

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

TITLE 4 CRIMINAL CODE

TABLE OF CONTENTS

Chapter 4.10	General Provisions.....	1
PART I.	INTRODUCTORY PROVISIONS	1
Section 4.10.001	Scope	1
Section 4.10.002	Purpose and Construction	1
Section 4.10.003	Reserved	1
Section 4.10.004	Civil Remedies Preserved	1
Section 4.10.005	Definitions	1
PART II.	MULTIPLE PROSECUTIONS AND DOUBLE JEOPARDY	75
Section 4.10.006	Prosecution for Multiple Offenses [4-1-5]	75
Section 4.10.007	Double Jeopardy [4-1-6]	86
Section 4.10.008	Reserved	86
PART III.	BURDEN OF PROOF	87
Section 4.10.009	Burden and Presumption of Innocence	87
Section 4.10.010	Negating Defenses [4-1-8]	87
Section 4.10.011	Reserved	87
PART IV.	CRIMINAL LIABILITY	87
Section 4.10.012	Acts and Omissions to Act [4-1-9]	87
Section 4.10.013	Culpability [4-1-10]	97
Section 4.10.014	Causal Relationships Between Conduct and Result [4-1-11]	98
Section 4.10.015	Ignorance or Mistake [4-1-12]	108
Section 4.10.016	Accomplices [4-1-13]	108
Section 4.10.017	Corporations, Unincorporated Associations and Persons Acting, or Under a Duty to Act, in Their Behalf [4-1-14]	119
PART V.	AFFIRMATIVE DEFENSES AND JUSTIFIABLE USE OF FORCE	1210
Section 4.10.018	Intoxication [4-1-15]	1210
Section 4.10.019	Duress [4-1-16]	1210
Section 4.10.020	Consent [4-1-17]	1211
Section 4.10.021	Entrapment [4-1-18]	1311
Section 4.10.022	Justification As A Defense	1312
Section 4.10.023	Justification Generally; Civil Remedies Unaffected [4-1-21]	1312
Section 4.10.024	Force in Self-Protection or Protection of Others [4-1-22]	1412
Section 4.10.025	Force for the Protection of Property [4-1-23]	1413
Section 4.10.026	Force in Law Enforcement [4-1-24]	1513
Section 4.10.027	Force by Persons with Special Responsibility or Care, Discipline or Safety of Others [4-1-25]	1514
Section 4.10.028	Reserved	1614
PART VI.	RESPONSIBILITY	1614
Section 4.10.029	Mental Disease or Defect Excluding Responsibility [4-1-19]	1614
Section 4.10.030	Medical Examination and Institutionalization [4-1-20]	1615

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

Section 4.10.031	Reserved	1615
Section 4.10.032	Reserved	1615
PART VII.	SENTENCING AND DISPOSITION OF OFFENDERS	1715
Section 4.10.033	Grades of Crimes	1715
Section 4.10.034	Felony, Misdemeanor and Infraction Defined	1715
Section 4.10.035	Fine and Imprisonment Limitations by Class of Criminal Offense	1716
Section 4.10.036	Reserved – Habitual Offenders	1816
Section 4.10.037	Reserved	1816
Section 4.10.038	General Principles in Sentencing and Punishment [4-1-26]	1817
Section 4.10.039	Sentences and Combinations of Sentences [4-1-27]	1817
Section 4.10.040	Sentencing Proceedings [4-1-31]	1917
Section 4.10.041	Payment of Fines and Other Monies [4-1-28]	1918
Section 4.10.042	Decision to Impose a Fine [4-1-29]	1918
Section 4.10.043	Community Service [4-1-30]	1918
Section 4.10.044	Probation [4-1-32]	2018
Section 4.10.045	Violation of Terms of Probation [4-1-33]	2018
Section 4.10.046	Reserved	2119
Section 4.10.047	Reserved	2119
Section 4.10.048	Reserved	2119
Section 4.10.049	Reserved	2119
PART VIII.	SEX OFFENDER REGISTRATION [CH. 4-6]	2119
Section 4.10.050	General Matters Related to Sex Offender Registration	2119
Section 4.10.051	Terminology Related to Sex Offender Registration [4-6-5]	2120
Section 4.10.052	Covered Offenses Requiring Sex Offender Registration [4-6-6]	2422
Section 4.10.053	Required Information	2624
Section 4.10.054	Safety Zones	3129
Section 4.10.055	Sex Offender Registration Procedures [4-6-29 through 4-6-32]	3130
Section 4.10.056	Retroactive Registration [4-6-33]	3331
Section 4.10.057	Keeping Registration Current [4-6-34]	3332
Section 4.10.058	Failure to Appear for Registration and Absconding [4-6-35]	3432
Section 4.10.059	Electronic Restrictions for Sex Offenders	3533
Section 4.10.060	Public Sex Offender Registration	3534
Section 4.10.061	Intervention and Treatment	3836
Chapter 4.15	Inchoate Offenses	3836
Section 4.15.001	Attempt [4-1-34]	3836
Section 4.15.002	Criminal Conspiracy [4-1-35]	3937
Section 4.15.003	Solicitation [4-1-36]	3937
Chapter 4.20	Offenses Against The Person	3938
Section 4.20.001	Simple Assault [4-1-37]	3938
Section 4.20.002	Aggravated Assault [4-1-39]	3938
Section 4.20.003	Battery [4-1-38]	4038
Section 4.20.004	Aggravated Battery [4-1-40]	4038
Section 4.20.005	Stalking [4-1-41]	4039
Section 4.20.006	Aggravated Stalking [4-1-42]	4139
Section 4.20.007	Strangulation	4239

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

Section 4.20.008	Suffocation	<u>4239</u>
Section 4.20.009	Murder [4-1-43]	<u>4240</u>
Section 4.20.010	Manslaughter [4-1-44]	<u>4340</u>
Section 4.20.011	Kidnapping [4-1-45]	<u>4341</u>
Section 4.20.012	False Imprisonment [4-1-46]	<u>4441</u>
Section 4.20.013	Human Trafficking.....	<u>4441</u>
Chapter 4.23	Sex-Related Crimes	<u>4442</u>
Section 4.23.001	Definitions Related to Sex Crimes	<u>4442</u>
Section 4.23.002	Rape [4-1-48]	<u>4542</u>
Section 4.23.003	Forcible Sexual Penetration with a Foreign Object [4-1-49]	<u>4543</u>
Section 4.23.004	Unlawful Sexual Intercourse [4-1-50].....	<u>4543</u>
Section 4.23.005	Sexual Assault [4-1-51].....	<u>4643</u>
Section 4.23.006	Sexual Molestation of a Minor under the Age of 16 [4-1-52]	<u>4643</u>
Section 4.23.007	Enticement of a Child [4-1-52(a)]	<u>4644</u>
Section 4.23.008	Enticement of a Child Through Use of the Internet or Other Communication Device [4-1-52(b)]	<u>4744</u>
Section 4.23.009	Commercial Sexual Exploitation of a Minor.....	<u>4745</u>
Section 4.23.010	Sexual Exploitation of a Minor.....	<u>4845</u>
Section 4.23.011	Voyeurism.....	<u>4845</u>
Section 4.23.012	Unlawful Distribution of Sexual Images	<u>4946</u>
Section 4.23.013	Indecent Exposure [4-1-53].....	<u>4947</u>
Section 4.23.014	Reserved	<u>4947</u>
Section 4.23.015	Patronizing a Prostitute	<u>4947</u>
Section 4.23.016	Promotion of Prostitution [4-1-123]	<u>5047</u>
Section 4.23.017	Incest [4-1-86].....	<u>5048</u>
Section 4.23.018	Reserved	<u>5148</u>
Section 4.23.019	Failure to Register as a Sex Offender or Provide Notice of Registration Changes [4-1-148].....	<u>5148</u>
Section 4.23.020	Hindrance of Sex Offender Registration.....	<u>5148</u>
Section 4.23.021	Safety Zone Trespass by Sex Offender.....	<u>5149</u>
Chapter 4.25	Offenses Against The Family	<u>5249</u>
Section 4.25.001	Reserved	<u>5249</u>
Section 4.25.002	Bigamy [4-1-85]	<u>5249</u>
Section 4.25.003	Criminal Nonsupport [4-1-87]	<u>5249</u>
Section 4.25.004	Child Custodial Interference [4-1-47]	<u>5250</u>
Section 4.25.005	Child Abuse [4-1-90].....	<u>5350</u>
Section 4.25.006	Endangering the Welfare of a Minor Under the Age of 18 [4-1-91]	<u>5451</u>
Section 4.25.007	Contributing to the Delinquency of a Minor [4-1-92].....	<u>5452</u>
Section 4.25.008	Abuse of Vulnerable Adults [4-1-89]	<u>5452</u>
Section 4.25.009	Elder Abuse	<u>5552</u>
Chapter 4.30	Offenses Against Property	<u>5553</u>
Section 4.30.001	Reserved	<u>5553</u>
Section 4.30.002	Arson [4-1-54]	<u>5553</u>
Section 4.30.003	Aggravated Arson [4-1-55].....	<u>5553</u>
Section 4.30.004	Causing a Catastrophe [4-1-56].....	<u>5653</u>
Section 4.30.005	Malicious Injury to Property [4-1-57].....	<u>5653</u>

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

Section 4.30.006	Vandalism [4-1-58]	<u>5654</u>
Section 4.30.007	Burglary [4-1-59]	<u>5654</u>
Section 4.30.008	Burglary of a Vehicle [4-1-60]	<u>5754</u>
Section 4.30.009	Criminal Trespass [4-1-61]	<u>5754</u>
Section 4.30.010	Aggravated Criminal Trespass [4-1-62]	<u>5755</u>
Section 4.30.011	Trespass of Privacy	<u>5755</u>
Section 4.30.012	Robbery [4-1-63]	<u>5855</u>
Section 4.30.013	Theft [4-1-64]	<u>5855</u>
Section 4.30.014	Theft by Deception [4-1-65]	<u>5856</u>
Section 4.30.015	Acquiring Lost Property [4-1-66]	<u>5856</u>
Section 4.30.016	Theft by a False Promise [4-1-67]	<u>5956</u>
Section 4.30.017	Extortion [4-1-68]	<u>5957</u>
Section 4.30.018	Receiving Stolen Property [4-1-69]	<u>6057</u>
Section 4.30.019	Theft of Services [4-1-70]	<u>6058</u>
Section 4.30.020	Unauthorized use of a Vehicle [4-1-73]	<u>6158</u>
Section 4.30.021	Defenses to Theft and Related Offenses [4-1-71]	<u>6159</u>
Chapter 4.35	Offenses Involving Fraud and Deception	<u>6159</u>
Section 4.35.001	Forgery [4-1-74]	<u>6159</u>
Section 4.35.002	Criminal Simulation [4-1-75]	<u>6259</u>
Section 4.35.003	Fraudulent Handling of Recordable Instruments [4-1-76]	<u>6259</u>
Section 4.35.004	Tampering with Records [4-1-77]	<u>6260</u>
Section 4.35.005	Bad Checks [4-1-78]	<u>6260</u>
Section 4.35.006	Deceptive Business Practices [4-1-79]	<u>6360</u>
Section 4.35.007	Fraudulent use of Prepaid, Debit or Credit Card [4-1-80]	<u>6361</u>
Section 4.35.008	Rigging a Contest [4-1-81]	<u>6461</u>
Section 4.35.009	Defrauding Creditors [4-1-82]	<u>6461</u>
Section 4.35.010	Unlawful Dealing with Property by a Fiduciary [4-1-83]	<u>6462</u>
Section 4.35.011	Making a False Credit Report [4-1-84]	<u>6562</u>
Chapter 4.40	Offenses Against Public Health, Safety, And Welfare..	<u>6563</u>
Section 4.40.001	Spreading a Sexually-Transmitted Disease [4-1-124]	<u>6563</u>
Section 4.40.002	Weapons Offense [4-1-126]	<u>6563</u>
Section 4.40.003	Committing an Offense While Armed [4-1-127]	<u>6664</u>
Section 4.40.004	Abuse of Corpse [4-1-128]	<u>6764</u>
Chapter 4.45	Gangs	<u>6865</u>
Section 4.45.001	Findings and Purpose	<u>6865</u>
Section 4.45.002	Definitions Relating to Gangs	<u>6865</u>
Section 4.45.003	Prohibited Activity	<u>6865</u>
Section 4.45.004	Identification of a Gang Member	<u>6966</u>
Chapter 4.50	Drug- And Alcohol-Related Offenses	<u>7067</u>
Section 4.50.001	Reserved	<u>7067</u>
Section 4.50.002	Frequenting [Drug Promotion 4-1-129]	<u>7067</u>
Section 4.50.003	Reserved	<u>7067</u>
Section 4.50.004	Possession and/or Consumption of a Controlled Substance [4-1-130]	<u>7067</u>
Section 4.50.005	Manufacture or Delivery of a Controlled Substance	<u>7167</u>
Section 4.50.006	Drug Paraphernalia – definition [4-1-1(m)]	<u>7168</u>

