Withholding Order in a Judicial Proceeding

(a) The following items and documents shall be served on the employer personally or by any form of mail requiring a return receipt

- (1) two (2) conformed copies of the income withholding order, one (1) of which is for the employer, and one (1) for the obligor;
- (2) four (4) answer forms in substantial compliance with § 4-5-60;
- (3) Three (3) stamped envelopes provided by the obligee and addressed to, respectively, the person or entity designated in the income withholding order, the obligee's attorney or the obligee, and the obligor.

§4-5-58 Employer's Duties and Responsibilities - Fee for Employer

(a) Upon receiving an income withholding order from the court, the employer shall answer the income withholding order on forms supplied with the income withholding order within ten (10) days after the date of service. The employer shall deliver the original answer to the court and shall mail one (1) copy to the obligee or obligee's attorney and shall deliver one (1) copy to the obligor as soon as is reasonably possible. The answer shall state whether the obligor is employed by or receives income from the employer, whether the employer will honor the income withholding order, and whether there are multiple child support income withholding orders or garnishments against the obligor. Upon receiving an income withholding order from the CSEP, the employer shall begin income withholding pursuant to this section.

(b) If the employer possesses any income due and owing to the obligor, the income subject to the income withholding order shall be withheld immediately upon receipt of the income withholding order. The withheld income shall be delivered to the person or entity designated in the income withholding order within seven (7) business days after the date the amount would have been paid or credited to the employee.

(c) The total amount to be withheld from the obligor's earnings each month, or from each earnings disbursement, shall not exceed forty percent (40%) of the disposable earnings of the obligor for that period. If the amounts to be paid toward the arrearage are specified in the support order, then the maximum amount to be withheld is the sum of the current support ordered and the amount ordered to be paid toward the arrearage, or fifty percent (50%) of the disposable earnings of the obligor for that period, whichever is less. (In no event shall the amount to be withheld from the earnings of the obligor exceed the amount specified under section 303(b) of the Consumer Credit Act (15 U.S.C. 1673(b)).

(d) When an employer receives an income withholding order issued by another tribe or state, the employer shall apply the income withholding law of the jurisdiction of the obligor's principal place of employment in determining:

- (1) The employer's fee for processing an income withholding order;
- (2) The maximum amount permitted to be withheld from the obligor's income;
- (3) The time periods within which the employer must implement the income

withholding order and forward the child support payment;

- (4) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (5) Any withholding terms or conditions not specified in the income withholding order.

(e) If an obligor is subject to two (2) or more income withholding orders for child support on behalf of more than one (1) obligee, the employer may send the entire amount withheld from that obligor to the Nez Perce Accounting Department. The Accounting Department shall apportion the amount of income withheld between all obligees of the obligor as follows: the support obligation for the current month shall be paid first. If the amount of nonexempt disposable income withheld is not sufficient to pay the total support obligation for the current month for each obligee for whom there is an income withholding order, the amount withheld shall be divided between each obligee for whom there is an income withholding order on a pro rata basis. If the amount of the nonexempt disposable earnings withheld is in excess of the total support obligation for the current month for each obligee for whom there is an income withholding order, the excess shall be divided between each obligee for whom there is an income withholding order which includes withholding for any delinquency on a pro rata basis unless otherwise ordered by the court. (subsection amended 2/26/08)

(f) The employer shall continue to withhold the ordered amounts from nonexempt income of the obligor until notified by the court or the CSEP that the income withholding order has been modified or terminated. The employer shall promptly notify the CSEP when the employee is no longer employed, and of the employee's last known address, and the name and address of his new employer, if known. (subsection amended 2/26/08)

(g) The employer may deduct a processing fee, not to exceed five dollars (\$5.00), to cover the costs of each withholding. Such fee is to be withheld from the obligor's income in addition to the amount withheld to satisfy the withholding order, but the total amount withheld, including the fee, shall not exceed forty percent (40%) of the obligor's disposable income.

(h) The employer may combine amounts withheld from various employees for a particular entity in a pay period into a single payment for that pay period, as long as the portion thereof which is attributable to each individual employee is separately designated.

(i) An order for income withholding for support entered under this chapter shall have priority over any other wage assignment or garnishment, except for another wage assignment, income withholding order, or garnishment for child support.

§4-5-59 Penalties for Employers

(a) An employer may not discharge, discipline, or refuse to employ an obligor on the basis of an income withholding order issued under this chapter. If an employer discharges, disciplines, or refuses to employ an obligor because of an income withholding obligation, the obligor shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and other damages suffered as a result of the violation and for costs and reasonable attorney's fees, and may be subject to a civil penalty of up to three hundred dollars (\$300) for each violation. In addition, the employer may also be ordered to hire, rehire, or reinstate the aggrieved obligor.

