TITLE 3
CRIMINAL CODE
(As redesignated June 1, 1989)

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TITLE 3
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	Section	Revised Date
8	3-827, 3-828	May 17, 2023
6	3-602	May 21, 2025
13	Adopt entire article	May 3, 2024
14	Adopt revised article	July 15, 2025
16	Adopt entire article	July 15, 2025
7	Adopting 3-713	December 12, 2025
8	Adopting 3-830 to 3-838	December 12, 2025
7	Amending 3-736 to 3-739	December 12, 2025
3	Amending 3-321	April 20, 2026

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TITLE 3
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3-101 Name and citation. This Title shall be known and may be cited as the Criminal Code, and references in this part shall refer to this Code unless another is clearly indicated. [TCR 86-79]

3-102 Effective date. This Code shall apply to all offenses as herein defined occurring on or after its effective date. If all or any part of any offense was committed prior to such date, the offense shall be governed by the prior existing law, except that defenses enumerated herein shall apply to all offenses tried after the effective date. [TCR 86-79]

3-103 Purpose and construction. The provisions of this Code shall be construed in accordance with these general principles and purposes:

1. To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;
2. To subject to public control persons whose conduct indicates that they are disposed to commit crimes;
3. To safeguard conduct that is without fault and which is essentially victimless in its effect from condemnation as criminal;
4. To give fair warning of the nature of the conduct declared to constitute an offense;
5. To differentiate on reasonable grounds between serious and minor offenses,
6. To prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons; and
7. To encourage in each case the least restrictive means which enables rehabilitation of the defendant. [TCR 86-79, 89-87]

3-104 No affect on civil liability. This Code shall not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action. [TCR 86-79]

3-105 Exclusiveness of offenses. No conduct constitutes an offense unless so declared by this Code, or by any other Tribal resolution or ordinance or Code provision or by federal law. [TCR 86-79]

3-106 Severability. If any provision of this Code or the application of any provision of this Code to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby. [TCR 86-79]

3-107 Terms, defined. As used in this Code, unless the context otherwise requires:

1. "Act" shall mean a bodily movement, and includes words and possession of property; make possible;
2. "Aid" or "assists" shall mean knowingly to give or lend money or credit to be used for, or to available, or to further activity thus aided or assisted;
3. "Benefit" shall mean any gain or advantage to the benefit person pursuant to the desire or consent of the beneficiary;
4. "Bodily injury" shall mean physical pain, illness, or any impairment of physical condition;
5. "Conduct" shall mean an action or omission and its accompanying state of mind, or where relevant, a series of acts and omissions;
6. "Deadly physical forces" shall mean force, the intended, natural, and probable consequence of which is to produce death, or which does, in fact, produce death;
7. "Deadly weapon" shall mean any firearm, knife, bludgeon, or other device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury;
8. "Deface" shall mean to alter the appearance of something by removing, distorting, adding to, or covering all or a part of the thing;
9. "Dwelling" shall mean a building or other thing which is used, intended to be used, or usually used by a person for habitation;
10. "Government" shall mean the Winnebago Tribe of Nebraska, the United States, the state, and any corporation or other entity established by law to carry out any governmental function;
11. "Governmental functions" shall mean any activity which a public servant is legally authorized to undertake on behalf of government;
12. "Motor vehicles" shall mean every self-propelled land vehicle, not operated upon rails, except self-propelled invalid chairs;
13. "Omission" shall mean a failure to perform an act as to which a duty of performance is imposed by law;
14. "Peace officers" shall mean any officer or employee of the Winnebago Tribe of Nebraska, the United States, or the state, authorized by law to make arrests;
15. "Pecuniary benefits" shall mean benefit in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain;
16. "Person" shall mean any natural person and where relevant a corporation or an unincorporated association;
17. "Public places" shall mean a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities;
18. "Public servants" shall mean any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses;
19. "Recklessly" shall mean acting with respect to a material element of an offense when any person disregards a substantial and unjustifiable risk that the material element exists or will result from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him/her, its disregard involves a

gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation;20. "Serious bodily injury" shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body;

21. "Tamper" shall mean to interfere with something improperly or to make unwarranted alterations in its condition;
22. "Thing of value" shall mean real property, contract rights, choices in action, services, and any rights of use or enjoyment connected therewith; and
23. "Voluntary act" shall mean an act performed as a result of effort or determination, and includes the possession of property if the actor was aware of his/her physical possession or control thereof for a sufficient period to have been able to terminate it. [TCR 86-79]

3-108 Prosecution for multiple offenses. 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/she may not, however, be convicted of more than one offense, if.

1. One offense is a lesser included offense of another offense where conviction was sought for both;
2. One offense consists only of a conspiracy, or any attempt to commit the other; or
3. Inconsistent findings of fact are required to establish the offenses; or
4. The offenses only differ in that one is defined to prohibit a specific kind of conduct and the other prohibits the same conduct generally; or
5. The offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the Code provides that specific periods of such conduct constitute separate offenses. [TCR 86-79]

3-109 Limitation. Except as provided in Section 3-105, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses are known to the prosecuting officer or to the state patrol, the Bureau of Indian Affairs police, or the Tribal police at the time of the commencement of the first trial and are within the jurisdiction of the Tribe. [TCR 86-79]

3-110 Separate trials. Upon application of any party and if justice so requires, the court may order that separate trials be held for two or more offenses based on the same conduct or arising from the same criminal episode. [TCR 86-79]

3-111 Lesser included offenses.