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

Section 4.50.007	Possession of Drug Paraphernalia [4-1-132]	<u>7370</u>
Section 4.50.008	Reserved	<u>7370</u>
Section 4.50.009	Abuse of Psychotoxic Chemical Solvents [4-1-131]	<u>7470</u>
Section 4.50.010	Reserved	<u>7471</u>
Section 4.50.011	Possession of Alcohol by a Person Under 21 Years of Age [4-1-133]	<u>7471</u>
Section 4.50.012	Possession, Distribution or use of Cigarettes or Other Tobacco Products by a Person Under 21 Years of Age [4-1-134]	<u>7672</u>
Section 4.50.013	Dispensing of Alcohol to a Person Under 21 Years of Age [4-1-136]	<u>7672</u>
Section 4.50.014	Reserved	<u>7672</u>
Section 4.50.015	Reserved	<u>7672</u>
Section 4.50.016	Public Intoxication [4-1-135]	<u>7672</u>
Section 4.50.017	Open Container [4-1-137]	<u>7672</u>
Chapter 4.55	Offenses Related to Public Order	<u>7773</u>
Section 4.55.001	Disorderly Conduct [4-1-200].....	<u>7773</u>
Section 4.55.002	Unreasonable Noise [4-1-201]	<u>7773</u>
Section 4.55.003	Reserved	<u>7874</u>
Section 4.55.004	Reserved	<u>7874</u>
Section 4.55.005	Animal Fighting [4-1-202]	<u>7874</u>
Section 4.55.006	Cruelty to Animals [4-1-203]	<u>7975</u>
Section 4.55.007	Persistent or Habitual Violations of the Dog Ordinance [4-1-204]	<u>7975</u>
Chapter 4.60	Offenses Against The Administration of Government. <u>7976</u>	
PART I.	BRIBERY AND CORRUPT INFLUENCES	<u>8076</u>
Section 4.60.001	Bribery in Official Matters [4-1-94]	<u>8076</u>
Section 4.60.002	Threats and Other Improper Influence in Official Matters [4-1-95].....	<u>8076</u>
Section 4.60.003	Compensation for Past Official Behaviors [4-1-96]	<u>8076</u>
Section 4.60.004	Retaliation for Past Official Action [4-1-97]	<u>8177</u>
Section 4.60.005	Improper Gifts to Public Servants [4-1-98].....	<u>8177</u>
PART II.	ABUSE OF OFFICE	<u>8278</u>
Section 4.60.006	Official Misconduct [4-1-99].....	<u>8278</u>
Section 4.60.007	Interference with Tribal Court [4-1-100]	<u>8278</u>
Section 4.60.008	Official Oppression [4-1-101]	<u>8379</u>
Section 4.60.009	Misuse of Public Monies [4-1-102].....	<u>8379</u>
PART III.	FALSIFICATION IN OFFICIAL MATTERS	<u>8480</u>
Section 4.60.010	Perjury [4-1-103]	<u>8480</u>
Section 4.60.011	False Swearing [4-1-104]	<u>8480</u>
Section 4.60.012	Unsworn Falsification [4-1-105].....	<u>8581</u>
Section 4.60.013	Tampering with Physical Evidence [4-1-106]	<u>8682</u>
Section 4.60.014	Tampering with Public Records [4-1-107]	<u>8682</u>
Section 4.60.015	Tampering with a Witness [4-1-108].....	<u>8682</u>
Section 4.60.016	Bribing a Witness [4-1-109].....	<u>8682</u>
Section 4.60.017	Receiving Bribes in Exchange for Testimony [4-1-110]	<u>8783</u>
Section 4.60.018	Simulating Legal Process [4-1-111].....	<u>8783</u>
Section 4.60.019	Criminal Impersonation [4-1-112].....	<u>8783</u>
Section 4.60.020	Welfare Offense [4-1-113]	<u>8783</u>

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

Section 4.60.021	Reserved	<u>8883</u>
Section 4.60.022	Reserved	<u>8883</u>
PART IV.	OFFENSES AGAINST PUBLIC ADMINISTRATION	<u>8883</u>
Section 4.60.023	Resisting and Obstructing Officers [4-1-114]	<u>8883</u>
Section 4.60.024	Hindering Prosecution [4-1-115]	<u>8884</u>
Section 4.60.025	Escape [4-1-116]	<u>8984</u>
Section 4.60.026	Providing Contraband [4-1-117]	<u>8985</u>
Section 4.60.027	Bail Jumping [4-1-118]	<u>9085</u>
Section 4.60.028	Failure to Obey an Order of the Court [4-1-119]	<u>9085</u>
Section 4.60.029	Violation of No Contact Order – Domestic Violence	<u>9085</u>
Section 4.60.030	Violation of a Civil Protection Order.....	<u>9086</u>
Section 4.60.031	Default on Fine [4-1-120]	<u>9187</u>
Section 4.60.032	Riot [4-1-121]	<u>9187</u>
Section 4.60.033	Obstructing the Administration of Justice [4-1-122]	<u>9187</u>
Chapter 4.80	Traffic Offenses	<u>9388</u>
Section 4.80.001	Purpose	<u>9388</u>
Section 4.80.002	Scope	<u>9388</u>
Section 4.80.003	Jurisdiction.....	<u>9489</u>
Section 4.80.004	Sovereign Immunity.....	<u>9489</u>
Section 4.80.005	Amendment [4-2-7(a) and 4-2-9(a)]	<u>9489</u>
Section 4.80.006	Definitions related to Traffic Offenses [4-2-1]	<u>9489</u>
Chapter 4.90	Civil Infractions	<u>9490</u>
PART I.	GENERAL PROVISIONS.....	<u>9490</u>
Section 4.90.001	Definitions [4-3-1]	<u>9490</u>
Section 4.90.002	Duties of Officers; Warrant not Required [4-3-2]	<u>9590</u>
Section 4.90.003	Disposition of Fines [4-3-3]	<u>9590</u>
Section 4.90.004	Officers [4-3-4]	<u>9590</u>
PART II.	PROPERTY.....	<u>9591</u>
Section 4.90.005	Trespass [4-3-5]	<u>9591</u>
Section 4.90.006	Vandalism [4-3-6]	<u>9691</u>
Section 4.90.007	Shoplifting/Retail Theft [4-3-7]	<u>9691</u>
Section 4.90.008	Liability for Acts of Minors [4-3-8]	<u>9691</u>
Section 4.90.009	Nuisance Abatement [4-3-9]	<u>9792</u>
PART III.	PUBLIC ORDER	<u>9893</u>
Section 4.90.010	Refusing Assistance to Officers [4-3-20]	<u>9893</u>
Section 4.90.011	False Reporting [4-3-21]	<u>9994</u>
Section 4.90.012	Loitering [4-3-23].....	<u>9994</u>
Section 4.90.013	Harassment [4-3-24]	<u>9994</u>
Section 4.90.014	Abuse of Corpse [4-3-25]	<u>9994</u>
Section 4.90.015	Cruelty to Animals [4-3-26]	<u>9994</u>
Section 4.90.016	Animal Fighting [4-3-26(b)]	<u>10095</u>
PART IV.	PUBLIC HEALTH, SAFETY, AND WELFARE.....	<u>10095</u>
Section 4.90.017	Waters Infraction [4-3-50]	<u>10095</u>

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

Section 4.90.018	Public Nuisance [4-3-51]	<u>10196</u>
Section 4.90.019	Curfew Infraction – Persons Under Eighteen (18) Years [4-3-52]	<u>10297</u>
Section 4.90.020	Curfew Infraction – Parental Violation [4-3-53]	<u>10297</u>
Section 4.90.021	Truancy – Persons Under Eighteen (18) Years [4-3-53(a)]	<u>10297</u>
Section 4.90.022	Truancy Infraction – Parental Violation [4-3-53(b)]	<u>10398</u>
Section 4.90.023	Runaway – Persons Under Eighteen (18) Years [4-3-53(c)]	<u>10398</u>
Section 4.90.024	Runaway Infraction – Parental Violation [4-3-53(d)]	<u>10398</u>
Section 4.90.025	Littering [4-3-54]	<u>10398</u>
Section 4.90.026	Livestock Infraction [4-3-55]	<u>10398</u>
PART V.	IMMUNITY FROM SUIT	<u>105100</u>
Section 4.90.027	Immunity of Persons Giving First Aid From Damage Claim [4-3-56]	<u>105100</u>
Section 4.90.028	Medical assistance – Drug-related overdose or life-threatening emergency	<u>105100</u>
Section 4.90.029	Immunity of Volunteer Ambulance Attendant [4-3-57]	<u>106101</u>
PART VI.	ADMINISTRATION OF GOVERNMENT	<u>106101</u>
Section 4.90.030	Official Nez Perce Tribal Executive Committee Actions Enforceable [4-3-75]	<u>106101</u>
Section 4.90.031	Interference with Judicial Process [4-3-70]	<u>106101</u>
Section 4.90.032	Dog Ordinance Violations [4-3-71]	<u>107102</u>
Section 4.90.033	Fireworks Ordinance Violations [4-3-72]	<u>107102</u>
Section 4.90.034	Fuel Tax Ordinance Violations [4-3-73]	<u>108103</u>
Section 4.90.035	Tobacco and Liquor Ordinance Violations [4-3-74]	<u>109103</u>
Section 4.90.036	Violation of Sex Offender Registration Code [4-3-76]	<u>109104</u>
Section 4.90.037	Violation of Forest Product Harvesting Policy [4-3-77]	<u>109104</u>
Section 4.90.038	Noncompliance with Commercial Building and Electrical Code [4-3- 78]	<u>110105</u>

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

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TITLE 4 • CRIMINAL CODE

CHAPTER 4.10 GENERAL PROVISIONS

PART I. INTRODUCTORY PROVISIONS

Section 4.10.001 Scope

This chapter shall apply to all provisions of this title.

Section 4.10.002 Purpose and Construction

The purpose of the provisions of this title shall be construed in accordance with tribal customs as well as to achieve the following general principles and purposes:

- A. To forbid and prevent the commission of offenses and give fair warning of conduct which is declared to be an offense;
- B. To adequately define the conduct and mental state which constitute an offense and safeguard permitted conduct;
- C. To prescribe penalties which are proportionate to the seriousness of the offense, and which permit recognition of differing rehabilitative needs of individual offenders while at the same time recognizing the need of the entire Reservation community to protect itself from offenders; and
- D. To prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons; and
- E. To protect any tribal member or other person residing on the Reservation whose health or welfare may be adversely affected or threatened due to abuse, neglect or exploitation by family, household members, or other person in a legal or contractual position of providing physical, mental, or medical assistance and support to the affected person.

Section 4.10.003 Reserved

Section 4.10.004 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.

Section 4.10.005 Definitions

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

These definitions apply generally throughout Title 4, unless otherwise noted specifically in reference to particular chapters or sections.

- A. **Affirmative defense** means a new matter in the prosecution of an offense which assuming the complaint to be true constitutes a defense to it.
- B. **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.
- C. **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.
- D. **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.
- E. **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.
- F. **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 protected activity is not included, within the meaning of this definition.
- G. **Covered Crime means a violation of NPTrC involving one of the following categories of crime:**
 - 1. **Assault of Tribal Justice Personnel: A violation of NPTrC that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the Nez Perce Tribe or serving the Nez Perce Tribe during, or because of, the performance or duties of that individual in:**
 - a. **preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;**
 - b. **adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;**
 - c. **detaining, providing supervision for, or providing services for persons charged with a covered crime; or**

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

- d. incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.
2. Child Violence: A violation of NPTrC that involves the use, threatened use, or attempted use of violence against a child.
3. Dating Violence: A violation of NPTrC that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
4. Domestic Violence: A violation of NPTrC that is committed by:
 - a. a current or former spouse or intimate partner of the victim;
 - b. a person with whom the victim shares a child in common;
 - c. a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
 - d. a person similarly situated to a spouse of the victim.
5. Obstruction of Justice: A violation of NPTrC that involves interfering with the administration or due process of the laws of the Nez Perce Tribe, including any criminal proceeding or investigation of a crime.
6. Sexual Violence: A violation of NPTrC that involves any nonconsensual sexual act or contact, including in any case in which the victim lacks the capacity to consent to the act.
7. Sex Trafficking: A violation of NPTrC that involves conduct within the meaning of 18 U.S. C. § 1591(a).
8. Stalking: A violation of NPTrC that involves a course of conduct directed at a specific person that would cause a reasonable person:
 - a. to fear for the person's safety or the safety of others; or
 - b. to suffer substantial emotional distress.
9. Criminal violations of protection orders: A violation of NPTrC that involves the violation of a provision of a protection order that:
 - a. occurs within the Indian Country of the Nez Perce Tribe
 - b. prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
 - c. was issued against the defendant;
 - d. is enforceable by the Nez Perce Tribe; and

e. is consistent with 18 U.S.C. § 2265(b).

Whether the elements of an offense under NPTrC constitute a Covered Crime is a question of law.

F.H. Dangerous device means any device capable of causing serious bodily injury or death to human beings.

G.I. 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.

H.J. DOMESTIC VIOLENCE-related definitions as further detailed in the DV Chapters currently under Title 5.

1. **Domestic violence** means violence committed by: an intimate partner of the victim, a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or a person similarly situated to a spouse of the victim under the domestic violence laws of the Nez Perce Tribe.
 - a. Domestic violence can take many forms such as but not limited to: use of intimidation, contact as defined within this chapter, manipulation, isolation, coercion, fear and/or violence, as well as other tactics of power and control to establish and maintain a relationship of dominance over an intimate partner, but does not include acts of self-defense.
 - b. The following are examples of what form actions of domestic violence may take, but are not an exhaustive list, merely illustrative:
 - i. Attempting to commit or committing any criminal offense as defined by N.P.T.r.C. Title 4, Chapter 4.20 Offenses Against The Person [formerly 4-1-37 through 4-1-46], and Chapter 4.23 Sex-Related Crimes [formerly 4-1-48 through 4-1-53] against an intimate partner;
 - ii. Physically harming, attempting to physically harm, or placing an intimate partner in reasonable fear of physical harm to himself or herself. “Reasonable fear” may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

- iii. Emotional or mental abuse of the intimate partner, including physical or mental intimidation, controlling activities, or using demeaning language;
- iv. Economic abuse of an intimate partner;
- v. Causing an intimate partner to engage involuntarily in sexual activity; or
- vi. Preventing the victim from accessing services.

2. **Intimate partner** *means*:

- a. Spouses;
- b. Former spouses;
- c. Persons who are or have been in a dating relationship, including same-sex relationships;
- d. Persons who are or have been in a marital-like relationship, including same-sex relationships; or
- e. Persons who have a child in common, regardless of whether they have been married or have lived together at any time in a romantic relationship.

3. **Dating relationship** *means* a social relationship of a romantic nature. In determining whether parties have a “dating relationship,” the trier of fact shall consider:

- a. The length of time the relationship has existed;
- b. The nature of the relationship; and
- c. The frequency of the interaction between the parties.

I.K. **Electronic Communication** *means* any transfer of signs, signals, writing, images sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic or photo-optical system, any telecommunications networks and mobile phones.

- 1. For purposes of determining jurisdiction for offenses involving electronic communications, an offense is committed within the Nez Perce Tribe’s jurisdiction if an electronic communication device transmission either originates or is received within the Nez Perce Tribe’s jurisdiction.

J.L. **Family or household member** *means* persons who are not Spouses or Intimate Partners who are related by blood or marriage or persons who are living in the same household; minor children, by blood, marriage or adoption; minor children who are part of the household; or persons who reside or have resided together in the past who are not or have not been intimate partners.

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

K.M. Fiduciary means a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization.

L.N. Firearm means:

1. Any weapon (including a starter gun) which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive but does not include an antique firearm or any device that expels a projectile by means of compressed air;
2. The frame or receiver of any such weapon;
3. Any firearm muffler or firearm silencer; or
4. Any destructive device.

M.O. 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.

N.P. Indian means any person under the Indian Civil Rights Act, 25 U.S.C. § 1301, who would be subject to the jurisdiction of the United States as an Indian under the Major Crimes Act, 18 U.S.C. § 1153, if that person were to commit an offense listed in that section in Indian country to which that section applies.

O.Q. 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.

P.R. 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.

Q.S. 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.

R.T. 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.

S.U. 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.

T.V. Tribal member means a member of the Nez Perce Tribe, unless otherwise indicated.

U.W. **Vulnerable adult** means a person eighteen (18) years of age or older who is unable to protect themselves 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.

PART II. MULTIPLE PROSECUTIONS AND DOUBLE JEOPARDY

Section 4.10.006 Prosecution for Multiple Offenses [4-1-5]

- 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 paragraph C below, 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.