(b) An employer who knowingly fails to retain and remit to the Nez Perce Accounting Department an amount pursuant to the income withholding order shall be liable to the CSEP for the amount to be retained specified in the income withholding order and may be subject to a fine of up to one hundred dollars (\$100), which is a debt due and owing to the CSEP unless: (subsection amended 2/26/08)

- (1) The employer notifies the court or CSEP that the obligor is not in his employ and the CSEP verifies the obligor's nonemployment and withdraws its income withholding order; or
- (2) The obligor's income is not sufficient and therefore the restrictions in section 303(b) of the Consumer Credit Production Act (15 U.S.C. 1673(b)), apply and a lesser amount must be withheld.

(c) No employer who complies with an income withholding order that is regular on its face shall be subject to civil liability to any individual or agency for conduct in compliance with the income withholding order.

§4-5-60 Identifying Information -- Filing with Tribunal and Child Support Services

Obligors and obligees shall file with the court or the CSEP, if the CSEP is providing child support services, identifying information including social security number, residential and mailing address, telephone number, driver's license number, and name, address, and telephone number of the employer. Obligors and obligees shall provide written notification of any changes within ten (10) days after such changes. (subsection amended 2/26/08)

§4-5-61 Order for Payment of Medical Expenses

(a) A proceeding to enforce a support order directing the payment of medical expenses of a dependent child may be commenced as provided in § 4-5-56.

(b) The petition or motion may be filed by an obligee when medical expenses not otherwise provided without charge to the obligee by the Indian Health Service, or Nimiipuu Health, or Medicaid, or otherwise covered by insurance have been incurred in the amount of one hundred dollars (\$100) or more, or when insurance premiums, deductibles, or payments on submitted claims for which payment or reimbursement is claimed to be due from the obligor equal or exceed one hundred dollars (\$100). The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the order, including (amended by NPTEC 3/22/11)

(c) Upon the filing of a petition or motion and affidavit containing the information required in subsection (2) of this section, the clerk of the court shall set a hearing thereon. The obligee shall serve a copy of the petition or motion, accompanying affidavit and notice of hearing on the obligor by personal service or certified mail, pursuant to the Nez Perce Tribe's rules of civil procedure.

(d) After hearing, the court shall enter its order directing payment of the specific sums, if any, for which the obligor is found to be liable for previously incurred medical expenses. In addition, if the court determines that some or all of the medical expenses of the dependent child are of an ongoing or recurring nature and the anticipated amounts thereof are capable of determination to the satisfaction of the court, the court may order payment to the

obligee of a specific sum per month toward such expenses.

(e) For purposes of this section "medical expenses" means any and all costs and expenses related to health care incurred on behalf of a dependent child, including insurance premiums and any deductible amounts, all or a portion of which are ordered to be paid by the obligor in addition to any amount awarded as child support, pursuant to a support order.

§4-5-62 Termination of Income Withholding upon Obligor's Request

(a) An obligor whose income is subject to withholding upon a delinquency under this chapter may request a hearing to quash, modify, or terminate the withholding, by filing a motion requesting such relief before the court which issued the income withholding order. A copy of the motion and a notice of hearing shall be served upon the obligee by personal service or certified mail, pursuant to the Nez Perce Tribe's rules of civil procedure.

(b) In a hearing to quash, modify, or terminate the income withholding order, the court may grant relief only upon a showing by the obligor that there is a substantial probability that the obligor would suffer irreparable injury and that the obligee would not suffer irreparable injury. Satisfaction by the obligor of any delinquency subsequent to the issuance of the income withholding order is not grounds to quash, modify, or terminate the income withholding order.

(c) Mistake of fact is the only basis for contesting income withholding.

§4-5-63 Health Insurance Coverage - Enforcement

(a) Where a person is required by court or administrative order to provide health insurance coverage for a dependent child, that person is eligible for family health coverage through an employer and fails to provide such coverage or lets it lapse, the CSEP or other obligee may seek enforcement of the coverage order as provided under this section provided that, where health care is available to a child based upon a parent's status as an American Indian/Alaskan Native, the federal health care exemption shall apply and CSEP shall not seek enforcement. (amended by NPTEC 3/22/11)

(b)

(1) If the obligor's order to provide health insurance coverage contains language notifying the obligor that failure to provide such coverage may result in direct enforcement of the order and orders payments through, then the CSEP may, without further notice to the obligor, send a notice of intent to enroll to the obligor's employer by certified mail, return receipt requested. The notice which shall include a copy of the order shall require the employer to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(2) If the obligor's order to provide health insurance coverage does not order payments through, and has not been submitted to, the CSEP:

(A) The obligee may, without further notice to the obligor, send a certified copy of the order requiring health insurance coverage to the obligor's employer by certified mail, return receipt requested; and

- (B) The obligee shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court.