1. A defendant may be convicted of a lesser included offense different from the offense charged in a complaint without having been specifically charged with such included offense. An offense is so included when:
   A. It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or
   B. It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or
   C. It differs from the offenses charged 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.

2. The court must charge the jury with respect to a lesser included offense if so requested by the defendant if there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him/her of the lesser included offense. [TCR 86-79]

3-112 Double jeopardy.

1. If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode or the same facts as the original prosecution, a subsequent prosecution for the same or a different offense arising out of such episode or facts is barred if:
   A. The subsequent prosecution is for an offense that was or should have been tried in the former prosecution, unless such subsequent trial has been ordered as a separate trial by the judge; and
   B. The former prosecution:
      i. Resulted in acquittal; or
      ii. Resulted in conviction; or
      iii. Was improperly terminated; or
      iv. Was terminated by a final order of judgment for the defendant that has not been reversed, set aside or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.
2. There is an acquittal if the prosecution results in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of the lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.
3. There is a conviction if the prosecution resulted in a judgment of guilty that has not been reversed, set aside, or vacated; a verdict that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the court.
4. There is an improper termination of prosecution if the termination takes place before the verdict, if for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn in, or, if the matter was to be tried without a jury, after the first witness is sworn. However, termination of prosecution is not improper if:
   A. The defendant consents to the termination; or
   B The defendant waives his/her right to object to the termination; or
   C. The court finds and states for the record that the termination is necessary because:
      i. It is physically impossible to proceed with the trial in conformity to the law; or there is a legal defect in the proceeding not attributable to the prosecution that would make any judgment entered upon a verdict reversible as a matter of law; or
      ii. Prejudicial conduct in or out of the courtroom not attributable to the prosecution makes it impossible to proceed with the trial without injustice to the defendant or to the prosecution; or
      iii. The jury is unable to agree on the verdict; or
   D. A false statement of a juror on voir dire prevents a fair trial.
5. A subsequent prosecution of an offense is not barred if the former prosecution resulted in a judgment of a guilt held invalid in a subsequent proceeding on appeal, or on writ of habeas corpus.
6. Prosecution for an offense under this Code is not barred by virtue of the fact that the defendant could be or has been charged or convicted under 18 U.S.C.A., section 1153 (Major Crimes Act) or other federal law. [TCR 86-79]

3-113 Burden and presumption of innocence.

1. A defendant in a criminal proceeding is presumed to be innocent until each and every element of the offense against him/her if proved beyond a reasonable doubt. In the absence of such proof the defendant shall be acquitted.
2. By "element of the offense" is meant:
   A. The conduct, attendant circumstances or results of conduct included in the definition of the offense; plus
   B. The culpable mental state required (if any); but
   C. Jurisdiction is not an element of the offense nor is the statute of limitations or any other matter similarly unconnected with the harm or evil incident or conduct, sought to be prevented by the statute; these matters are established by a preponderance of the evidence. The existence of justification or excuse as defenses to the offense may also be established by a preponderance of the evidence. [TCR 86-79]

3-114 Negating defenses. The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either side, or unless the defense is an affirmative defense, and the defendant has presented evidence of such. [TCR 86-79]

3-115 Presumptions of fact. An evidentiary presumption established by this Code has the following consequences:

1. When the evidence of facts which support the presumption exist, the issue of the existence of the presumed fact must be submitted to the jury unless the court is satisfied that the evidence as a whole clearly negates the presumed fact.
2. In submitting the issue of the presumed fact to the jury, the court shall charge the jury that the presumed fact must on all evidence be proved beyond a reasonable doubt. And, that the law regards the facts that give rise to the presumed fact as evidence which, in effect, established the presumed fact at least by a preponderance of the evidence, but does not necessarily establish such fact beyond a reasonable doubt. [TCR 86-79]

TITLE 3
ARTICLE 2
PRINCIPLES OF CRIMINAL RESPONSIBILITY

3-201 Acts and omissions to act.
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3-201 Acts and omissions to act.

1. A person is not guilty of an offense unless his/her liability is based on conduct which includes a voluntary act or the omission to perform an act of which he/she is physically capable.
2. The following are not voluntary acts within the meaning of this Section:
   A. A reflex or convulsion;
   B. A bodily movement during unconsciousness or sleep;
   C. Conduct during hypnosis;
   D. A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.
3. Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:
   A. The omission is expressly made sufficient by the law defining the offense; or
   B. A duty to perform the omitted act is otherwise imposed by law.
4. Possession is an act, within the meaning of this Section, if the possessor knowingly procured or received the thing possessed or was aware of his/her control thereof for a sufficient period to have been able to determine hi/her possession. [TCR 86-79]

3-202 Culpability; general requirements. A person is not guilty of an offense unless he acted purposely, knowingly, or negligently, as the law may require, with respect to each element of the offense, or unless his/her acts constitute an offense involving strict liability.