Section 4.10.007 Double Jeopardy [4-1-6]

- A. As a separate sovereign, the Nez Perce Tribe shall have authority to prosecute all violations of its code, regardless of any state or federal prosecution.
- B. 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.
- C. 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.

Section 4.10.008 Reserved

PART III. BURDEN OF PROOF

Section 4.10.009 Burden and Presumption of Innocence

The defendant in a criminal proceeding is presumed to be innocent until each element of the offense with which the defendant is charged is proved beyond a reasonable doubt. In the absence of such proof, the defendant shall be acquitted.

Section 4.10.010 Negating Defenses [4-1-8]

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.

Section 4.10.011 Reserved

PART IV. CRIMINAL LIABILITY

Section 4.10.012 Acts and Omissions to Act [4-1-9]

- 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 within 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.

Section 4.10.013 Culpability [4-1-10]

A person is not guilty of an offense unless they 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.

Section 4.10.014 Causal Relationships Between Conduct and Result [4-1-11]

- 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.

Section 4.10.015 Ignorance or Mistake [4-1-12]

- 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.

Section 4.10.016 Accomplices [4-1-13]

- 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
 - d. His conduct is expressly declared by the code or the definition of the crime to establish his complicity.
 2. 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.
 3. 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.
- B. 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.

- C. 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.

Section 4.10.017 Corporations, Unincorporated Associations and Persons Acting, or Under a Duty to Act, in Their Behalf [4-1-14]

- 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 on 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 on 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 on 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.

PART V. AFFIRMATIVE DEFENSES AND JUSTIFIABLE USE OF FORCE

Section 4.10.018 Intoxication [4-1-15]

- 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 the Criminal Code.

Section 4.10.019 Duress [4-1-16]

- 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.

Section 4.10.020 Consent [4-1-17]

- 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.

Section 4.10.021 Entrapment [4-1-18]

- 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.

Section 4.10.022 Justification As A Defense

In any prosecution for an offense, justification as described in the following sections is a defense.

Section 4.10.023 Justification Generally; Civil Remedies Unaffected [4-1-21]

- A. Justification is an affirmative defense to the prosecution of any offense based on such conduct and may be claimed:
1. 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

2. If the conduct is required or authorized by the law.

Section 4.10.024 Force in Self-Protection or Protection of Others [4-1-22]

- 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.

Section 4.10.025 Force for the Protection of Property [4-1-23]

- 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.

Section 4.10.026 Force in Law Enforcement [4-1-24]

- 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.

Section 4.10.027 Force by Persons with Special Responsibility or Care, Discipline or Safety of Others [4-1-25]

- A. The use of force upon or toward the person of another is justifiable if:
1. 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
 2. 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.

Section 4.10.028 Reserved

PART VI. RESPONSIBILITY

Section 4.10.029 Mental Disease or Defect Excluding Responsibility [4-1-19]

Text.

- 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.
- B. 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.
- C. 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.

Section 4.10.030 Medical Examination and Institutionalization [4-1-20]

- 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.
- B. 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.
- C. 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.

Section 4.10.031 Reserved

Section 4.10.032 Reserved

PART VII. SENTENCING AND DISPOSITION OF OFFENDERS

Section 4.10.033 Grades of Crimes

- A. Crimes are divided into two grades:
 - 1. Felonies; and
 - 2. Misdemeanors.

Section 4.10.034 Felony, Misdemeanor and Infraction Defined

- A. A felony is a crime which is subject to a maximum fine of \$5,000 and a term of imprisonment of no more than one year.
 - 1. Felony crimes, Class F offenses, within the Nez Perce Tribal Code are considered eligible for Enhanced Sentencing Authority under the Tribal Law and Order Act, 25 U.S.C § 1301 et seq.
- B. A misdemeanor is every other crime which is subject to a maximum fine of \$5,000 and a maximum term of imprisonment of no more than one year.
 - 1. Misdemeanor crimes are further divided below into classes.
- C. An infraction is a civil public offense—not constituting a crime—which is punishable only by a penalty not exceeding five-hundred dollars (\$500.00) and for which no period of incarceration may be imposed.

Section 4.10.035 Fine and Imprisonment Limitations by Class of Criminal Offense

- A. **Civil Infractions.**
 - 1. Class A infraction Sentencing Limitations:
 - a. A fine not to exceed \$500.00;
 - b. Imprisonment is not permitted.
- B. **Misdemeanors.**
 - 1. Class B offense Sentencing Limitations:
 - a. A fine not to exceed \$200.00;
 - b. Imprisonment not to exceed 20 days.
 - 2. Class C offense Sentencing Limitations:
 - a. A fine not to exceed \$1,000.00;
 - b. Imprisonment not to exceed 90 days.
 - 3. Class D offense Sentencing Limitations:
 - a. A fine not to exceed \$2,500.00;

- b. Imprisonment not to exceed 180 days.
- 4. Class E offense Sentencing Limitations:
 - a. A fine not to exceed \$5,000.00;
 - b. Imprisonment not to exceed 1 year.
- C. **Felonies.**
 - 1. Class F offense Sentencing Limitations:
 - a. A fine not to exceed \$5,000;
 - b. Imprisonment not to exceed 1 year.
 - c. As noted in the above section, Class F offenses within the Nez Perce Tribal Code are considered eligible for Enhanced Sentencing Authority under the Tribal Law and Order Act, 25 U.S.C § 1301 et seq.
- D. **Offense Not Classified:** Any criminal offense that is not classified shall be considered a criminal offense, Class E.

Section 4.10.036 Reserved – Habitual Offenders

Section 4.10.037 Reserved

Section 4.10.038 General Principles in Sentencing and Punishment [4-1-26]

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.

Section 4.10.039 Sentences and Combinations of Sentences [4-1-27]

- A. Available Sentences for all Criminal Offenses: For any one criminal offense, any of the following or any combination of the following sentences may be imposed:
 - 1. Imprisonment, subject to the limitations of the Class of Criminal Offense;
 - 2. Fine, subject to the limitations of the Class of Criminal Offense;
 - 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. Other Lawful Orders: 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.

Section 4.10.040 Sentencing Proceedings [4-1-31]

- 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.

Section 4.10.041 Payment of Fines and Other Monies [4-1-28]

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.

Section 4.10.042 Decision to Impose a Fine [4-1-29]

- A. In determining whether to impose a fine and its amount, the Court should consider:
 1. The nature of the offense committed and the impact of the offense on the victim and the community;
 2. The financial resources of the defendant.

Section 4.10.043 Community Service [4-1-30]

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

- A. 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.
- B. Defendants receiving community service hours will contact the Tribal Probation Office within five (5) days after being sentenced and will follow all guidelines for community service work. Status reports on the defendants will be kept by the Probation Office.

Section 4.10.044 Probation [4-1-32]

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

Section 4.10.045 Violation of Terms of Probation [4-1-33]

- A. Upon a report of a violation of probation from the prosecuting attorney 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.
- D. 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.
- E. 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.
- F. 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.

Section 4.10.046 Reserved

Section 4.10.047 Reserved

Section 4.10.048 Reserved

Section 4.10.049 Reserved

PART VIII. SEX OFFENDER REGISTRATION [CH. 4-6]

Section 4.10.050 General Matters Related to Sex Offender Registration

Text.

- A. **Purpose** [4-6-2]. The intent of Chapter 4.10, Part VIII, Nez Perce Tribe Sex Offender Registration 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.
- B. **Need** [4-6-3]. 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.
- C. **Creation of Sex Offender Registries** [4-5-4].
 - 1. Sex Offender Registry [4-5-4(A)]. There is hereby established a sex offender registry, which the Nez Perce Tribal Police shall maintain and operate pursuant to the provisions of Chapter 4.10, Part VIII, as amended.
 - 2. Public Sex Offender Registry Website [4-5-4(B)]. 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 Chapter 4.10, Part VIII, as amended.

Section 4.10.051 Terminology Related to Sex Offender Registration [4-6-5]

Definitions. The definitions below only apply to Part VIII Sex Offender Registration [4-6-5].

- A. **CODIS.** The Combined DNA Index System (CODIS) blends forensic science and computer technology into a tool for linking violent crimes. It enables federal, state, and local forensic laboratories to exchange and compare DNA

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

profiles electronically, thereby linking serial violent crimes to each other and to known offenders.

- B. **Convicted.** An adult sex offender is “convicted” for the purposes of Chapter 4.10, Part VIII if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.
1. A juvenile offender is “convicted” for purposes of Chapter 4.10, Part VIII if the juvenile offender is either:
- a. Prosecuted and found guilty as an adult for a sex offense; or
 - b. 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 18 U.S.C. § 2241) or was an attempt or conspiracy to commit such an offense.
- C. **Foreign Convictions.** A foreign conviction is one obtained outside of the United States.
- D. **Employee.** The term “employee” as used in Chapter 4.10, Part VIII 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.
- E. **Immediate.** “Immediate” and “immediately” mean within three business days.
- F. **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.”
- G. **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.
- H. **Jurisdiction.** The term “jurisdiction” as used in Chapter 4.10, Part VIII 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 federally-recognized Indian tribe.

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

- I. **Minor.** The term “minor” means an individual who has not attained the age of 18 years.
- J. **NCIC.** The National Crime Information Center (NCIC) is an electronic clearinghouse of crime data.
- K. **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 office at 210 Bever Grade, Lapwai, Idaho.
- L. **NSOR.** The National Sex Offender Registry (NSOR) is the database maintained by the Attorney General of the United States pursuant to 42 U.S.C. 16919.
- M. **NSOPW.** The Dru Sjodin National Sex Offender Public Website (NSOPW) is maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.
- N. **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.
- O. **Sex Offense.** The term “sex offense” as used in Chapter 4.10, Part VIII includes those offenses contained in 42 U.S.C. § 16911(5) and those offenses enumerated in subsection B (Covered Offenses) of this section or any other covered offense under the Nez Perce Tribal Code.
 - 1. An offense involving consensual sexual conduct is not a sex offense for the purposes of Chapter 4.10, Part VIII Sex Offender Registration 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.
- P. **Sex Offender.** A person convicted of a sex offense is a “sex offender.”
- Q. **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.
- R. **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.
- S. **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.
- T. **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.
- U. **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.
- V. **SMART Office.** The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), which was established within the U.S. Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16945.

Section 4.10.052 Covered Offenses Requiring Sex Offender Registration
[4-6-6]

- A. Except as otherwise noted in 4.10.052(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 Chapter 4.10, Part VIII, Sex Offender Registration.
- B. 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.
- C. A conviction under any of the following provisions of the Nez Perce Tribal Code:

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

1. Rape;
 2. Forcible Sexual Penetration with a Foreign Object;
 3. Unlawful Sexual Intercourse;
 4. Sexual Assault;
 5. Sexual Molestation of a Minor under Sixteen;
 6. Enticement of a Child;
 7. Enticing a Child Through Use of the Internet or Other Communication Device); or
 8. Incest.
- D. Any criminal offense committed within the jurisdiction of 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).
- E. 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:
- 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;
 - 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.

Section 4.10.053 Required Information

A. General Requirements for Information [4-6-10].

- 1. Duties. A sex offender covered by Chapter 4.10, Part VIII who is required to register with the Tribe pursuant to the Registration sections as detailed further in this code shall provide all of the information detailed in subsections (B) through (T) below to the Nez Perce Tribal Police or designee, and the Nez Perce Tribal Police or designee shall obtain all of the information detailed in subsections (B) through (T) below from covered sex offenders who are required to register with the Tribe in accordance with Chapter 4.10, Part VIII and shall implement any relevant policies and procedures.

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

2. Digitization. All information obtained under Chapter 4.10, Part VIII shall be, at a minimum, maintained by the Nez Perce Tribal Police or designee in a digitized format.
 3. 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.
- B. Criminal History [4-6-11]**. 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.
- C. Date of Birth [4-6-12]**. 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.
- D. DNA Sample [4-6-13]**.
1. 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.
 2. 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.
- E. Identification [4-6-14]**.
1. 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.
 2. 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.
 3. 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.

4. **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.
- F. **Employment Information [4-6-15]**. 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.
- G. **Finger and Palm Prints [4-6-16]**. 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.
- H. **Homeless**. If a sex offender is designated as "homeless," it means they cannot verify information as required to prove a residence address as defined below.
- I. **Internet Identifiers [4-6-17]**. 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 social media 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.
- J. **Name [4-6-18]**. 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.
- K. **Phone Numbers [4-6-19]**. 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:

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (_____ , 2024)

1. Any and all land line telephone numbers;
2. Any and all cellular telephone numbers; and
3. Any telephone numbers used through the internet.

L. Picture [4-6-20].

1. Photograph. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender.
2. Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected every year.

M. Physical Description [4-6-21]. 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.

N. Professional Licensing Information [4-6-22]. 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.

O. Residence Address [4-6-23]. 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 residence at which the sex offender resides or will reside.
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.
3. A covered sex offender shall not reside or maintain an address for residential purposes at any location which is within 500 feet of any school, playground, school bus stop, tribal community center, youth center, Boys & Girls Club, or any other location which is established or designated specifically for the use by, or enjoyment of minors and such location is commonly used by minors.

4. An offender should be designated as homeless if they can't verify information for a residential address as required in paragraph (1) above.
- P. **School** [4-6-24]. 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.
- Q. **Social Security Number(s)** [4-6-25]. 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.
- R. **Temporary Lodging** [4-6-26]. 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 seven days or more:
1. Identifying information of the temporary lodging locations including addresses and names, and
 2. Dates. 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 Tribal Police or designee shall immediately provide this information to U.S. Marshals Service.
- S. **Offense Information** [4-6-27]. 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.
- T. **Detailed Vehicle Information** [4-6-28]. 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.

U. Requirements for In-Person Appearances [4-6-30].

1. 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.
2. Review of Information. At each in-person verification, the sex offender shall review existing information for accuracy.
3. 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.

Section 4.10.054 Safety Zones

- A. Registered sex offenders or persons required to register cannot live or be within 500 feet of any school, playground, school bus stop, tribal community center, youth center, Boys & Girls Club, or any other location which is established or designated specifically for the use by or enjoyment of minors and such location is commonly used by minors.
- B. A waiver may be granted by the Nez Perce Tribal Police Department to a parent who has physical custody of their child(ren) who attend a school, day care, agency, or facility on a regular basis.