(c) Upon receipt of an order that provides for health insurance coverage, or a notice of intent to enroll:

- (1) The obligor's employer shall answer the party who sent the order or notice within thirty (30) days and confirm that the child:
 - (A) Has been submitted in the health insurance plan;
 - (B) Cannot be covered, stating the reasons why such coverage cannot be provided.
- (2) The employer shall withhold any required premium for the obligor's dependents from the obligor's income or wages;
- (3) If more than one (1) plan is offered by the employer, and each plan may be extended to cover the child, then the child shall be enrolled in the obligor's plan. If the obligor's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the obligor parent;
- (4) The employer or insurer shall provide the name of the health insurance coverage provider or insurer, the extent of coverage available and other necessary information to the CSEP or other obligee and shall make available any necessary claim forms or enrollment membership cards.

(d) If the order for coverage contains no language notifying the obligor that failure to provide health insurance coverage may result in direct enforcement of the order, the CSEP or other obligee may serve a written notice of intent to enforce the order on the obligor by certified mail, return receipt requested, or by personal service. If the obligor fails to provide written proof that such coverage has been obtained or applied for within thirty (30) days of service of the notice, or within thirty (30) days of coverage becoming available, the CSEP or other obligee may proceed to enforce the order directly as provided in subsection (b) of this section.

(e) If the obligor ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the CSEP or other obligee may serve a written notice of intent to enroll the child in a separate health insurance coverage plan on the obligor by certified mail, return receipt requested. The notice shall also specify the type and cost of coverage.

(f) If the CSEP serves a notice under subsection (e) of this section, the obligor may, within thirty (30) days of the date of service:

- (1) File a motion with the tribal court; or
- (2) Provide written proof to the CSEP that the obligor has either applied for or obtained coverage accessible to the child.

(g) If an obligee other than the CSEP serves a notice under subsection (5) of the section, within thirty (30) days of the date of service, the obligor shall provide written proof to the obligee that the obligor has either applied for, or obtained, coverage accessible to the child.

(h) If the obligor fails to respond to a notice served under subsection (5) of this section to the party who served the notice, the party who served the notice may enroll the obligor's child in the health insurance coverage specified in the notice directly. The employer shall withhold the amount of the premium from the income of the obligor. The amount to be withheld from the income of the obligor shall not exceed the amount specified in section 303(b) of the Consumer Credit Act (15 U.S.C. 1673(b)). The employer shall forward the amount of premium withheld to the insurance provider.

(i) If the coverage is terminated or amended, the employer shall mail a notice of termination or amendment to the CSEP or other obligee at the obligee's last known address within forty-five (45) days of the termination date.

(j) This section shall not be construed to limit the right of the obligor or the obligee to bring an action in court at any time to enforce, modify or clarify the original support order.

(k) If the amount of the obligor's income or wages which are withheld under subsection (c)(2) of this section is insufficient to pay the premium for the dependents, the obligor shall, nevertheless, be responsible for payment of the premium.

(l) The employer shall not disenroll or eliminate coverage of any such child unless:

- (1) The employer has been provided satisfactory written evidence that the order requiring such health care coverage is no longer in effect; or
- (2) The employer has received confirmation that the child is enrolled in other comparable health care coverage; or
- (3) The employer has eliminated family health coverage for all of its employees; or
- (4) The employee upon whose employment the health coverage is premised has ceased employment with the employer and reasonable measures have been taken to give notice to the parents or guardians of the child.

§4-5-64 Termination or Modification of Income Withholding upon Obligees' Request

The court may quash, modify or terminate an income withholding order upon written request therefor by the obligee, unless the court finds that the termination would not be in the best interests of the dependent child.

§4-5-65 Termination of Income Withholding by the Court in a Judicial Proceeding

If the clerk is unable to deliver payments under the income withholding order for a period of three (3) months due to the failure of the obligee to notify the clerk of a change of address, the court shall terminate the income withholding order, and shall mail a copy of the termination order to the employer and to the obligor. The court shall return all undeliverable payments to the

obligor.

§4-5-66 Location of Noncustodial Parent

(a) The Nez Perce Tribe Child Support Enforcement Division (CSEP) maintains a service to locate noncustodial parents using:

- (1) All sources of information and available records on the Nez Perce Reservation, in Idaho or other states; and
- (2) The Federal Parent Locator Service (FPS) maintained by the federal Department of Health and Human Services.