1. Kinds of culpability defined are:
   A. Purposely: a person acts purposely with respect to a element of an offense:
      i. If the element involves the nature of his/her conduct or a result thereof, it is his/her conscious object to engage in conduct of that nature or to cause such a result; and
      ii. If the element involves the attendant circumstances, he/she is aware of the existence of such circumstances, or he/she believes or hopes that they exist.

B. Knowingly: a person acts knowingly with respect to an element of an offense when:
   i. If the element involves the nature of his/her conduct or the attendant circumstances, he/she is aware that his/her conduct is of that nature or that such circumstances exist; and
   ii. If the element involves a result of conduct, he/she is aware that it is practically certain that his/her conduct will cause such a result.

C. Recklessly: a person acts recklessly with respect to an element of an offense when he/she consciously disregards a substantial and unjustifiable risk that the element exists or will result from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him/her, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

D. Negligently: A person acts negligently with respect to an element of an offense when he/she should be aware of a substantial and unjustifiable risk that the element exists or will result from his/her conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his/her conduct and the circumstances known, reflects a want of that degree of care that a reasonable person would observe in the actor's situation.

E. Strict Liability: an element of an offense shall involve strict liability only when the definition of the offense or element clearly indicates a legislative purpose to impose strict liability for an element of the offense by use of the phrase strict liability or other terms of similar import, and when so used, no proof of a culpable mental state is required to establish the commission of the element or offense.

2. When the culpability sufficient to establish an element of an offense is not specifically prescribed, such element is established if a person acts purposely, knowingly, or recklessly with respect thereto.
3. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the elements thereof, such provisions shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.
4. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly, or recklessly. When recklessness suffices to establish an element, such element is also established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element is also established if a person acts purposely.
5. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negates the harm or evil sought to be prevented by the offense.
6. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is or should be aware of a high probability of its existence, unless he/she actually believes that it does not exist.
7. A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.
8. The knowledge that certain conduct constitutes an offense is not an element of the offense unless the definition so provides. The lack of understanding of the meaning or application of the law is not a defense to an offense unless so specified.
9. When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly, or negligently, its grade or degree shall be the lowest for which the

determinative kind of culpability is established with respect to any element of the offense. [TCR 86-79]

3-203 Causal relationship between conduct and result.

1. Conduct is the cause of a result when:
   A. It is an antecedent but for which the result in question would not have occurred; and
   B. The relationship between the cause and result satisfied any additional causal requirements imposed by this Code or the definition of the offense.
2. When a particular mental state is specified in conjunction with an element of an offense, proof of the existence of that element is not avoided because the actual result differed from that intended or that which was probable or likely under the circumstances either in kind or degree or because a different person or different property was injured or affected than that intended or than that which was probable or likely under the circumstances, unless such differences are sufficient without consideration of the mental state involved to constitute a defense or avoidance or unless such differences are of such magnitude that it would be unjust to find the element involved in light of such differences. [TCR 86-79]

3-204 Ignorance or mistake of fact.

1. The law provides that the actual state of mind which exists itself constitutes a defense when intent is an element of the offense. However, state of mind may be inferred from the acts of the defendant.
2. Although ignorance or mistake of fact will otherwise afford a defense to the offense charge, the defense is not available if the defendant would be guilty of another offense if the situation had been as he/she supposed, in which case the punishment available upon conviction shall not exceed that prescribed for the other offense. [TCR 86-79]

3-205 Liability for conduct of another.

1. A person is guilty of an offense if it is committed by his/her own conduct or by the conduct of another person for whom he/she is legally accountable, or both.
2. A person is legally accountable for the conduct of another person when:
   A. Acting with the kind of culpability that is sufficient for the commission of the offense, he/she causes an innocent or irresponsible person to engage in such conduct, or
   B. He/she is an accomplice of such other person in the commission of the offense.
3. A person is an accomplice of another person in the commission of an offense if:
   A. With the purpose of promoting or facilitating the commission of an offense, he/she (i) aids or agrees or attempts to aid such other person in planning or committing it; or (ii) having legal duty to prevent the commission of the offense, fails to make proper effort to do so.
   B. His/her conduct is expressly declared by law to establish his/her complicity.
4. 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/she acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.
5. A person who is legally incapable of committing a particular offense him/herself may be guilty thereof if it is committed by the conduct of another person for whom he/she is legally accountable, unless such liability is inconsistent with the purpose of his/her incapacity.
6. Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if.

A. He/she is a victim of that offense; or
B. The offense is so defined that his/her conduct is inevitably incident to its commission; or
C. He/she terminates his/her complicity prior to the commission of the offense, and
    i. Wholly deprives it of effectiveness in the offense; or gives timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

7. An accomplice may be convicted on proof of the commission of the offense and of his/her complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted of a different offense or degree of offense or has immunity from prosecution or has been acquitted.
8. Notwithstanding the above, no person shall be held legally accountable in any criminal proceeding for another's criminal conduct solely because of their familial or marital relationship with any person accused of criminal conduct. [TCR 86-79]

3-206 Corporation and unincorporated associations.