Section 4.10.055 Sex Offender Registration Procedures [4-6-29 through 4-6-32]

- A. **Where Registration Is Required [4-6-31]**. 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.
- B. **Timing of Registration [4-6-32]**.
 1. Timing. A sex offender required to register with the Tribe under Chapter 4.10, Part VIII of this title shall do so in the following timeframe:
 - a. If convicted by the Nez Perce Tribe for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration,

- b. If convicted by the Nez Perce Tribe but not incarcerated, within three business days of sentencing for the registration offense, and
 - c. Within three 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.
2. Duties of Nez Perce Tribal Police. The Nez Perce Tribal Police shall have policies and procedures in place to ensure the following:
- a. That any sex offender incarcerated or sentenced by the Tribe for a covered sex offense completes their initial registration with the Tribe;
 - b. 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;
 - c. That the sex offender is registered; and
 - d. 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.
- C. **Frequency, Duration and Reduction [4-6-29]**
- 1. 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.
 - a. A sex offender designated as homeless shall appear in person at the Nez Perce Tribal Police Department or designee for the purpose of verification once every seven (7) days.
 - 2. Reduction of Registration Periods. A sex offender may have their period of registration reduced as follows:
 - a. An offender may have his period of registration reduced to 10 years if he has maintained a clean record for 10 consecutive years.

- b. **Clean Record.** For purposes of Paragraph (a) of this section, a person has a clean record if:
 - i. They have 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, Title 4, that results in a sentence of imprisonment for one year,
 - ii. He has not been convicted of any sex offense,
 - iii. He has successfully completed, without revocation, any period of supervised release, probation, or parole, and
 - iv. He has successfully completed an appropriate sex offender treatment program certified by the Tribe, another jurisdiction, or by the Attorney General of the United States.

Section 4.10.056 Retroactive Registration [4-6-33]

- 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 Chapter 4.10, Part VIII under Title 4.

Section 4.10.057 Keeping Registration Current [4-6-34]

- 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

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

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.

Section 4.10.058 Failure to Appear for Registration and Absconding [4-6-35]

- 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,

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (_____ , 2024)

- 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 NCIC 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 above in Sex Offender Registration Procedures, subsection 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. *See Chapter 4.90 Civil Infractions, Section 4.90.035.*

Section 4.10.059 Electronic Restrictions for Sex Offenders

- A. A covered sex offender who is actively on probation with the Nez Perce Tribal Probation Department or another jurisdiction’s probation must submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media and effects to search any time with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer’s supervision functions.
- B. A covered sex offender must not view or possess any “visual depiction” as defined in 18 U.S.C. § 2256, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of “sexually explicit conduct.”

Section 4.10.060 Public Sex Offender Registration

- A. **Website [4-6-36].** The Nez Perce Tribal Police or designee shall use and maintain a public sex offender registry website.
1. **Links.** The registry website shall include links to sex offender safety and education resources. Instructions: The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.
 2. **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.
 3. **Search Capabilities.** The registry website shall have the capability of conducting searches by name, county, city, and/or town; and zip code and/or geographic radius.
 4. **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.
- B. **Required and Prohibited Information [4-6-37].**
1. The following information shall be made available to the public on the sex offender registry website:
 - a. Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,
 - b. All sex offenses for which the sex offender has been convicted,
 - c. The sex offense(s) for which the offender is currently registered,
 - d. The address of the sex offender's employer(s),
 - e. The name of the sex offender including all aliases,
 - f. A current photograph of the sex offender,
 - g. A physical description of the sex offender,
 - h. The residential address and, if relevant, a description of a habitual residence of the sex offender,
 - i. All addresses of schools attended by the sex offender, and
 - j. The sex offender's vehicle license plate number along with a description of the vehicle.

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (_____ , 2024)

2. **Prohibited Information.** The following information shall not be available to the public on the sex offender registry website:
 - a. Any arrest that did not result in conviction,
 - b. The sex offender's social security number,
 - c. Any travel and immigration documents,
 - d. The identity of the victim, and
 - e. Internet identifiers (as defined in 42 U.S.C. § 16911).
3. **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.

C. Community Notification [4-6-38].

1. **Enforcement Notification.** Whenever a sex offender registers or updates his or her information with the Tribe, the Nez Perce Tribal Police or designee shall:
 - a. 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,
 - b. 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,
 - c. 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,
 - d. 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. § 5119(a), when a sex offender registers or updates registration.
2. **Community Notification.** The Nez Perce Tribal Police or designee shall ensure there is an automated community notification process in place that ensures the following:

- a. Upon a sex offender's registration or update of information with the Tribe, the Tribe's public sex offender registry website is immediately updated,
- b. 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.

Section 4.10.061 Intervention and Treatment

- A. A person who is required to register as a sex offender shall enroll in a specialized program. A specialized program means the program:
 - 1. Accepts perpetrators of sex crimes into treatment or educational classes to satisfy court orders;
 - 2. Offers assessment and treatment to perpetrators of sex crimes; or
 - 3. Offers classes or instruction to perpetrators of sex crimes.

CHAPTER 4.15 INCHOATE OFFENSES

Section 4.15.001 Attempt [4-1-34]

- 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.

Section 4.15.002 Criminal Conspiracy [4-1-35]

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

Section 4.15.003 Solicitation [4-1-36]

- 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.

CHAPTER 4.20 OFFENSES AGAINST THE PERSON

Section 4.20.001 Simple Assault [4-1-37]

- A. It shall be unlawful for any person:
 1. With apparent ability, to attempt unlawful contact with another; or
 2. 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.
- B. Simple Assault is a misdemeanor offense, Class C.

Section 4.20.002 Aggravated Assault [4-1-39]

- A. The act of assault is aggravated if while committing assault a person uses:
 1. A deadly weapon or instrument without intent to kill;

2. Any means or force likely to produce great bodily harm; or
3. Any corrosive acid or a caustic chemical of any kind.

B. Aggravated Assault is a felony offense, Class F.

Section 4.20.003 Battery [4-1-38]

A. It shall be unlawful for any person to:

1. Willfully and unlawfully use force or violence to another;
2. Actually, intentionally and unlawfully touch or strike another person against their will; or
3. Unlawfully and intentionally cause bodily harm to an individual.

B. Battery is a misdemeanor offense, Class E.

Section 4.20.004 Aggravated Battery [4-1-40]

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

1. Causes great bodily harm, permanent disability or permanent disfigurement to any person;
2. Uses a deadly weapon or instrument;
3. Uses any corrosive acid, or a caustic chemical of any nature; or
4. Uses any poison or other noxious or destructive substance or liquid.

B. Aggravated Battery is a felony offense, Class F.

Section 4.20.005 Stalking [4-1-41]

~~A. 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.~~

- ~~1. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist.~~
- ~~2. Surveils or causes another person to surveil a person for no legitimate purpose.~~
- ~~3. On more than one occasion makes a false report to a law enforcement, credit, or social service agency.~~
4. Interferes with the delivery of any public or regulated utility to a person.

B. A person commits the crime of stalking if, without lawful authority:

1. He or she, either personally or through other parties, intentionally and repeatedly harasses, follows, or surveils another person;

2. which creates a well-founded fear of injury or emotional harm to the person or another person; or injury to a pet, service animal, emotional support animal, or horse of that person, or property of the person or another person. The fear must be one that a reasonable person would experience under the same circumstances; and
 3. The person performing the conduct either:
 - a. Intends to frighten, intimidate, or harass the recipient of the conduct; or
 - b. Knows or reasonably should know that the recipient of the conduct is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.
- C. It is not a defense to the crime of stalking:
1. Under subsection (1)(c)(i) of this section, that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; or
 2. Under subsection (1)(c)(ii) of this section, that the stalker did not intend to frighten, intimidate, or harass the person.
- D. Intentional and repeated harassment may occur through any technology, format, or medium that can be used to convey information.
- E. Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitute prima facie evidence that the stalker intends to intimidate or harass the person.
- B.F. Stalking is a misdemeanor offense, Class E.

Section 4.20.006 Aggravated Stalking [4-1-42]

- A. The crime of stalking is aggravated when: ~~there is a~~
1. The stalker has previously been convicted of any crime of stalking or other offense containing substantially similar elements, in a tribal, state, or federal court.
 2. The stalking violates a temporary protection order, or an injunction, or both other similar court order, that in effect prohibits the behavior described above under the offense of stalking against the same party.
 3. The stalker was armed with a dangerous weapon while committing the act(s) constituting the offense of stalking.
 4. The stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate or children's advocate, NPTEC member, community corrections officer, probation officer or staff, with the intent

to retaliate for an act the victim performed during the course of official duties or to influence the performance of official duties; or

4.5. The stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

B. Aggravated Stalking is a felony offense, Class F.

Section 4.20.007 Strangulation

- A. It shall be unlawful for any person to commit strangulation regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.
- B. Strangulation is defined as any person who intentionally, knowingly, or recklessly impedes the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure to the victim.
- C. Strangulation is a felony offense, Class F.

Section 4.20.008 Suffocation

- A. It shall be unlawful for any person to commit suffocation regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.
- B. Suffocation is defined as any person who intentionally, knowingly, or recklessly impedes the normal breathing of a person regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure to the victim by:
 - 1. Placing pressure on the chest of the person,
 - 2. Covering the mouth of the person,
 - 3. Covering the nose of the person, or
 - 4. Any combination of the above actions.
- C. Suffocation is a felony offense, Class F.

Section 4.20.009 Murder [4-1-43]

- A. It shall be unlawful for any person to kill a human being:
 - 1. With intent to kill,
 - 2. With intent to inflict serious bodily harm,

3. With extreme and reckless disregard for life, or
4. While in the perpetration, or while attempting to perpetrate another felony offense.

B. Murder is a felony offense, Class F.

Section 4.20.010 Manslaughter [4-1-44]

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

1. Voluntarily, meaning upon a sudden quarrel or heat of passion; or
2. Involuntarily, meaning
 - a. In the perpetration of or attempt to perpetrate any unlawful act;
 - b. In the commission of a lawful act which might produce death, in an unlawful manner;
 - c. Without due caution or care; or
 - d. In the operation of any firearm or dangerous weapon in a reckless, careless or negligent manner which produces death.
3. Vehicular, in which the operation of a motor vehicle is a significant cause contributing to the death because of the commission of an unlawful act:
 - a. If the commission of the unlawful act was done with gross negligence, vehicular manslaughter shall be a felony offense, Class F.
 - b. The commission of an unlawful act was done without gross negligence, it shall be a misdemeanor offense, Class E.
 - c. Notwithstanding any other provision of law, any evidence of conviction for violation of this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for violation of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

B. Except as noted in above subsections, Manslaughter is a misdemeanor offense, Class E.

Section 4.20.011 Kidnapping [4-1-45]

- A. 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.
- B. Kidnapping is a felony offense, Class F.

Section 4.20.012 False Imprisonment [4-1-46]

- A. It shall be unlawful for any person to willfully and unlawfully restrain another so that he substantially interferes with their personal liberty.
- B. False Imprisonment is a misdemeanor offense, Class E.

Section 4.20.013 Human Trafficking

- A. It shall be unlawful for a person to commit the offense of human trafficking regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim trafficking by knowingly;
 - 1. Recruiting, soliciting, enticing, transporting, harboring, maintaining or obtaining a person by any means with the intent to compel the person by force, fraud, or coercion to engage in labor, services, or commercial sexual activities;
 - 2. Recruiting, soliciting, enticing, transporting, harboring, maintaining or obtaining a person by any means under the age of 18 years of age with the intent the person will engage in any commercial sexual activity;
 - 3. Benefiting financially or receiving any tangible value from the labor, services, or commercial sexual activity of another person compelled by force, fraud, or coercion; or
 - 4. Using the labor or services of a person with the prior knowledge that such labor or services were compelled by force, fraud, or coercion.
- B. Human Trafficking is a felony offense, Class F.

CHAPTER 4.23 SEX-RELATED CRIMES
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Section 4.23.001 Definitions Related to Sex Crimes

- A. **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.
- B. **Sexual Contact** means any intentional touching, either directly or through the clothing, of the genitals, anus, groin, breast, inner thigh or buttocks of any person with intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desires of another person.

Section 4.23.002 Rape [4-1-48]

- 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.
- C. Rape is a felony offense, Class F.

Section 4.23.003 Forcible Sexual Penetration with a Foreign Object [4-1-49]

- A. 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.
- B. Forcible Sexual Penetration with a Foreign Object is a felony offense, Class F.

Section 4.23.004 Unlawful Sexual Intercourse [4-1-50]

- A. It shall be unlawful for any person who is over the age of sixteen (16) to:
1. Solicit a minor under the age of sixteen (16) years to participate in a sexual act; or

2. Engage in sexual intercourse with a minor under the age of sixteen (16) years.

B. Unlawful Sexual Intercourse is a misdemeanor offense, Class E.

Section 4.23.005 Sexual Assault [4-1-51]

- A. It shall be unlawful for any person to have sexual contact with another or cause such other to have sexual contact with him if:
1. He knows that the contact is offensive to the other person;
 2. 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;
 3. He knows that the other person is unaware that a sexual act is being committed;
 4. 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
 5. 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.
- B. Sexual Assault is a felony offense, Class F.

Section 4.23.006 Sexual Molestation of a Minor under the Age of 16 [4-1-52]

- A. It shall be unlawful for any person to engage in sexual contact with another who is under the age of sixteen (16) years; 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.
- B. Sexual Molestation of Minor under Sixteen is a felony offense, Class F.

Section 4.23.007 Enticement of a Child [4-1-52(a)]

- 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 a felony offense, Class F.
1. Aggravated. 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.

- a. Aggravated Enticement of a Child is a felony offense, Class F.

Section 4.23.008 Enticement of a Child Through Use of the Internet or Other Communication Device [4-1-52(b)]

- A. A person commits the offense Enticement of a Child Through Use of the Internet or Other Communication Device 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 4.23 of the Nez Perce Tribe Code, Title 4 – Criminal Offenses and Infractions.
- B. In a prosecution under this section, it is not necessary for the prosecution to show that an act described in Chapter 4.23 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 Through Use of Internet of Other Communication is a felony offense, Class F.
 - 1. Aggravated. It is a considered Aggravated Enticement of a Child Through Use of Internet of Other Communication, 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.
 - a. Aggravated Enticement of a Child Through Use of Internet of Other Communication is a felony offense, Class F.

Section 4.23.009 Commercial Sexual Exploitation of a Minor

- A. Any person commits commercial sexual exploitation of a minor by knowingly:
 - 1. Using, employing, persuading, enticing, inducing, or coercing a minor to engage in or assist others to engage in sexual conduct for the purpose of producing any visual or print medium or live act depicting such conduct.

2. Using, employing, persuading, enticing, inducing, or coercing a minor to expose the genitals or anus or the areola or nipple of the female breast for financial or commercial gain.
3. Permitting a minor under such person's custody or control to engage in or assist others to engage in sexual conduct for the purpose of producing any visual or print medium or live act depicting such conduct.
4. Transporting or financing the transportation of any minor through or across this Reservation with the intent that such minor engages in prostitution or sexual conduct for the purpose of producing a visual or print medium or live act depicting such conduct.