§4-5-67 Modification (section added 2/26/08)

(a) Any order for child support, in which the tribal court has original jurisdiction or to which both parties agree to a modification in tribal court, may be modified on a showing of changed circumstance that is substantial and continuing, except as to any amount that may have accrued as an arrearage before the date of notice of the motion to modify.

- (1) If application of the guidelines results in an order that varies fifteen percent (15%) or more from the existing amount, the fifteen percent variation in the amount of the order will be considered evidence of a substantial and continuing change of circumstances.
- (2) The addition of health insurance coverage as defined in section 4-5-51(c)(3) or a change in the availability of health insurance coverage may constitute a continuing and substantial change in circumstance.

(b) Modification is effective on the first day of the month following notice of the motion for modification unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the motion for modification. The order of modification may include an award of attorney fees and court costs to the prevailing party.

(c) In a case receiving CSEP services, a party or the CSEP, if there is an assignment of rights resulting from the custodial person receiving TANF benefits, may request every three years that an order for child support be reviewed and, if appropriate, adjusted.

- (1) The request may be made without a specific showing of a changed circumstance that is substantial and continuing.
- (2) The CSEP shall conduct the review in accordance with the tribal child support guidelines.
- (3) If appropriate, the CSEP shall file a motion in the tribal court to adjust the support amount.
- (4) Every three years the CSEP shall notify the parties of their right to request a review of the order for support. The CSEP shall notify the parties by first class mail at their last known address or by including the notice in an

order.

(d) If a party in a case receiving CSEP services requests a review and adjustment sooner than three years, the party shall demonstrate a changed circumstance that is substantial and continuing.

(e) Children of the party requesting the modification who are born or adopted after the entry of the existing order shall not be considered in determining a modified support obligation.

§4-5-68 Income Withholding Orders from Foreign Jurisdictions (section added 2/26/08)

The CSEP shall receive and process income withholding orders from other Tribes, States and other entities as follows: Within five days of receiving an income withholding order from a foreign jurisdiction either directly or as forwarded from a Tribal employer, the CSEP shall request transmittal of the case from the initiating IV-D agency. Upon receipt of the foreign order, CSEP shall proceed pursuant to § 4-5-53 and the procedural rules for the Recognition and Enforcement of Foreign Judgments. (amended by NPTEC 3/22/11)

§4-5-69 Termination of Income Withholding upon Satisfaction of Support Obligation (section added 2/26/08)

Notice terminating the income withholding will be promptly sent to the employer when the support obligation, including any arrears, has been satisfied.

§4-5-70 Amounts Improperly Withheld (section added 2/26/08)

The Nez Perce Accounting Department will promptly refund to the obligor any amounts improperly withheld from the obligor's earnings.

TITLE 4 OFFENSES

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CHAPTER 4-6
SEX OFFENDER REGISTRATION CODE
(Adopted by NPTEC 5/24/11; Amended by NPTEC 5/28/13)

GENERAL MATTERS**§4-6-1 Title**

This Code shall be known as The Nez Perce Tribe Sex Offender Registration Code (Code).

§4-6-2 Purpose

The intent of this Code is to implement the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

§4-6-3 Need

The Nez Perce Tribe is disproportionately affected by violent crime and sex offenses in particular from both Indian and non-Indian perpetrators; consequently, the conduct and presence of convicted sex offenders within the Nez Perce Reservation threatens the political integrity, economic security, health and welfare of tribal nations.

§4-6-4 Creation of Registries

(a) Sex Offender Registry. There is hereby established a sex offender registry, which the Nez Perce Tribal Police shall maintain and operate pursuant to the provisions of this Code, as amended.

(b) Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, which the Nez Perce Tribal Police or designee shall maintain and operate pursuant to the provisions of this Code, as amended.

TERMINOLOGY AND COVERED OFFENSES**§4-6-5 Definitions**

The Definitions below apply to this Code only.

(a) Convicted. An adult sex offender is "convicted" for the purposes of this Code if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

A juvenile offender is "convicted" for purposes of this Code if the juvenile offender is either:

- (1) Prosecuted and found guilty as an adult for a sex offense; or
- (2) Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

(b) Foreign Convictions. A foreign conviction is one obtained outside of the United States.

(c) Employee. The term "employee" as used in this Code includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.

(d) Immediate. "Immediate" and "immediately" mean within 3 business days.

(e) Imprisonment. The term "imprisonment" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal "jail". Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provisions of this code during their period of "house arrest".

(f) In Person. The term "in person" as used in this Code means that the individual must physically be present at the location required by the Code.

(g) Jurisdiction. The term "jurisdiction" as used in this Code refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe.

(h) Minor. The term "minor" means an individual who has not attained the age of 18 years.