1. A person is legally accountable for any conduct he/she performs or causes to be performed in the name of a corporation or unincorporated association or in its behalf to the same extent as if it were performed in his/her own name or behalf.
2. Whenever a duty to act is imposed by law upon a corporation or unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless emission to perform the required act to the same extent as if the duty were imposed by law directly upon him/herself.
3. When a person is convicted of an offense by reason of his/her legal accountability for the conduct of a corporation or an unincorporated association, he/she is subject to the sentence authorized by law when a natural person is convicted of an offense of the class involved. [TCR 86-79]

3-207 Intoxication.

1. Except as provided in subsection (4) of this Section, intoxication of the actor is not a defense unless it negates an element of the offense, including, but not limited to, "specific intent."
2. When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of risk of which he/she would have been aware had he/she been sober, such lack of awareness is not a defense to the crime charged.
3. Intoxication does not, in itself, constitute a mental disease as that term is used in this Code.
4. Intoxication which (A) is not self induced, or (B) is the result of intoxication excessive in degree given the amount of intoxicant, to which result the actor does not know he/she is susceptible, is an affirmative defense if by reason thereof the defendant lacks substantial capacity either to appreciate the wrongfulness of his/her conduct or to conform his/her conduct to the requirements of the law.
5. "Intoxication" means a disturbance of mental or physical capabilities and/or capacities resulting from the introduction of substances into the body. Except as otherwise provided in the Code, intoxication must be proven by use of scientific testing equipment e.g., intoxilyzer. The arresting officer must have reasonable grounds to believe that such person has alcohol in his/her body, or has committed a moving traffic violation, or has been involved in a traffic accident. [TCR 86-79]

3-208 Duress.

1. Except as herein otherwise provided, it is an affirmative defense that the actor engaged in conduct constituting an offense because he/she was coerced to do so by the use of, or threat to use, unlawful force against his/her person or the person of another, which a law-abiding person of reasonable firmness in his/her situation would have been unable to resist.
2. The defense provided in this Section is unavailable to a person who intentionally, knowingly, or recklessly places him/herself in a situation in which it is probable that he/she will be subject to duress.
3. It is not a defense that a spouse acted on the command of his/her spouse, unless they acted under coercion as would establish a defense under subsection (1) above. No presumption of duress arises from the mere presence of one spouse at the time the other acted.
4. The defense provided in this Section is unavailable in any situation where the coerced conduct threatens to cause death or serious bodily harm to some person other than the actor or does in fact cause such harm. [TCR 86-79]

3-209 Consent.

1. The consent of the victim to conduct constituting an offense or to the result thereof is a defense if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.
2. When conduct constitutes an offense because it threatens to cause or causes bodily harm, consent to such conduct or to the infliction of such harm is a defense only if:
   A. The bodily harm consented to or threatened by the conduct consented to is not serious; or
   B. The conduct and the harm are reasonably foreseeable hazards of joint participants in a lawful activity; or
   C. The consent establishes a justification for the conduct under this Code.
3. Unless otherwise provided by the Code or the law defining the offense, assent does not constitute consent if:
   A. It is given by a person who is legally incompetent to authorize the conduct constituting an offense; or
   B. It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known to the actor to be unable to make a reasonable judgment as to the nature or the harmfulness of the conduct constituting the offenses; or
   C. It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or
   D. It is induced by force, duress, or deception. [TCR 86-79]

3-210 Entrapment.

1. A public law enforcement officer or official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he/she induces or encourages another person to engage in conduct constituting an offense by either:
   A. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
   B. 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 in the absence of such inducement.

2. The defense afforded by this Section shall be 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.
3. Except as provided in (2) above, a person prosecuted for an offense shall be acquitted if he/she proves by a preponderance of the evidence that his/her conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the court and not by jury. Evidence of past offenses shall be admissible only if the defendant takes the stand in his/her own defense. [TCR 86-79]

3-211 Mental disease or defect.

1. In any prosecution for an offense, it shall be a defense that the defendant, at the time of the conduct upon which the prosecution is based, as a result of mental disease or defect lacked substantial capacity either to appreciate the wrongfulness of his/her conduct or to conform his/her conduct to the requirement of the law.
2. As used in this Section, the terms mental diseases or defect do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
3. The defense afforded by this Section shall not be available unless notice of intent to rely on such defense is given at least two weeks before trial. By giving such notice, the defendant will be deemed to have consented to be examined for the prosecution by not more than two professional medical or other experts for the purpose of ascertaining the state of defendant's mental health.
4. No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him/her or to assist in his/her own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.
5. The defendant shall have the burden of proving by a preponderance of the evidence that he/she has a mental disease or defect within the meaning of this Section. [TCR 86-79]

3-212 Justification; terms defined. As used in Sections 3-212 to 3-222 unless the context otherwise requires:

1. "Unlawful forces" shall mean force, including confinement, which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense such as the absence of intent, negligence, or mental capacity, duress, youth, or diplomatic status; not amounting to a privilege to use the force;
2. "Assent" shall mean consent, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm;
3. "Deadly force" shall mean force which the actor uses with the purpose of causing or which he/she knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he/she will use deadly force if necessary, shall not constitute deadly force;
4. "Actor" shall mean any person who uses force in such a manner as to attempt to invoke the privileges and immunities afforded him/her by Sections 3-213 to 3-222, except any duly authorized law enforcement officer of the state, or the Winnebago Tribe of Nebraska, or the United States.
5. "Dwelling" shall mean any building or structure, though movable or temporary, or a portion thereto, which is for the time being the actor's home or place of lodging; and

6. "Public servants" shall mean any elected or appointed officer or employee of the Winnebago Tribe of Nebraska, the United States, or the state, except any duly authorized law enforcement officer of the state , the Winnebago Tribe of Nebraska, or the United States. [TCR 86-79]

3-213 Justification; choice of evils.