B. Commercial Sexual Exploitation of a Minor is a felony offense, Class F.

Section 4.23.010 Sexual Exploitation of a Minor

- A. Any person commits sexual exploitation of a minor by knowingly:
1. Recording, filming, photographing, developing, or duplicating any visual or print medium in which minors are engaged in sexual conduct.
 2. Distributing, transporting, exhibiting, receiving, selling, purchasing, possessing or exchanging any visual or print medium in which minors are engaged in sexual conduct.
- B. Sexual Exploitation of a Minor is felony offense, Class F.

Section 4.23.011 Voyeurism

- A. Any person commits voyeurism if that person has the intent to capture or broadcast an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy.
- B. In this section:
1. The term "capture", with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;
 2. The term "broadcast" means to electronically or otherwise transmit a visual image with the intent that it be viewed by a person or persons;
 3. The term "a private area of the individual" means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;
 4. The term "female breast" means any portion of the female breast below the top of the areola; and

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

5. The term “under circumstances in which that individual has a reasonable expectation of privacy” means:
 - a. Circumstances in which reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or
 - b. Circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.
 6. This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.
- C. Voyeurism is a felony offense, Class F.

Section 4.23.012 Unlawful Distribution of Sexual Images

- A. It is unlawful for a person to intentionally disclose an image of another person who is identifiable from the image itself or from information displayed in connection with the image if all of the following are met:
1. The person in the image is depicted in a state of nudity or in engaged in sexual conduct;
 2. The depicted person has a reasonable expectation of privacy, evidence that a person has shared an image with another person by electronic communication or other means does not, on its own, remove the person’s reasonable expectation of privacy for that image; and
 3. The image is disclosed for sexual gratification or with the intent to annoy, terrify, humiliate, offend, degrade, harm, harass, intimidate, threaten or coerce the depicted person.
- B. Unlawful Distribution of Sexual Images is a felony offense, Class F.

Section 4.23.013 Indecent Exposure [4-1-53]

- A. 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.
- B. Indecent Exposure is a misdemeanor offense, Class D.

Section 4.23.014 Reserved

Section 4.23.015 Patronizing a Prostitute

- A. A person commits the crime of patronizing a prostitute if the person pays, or offers or agrees to pay, a fee to engage in sexual conduct or sexual acts with another person.
 - 1. “Fee” means something that has economic value and that is exchanged in a transaction that is commercial in character.
- B. Patronizing a Prostitute is a misdemeanor offense, Class E.

Section 4.23.016 Promotion of Prostitution [4-1-123]

- A. A person commits the offense of prostitution if he or she knowingly:
 - 1. Owns, controls, manages, supervises or otherwise maintains a place of prostitution or a prostitution enterprise; or
 - 2. Induces, compels or otherwise causes a person to engage in prostitution or unwillingly remain in a place of prostitution or aid or assist another in such an act; or
 - 3. Receives or agrees to receive a fee in return for prostitution activity, other than a prostitute being compensated for personally rendered prostitution services.
- B. Definitions.
 - 1. “Fee” *means* something that has economic value and that is exchanged in a transaction that is commercial in character.
 - 2. “Place of prostitution” *means* any place where prostitution is practiced.
 - 3. “Prostitute” *means* a person who is promised to engage in or engages in sexual conduct or sexual contact for a fee, regardless of to whom the fee is given or owed.
 - 4. “Prostitution enterprise” *means* an arrangement whereby two or more prostitutes are organized to conduct prostitution activities.
- C. Promotion of Prostitution is a felony offense, Class F.

Section 4.23.017 Incest [4-1-86]

- A. It shall be unlawful for any parent and child including step, foster and adoptive children, lineal 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 contact or intercourse.
- B. Minors, incompetents, or non-consenting parties may not be found guilty of incest.
- C. Incest is a felony offense, Class F.

Section 4.23.018 Reserved

Section 4.23.019 Failure to Register as a Sex Offender or Provide Notice of Registration Changes [4-1-148]

- A. Any person who is required to register under the provisions of the Nez Perce Tribe Sex Offender Registration and fails to do so pursuant to the provisions contained in Chapter 4.10, Part VIII Sex Offender Registration of the Nez Perce Tribal Code shall be guilty of the offense of failure to register as a sex offender.
- B. Any person convicted under this section may also be subject to Exclusion and Removal Chapter pursuant to the Nez Perce Tribal Code.
- C. Failure to Register as a Sex Offender or Provide Notice of Registration Changes is a misdemeanor offense, Class E.

Section 4.23.020 Hindrance of Sex Offender Registration

- A. A person is guilty of an offense if they:
 - 1. 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;
 - 2. 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; or
 - 3. Provides information to law enforcement agency regarding a sex offender which the person knows to be false.
- B. Hindrance of Sex Offender Registration is a misdemeanor offense, Class E.

Section 4.23.021 Safety Zone Trespass by Sex Offender

- A. A person commits the offense of trespass in a safety zone when they fail to adhere to the requirements of Chapter 4.10, Part VIII Sex Offender Registration.
 - 1. Registered sex offenders or persons required to register cannot live or be within 500 feet of any school, playground, school bus stop, tribal community center, youth center, Boys & Girls Club, or any other location which is established or designated specifically for the use by or enjoyment of minors and such location is commonly used by minors. See Chapter 4.10, Part VIII Sex Offender Registration.
- B. The first three violations of this section are a misdemeanor offense, Class D. Any fourth and all subsequent violations are misdemeanor offenses, Class E.

CHAPTER 4.25 OFFENSES AGAINST THE FAMILY
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Section 4.25.001 Reserved

Section 4.25.002 Bigamy [4-1-85]

- A. 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 such other person.
- B. 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.
- C. Bigamy is a misdemeanor offense, Class D.

Section 4.25.003 Criminal Nonsupport [4-1-87]

- 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 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.
 - 3. Proof of the desertion of a spouse, child or children in destitute or necessitous circumstances or of neglect to furnish such spouse, child, or children necessary and proper food, clothing or shelter is prima facie evidence that such desertion or neglect is willful.
- B. Criminal Nonsupport is a misdemeanor offense, Class D.

Section 4.25.004 Child Custodial Interference [4-1-47]

- 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:

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

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.

C. Child Custodial Interference is a misdemeanor offense, Class D.

Section 4.25.005 Child Abuse [4-1-90]

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.
 - a. 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.
4. 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 the Controlled Substances Act, 21 U.S.C. § 812(c). This section shall not preclude:
 - a. The possession, purchase, consumption, obtaining, ingestion, distribution or sale of peyote for bona fide Native American religious ceremonies; or
 - b. 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.
5. To commit a crime involving domestic violence in the presence of a child. [7-2-3]
 - a. For purposes of this offense, “in 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.

B. Child Abuse without “Great Bodily Harm” is a misdemeanor offense, Class E.

C. Child Abuse with “Great Bodily Harm” is a felony offense, Class F.

**Section 4.25.006 Endangering the Welfare of a Minor Under the Age of 18
[4-1-91]**

- 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 narcotics in any form to a person under eighteen (18) years of age; or
 5. Sell, cause to be sold or provide tobacco or alcohol in any form to a person under twenty-one (21) years of age;
 6. To commit a crime involving domestic violence in the presence of a child. For the purpose of this subsection, “in 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.
 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.
- C. Endangering the Welfare of a Minor is a misdemeanor offense, Class D.

Section 4.25.007 Contributing to the Delinquency of a Minor [4-1-92]

- 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. Contributing to the Delinquency of a Minor is a misdemeanor offense, Class E.

Section 4.25.008 Abuse of Vulnerable Adults [4-1-89]

- 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.
 4. In addition to any other penalty imposed for a violation of this section, the Tribal Court may grant any other civil or equitable remedy.
- B. Abuse of Vulnerable Adults is a felony offense, Class F.

Section 4.25.009 Elder Abuse

- A. For this section, “Elder” means any person who has reached the age of fifty-five (55) years or older.
- B. It shall be unlawful for any person:
 1. To inflict physical injury, emotional harm, or mental injury, or
 2. To misuse the funds, property or resources of an elder for profit or advantage; or
 3. To unreasonable confine, or
 4. To unreasonable restrict cultural activities; or
 5. To sexually abuse or sexually assault, or
- C. It shall be unlawful for any person who is responsible for the care of an Elder, to willfully or negligently fail to provide food, clothing, shelter, medical care, other services reasonably necessary to sustain the life and health of an Elder.
- D. Elder Abuse is a felony offense, Class F.

CHAPTER 4.30 OFFENSES AGAINST PROPERTY

Section 4.30.001 Reserved

Section 4.30.002 Arson [4-1-54]

- A. It shall be unlawful for any person to willfully and maliciously set fire to, burn or cause to be burned any building or structure.
- B. Arson is a misdemeanor offense, Class E.

Section 4.30.003 Aggravated Arson [4-1-55]

- A. The act of arson is aggravated if while committing arson:

1. 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
 2. Any person suffers death, great bodily harm, permanent disability or disfigurement as a result of the fire.
- B. Aggravated Arson is a felony offense, Class F.

Section 4.30.004 Causing a Catastrophe [4-1-56]

- A. 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 widespread injury or damage.
- B. Causing a Catastrophe is a felony offense, Class F.

Section 4.30.005 Malicious Injury to Property [4-1-57]

- A. It shall be unlawful for any person to:
1. Maliciously injure or destroy any real or personal property not his own; or
 2. Intentionally and unlawfully tamper with the property of another and thereby:
 - a. Endanger human life; or
 - b. Cause or threaten a substantial interruption or impairment of any public utility service.
- B. Malicious Injury to Property is a misdemeanor offense, Class D.

Section 4.30.006 Vandalism [4-1-58]

- A. It shall be unlawful for any person to willfully and maliciously:
1. 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
 2. 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.
- B. Vandalism is a felony offense, Class F.

Section 4.30.007 Burglary [4-1-59]

- A. It shall be unlawful for any person to enter a building or occupied structure with intent to commit an offense therein.
- B. Burglary is a felony offense, Class F.

Section 4.30.008 Burglary of a Vehicle [4-1-60]

- A. It shall be unlawful for any person to enter any vehicle with intent to commit an offense therein.
- B. Burglary of a Vehicle is a felony offense, Class F.

Section 4.30.009 Criminal Trespass [4-1-61]

- A. It shall be unlawful for any person to unlawfully:
 - 1. 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
 - 2. enter without permission of the owner or the owner's agent, upon the real property of another.
- B. Criminal Trespass is a misdemeanor offense, Class C.

Section 4.30.010 Aggravated Criminal Trespass [4-1-62]

- A. The act of trespass shall be aggravated if while committing trespass, a person:
 - 1. 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;
 - 2. Intends to cause or causes annoyance or injury to any person thereon or damage to any property thereon;
 - 3. Intends to commit or commits an offense thereon; or
 - 4. Is in possession of a deadly or dangerous weapon.
- B. Aggravated Criminal Trespass is a felony offense, Class F.

Section 4.30.011 Trespass of Privacy

- A. It shall be unlawful for any person, upon the private property of another, to intentionally look, peer or peek in the door, window, or other transparent opening of any inhabited building or other structure located thereon, without lawful purpose.
- B. Trespass of Privacy is a misdemeanor offense, Class E.

Section 4.30.012 Robbery [4-1-63]

- 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.
 - 1. 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.
- B. Robbery is a felony offense, Class F.

Section 4.30.013 Theft [4-1-64]

- A. 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.
- B. Theft \$1,000 or more is a felony offense, Class F.
- C. Theft less than \$1,000 is a misdemeanor offense, Class E.

Section 4.30.014 Theft by Deception [4-1-65]

- A. 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:
 - 1. Creating or confirming another's impression which is false and which the offender does not believe to be true;
 - 2. Failing to correct a false impression which the offender previously has created or confirmed;
 - 3. Preventing another from acquiring information pertinent to the disposition of the property involved;
 - 4. 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.
- B. Theft by Deception \$1,000 or more is a felony offense, Class F.
- C. Theft by Deception less than \$1,000 is a misdemeanor offense, Class E.

Section 4.30.015 Acquiring Lost Property [4-1-66]

- A. 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.

- B. Acquiring Lost Property \$1,000 or more is a felony offense, Class F.
- C. Acquiring Lost Property less than \$1,000 is a misdemeanor offense, Class E.

Section 4.30.016 Theft by a False Promise [4-1-67]

- 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.
- C. Theft by a False Promise \$1000 or more is a felony offense, Class F.
- D. Theft by a False Promise less than \$1,000 is a misdemeanor offense, Class E.

Section 4.30.017 Extortion [4-1-68]

- A. 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:
 - 1. Cause physical injury to some person in the future;
 - 2. Cause damage to property;
 - 3. Engage in conduct constituting a crime;
 - 4. Accuse some person of a crime or cause criminal charges to be instituted against him;
 - 5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;
 - 6. 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;

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
8. 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
9. 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.

B. Extortion is a felony offense, Class F.

Section 4.30.018 Receiving Stolen Property [4-1-69]

- A. 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
 1. He intends to deprive the owner permanently of the use or benefit of the property; or
 2. He knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit:
- B. Receiving Stolen Property \$1,000 or more is a felony offense, Class F.
- C. Receiving Stolen Property less than \$1,000 is a misdemeanor offense, Class E.

Section 4.30.019 Theft of Services [4-1-70]

- A. 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.
- B. Defenses to Theft and Related Offenses
 1. 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.
 2. 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.
- C. Theft of Services \$1,000 or more is a felony offense, Class F.

D. Theft of Services less than \$1,000 is a misdemeanor offense, Class E.

Section 4.30.020 Unauthorized use of a Vehicle [4-1-73]

A. It shall be unlawful for any person:

1. To knowingly take, operate, exercise control over, ride in or otherwise use another's vehicle, boat or aircraft without consent of the owner;
2. 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
3. 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.

B. Unauthorized Use of Vehicle is a misdemeanor offense, Class C.

Section 4.30.021 Defenses to Theft and Related Offenses [4-1-71]

- 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.

CHAPTER 4.35 OFFENSES INVOLVING FRAUD AND DECEPTION
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Section 4.35.001 Forgery [4-1-74]

- A. It shall be unlawful for any person if with intent to defraud or injure anyone, he:
 1. Alters any writing or electronic communication of another without such person's authority;
 2. Makes, completes, executes, authenticates, issues or transfers any writing or electronic communication so that it purports to be:
 3. The act of another who did not authorize that act;

4. To have been executed at a time or place or in numbered sequence other than was in fact the case;
5. To be a copy of an original when no such original existed; or;
6. Utters or attempts to circulate as genuine any writing or electronic communication which he knows to be forged in the manner specified in this section.

B. Forgery is a felony offense, Class F.

Section 4.35.002 Criminal Simulation [4-1-75]

- A. 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.
- B. Criminal Simulation is a felony offense, Class F.

Section 4.35.003 Fraudulent Handling of Recordable Instruments [4-1-76]

- A. 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.
- B. Fraudulent Handling of Recordable Instruments is a felony offense, Class F.