(i) Nez Perce Tribal Police. When the term "Nez Perce Tribal Police" is used as a location, it refers to the Lapwai office at 210 Bever Grade. For instance, to appear in person at Nez Perce Tribal Police, refers to the Lapwai office at 210 Bever Grade.

(j) Resides. The term "reside" or "resides" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.

(k) Sex Offense. The term "sex offense" as used in this code includes those offenses contained in 42 U.S.C. §16911(5) and those offenses enumerated in Section 4-6-6 of this Code or any other covered offense under the Nez Perce Tribal Code.

An offense involving consensual sexual conduct is not a sex offense for the purposes of this Code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

(l) Sex Offender. A person convicted of a sex offense is a "sex offender".

(m) Sexual Act. The term "sexual act" means:

- (1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

- (2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- (3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- (4) the intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(n) Sexual Contact. The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

(o) Student. A "student" is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

(p) SORNA. The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. §16911 *et. seq.*, as amended.

(q) Sex Offender Registry. The term "sex offender registry" means the registry of sex offenders, and a notification program, maintained by Nez Perce Tribal Police or designee.

(r) National Sex Offender Registry (NSOR). The national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16919.

(s) SMART Office. The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. §16945.

(t) Dru Sjodin National Sex Offender Public Website (NSOPW). The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16920.

§4-6-6 Covered Offenses

Except as otherwise noted in section 4-6-6(c) below, individuals who are or have been convicted in the Nez Perce Tribal Court of any offenses listed in this section and who reside on property within the exterior boundaries of the reservation or held in trust or restricted fee status for the Tribe or its members, or owned by the Tribe in fee, regardless of location; are employed within the exterior boundaries of the reservation or on property held in trust or restricted fee status for the Tribe or its members, or owned by the Tribe in fee, regardless of location; or who attend school within the exterior boundaries of the reservation or on property held in trust or restricted fee status for the Tribe or its members, or owned by the Tribe in fee, are subject to the requirements of this Code. (amended by NPTEC 4/10/18)

Individuals who have been convicted of a sex offense in any other court are required to

register pursuant to the requirements of the Idaho Code.

- (a) A conviction under any of the following provisions of the Nez Perce Tribal Code:
 - (1) §4-1-48 (Rape),
 - (2) §4-1-49 (Forcible Sexual Penetration with a Foreign Object),
 - (3) §4-1-50 (Unlawful Sexual Intercourse),
 - (4) §4-1-51 (Sexual Assault),
 - (5) §4-1-52 (Sexual Molestation of a Minor under Sixteen),
 - (6) §4-1-52(a) (Enticement of a Child), (NPTEC authorized amendment 5/22/18)
 - (7) §4-1-52(b) (Enticing a Child Through Use of the Internet or Other Communication Device), or (NPTEC authorized amendment 5/22/18)
 - (8) §4-1-86 (Incest).
- (b) Any criminal offense committed in this Tribe that involves:
 - (1) Any type or degree of genital, oral, or anal penetration,
 - (2) Any sexual touching of or sexual contact with a person's body, either directly or through the clothing,
 - (3) Kidnapping of a minor,
 - (4) False imprisonment of a minor,
 - (5) Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,
 - (6) Use of a minor in a sexual performance,
 - (7) Solicitation of a minor to practice prostitution,
 - (8) Possession, production, or distribution of child pornography,
 - (9) Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,
 - (10) Any conduct that by its nature is a sex offense against a minor, or
 - (11) Any offense similar to those outlined in:
 - (A) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),

- (B) 18 U.S.C. §1801 (video voyeurism of a minor),
- (C) 18 U.S.C. §2241 (aggravated sexual abuse),
- (D) 18 U.S.C. §2242 (sexual abuse),
- (E) 18 U.S.C. §2244 (abusive sexual contact),
- (F) 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution), or
- (G) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

(c) **Offenders Registered in Other Jurisdictions.** Any sex offender who is registered as a sex offender by any other jurisdiction (including the State of Idaho) and who resides on property within the exterior boundaries of the reservation or held in trust or restricted fee status for the Tribe or its members, or owned by the Tribe in fee, regardless of location; are employed within the exterior boundaries of the reservation or on property held in trust or restricted fee status for the Tribe or its members, or owned by the Tribe in fee, regardless of location; or who attend school within the exterior boundaries of the reservation or on property held in trust or restricted fee status for the Tribe or its members, or owned by the Tribe in fee, is subject to the following provisions: (amended by NPTEC 4/10/18)

- (1) If said offender is employed within the exterior boundaries of the reservation or on property held in trust or restricted fee status for the Tribe or its members, or owned by the Tribe in fee, regardless of location, the offender shall provide and the Nez Perce Tribal Police Department shall collect the offender's employer address information and such employer address information shall be made available to the public upon request; (amended by NPTEC 4/10/18)
- (2) If an offender is classified as a Tier III offender by the State of Idaho, the Nez Perce Tribal Police Department shall conduct at least one in-person verification check of the offender's provided registration information. Any information obtained from such a check shall be immediately provided to the Central Registry.