1. Conduct which the actor believes to be necessary to avoid a harm or evil to him/her or to another is justifiable if:
   A. The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged;
   B. Neither Section 3-213 to 3-222, nor other law defining the offense provides exceptions for defenses dealing with the specific situation involved; and
   C. A legislative purpose to exclude the justification claimed does not otherwise plainly appear.
2. When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his/her conduct, the justification afforded by this Section is unavailable in prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability. [TCR 86-79]

3-214 Public duty; execution.

1. Except as provided in subsection (2) of this Section, conduct is justifiable when it is required or authorized by:
   A. The law defining the duties or functions of a public officer or the assistance to be rendered to such officer in the performance of his/her duties;
   B. The law governing the execution of legal process;
   C. The judgment or order of a competent court or tribunal;
   D. The law governing the armed services or the lawful conduct of war; or
   E. Any other provision of law imposing a public duty.
2. Sections 3-213 to 3-222, shall apply to:
   A. The use of force upon or toward the person of another for any of the purposes dealt with in such sections; and
   B. The use of deadly force for any purpose, unless the use of such force is otherwise expressly authorized by law or occurs in the lawful conduct of war.
3. The justification afforded by subsection (1) of this Section shall apply:
   A. When the actor believes his/her conduct to be required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and
   B. When the actor believes his/her conduct to be required or authorized to assist a public officer in the performance of his/her duties, notwithstanding that the officer exceeded this legal authority. [TCR 86-79]

3-215 Use of force; self-protection.

1. Subject to the provisions of this Section and of Section 3-220, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting him/herself against the use of unlawful force by such other person on the present occasion.

2. The use of such force is not justifiable under this Section to resist an affect which the actor known is being made by a peace officer, although the arrest is unlawful.
3. The use of such force is not justifiable under this Section to resist force by the occupier or possessor of property or by another person on his/her behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:
   A. The actor is a public officer acting in the performance of his/her duties or person lawfully assisting him/her therein or a person making or assisting in a lawful arrest;
   B. The actor has been unlawfully dispossessed of the property and is making are entry or recapture justified by Section 3-217; or
   C. The actor believes that such force is necessary to protect him/herself against death or serious bodily harm.
4. The use of deadly force shall not be justifiable under this Section unless the actor believes that such force is necessary to protect him/herself against death, serious bodily harm, kidnapping or sexual intercourse compelled by force or threat, nor is it justifiable if:
   A. The actor, with the purpose of causing death or serious bodily harm, provoked the use of force against him/herself in the same encounter; or
   B. The actor knows that he/she can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he/she abstain from any action which he/she has no duty to take, except that:
      i. The actor shall not be obliged to retreat from his/her dwelling or place of work, unless he/she was the initial aggressor or is assailed in his/her place of work by another person whose place of work the actor knows it to be; and a public officer justified in using force in the performance of his/her duties or person justified in using force in his/her assistance or a person justified in using force in making an arrest or preventing an escape shall not be obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.
5. Except as required by subsections (3) and (4) of this Section, a person employing protective force may estimate the necessity thereof under the circumstance as he/she believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he/she has no legal duty to do, or abstaining from any lawful action.
6. The justification afforded by this Section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she safely can do so, unless the person confined has been arrested on charge of crime. [TCR 86-79]

3-216 Use of force; protection of other persons.

1. Subject to the provisions of this Section and of Section 3-210, the use of force upon or toward the person of another is justifiable to protect a third person when:
   A. The actor would be justified under Section 3-215, in using such force to protect him/herself against the injury he/she believes to be threatened to the person whom he/she seeks to protect;
   B. Under the circumstances as the actor believes them to be, the person whom he/she seeks to protect would be justified in using such protective force; and

C. The actor believes that his/her intervention is necessary for the protection of such other person.

2. Notwithstanding subsection (1) of this Section:
   A. When the actor would be obliged under Section 3-215 to retreat, to surrender the possession of a thing or to comply with a demand before using force in self-protection, he/she shall not be obliged to do so before using force for the protection of another person, unless he/she knows that he/she can thereby secure the complete safety of such other person;
   B. When the person whom the actor seeks to protect would be obliged under Section 3-215 to retreat, to surrender the possession of a thing or to comply with a demand if he/she knew that he/she could obtain complete safety by so doing, the actor is obliged to try to cause him/her to do so before using force in his/her protection if the actor knows that he/she can obtain complete safety in that way; and
   C. Neither the actor nor the person whom he/she seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in his/her own. [TCR 86-79]