Section 4.35.004 Tampering with Records [4-1-77]

- A. 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 electronic communication or record, with intent to deceive or injure anyone or to conceal any wrongdoing.
- B. Tampering With Records is a felony offense, Class F.

Section 4.35.005 Bad Checks [4-1-78]

- 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.
 1. An issuer is presumed to know that the check or order would not be paid if:
 2. The issuer had no account with the drawee at the time the check or order was issued; or

3. 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.

B. Bad Checks is felony offense, Class F.

Section 4.35.006 Deceptive Business Practices [4-1-79]

- 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 or electronic 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.
- C. Deceptive Business Practices is a felony offense, Class F.

Section 4.35.007 Fraudulent use of Prepaid, Debit or Credit Card [4-1-80]

- A. It shall be unlawful for any person to use with the intention of obtaining money, goods, services or any other thing of value a prepaid, debit or credit card or account which he knows is forged, expired, canceled, revoked, stolen, or retained without consent of the card or account holder.
- B. Fraudulent Use of a Prepaid, Debit or Credit Card \$300 or more is a felony offense, Class F.
- C. Fraudulent Use of a Prepaid, Debit or Credit Card under \$300 is a misdemeanor offense, Class E.

Section 4.35.008 Rigging a Contest [4-1-81]

- A. It shall be unlawful for any person who:
1. With a purpose to prevent a contest from being conducted in accordance with the rules and usages purporting to govern it, he:
 2. 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;
 3. Tampers with any person, animal, or thing associated with the contest;
 4. Knowingly solicits, accepts or agrees to accept any benefit from a participant, official or other person associated with the contest; or
 5. 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.
- B. Rigging a Contest is a misdemeanor offense, Class E.

Section 4.35.009 Defrauding Creditors [4-1-82]

- A. It shall be unlawful for any person:
1. To destroy, remove, conceal, encumber, transfer, or otherwise deal with property subject to a security interest with purpose to hinder enforcement of that interest;
 2. 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:
 3. 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;
 4. Knowingly falsify any writing or record relating to the property; or
 5. 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.
- B. Defrauding Creditors of \$1,000 or more is a felony offense, Class F.
- C. Defrauding Creditors of less than \$1,000 is a misdemeanor offense, Class E.

Section 4.35.010 Unlawful Dealing with Property by a Fiduciary [4-1-83]

- A. 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. The current standards set for in the Prudent Investor Act shall be used as a guideline. Reference Idaho Code § 68-501.
- B. Unlawful Dealing With Property By a Fiduciary of \$1,500 or more is a felony offense, Class F.
- C. Unlawful Dealing With Property By a Fiduciary of less than \$1,500 is a Class B Offense.

Section 4.35.011 Making a False Credit Report [4-1-84]

Text.

- A. 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.
- B. Making a False Credit Report is a felony offense, Class F.

CHAPTER 4.40 OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND WELFARE

Section 4.40.001 Spreading a Sexually-Transmitted Disease [4-1-124]

- A. 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.
- B. Spreading a Sexually-Transmitted Disease is a felony offense, Class F.

Section 4.40.02 Setting a Dangerous Device [4-1-125]

- A. 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.
- B. Setting a Dangerous Device is a felony offense, Class F.

Section 4.40.002 Weapons Offense [4-1-126]

- 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 his possession or his custody or control a dangerous weapon;

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

- 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, solely for the purpose of exercising her or his treaty hunting right. This exception does not apply to any other weapons offense listed in herein.
- B. For purposes of this section, hunting bow means a crossbow, longbow, recurve bow, or compound bow as defined under Title 3.
1. 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;
 2. To have on his person a concealed dangerous weapon without proper authority;
 3. To bring a firearm, concealed or in plain view, into any Tribal Government or Tribal Enterprise Building, Nimiipuu Health Clinics, or the offices of the Nez Perce Tribal Housing Authority, unless authorized by the Nez Perce Tribal Executive Committee;
 4. To point or aim any dangerous weapon at or toward any other person within range of the weapon except in self-defense;
 5. To discharge any kind of dangerous weapon from a motor vehicle, from, upon or across any public highway without lawful authority;
 6. To have in his possession any dangerous weapon with intent to assault another;
 7. To provide to any minor under the age of sixteen (16) a dangerous weapon without consent of parent or guardian; or
 8. 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, or
 9. To have been convicted of a crime of domestic violence. Reference 18 U.S.C. §§ 921(a)(3) and 921(a)(1).
- C. 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.
- D. Weapons Offense is a misdemeanor offense, Class C.

Section 4.40.003 Committing an Offense While Armed [4-1-127]

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (_____, 2024)

- A. It shall be unlawful for any person to commit or attempt to commit any offense while armed with any dangerous or deadly weapon.
- B. Committing an Offense While Armed is a felony offense, Class F.

Section 4.40.004 Abuse of Corpse [4-1-128]

- A. It shall be unlawful for any person to intentionally and unlawfully desecrate, remove, destroy or molest in any way any part of human remains.
- B. Abuse of Corpse is a felony offense, Class F.

~~Chapter 4.46~~ **CHAPTER 4.45** **GANGS**

~~Section 4.46.001~~ **Section 4.45.001** **Findings and Purpose**

- A. The Nez Perce Tribal Executive Committee (NPTEC) has determined that the presence of gangs and gang activity on the Nez Perce Reservation has a direct and negative effect on the health, safety, and welfare of Nez Perce Reservation communities.
- B. Gang activity has a particularly negative effect on Reservation youth, who are the Nez Perce Tribe's most valuable resource.
- C. Gang membership and gang activity on the Nez Perce Reservation involves both Indians and, in many instances, non-Indian persons.
- D. The Nez Perce Tribal Government has the inherent sovereign power to pass laws to protect the interests, health, safety, and general welfare of the Tribal membership.
- E. The NPTEC also has authority to protect these interests pursuant to Article VIII, Section 1(B) and Section 2(C) of the Nez Perce Tribe Constitution and Bylaws of the Nez Perce Reservation.
- F. The NPTEC has determined that the Nez Perce Tribe has a compelling interest in adopting a gang ordinance to combat gangs and gang activity on the Reservation.

~~Section 4.46.002~~ **Section 4.45.002** **Definitions Relating to Gangs**

- A. **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:
 - 1. Has a common name or identifying symbol;
 - 2. Has a particular conduct, status, and customs indicative of it; and
 - 3. Has one of its common activities engaging in criminal activity punishable as an offense under the Nez Perce Tribe Code.
- B. **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.
- C. **Law Enforcement Officer** means a commissioned Nez Perce Tribe Police Officer.

~~Section 4.46.003~~ **Section 4.45.003** **Prohibited Activity**

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (_____ , 2024)

- A. No person, while on the Nez Perce Reservation, shall:
1. 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;
 2. Commit any act or omission in furtherance of the interest of gang related activity, including but not limited to:
 - a. Soliciting others for membership in any gangs;
 - b. Requesting any person to pay protection or otherwise intimidating or threatening any person;
 - c. Inciting other persons to act with physical violence upon any other person;
 - d. Place graffiti on or otherwise deface property; or
 - e. Commit any other illegal act or violation of the Nez Perce Tribe Criminal Code.
- B. A person does not violate this provision if they are in possession of any clothing, jewelry, emblem, badge, symbol or sign referenced in Paragraph (A) (1) of this section for legitimate and lawful purposes.
- C. 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.
- D. 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.

~~Section 4.46.004~~ Section 4.45.004 **Identification of a Gang Member**

- A. Individuals that meet two or more of the following will be documented as a criminal gang member:
1. Non-custodial admission to gang membership;
 2. Written or electronic correspondence indicating gang membership;
 3. Paraphernalia or photographs indicating gang membership;
 4. Seen displaying gang hand signs or signals; or
 5. 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;
 6. Has been arrested more than once in the company of identified gang members for offenses that are consistent with usual gang activity;

7. Has been stopped in the company of known gang members three or more times.

CHAPTER 4.50 DRUG- AND ALCOHOL-RELATED OFFENSES
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Section 4.50.001 Reserved

Section 4.50.002 Frequenting [Drug Promotion 4-1-129]

Text.

- A. It shall be unlawful for any person to be present at or on premises of any place, including a vehicle, where he knows illegal controlled substances are being manufactured or cultivated, or are being held for manufacturing and delivery, transportation, delivery, administration, use, or to be given away.
- B. Frequenting is a misdemeanor offense, Class B.

Section 4.50.003 Reserved

Section 4.50.004 Possession and/or Consumption of a Controlled Substance [4-1-130]

Text.

- A. It shall be unlawful for any person to possess, purchase, consume, obtain, ingest, inject, inhale, deliver, 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 the Controlled Substances Act, 21 U.S.C. § 812(c). The controlled substances listed in 21 U.S.C. § 812(c) 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, delivery, manufacture, or sale of peyote for bona fide Native American religious ceremonies; or
 2. Any substances as prescribed by a duly licensed physician so long as that substance is lawful to possess under the Controlled Substances Act, 21 U.S.C. § 812.
- C. Except as noted below, Possession and/or Consumption of Controlled Substance is a felony offense, Class F.
1. Possession and/or Consumption of Marijuana (also known as genus Cannabis which contains tetrahydrocannabinol (THC)) is a misdemeanor offense, Class B.

Section 4.50.005 Manufacture or Delivery of a Controlled Substance

- A. A person commits the crime of manufacture or delivery of a controlled substance by:
1. Except as authorized by this chapter, manufacturing, cultivating, delivering, distributing, or dispensing a controlled substance; or
 2. Except as authorized by this chapter, possessing with the intent to manufacture, deliver, distribute, or dispense a controlled substance; or
 3. Possessing a minimum any of the following:
 - a. Eighty-five (85) grams of any parts of the plants of the genus Cannabis, including the extract or any preparation of genus Cannabis which contains more than 0.3% Tetrahydrocannabinol (THC);
 - b. Five (5) grams of cocaine mixture;
 - c. Ten (10) grams of Fentanyl mixture;
 - d. Seven (7) grams of heroin mixture;
 - e. One (1) gram of LSD mixture;
 - f. Five (5) grams of methamphetamine mixture; or
 - g. Five (5) grams PCP mixture.
- B. Manufacture or Delivery of a Controlled Substance is a felony offense, Class F.

Section 4.50.006 Drug Paraphernalia – definition [4-1-1(m)]

- A. **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:
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.
- B. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:
1. Statements by an owner or by anyone in control of the object concerning its use;
 2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any 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; or
13. The existence and scope of legitimate uses.

Section 4.50.007 Possession of Drug Paraphernalia [4-1-132]

- 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 Controlled Substances Act, 21 U.S.C. § 812(c).
- 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, so long as that substance is lawful to possess under the Controlled Substances Act, 21 U.S.C. § 812(c).
- C. Possession of Drug Paraphernalia is a felony offense, Class F, except as provided below:
 1. Possession of Drug Paraphernalia for Marijuana (also known as genus Cannabis which contains more than 0.3% THC) is a misdemeanor offense, Class B.

Section 4.50.008 Reserved

Section 4.50.009 Abuse of Psychotoxic Chemical Solvents [4-1-131]

- 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. Exception. 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, peptone, 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.
- D. Abuse of Psychotoxic Chemical Solvents is a felony offense, Class F.

Section 4.50.010 Reserved

Section 4.50.011 Possession of Alcohol by a Person Under 21 Years of Age [4-1-133]

- 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.

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (_____, 2024)

- 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.
- C. Possession of Alcohol by a Person Under 21 Years of Age is a misdemeanor offense, Class B.

~~Section 4.50.013~~ **Section 4.50.012 Possession, Distribution or use of Cigarettes or Other Tobacco Products by a Person Under 21 Years of Age [4-1-134]**

- A. 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.
1. Except as provided in paragraph below, it shall be unlawful for a person under the age of twenty-one (21) years to possess, receive, purchase, sell, distribute, use or consume cigarettes or other tobacco products and those containing nicotine, including but not limited to e-cigarettes and vaping products, as defined in Tobacco and Liquor Ordinance or to attempt any of the foregoing.
 2. This section shall not apply to possession or use of tobacco by an enrolled member of a federally recognized Indian Tribe when used in connection with recognized ceremony or event.
- B. Possession, Distribution or Use of Cigarettes or Other Tobacco Products by a Person Under the Age of 21 Years is a misdemeanor offense, Class B.

~~Section 4.50.014~~ **Section 4.50.013 Dispensing of Alcohol to a Person Under 21 Years of Age [4-1-136]**

- A. It shall be unlawful for any person who is twenty-one (21) years of age or older knowingly 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).
- B. Dispensing of Alcohol to Person Under the Age of 21 Years is a misdemeanor offense, Class D.

~~Section 4.50.015~~ **Section 4.50.014 Reserved**

~~Section 4.50.016~~ **Section 4.50.015 Reserved**

~~Section 4.50.017~~ **Section 4.50.016 Public Intoxication [4-1-135]**

- A. 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.
- B. Public Intoxication is a misdemeanor offense, Class B.

~~Section 4.50.018~~ **Section 4.50.017 Open Container [4-1-137]**

- A. 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.

B. Open Container is a misdemeanor offense, Class B.

CHAPTER 4.55 OFFENSES RELATED TO PUBLIC ORDER
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Section 4.55.001 Disorderly Conduct [4-1-200]

- A. A person commits the offense of disorderly conduct if he causes public inconvenience, annoyance or alarm or creates a risk thereof by:
1. Engaging in fighting or threatening, or in violent or tumultuous behavior;
 2. Making unreasonable noise or an offensively coarse utterance, gesture or display, or addresses abusive language to any person present;
 3. Creating a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor; or
 4. Threatening, quarreling, challenging to fight or fighting.
- B. Disorderly conduct is a misdemeanor offense, Class B.

Section 4.55.002 Unreasonable Noise [4-1-201]

- A. A person commits the offense of unreasonable noise by causing, creating, assisting, or permitting the continuance of any unreasonable noise.
1. 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.
- B. Unreasonable noise is a misdemeanor offense, Class B.
- C. Violations of this section shall include but not be limited to:
1. Common Firework. Noise caused or created by any common firework, as defined in the Fireworks Ordinance, other than the noise caused by a common firework discharged between 9:00 am to 9:00 pm during firework season or any common fireworks discharged at any time on July 4th or December 31st.
 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 vehicles, 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 Section.
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 11:30 pm and 7:00 am.
 4. Bell or chime. Any bell or chime from any building clock, school, or church.

Section 4.55.003 Reserved

Section 4.55.004 Reserved

Section 4.55.005 Animal Fighting [4-1-202]

- A. Any person commits the offense of animal fighting who knowingly:
1. Owns, possesses, keeps, trains, buys or sells any animals for the purpose of a public or private display of combat between two or more animals in which the fighting, killing, maiming or injuring of animals is a significant feature; or
 2. Advertises, promotes, organizes, participates or knowingly has a monetary interest in a public or private display of combat between two or more animals in which the fighting, killing, maiming or injuring of animals is a significant feature; or
 3. Is 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.
- B. 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 or more uncontrolled dogs.