§4-6-7 Section Reserved

§4-6-8 Section Reserved

§4-6-9 Section Reserved

REQUIRED INFORMATION

§4-6-10 General Requirements

(a) **Duties.** A sex offender covered by this code who is required to register with the Tribe pursuant to Sections 4-6-31 to 4-6-35 shall provide all of the information detailed in Sections 4-6-11 through 4-6-28 of this Code to the Nez Perce Tribal Police or designee, and the Nez Perce Tribal Police or designee shall obtain all of the information detailed in Sections 4-6-11 through 4-6-28 of this Code from covered sex offenders who are required to register with the Tribe in accordance with this Code and shall implement any relevant policies and procedures.

(b) Digitization. All information obtained under this Code shall be, at a minimum, maintained by the Nez Perce Tribal Police or designee in a digitized format.

(c) Electronic Database. A sex offender registry shall be maintained in an electronic database by the Nez Perce Tribal Police or designee and shall be in a form capable of electronic transmission.

§4-6-11 Criminal History

(a) Criminal History. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history:

- (1) The date of all arrests,
- (2) The date of all convictions,
- (3) The sex offender's status of parole, probation, or supervised release,
- (4) The sex offender's registration status, and
- (5) Any outstanding arrest warrants.

§4-6-12 Date of Birth

(a) Date of Birth. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:

- (1) The sex offender's actual date of birth, and
- (2) Any other date of birth used by the sex offender.

§4-6-13 DNA Sample

(a) DNA. If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Nez Perce Tribal Police or designee a sample of his DNA.

(b) CODIS. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile in to CODIS.

§4-6-14 Driver's Licenses, Identification Cards, Passports, and Immigration Documents

(a) Driver's License. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of all of the sex offender's valid driver's licenses issued by any jurisdiction.

(b) Identification Cards. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of any identification card including the sex

offender's tribal enrollment card issued by any jurisdiction.

(c) Passports. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of any passports used by the sex offender.

(d) Immigration Documents. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of any and all immigration documents.

§4-6-15 Employment Information

(a) Employment. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions:

- (1) The name of the sex offender's employer,
- (2) The address of the sex offender's employer, and
- (3) Similar information related to any transient or day labor employment.

§4-6-16 Finger and Palm Prints

Finger and Palm Prints. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, both fingerprints and palm prints of the sex offender in a digitized format.

§4-6-17 Internet Identifiers

(a) Internet Names. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:

- (1) Any and all email addresses used by the sex offender,
- (2) Any and all Instant Message addresses and identifiers,
- (3) Any and all other designations or monikers used for self-identification in internet communications or postings, and
- (4) Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

§4-6-18 Name

(a) Name. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:

- (1) The sex offender's full primary given name,
- (2) Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used, and

- (3) Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

§4-6-19 Phone Numbers

(a) Phone Numbers. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's telephone numbers:

- (1) Any and all land line telephone numbers, and
- (2) Any and all cellular telephone numbers.

§4-6-20 Picture

(a) Photograph. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender.

(b) Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected every year.

§4-6-21 Physical Description

(a) Physical Description. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:

- (1) A physical description,
- (2) A general description of the sex offender's physical appearance or characteristics, and
- (3) Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

§4-6-22 Professional Licensing Information

Professional Licenses. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

§4-6-23 Residence Address

(a) Address. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence:

- (1) The address of each residence at which the sex offender resides or will reside, and
- (2) Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

§4-6-24 School

(a) School Location. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

- (1) The address of each school where the sex offender is or will be a student, and
- (2) The name of each school the sex offender is or will be a student.

§4-6-25 Social Security Number

(a) Social Security. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information:

- (1) A valid social security number for the sex offender, and
- (2) Any social security number the sex offender has used in the past, valid or otherwise.

§4-6-26 Temporary Lodging

(a) Lodging Information. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for 7 days or more:

- (1) Identifying information of the temporary lodging locations including addresses and names, and
- (2) The dates the sex offender will be staying at each temporary lodging location,
- (3) Travel Abroad. In the event the sex offender will be traveling outside of the United States for any period of time, the sex offender shall provide such travel information to the Nez Perce Tribal Police or designee at least 21 days prior to such international travel, and the Nez Perce Tribal Police or designee shall immediately provide this information to U.S. Marshal's Service.