3-217 Use of force; protection of property

1. Subject to the provisions of this Section and of Section 3-220, the use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:
   A. To prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property; provided, that such land or movable property is, or is believed by the actor to be, in his/her possession or in the possession of another person for whose protection he/she acts; or
   B. To effect an entry or reentry upon land or to retake tangible movable property; provided, that the actor believes that he/she or the person by whose authority he/she acts or a person from whom he/she or such other person derives title was unlawfully dispossessed of such land or movable property and is entitled to possession and provided that:
      i. The force is used immediately or on fresh pursuit after such dispossession; or
      ii. The actor believes that the person against whom he/she uses force has no claim of right to the possession of the property and, in the case of land, the circumstances, as the actor believes them to be, are of such urgency that it would be an exceptional hardship to postpone the entry or reentry until a court order is obtained.
2. For the purposes of subsection (1) of this Section:
   A. A person who had parted with the custody of property to another who refuses to restore it to him/her is no longer in possession, unless such property is movable and was and still is located on land in his/her possession;
   B. A person who has been dispossessed of land does not regain possession thereof merely by setting foot there on; and
   C. A person who has a license to use or occupy real property is deemed to be in possession thereof except against the licenser acting under claim of right.
3. The use of force is justifiable under this Section only if the actor first requests the person against whom such force is used to desist from his/her interference with the property, unless the actor believes that:
   A. Such request would be useless;
   B. It would be dangerous to him/herself or another person to make the request; or

C. Substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.

4. The use of force to prevent or terminate at trespass is not justifiable under this Section if the actor knows that dire exclusion of the trespasser will expose him/her to substantial danger of serious bodily harm.

5. The use of force to prevent an entry or reentry upon land or the recapture of movable property is not justifiable under this Section although the actor believes that such reentry or recapture is unlawful, if:
   A. The reentry or recapture is made by or on behalf of a person who was actually dispossessed of the property; and
   B. It is otherwise justifiable under subsection (l)(B) of this Section.

6. The use of deadly force is not justifiable under this Section unless the actor believes that the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either:
   A. Has employed or threatened deadly force against or in the presence of the actor; or
   B. The use of force other than deadly force to prevent the commission or the consummation of the crime would expose the actor or another in his/her presence to substantial danger of serious bodily harm.

7. The justification afforded by this Section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she can do so with safety to the property, unless the person confined has been arrested on a charge of crime.

8. The justification afforded by this Section extends to the use of advice for the purpose of protecting property only if:
   A. Such device is not designed to cause or known to create a substantial risk of causing death or serious bodily harm;
   B. Such use of the particular device to protect such property from entry or trespass is reasonable under the circumstances, as the actor believes them to be; and
   C. Such 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.

9. The use of force to pass a person whom the actor believes to be purposely or knowingly and unjustifiably obstructing the actor from going to a place to which he/she may lawfully go is justifiable if:
   A. The actor believes that the person against whom he/she uses force has no claim of right to obstruct the actor;
   B. The actor is not being obstructed from entry or movement on land which he/she knows to be in the possession or custody of the person obstructing him/her, or in the possession or custody of another person by whose authority the obstructer acts, unless the circumstances, as the actor believes them to be, are of such urgency that it would not be reasonable to postpone the entry or movement on such land until a court order is obtained; and
   C. The force used is not greater than would be justifiable if the person obstructing the actor were using force against him/her to prevent his/her passage. [TCR 86-79]

3-218 Use of force; law enforcement.

1. Subject to the provisions of this Section and of Section 3-220, the use of force upon or toward the person of another is justifiable when the actor is making or assisting an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

2. The use of force is not justifiable under this Section unless:
   A. The actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and
   B. When the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.
3. The use of deadly force is not justifiable under this Section unless:
   A. The arrest is for a criminal offense;
   B. Such person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he/she believes to be authorized to act as a peace officer;
   C. The actor believes that the force employed creates no substantial risk of injury to innocent persons; and the actor reasonably believes that: force; or the crime for which the arrest is made involved conduct including the use or threatened use of deadly.
      i. There is a substantial risk that the person to be arrested will cause death or serious bodily harm if this apprehension is delayed.
4. The use of reasonable force to prevent the escape of an arrested person from custody is justifiable. A guard or other person authorized to act as a peace officer is justified in using reasonable force which he/she believes to be immediately necessary to prevent the escape of a person from jail, prison, or other institution for the detention of persons charged with or convicted of a crime.
5. A private person who assists another private person in effecting an unlawful arrest, or who assists a peace officer in effecting an unlawful arrest, is justified in using force which he/she would be justified in using if the arrest were lawful, if:
   A. He/she reasonably believes the arrest is lawful; and
   B. The arrest would be lawful if the facts were as he/she believes them to be.
6. The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily harm upon him/herself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:
   A. Any initiation imposed by the other provisions of Sections 3-212 to 3-222 on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and
   B. The use of deadly force is not in any event justifiable under this subsection unless the actor reasonably believes that there is a substantial risk that the person who he/she seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons.
7. The justification afforded by subsection (6) of this Section extends to the use of confinement as preventive force only if the actor takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she safely can do so, unless the person confined has been arrested on a charge of crime. [TCR 86-79, 89-87]

3-219 Use of force by person with special responsibility for care, discipline, or safety of others. The use of force upon or toward the person of another is justifiable if:

1. The actor is the parent or guardian or other person similarly responsible for the general care and supervision if a minor or a person acting at the request of such parent, guardian or other responsible person and:

A. Such force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his/her misconduct; and

B. Such 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 or gross degradation; or

2. The actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and:

A. The actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and

B. The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under subdivision (1)(B) of this Section;

3. The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:

A. Such force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his/her misconduct, or, when such incompetent person is in a hospital or other institution for his/her care and custody, for the maintenance of reasonable discipline in such institution; and

B. Such force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme or unnecessary pain, mental distress, or humiliation;

4. The actor is a doctor or other therapist or a person assisting him/her at his/her direction, and:

A. Such force is used for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and

B. Such treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his/her parent or guardian or other person legally competent to consent in his/her behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent;

5. The actor is a jailer or other authorized official of a jail and:

A. He/she believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution, unless his/her belief in the lawfulness of the rule or procedure sought to be enforced is erroneous and his/her error is the result of ignorance or mistake as to the provisions of Sections 3-212 to 3-222, any other provisions of the criminal law, or the law governing the administration of the institution;

B. The nature or degree of force used is not forbidden by Sections 3-214 to 3-215; and

C. If deadly force is used, its use is otherwise justifiable under Sections 3-212 to 3-222;

6. The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train or other carrier or in a place where others are assembled, and:

A. He/she believes that the force used is necessary for such purpose; and

B. Such force used is not designed to cause or known to create a substantial risk of causing death, bodily harm, or extreme mental distress. [TCR 86-79]

3-220 Mistake of law; reckless or negligent use of force.

1. The justification afforded by Sections 3-215 to 3-218, is unavailable when:

A. The actor's belief in the unlawfulness of the force or conduct against which he/she employs protective force or his/her belief in the lawfulness of an arrest which he/she endeavors to effect by force is erroneous; and

B. His/her error is the result of ignorance or mistake as to the provisions of Sections 3-212 to 3-222, any other provision of the criminal law, or the law governing the legality of an arrest or search.

2. When the actor believes that the use of force toward another person is justifiable (as under Sections 3-216 to 3-219), but, the actor is reckless or negligent in having such belief, the justification afforded by those sections is unavailable in a prosecution or an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

3. When the actor is justified under Sections 3-214 to 3-219 in using force upon or toward the person of another but he/she recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons. [TCR 86-79]

3-221 Justification in property crimes. Conduct involving the appropriation, seizure or destruction of, damage to, intrusion on or interference with property is justifiable under circumstances which would establish a defense of privilege in a civil action based thereon, unless:

1. Sections 3-212 to 3-222, or the law defining the offense deals with the specific situation involved; or

2. A legislative purpose to exclude the justification claimed otherwise plainly appears. [TCR 86-79]

3-222 Justification an affirmative defense; civil remedies unaffected.

1. In any prosecution based on conduct which is justifiable under Sections 3-212 to 3-222, justification is an affirmative defense.

2. The fact that conduct is justifiable under Sections 3-212 to 3-222, does not abolish or impair any remedy for such conduct which is available in any civil action. [TCR 86-79]

TITLE 3
ARTICLE 3
CRIMES AGAINST PROPERTY

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3-301 Building defined. As used in this Article, unless the context otherwise requires, building shall mean a structure which has the capacity to contain, and is designed for the shelter of man, animals, or property, and includes ships, trailers, sleeping cars, aircraft, or other vehicles or places adapted for overnight accommodations of persons or animals, or for carrying on of business therein, whether or not a person or animal is actually present. If a building is divided into units for separate occupancy, any unit not occupied by the defendant is a building of another. [TCR 86-79]

3-302 Arson, first degree; penalty.

1. A person commits arson in the first degree if he/she intentionally damages a building by starting a fire or causing an explosion when another person is present in the building at the time and either:
   a. The actor knows that fact; or

b. The circumstances are such as to render the presence of a person therein a reasonable probability.

2. A person commits arson in the first degree if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or criminal mischief when another person is present in the building at the time and either:
   a. The actor knows that fact; or
   b. The circumstances are such as to render the presence of a person therein a reasonable probability.
3. Arson in the first degree is a Class I offense. [TCR 86-79]

3-303 Arson, second degree; penalty.

1. A person commits arson in the second degree if he/she intentionally damages a building by starting a fire or causing an explosion or if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or criminal mischief.
2. The following affirmative defenses may be introduced into evidence upon prosecution for a violation of this Section:
   a. No person other than the accused has a security or proprietary interest in the damaged building, or, if other persons have such interests, all of them consented to his/her conduct; or
   b. The accused's sole intent was to destroy or damage the building for a lawful and proper purpose.
3. Arson in the second degree is a Class II offense. [TCR 86-79]

3-304 Arson, third degree; penalty.

1. A person commits arson in the third degree if he/she intentionally sets fire to, burns, causes to be burned, or by the use of any explosive, damages or destroys, any property of another without his/her consent, other than a building or occupied structure.
2. Arson in the third degree is a Class III offense. [TCR 86-79]

3-305 Burning to defraud insurer; penalty. Any person who, with the intent to deceive or harm an insurer, sets fire to or burns or attempts so to do, or who causes to be burned, or who aids, counsels or procures the burning of any building or personal property, of whatsoever class or character, whether the property is of him/herself or of another, which shall at the time be insured by any person, company or corporation against loss or damage by fire, commits a Class I offense. [TCR 86-79]

3-306 Burglary; penalty.