C. Animal Fighting is a felony offense, Class F.

Section 4.55.006 Cruelty to Animals [4-1-203]

A. A person commits the offense of cruelty to animals if such person:

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. It may be a defense to a prosecution under this section if the person 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.

C. Cruelty to Animals is a felony offense, Class F.

Section 4.55.007 Persistent or Habitual Violations of the Dog Ordinance [4-1-204]

A. A person who persistently or habitually violates the provisions of the Dog Ordinance may be cited under this subsection for a criminal offense.

1. 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.

B. Persistent or Habitual Violations of the Dog Ordinance is a misdemeanor offense, Class C.

CHAPTER 4.60 OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT

PART I. BRIBERY AND CORRUPT INFLUENCES

Section 4.60.001 Bribery in Official Matters [4-1-94]

- 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. Bribery in Official Matters is felony offense, Class F.
- C. 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.

Section 4.60.002 Threats and Other Improper Influence in Official Matters [4-1-95]

- 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. Threats and Other Improper Influence in Official Matters is a felony offense, Class F.
- C. 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.

Section 4.60.003 Compensation for Past Official Behaviors [4-1-96]

- A. It shall be unlawful for any person to:
 - 1. 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

2. Offer, confer or agree to confer, compensation for the above purposes.
- B. Compensation for Past Official Behavior is a misdemeanor offense, Class E.

Section 4.60.004 Retaliation for Past Official Action [4-1-97]

- A. 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.
- B. Retaliation for Past Official Action is a misdemeanor offense, Class E.

Section 4.60.005 Improper Gifts to Public Servants [4-1-98]

- 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 NPTEC 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

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (_____, 2024)

5. Knowingly confers or agrees to confer any benefit prohibited by the above sections.
- B. Improper Gifts to Public Servants is a misdemeanor offense, Class E.
- C. 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.

PART II. ABUSE OF OFFICE

Section 4.60.006 Official Misconduct [4-1-99]

- A. It shall be unlawful for any person who:
1. 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
 2. 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:
 - a. Acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or
 - b. Speculates or wagers on the basis of such action or information; or knowingly aids another in doing any of the foregoing.
- B. Official Misconduct is a misdemeanor offense, Class E.

Section 4.60.007 Interference with Tribal Court [4-1-100]

- A. 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.
- B. Interference with Tribal Court is a felony offense, Class F.

Section 4.60.008 Official Oppression [4-1-101]

- A. 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:
1. Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or
 2. Denies or impedes another in the exercise or enjoyment of any right, power, or immunity.
- B. Official Oppression is a misdemeanor offense, Class E.

Section 4.60.009 Misuse of Public Monies [4-1-102]

- A. 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 monies:
1. Without authority of law, to appropriate such money or any portion thereof to his own use, or to the use of another;
 2. To loan such money or any portion thereof;
 3. 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;
 4. To fail to keep such money in his possession until disbursed or paid out by authority of law;
 5. 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;
 6. To change or convert any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law;
 7. To knowingly keep any false account, or make any false entry or erasure in any account of or relating to the same;
 8. To fraudulently alter, falsify, conceal, destroy or obliterate any such account;
 9. 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;
 10. To willfully omit to transfer or pay over any money when such transfer is required by law; or
 11. To misuse or misappropriate any contract or program monies.

- B. For purposes of this section, “public monies” mean 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.
- C. Misuse of Public Monies is a misdemeanor offense, Class E.

PART III. FALSIFICATION IN OFFICIAL MATTERS

Section 4.60.010 Perjury [4-1-103]

- 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;
 - a. 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.
 - 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 person 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. Perjury is a felony offense, Class F.

Section 4.60.011 False Swearing [4-1-104]

- A. It shall be unlawful for any person to make a false sworn statement, knowing it to be false.
- B. False Swearing is a felony offense, Class F.
- C. It is no defense to a prosecution under this section that:

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

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;
 - a. 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.
 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.
- D. 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.

Section 4.60.012 Unsworn Falsification [4-1-105]

- A. It shall be unlawful for any person to knowingly make any false written statement in an attempt to gain any benefit.
- B. Unsworn Falsification is a misdemeanor offense, Class E.
- C. 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;
 - a. 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.
 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.
- D. 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.

Section 4.60.013 Tampering with Physical Evidence [4-1-106]

- A. It is unlawful for any person to:
1. Present evidence as genuine or true which he knows has been forged or fraudulently altered;
 2. Prepare any false or fraudulently altered physical evidence for any fraudulent or deceitful purpose; or
 3. Knowingly destroy, alter or conceal the same.
- B. Tampering with Physical Evidence is a felony offense, Class F.

Section 4.60.014 Tampering with Public Records [4-1-107]

- A. 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.
- B. Tampering with Public Records is a felony offense, Class F.

Section 4.60.015 Tampering with a Witness [4-1-108]

- 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 to: from ~~testifying freely, fully or truthfully in that proceeding.~~
1. Withhold testimony, or withhold a record, document, or other object from a court proceeding;
 2. Alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in a court proceeding;
 3. Evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object in a court proceeding;
 - 1-4. Be absent from a court proceeding to which the person has been summoned by legal process.
- B. Tampering With A Witness is a felony offense, Class F.
- C. The fact that a witness was not actually influenced, prevented from testifying, or from performing any of the acts described herein shall not be a defense to a charge brought under this section.

Section 4.60.016 Bribing a Witness [4-1-109]

- A. 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.
- B. Bribing A Witnesses is a felony offense, Class F.

Section 4.60.017 Receiving Bribes in Exchange for Testimony [4-1-110]

- A. It shall be unlawful for any person to receive or offer to receive any bribe in exchange for false or altered testimony.
- B. Receiving Bribes in Exchange for Testimony is a felony offense, Class F.

Section 4.60.018 Simulating Legal Process [4-1-111]

- A. 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.
- B. Simulating Legal Process is a felony offense, Class F.

Section 4.60.019 Criminal Impersonation [4-1-112]

- A. It shall be unlawful for any person who is not a public servant to exercise or attempt to exercise the functions of, or hold himself out to anyone, as a public servant.
- B. Criminal Impersonation is a felony offense, Class F.

Section 4.60.020 Welfare Offense [4-1-113]

- 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 a manner which does not benefit each of those persons intended to benefit by the grant; or
 - 5. Knowingly use public assistance in a manner contrary to the applicable regulations.
- B. As used in this section, “public assistance” shall have the definition and meaning provided in Idaho Code, § 56-201 existing as of the date of adoption of this chapter by NPTEC or hereafter amended.

C. Welfare Offense is a felony offense, Class F.

Section 4.60.021 Retaliation Against a Witness

A. It shall be unlawful for any person to:

- 1. Knowingly, with the intent to retaliate, take any action harmful to any person, including interference with the lawful employment or livelihood of another person, for providing to a law enforcement officer any truthful information relating to the possible commission of any criminal offense.**

A.B. Retaliation Against a Witness is a felony offense, Class F.

Section 4.60.021~~Section 4.60.022~~ Reserved

PART IV. OFFENSES AGAINST PUBLIC ADMINISTRATION

Section 4.60.022~~Section 4.60.023~~ Resisting and Obstructing Officers [4-1-114]

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 law enforcement 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.

C. Resisting and Obstructing Officers is a misdemeanor offense, Class D.

Section 4.60.023~~Section 4.60.024~~ Hindering Prosecution [4-1-115]

A. 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:

- 1. Harbor or conceal such person;**
- 2. 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;**

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

3. Provide or aid in providing such person with money, transportation, any weapon, disguise or other means of avoiding discovery or apprehension;
 4. 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;
 5. 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
 6. Aid such person in securing or protecting the proceeds of the crime.
- B. Hindering Prosecution is a felony offense, Class F.

Section 4.60.024Section 4.60.025 **Escape [4-1-116]**

- A. It shall be unlawful for any person while being in the custody of any jail, prison, treatment center or officer:
1. To escape or attempt to escape from custody;
 2. To aid or attempt to aid another in escaping from jail, prison or from any officer; or
 3. 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.
- B. For the purposes of this section “officer” means any person who by virtue of his office or employment by the Tribe or by another government is vested by law with a duty to:
1. Enforce tribal, federal, or civil regulatory laws;
 2. Maintain public order;
 3. Make arrests for offenses while acting within the scope of his or her authority;
 4. This also includes probation officers.
- C. Escape is a felony offense, Class F.

Section 4.60.025Section 4.60.026 **Providing Contraband [4-1-117]**

- A. It is unlawful for any person to provide a person in official detention, or in the custody of an officer, with any alcoholic beverage, drug, weapon, implement of escape or any other thing or substance which is unlawful for the detainee to possess.
- B. Providing Contraband is a felony offense, Class F.

~~Section 4.60.026~~ Section 4.60.027 **Bail Jumping [4-1-118]**

- A. 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.
- B. Bail Jumping is a felony offense, Class F.

~~Section 4.60.027~~ Section 4.60.028 **Failure to Obey an Order of the Court [4-1-119]**

- A. It shall be unlawful for any person to fail to obey an order, subpoena, or warrant issued by the Tribal Court.
- B. Failure to Obey an Order of the Court is a misdemeanor offense, Class E.

~~Section 4.60.028~~ Section 4.60.029 **Violation of No Contact Order – Domestic Violence**

- A. As defined in the Domestic Violence chapter under Title 5, a “no contact order” means a Court order issued pursuant to a criminal case that prohibits a criminal defendant from having contact with the victim.
- B. A person commits the crime of violating a domestic violence no contact order when, after having been served with such order, they violate any provision of the no contact order.
- C. All provisions of an order issued under the Domestic Violence chapter shall remain in full force and effect until the order terminates or is modified by the Court.
- D. Willful violation of a no contact order subjects the defendant to criminal penalties under this chapter. Any defendant who is found guilty of violating the terms of a no contact order may also, subject to the Court’s discretion, be held in contempt of court, and the Court may impose such sanctions as it deems appropriate.
 - 1. Violation of a no contact order is a Class E offense.
 - 2. A third or subsequent violation of a no contact order is a Class F offense.
 - 3. Consent is not a defense to a violation of a domestic violence no contact order.

~~Section 4.60.029~~ Section 4.60.030 **Violation of a Civil Protection Order**

- A. As defined in the Domestic Violence chapter under Title 5, “protection order” means a temporary or permanent Court order, injunction or other order related to domestic violence or family violence, harassment, sexual abuse, or stalking, granted for the purpose of preventing violent or threatening acts or

harassment against, or contact or communication with, or physical proximity to another person, who is a victim or alleged victim of domestic violence or family violence, dating violence, sexual assault or stalking; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as an order during litigation in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

- B. A person commits the crime of violating a protection order when, after having been served with such order, they violate any provision of the order.
- C. All provisions of an order issued under Title 5, shall remain in full force and effect until the order terminates or is modified by the Court.
- D. Willful violation of an order subjects the respondent to criminal penalties under this chapter. Any defendant who is found guilty of violating the terms of a protection order may also, subject to the Court's discretion, be held in contempt of court, and the Court may impose such sanctions as it deems appropriate.
 - 1. Violation of a protection order is a Class E offense.
 - 2. A third or subsequent violation of a protection order is a Class F offense.
 - 3. Consent is not a defense to a violation of a protection order.

~~Section 4.60.030~~ Section 4.60.031 **Default on Fine [4-1-120]**

- A. 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.
- B. Default on Fine is a misdemeanor offense, Class C.

~~Section 4.60.031~~ Section 4.60.032 **Riot [4-1-121]**

- A. 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:
 - 1. Physically injure another person;
 - 2. Damage or destroy public or private property; or
 - 3. Disturb the public peace.
- B. Riot is a felony offense, Class F.

~~Section 4.60.032~~ Section 4.60.033 **Obstructing the Administration of Justice [4-1-122]**

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

A. It shall be unlawful for any person to:

1. Corruptly or 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 NPTEC in the discharge of his duty;
2. 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 NPTEC in his person or property on account of any verdict or judgment assented to by him;
3. 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 NPTEC in his person or property on account of the performance of his official duties; or
4. Corruptly or by threats or force, or by any threatening letter or communication, attempt to influence, obstruct, or impede the due administration of justice.
5. Knowingly and willfully obstruct, resist, assault, beat, wound or oppress any officer of the court, or any person duly authorized, in serving, or attempting to serve or execute, any legal or judicial writ or process.
6. Steal, alter, take away, falsify, or otherwise avoid any record, writ, process, or other proceeding whereby a judgment is reversed, made void, or does not take effect; or to acknowledge or to procure acknowledgment of any recognizance, bail, or judgment in the name of any other person not privy or consenting to the same.
7. With the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the Nez Perce Tribe, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence.
8. Knowingly and willfully, by any means or device whatsoever record, or attempt to record, the proceedings of any jury in any court of the Nez Perce Tribe while such jury is deliberating or voting; or listen to or observe, or attempt to listen to or observe, the proceedings of any jury of which he is not a member while such jury is deliberating or voting.

4.9. With intent to obstruct, delay, or prevent the administration of justice, directly or indirectly notify any person not authorized by the court about the existence or contents of a subpoena, warrant, or other court document that is sealed by the court at the time the notification is made.

- B. As used in this section, an “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.
- C. Obstructing the Administration of Justice is a felony offense, Class F.

CHAPTER 4.80 TRAFFIC OFFENSES

Section 4.80.001 Purpose

The Nez Perce Tribe is a sovereign nation with its own government, laws, and courts. The Tribe shares the interest all Reservation residents have in public health, public safety, conservation and equitable exploitation of natural resources, and adequate public infrastructure.

- A. The Treaty-reserved Right To Travel is not some ancient relic from the past, but rather a foundation to maintain a way of life no less important to the Nez Perce Tribe than any other provision in the Treaty of 1855. The Nez Perce Tribe hereby exercises its sovereign right to regulate use of motor vehicles in exercising the Right To Travel by adopting the revised Traffic Chapter for the purpose of protecting public safety.
- B. The purpose of this Chapter is to provide safety regulations for the use of vehicles within the boundaries of the Nez Perce Reservation. The proper use of vehicles within the boundaries of the Reservation is of importance to the health and safety of Nez Perce tribal members as well as the overall quality of life for residents of the Reservation.
- C. The Nez Perce Tribe intends to exercise concurrent jurisdiction with the State of Idaho over the operation and management of motor vehicles upon highways and roads maintained by the county or state, on the Nez Perce Reservation.

Section 4.80.002 Scope

- A. The Nez Perce Tribe hereby adopts certain laws defining and punishing traffic infractions and criminal acts involving motor vehicles as identified in Idaho Code Title 18 – Crimes, Chapter 80 – Motor Vehicles; Idaho Code § 39-3905 and Title 49 Motor Vehicles, §§ 49-101 through 49-2446.
 - 1. All references in the Idaho law to the “State of Idaho”, “Court”, or any related state agencies shall mean the corresponding authorities of the Tribal Government of the Nez Perce Tribe.