§4-6-27 Offense Information

Offense Information. The Nez Perce Tribal Police or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

§4-6-28 Vehicle Information

(a) Detailed Information. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

- (1) License plate numbers,
- (2) Registration numbers or identifiers,
- (3) General description of the vehicle to include color, make, model, and year, and
- (4) Any permanent or frequent location where any covered vehicle is kept.

§4-6-29 Frequency, Duration and Reduction

(a) **Frequency.** A sex offender who is required to register shall, at a minimum, appear in person at the Nez Perce Tribal Police or designee for purposes of verification and keeping their registration current once every year for 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.

(b) **Reduction of Registration Periods.** A sex offender may have their period of registration reduced as follows:

- (1) An offender may have his or her period of registration reduced to 10 years if he or she has maintained a clean record for 10 consecutive years,

(c) **Clean Record.** For purposes of Paragraph (b) of this section, a person has a clean record if:

- (1) He or she has not been convicted of any offense, for which imprisonment for more than 1 year may be imposed. This exception shall not include conviction for any offense under the Nez Perce Tribal Code that results in a sentence of imprisonment for 1 year,
- (2) He or she has not been convicted of any sex offense,
- (3) He or she has successfully completed, without revocation, any period of supervised release, probation, or parole, and
- (4) He or she has successfully completed an appropriate sex offender treatment program certified by the Tribe, another jurisdiction, or by the Attorney General of the United States.

§4-6-30 Requirements for in Person Appearances

(a) **Photographs.** At each in person verification, the sex offender shall permit the Nez Perce Tribal Police or designee to take a photograph of the offender.

(b) **Review of Information.** At each in person verification the sex offender shall review existing information for accuracy.

(c) **Notification.** If any new information or change in information is obtained at an in-person verification, the Nez Perce Tribal Police or designee shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.

REGISTRATION**§4-6-31 Where Registration Is Required**

(a) A sex offender must initially register with the Nez Perce Tribal Police if the sex offender was convicted by the Tribal Court of a covered sex offense regardless of the sex offender's actual or intended residency.

§4-6-32 Timing of Registration

(a) Timing. A sex offender required to register with the Tribe under this code shall do so in the following timeframe:

- (1) If convicted by the Nez Perce Tribe for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration,
- (2) If convicted by the Nez Perce Tribe but not incarcerated, within 3 business days of sentencing for the registration offense, and
- (3) Within 3 business days of establishing a residence, commencing employment, or becoming a student within the exterior bounds of the Nez Perce Reservation or otherwise reside on property owned by the Tribe in fee or trust regardless of location, a sex offender must appear in person to register with Nez Perce Tribal Police or designee.

(b) Duties of Nez Perce Tribal Police. The Nez Perce Tribal Police shall have policies and procedures in place to ensure the following:

- (1) That any sex offender incarcerated or sentenced by the Tribe for a covered sex offense completes their initial registration with the Tribe,
- (2) That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement,
- (3) That the sex offender is registered, and
- (4) That upon entry of the sex offender's information into the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status.

§4-6-33 Retroactive Registration

(a) Retroactive Registration. The Nez Perce Tribal Police shall have in place policies and procedures to ensure the following three categories of sex offenders are subject to the registration and updating requirements of this code:

- (1) Sex offenders incarcerated or under the supervision of the Tribe, whether for a covered sex offense or other crime,
- (2) Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the Tribe's laws or the laws of the State of Idaho, and
- (3) Sex offenders reentering the justice system due to conviction for any crime.

(b) **Timing of Recapture.** The Nez Perce Tribal Police shall ensure recapture of the sex offenders mentioned in Paragraph (a) of this Section within one year from the date of passage of this code.

§4-6-34 Keeping Registration Current

(a) All sex offenders required to register in this jurisdiction shall immediately appear in person at the Lapwai office of the Nez Perce Tribal Police to update any changes to their name, residence (including termination of residency), employment, or school attendance. All sex offenders required to register in this jurisdiction shall immediately inform Nez Perce Tribal Police in person, or by phone if outside of the jurisdiction boundaries, of any changes to their temporary lodging information, vehicle information, internet identifiers, or telephone numbers. In the event of a change in temporary lodging, the sex offender and Nez Perce Tribal Police shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.

(b) **Duties of Nez Perce Tribal Police.** With regard to changes in a sex offender's registration information, the Nez Perce Tribal Police or designee shall immediately notify:

- (1) All jurisdictions where a sex offender intends to reside, work, or attend school,
- (2) Any jurisdiction where the sex offender is either registered or required to register, and
- (3) Specifically, with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service. The Tribal Police shall also ensure this information is immediately updated on NSOR.

§4-6-35 Failure to Appear for Registration and Absconding

(a) **Failure to Appear.** In the event a sex offender fails to register with the Tribe as required by this code, the Nez Perce Tribal Police or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the Tribe that the sex offender failed to appear for registration.

(b) **Absconded Sex Offenders.** If the Nez Perce Tribal Police or designee receives information that a sex offender has absconded the Nez Perce Tribal Police shall make an effort to determine if the sex offender has actually absconded.

- (1) In the event no determination can be made, the Nez Perce Tribal Police or designee shall ensure the tribal police and any other appropriate law enforcement agency is notified.
- (2) If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.
- (3) If an absconded sex offender cannot be located, then the tribal police shall take the following steps:
 - (A) Update the registry/public website to reflect the sex offender has absconded or is otherwise not capable of being located,
 - (B) Notify the U.S. Marshals Service,
 - (C) Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,
 - (D) Update the NCIC/NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located, and
 - (E) Enter the sex offender into the National Crime Information Center Wanted Person File.

(c) **Failure to Register.** In the event a sex offender who is required to register due to their residence, employment or school attendance status fails to do so or otherwise violates a registration requirement of this code, the Nez Perce Tribal Police shall take all appropriate follow-up measures including those outlined in Section 4-6-32(b). The Nez Perce Tribal Police shall first make an effort to determine if the sex offender actually resides, is employed or attending school in lands subject to the Tribe's jurisdiction.

(d) **Criminal penalty.** Each violation of a provision of the Nez Perce Tribe Sex Offender Registration Code by a sex offender who is an Indian shall be considered a crime and subject to a period of incarceration of up to one year and a fine of up to \$500.

(e) **Civil Penalty.** Each violation of a provision of the Nez Perce Tribe Sex Offender Registration Code by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, and civil contempt.

PUBLIC SEX OFFENDER REGISTRY WEBSITE

§4-6-36 Website

(a) **Website.** The Nez Perce Tribal Police or designee shall use and maintain a public sex offender registry website.

(b) **Links.** The registry website shall include links to sex offender safety and education resources.

(c) **Instructions.** The registry website shall include instructions on how a person can

seek correction of information that the individual contends is erroneous.

(d) Warnings. The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

(e) Search Capabilities. The registry website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and, (3) zip code and/or geographic radius.

(f) Dru Sjodin National Sex Offender Public Website. The Tribe shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

§4-6-37 Required and Prohibited Information

(a) Required Information. The following information shall be made available to the public on the sex offender registry website:

- (1) Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,
- (2) All sex offenses for which the sex offender has been convicted,
- (3) The sex offense(s) for which the offender is currently registered,
- (4) The address of the sex offender's employer(s),
- (5) The name of the sex offender including all aliases,
- (6) A current photograph of the sex offender,
- (7) A physical description of the sex offender,
- (8) The residential address and, if relevant, a description of a habitual residence of the sex offender,
- (9) All addresses of schools attended by the sex offender, and
- (10) The sex offender's vehicle license plate number along with a description of the vehicle.

(b) Prohibited Information. The following information shall not be available to the public on the sex offender registry website:

- (1) Any arrest that did not result in conviction,
- (2) The sex offender's social security number,
- (3) Any travel and immigration documents,

- (4) The identity of the victim, and
- (5) Internet identifiers (as defined in 42 U.S.C. §16911).

(c) **Witness Protection.** For sex offenders who are under a witness protection program, the tribal police may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

§4-6-38 Community Notification

(a) **Law Enforcement Notification.** Whenever a sex offender registers or updates his or her information with the Tribe, the Nez Perce Tribal Police or designee shall:

- (1) Immediately notify the FBI or other federal agency as designated by the Attorney General in order that the information may be updated on NSOR or other relevant databases,
- (2) Immediately notify any agency, department, or program within the Tribe that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors, and tribal probation,
- (3) Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment,
- (4) Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a) when a sex offender registers or updates registration.

(b) **Community Notification.** The Nez Perce Tribal Police or designee shall ensure there is an automated community notification process in place that ensures the following:

- (1) Upon a sex offender's registration or update of information with the Tribe, the Tribe's public sex offender registry website is immediately updated,
- (2) The Tribe's public sex offender registry has a function that enables the general public to request an email notice that will notify them when a sex offender commences residence, employment, or school attendance with the Tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.

IMMUNITY

§4-6-39 Immunity

- (a) No waiver of immunity. Nothing under this Code shall be construed as a waiver

of sovereign immunity for the Nez Perce Tribe, its departments, agencies, employees, or agents.

(b) Good faith. Any person acting under good faith of this Code shall be immune from any civil liability arising out of such actions.