- 2. Nothing in this Chapter shall prohibit the NPTEC from enacting traffic laws in addition to or inconsistent with those passed by the State of Idaho.
- B. All traffic offenses shall be prosecuted under the Nez Perce Tribe's Rules of Criminal Procedure.
- C. The punishments provided by this Chapter shall be the sole penalty provided for criminal traffic violations and infractions notwithstanding those provided by the provisions of the Idaho Motor Vehicle Code incorporated herein.

Section 4.80.003 Jurisdiction

Jurisdiction regarding all matters under this Chapter is in the Nez Perce Tribal Court.

Section 4.80.004 Sovereign Immunity

The limited adoption of traffic infractions and criminal acts involving motor vehicles in Idaho Code as identified in the above Section on "Scope" shall not be construed as a blanket waiver, or diminishment of the Nez Perce Tribe's inherent sovereign immunity.

Section 4.80.005 Amendment [4-2-7(a) and 4-2-9(a)]

Amendments, additions, deletions, or recodifications of such provisions by the State of Idaho after the enactment of this Chapter shall be reviewed and evaluated for any conflicts with the Nez Perce Tribe's Treaty-reserved Right To Travel before presentation to NPTEC on whether to amend the Tribal Code's Traffic Chapter.

Section 4.80.006 Definitions related to Traffic Offenses [4-2-1]

For definitions related to Traffic and Motor Vehicles, Idaho Code §§ 49-101 through 49-127 and §§ 18-8001 through 18-8011 may be used in the absence of definitions within Title 4. The following definitions apply in the Traffic Chapter of the Nez Perce Tribal Code:

- A. **Actual physical control** as used in Idaho Code, Title 18, Chapter 80 Motor Vehicles shall be *defined* as being in the driver's position of a motor vehicle with said vehicle's motor running or with the motor vehicle moving.
- B. **ITD** means the Idaho State Department of Transportation.

CHAPTER 4.90 CIVIL INFRACTIONS

PART I. GENERAL PROVISIONS

Section 4.90.001 Definitions [4-3-1]

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

- 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.
- E. **Public place** includes highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

Section 4.90.002 Duties of Officers; Warrant not Required [4-3-2]

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

Section 4.90.003 Disposition of Fines [4-3-3]

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.

Section 4.90.004 Officers [4-3-4]

- 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 police 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.

PART II. PROPERTY

Section 4.90.005 Trespass [4-3-5]

- A. A person commits the infraction of trespass if he:

1. 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
2. Enters without permission of the owner or the owner's agent, upon the real property of another.

Section 4.90.006 Vandalism [4-3-6]

- A. A person commits the infraction of vandalism if he:
 1. Injures, defaces, damages or destroys:
 - a. Private property in which any other person has an interest without the consent of such other person;
 - b. Tribal or other public property without the lawful consent of the appropriate governing body; or
 - c. A recognized place of burial.
 2. 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.

Section 4.90.007 Shoplifting/Retail Theft [4-3-7]

- A. A person commits the infraction of shoplifting if he:
 1. knowingly removes merchandise from a merchant's premises without paying therefore,
 2. knowingly conceals merchandise to avoid paying therefore, and
 3. the sales price of such merchandise taken or concealed is under \$50.00.
- B. 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.

Section 4.90.008 Liability for Acts of Minors [4-3-8]

- A. 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.
- B. 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.

- C. The liability of the parent or legal guardian and of the minor under this section is joint and several.

Section 4.90.009 Nuisance Abatement [4-3-9]

A. Definitions

1. **Nuisance Abatement** means the removal or termination or destruction of something that has been found to be a nuisance.
2. **Owner** means 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 below under Section ~~4-3-51~~ Section 4.90.018.
4. **Reservation Sanitarian** means 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, Washington 99207.

B. Statement of Purpose and Intent

1. There currently exists 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 this Chapter, 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

NPTEC deems it necessary, they may then request an environmental health assessment inspection of the property.

- a. 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 NPTEC to cause the nuisance to be abated, remedied, or removed, as may be necessary.
- C. The person or persons so notified shall be allowed until 12:00 pm of the seventh 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.
- D. 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 seven days mentioned 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.
- E. 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 NPTEC has determined there exists a nuisance, have failed to comply with an abatement order, the NPTEC 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.
- F. The NPTEC shall determine the cost and expense of any work performed under the authority of subsection above and shall assess such cost and expense on the owner of the tract upon which such nuisance existed.
- G. 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.

PART III. PUBLIC ORDER

Section 4.90.010 Refusing Assistance to Officers [4-3-20]

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.

Section 4.90.011 False Reporting [4-3-21]

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.

Section 4.90.012 Loitering [4-3-23]

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

Section 4.90.013 Harassment [4-3-24]

- A. A person commits the infraction of harassment if, with intent to annoy or alarm another he:
1. subjects another to offensive physical contact;
 2. publicly insults another by abusive or obscene words or gestures in a manner likely to provoke a violent or disorderly response; or
 3. 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.

Section 4.90.014 Abuse of Corpse [4-3-25]

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.

Section 4.90.015 Cruelty to Animals [4-3-26]

- 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 wagering; or 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. 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.

Section 4.90.016 Animal Fighting [4-3-26(b)]

- A. A person commits the infraction of animal fighting if he:
1. causes any animal to fight for his amusement, betting or wagering; or
 2. permits the same to be done on any premises or is present at such fight.

PART IV. PUBLIC HEALTH, SAFETY, AND WELFARE

Section 4.90.017 Waters Infraction [4-3-50]

- 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 befoils 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.
- B. The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

Section 4.90.018 Public Nuisance [4-3-51]

- 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.

Section 4.90.019 Curfew Infraction – Persons Under Eighteen (18) Years [4-3-52]

- A. A person fourteen (14) years of age 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 pm to 6:00 am; and
 - 2. between the weekend hours of 10:00 pm to 6:00 am
- B. A person between the ages of fifteen (15) years to eighteen (18) years, 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 pm to 6:00 am; and
 - 2. between weekend hours of 12:00 am to 6:00 am.
- C. Weekday hours are defined as beginning at Sunday 6:00 pm through Friday 6:00 pm.
- 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 above in paragraph D, will minors be allowed on the streets, highways, or any place open to the public before 6:00 am.

Section 4.90.020 Curfew Infraction – Parental Violation [4-3-53]

- 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 pm to 6:00 am and weekend hours of 10:00 pm to 6:00 am if the minor is under the age of fourteen (14) years; or
 - 2. Between the weekday hours of 10:00 pm and 6:00 am and weekend hours of 12:00 midnight to 6:00 am if the minor is between the ages of fourteen (14) to seventeen (17) years.
- B. It may be a defense to a prosecution under this section upon a showing of good cause for the violation.

Section 4.90.021 Truancy – Persons Under Eighteen (18) Years [4-3-53(a)]

- 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.

B. 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 a state or the Tribe.

Section 4.90.022 Truancy Infraction – Parental Violation [4-3-53(b)]

- 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.

Section 4.90.023 Runaway – Persons Under Eighteen (18) Years [4-3-53(c)]

- A. A person under the age of eighteen (18) years commits a runaway infraction if he runs away from the control of his parent(s), guardian or custodian.
- B. It may be a defense to prosecution under this section upon a showing of good cause for the violation.

Section 4.90.024 Runaway Infraction – Parental Violation [4-3-53(d)]

- 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.

Section 4.90.025 Littering [4-3-54]

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.

Section 4.90.026 Livestock Infraction [4-3-55]

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

- 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.
1. Once an animal is so impounded, the owner shall be immediately notified of the impoundment and any potential violations of this section.
 2. A reasonable fee for the care of such animal(s) may be collected prior to their release.

PART V. IMMUNITY FROM SUIT

Section 4.90.027 Immunity of Persons Giving First Aid From Damage Claim [4-3-56]

- A. 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.
- B. 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.

Section 4.90.028 Medical assistance – Drug-related overdose or life-threatening emergency

- A. Any person or group of people acting in good faith who seeks medical assistance, or assists another in seeking medical assistance, for any person, including himself or herself, experiencing a drug-related overdose or other life-threatening medical emergency, and reports all relevant information available to such person as to the cause and circumstances of the drug-related overdose or life-threatening medical emergency, shall not be arrested or convicted for the following:
 - 1. Contributing to the Delinquency of a Minor pursuant to NPTrC 4.25.007;
 - 2. Possession and/or Consumption of a Controlled Substance pursuant to NPTrC 4.50.004;
 - 3. Possession of Drug Paraphernalia pursuant to 4.50.007;
 - 4. Possession of Alcohol by a Person Under 21 years of age pursuant to NPTrC 4.50.011;
 - 5. Misdemeanor warrants for nonviolent crimes.
- B. The protections in subsection (A) of this section may be raised as an affirmative defense, or as grounds to suppress evidence obtained as a result of a report of a drug-related overdose or life-threatening medical emergency.
- C. Evidence obtained as a result of a report of a drug-related overdose or life-threatening medical emergency under the circumstances stated in subsection (A) of this section shall not serve as the sole basis for revoking or modifying a

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (_____, 2024)

person's supervision status, or as the basis for any probable cause finding to search the premises where such overdose or medical emergency occurs or to arrest any person who reports such overdose or medical emergency under the circumstances stated in subsection (A) of this section.

- D. For the purposes of this section, "drug-related" means an acute medical condition that is the result of the ingestion or use by an individual of one of more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury.
- E. The protections in this section shall not be grounds for suppression of evidence in other criminal charges arising from circumstances related to a drug-related overdose or other life-threatening medical emergency.
- F. Nothing in this section shall prohibit arrest, prosecution, or conviction for any crime not listed herein, or seizure of any drugs or paraphernalia found at the scene of a drug-related overdose or other life-threatening emergency.

Section 4.90.029 Immunity of Volunteer Ambulance Attendant [4-3-57]

- A. 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.
- B. 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.

PART VI. ADMINISTRATION OF GOVERNMENT

Section 4.90.030 Official Nez Perce Tribal Executive Committee Actions Enforceable [4-3-75]

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.

Section 4.90.031 Interference with Judicial Process [4-3-70]

- A. The infraction of interference with judicial process is committed when a person:
1. interferes with or attempts to influence any decision of the Tribal court or investigation, prosecution, or settlement of any case; or
 2. 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.

Section 4.90.032 Dog Ordinance Violations [4-3-71]

- A. A person commits an infraction of the Dog Ordinance by:
1. Any person owning, harboring, or in any way responsible for any dog(s) not licensing said dog(s);
 2. 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 the paragraph above;
 3. 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;
 4. Any person who hinders, molests, or interferes with the Dog Marshall;
 5. Any person owning, harboring, or in any way responsible for any female dog(s) not keeping such animal(s) isolated or fenced in when in heat;
 6. 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
 7. 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.

Section 4.90.033 Fireworks Ordinance Violations [4-3-72]

- A. A person commits the offense or violation of the Nez Perce Fireworks Ordinance if he:
1. As a retail or wholesale operator, fails to obtain a firework's license;
 2. As a wholesaler attempts to or sells fireworks to an unlicensed person;
 3. As a retailer purchases, receives, or attempts to purchase or receive fireworks from an unlicensed wholesaler;

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

4. Any person knowingly submitting a license application containing false information;
5. As a retail or wholesale operator, stocks or sells any fireworks that are not authorized under the Ordinance;
6. As a retailer attempts to or sells fireworks, other than “safe and sane” fireworks to any person under eighteen (18) years of age;
7. As a retailer knowingly attempts to or sells fireworks to any intoxicated person;
8. As a retailer attempts to or sells, distributes, or discharges fireworks while intoxicated or under the influence of drugs;
9. As a retailer fails to stock two functioning fire extinguishers in the selling area;
10. As a retailer fails to display a “Notice of Unlawful Acts” sign;
11. 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
12. As a retail operator, utilize more than four (4) signs or any sign in excess of thirty-two (32) square feet.
13. As a retail operator, fails to affix Retail Operator’s Permit number to signs used to advertise or identify a Fireworks Retail Outlet.
14. Any person discharging fireworks after the NPTEC imposes a ban as authorized under the Fireworks Ordinance.

Section 4.90.034 Fuel Tax Ordinance Violations [4-3-73]

- A. A person commits a violation of the Nez Perce Fuel Tax Ordinance by:
1. As a retail operator or distributor, fails to obtain a distributor or retail license to buy or sell fuel;
 2. As a distributor attempts to or sells fuel to an unlicensed person;
 3. As a retailer purchases, receives, or attempts to purchase or receive fuel from an unlicensed distributor;
 4. Any person knowingly submitting a license application containing false information; or
 5. As a retail operator or distributor fails to follow federal health and safety regulations with regard to fuel receipt, dispensing and distribution.

Section 4.90.035 Tobacco and Liquor Ordinance Violations [4-3-74]

- A. A person commits a violation of the Tobacco and Liquor Ordinance by:
1. As an operator or distributor, fails to obtain a tobacco or liquor license;
 2. As an operator or distributor, attempts to or sells tobacco or liquor without a license;
 3. As an operator or distributor, fails to submit a report as required by the Tobacco and Liquor Ordinance.
 4. As a distributor, attempts to or sells tobacco or liquor to an unlicensed operator;
 5. As an operator, purchases, receives, or attempts to purchase or receive tobacco or liquor from an unlicensed distributor;
 6. As a tobacco distributor or tobacco outlet, sells unstamped cigarettes;
 7. Any person knowingly submitting a license application containing false information;
 8. As a tobacco operator, attempts to or sells tobacco products to any person under twenty-one (21) years of age;
 9. As a liquor operator, attempts to or sells liquor products to any person under twenty-one (21) years of age; or
 10. As a tobacco distributor or operator, attempts to sell more than 48 cartons of cigarettes to a non-licensed non-resident person/entity.

Section 4.90.036 Violation of Sex Offender Registration Code [4-3-76]

Civil Penalty. Each violation of a provision of the Chapter 4.10, Part VIII Sex Offender Registration contained in Title 4 by a sex offender who is not subject to the criminal jurisdiction of the Nez Perce Tribe 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.

Section 4.90.037 Violation of Forest Product Harvesting Policy [4-3-77]

- 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.
 - a. 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.

NEZ PERCE TRIBE REVISED CODES
As Amended through Resolutions NP 22-212 and NP 22-213 (March 22, 2022)
Resolution NP 24- (, 2024)

3. Cutting a tree, other than a tree for teepee poles or a Christmas tree, that is not dead.
 - a. 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 six (6) feet in diameter at the stump.
6. Girdling a tree for the purpose of killing the tree for future harvest.

Section 4.90.038 Noncompliance with Commercial Building and Electrical Code [4-3-78]

- A. A person commits an infraction of the Commercial Building and Electrical Code by:
 1. 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. Text.

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End Criminal Code.