1. A person commits burglary if such person willfully, maliciously, and forcibly breaks and enters any real estate or any improvements erected thereon with intent to commit any criminal offense, or with intent to steal property of any value.
2. Burglary is a Class I offense. [TCR 86-79]

3-307 Possession of burglary tools; penalty.

1. A person commits the offense of possession of burglary tools if:

A. He/she knowingly possesses any explosive, tool, instrument, or other article adapted, designed, or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking; and

B. He/she intends to use the explosive, tool, instrument, or article, or knows some person intends ultimately to use it, in the commission of an offense of the nature described in subdivision (1)(A) of this Section.

2. Possession of burglary tools is a Class III offense. [TCR 86-79, 89-87]

3-308 Breaking and entering; penalty.

1. It shall be unlawful to break into by any force whatsoever and enter in any manner any dwelling, building, office, room, pol-do stable, garage, tent, vessel, apartment, tenement, chee-poda-ke, shop, warehouse, store, mill, barn, railroad car, airplane, motor vehicle, trailer or semi-trailer, mobile home, trunk, drawer, box, coin operated machine, or similar structure, object, or device of another without consent with the intent to:
   A. Cause annoyance or injury to any person therein; or
   B. Cause damage to any property therein; or
   C. Commit any offense therein; or
   D. Steal; or
   E. Cause, or does actually cause, whether intentionally or recklessly, fear for the safety or another.
2. Breaking and entering is Class III offense. [TCR 86-79]

3-309 Theft; terms defined. As used in Sections 3-309 to 3-319, unless the context otherwise requires:

1. "Deprive" shall mean:
   A. To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or
   B. To dispose of the property of another so as to create a substantial risk that the owner will not recover it in the condition it was when the actor obtained it.
2. "Financial institution" shall mean a bank, insurance company, credit union, building and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;
3. "Movable property" shall mean property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby may have no physical location. Immovable property shall mean all other property.
4. "Obtain" shall mean:
   A. In relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or
   B. In relation to labor or service, to secure performance thereof.
5. "Property" shall mean anything of value, including real estate, tangible and intangible personal property, contract rights, credit cards, charge plates, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer, chooses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power;
6. "Property of another" shall mean property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest

in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement;

7. "Receiving" shall mean acquiring possession, control or title, or lending on the security of the property, and
8. "Stolen" shall mean property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of Section 3-318. [TCR 86-79]

3-310 Consolidation of theft offenses. Conduct denominated theft in Sections 3-309 to 3-319 constitutes a single offense embracing the separated offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under Sections 3-309 to 3-319, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of the court to insure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise. [TCR 86-79]

3-311 Theft by unlawful taking or disposition.

1. A person is guilty of theft if he/she takes, or exercises control over, movable property of another with the intent to deprive him/her thereof.
2. A person is guilty of theft if he/she transfers immovable property of another or any interest therein with the intent to benefit him/herself or another not entitled thereto.
3. For the purposes of this Section, it shall be presumed that a lessee's failure to return leased or rented movable property to the lessor after the expiration of a written lease or written rental agreement is done with intent to deprive if such lessee has been mailed notice by certified mail that such lease or rental agreement has expired and he/she has failed within ten (10) days after such notice to return such property. [TCR 86-79]

3-312 Theft by shoplifting: penalty.

1. A person commits the crime of theft by shoplifting when he/she, with the intent of appropriating merchandise to his/her own use without paying for the same or to deprive the owner of possession of such property or its retail value, in whole or in part, does any of the following:
   A. Conceals or takes possession of the goods or merchandise of any store or retail establishment;
   B. Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;
   C. Transfers the goods or merchandise of any store or retail establishment from one container to another;
   D. Interchanges the label or price tag from one item of merchandise with a label or price tag for another item of merchandise; or
   E. Causes the cash register or other sales recording device to reflect less than the retail price of the merchandise. [TCR 86-79]

3-313 Theft by deception. A person commits theft if he/she obtains property of another by deception. A person deceives if he/she intentionally:

1. Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he/she did not subsequently perform the promise; or
2. Prevents another from acquiring information which would affect his/her judgment of transaction; or
3. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he/she stands in a fiduciary or confidential relationship; or
4. Uses a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer:
   A. Where such instrument has been stolen, forged, revoked or canceled, or where for any other reason its use by the actor is unauthorized; or
   B. Where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his/her use of the instrument. The word deceive does not include falsity as to matter having no pecuniary significance, or statements unlikely to deceive ordinary persons in the group addressed. [TCR 86-79]

3-314 Theft by extortion.

1. A person commits theft if he/she obtains property of another by threatening to:
   A. Inflict bodily injury on anyone or commit any other criminal offense; or
   B. Accuse anyone of a criminal offense; or
   C. Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his/her credit or business repute; or
   D. Take or withhold action as an official, or cause an official to take or withhold action; or
   E. Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not received for the benefit of group in whose interest the actor purports to act; or
   F. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.
   G It is an affirmative defense to prosecution based on subdivision (1)(B), (1)(C), or (1)(D) of this Section that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services. [TCR 86-79]

3-315 Theft of property lost, mislaid, or delivered by mistake; penalty. A person who comes into control of property of another that he/she knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits theft if, with intent to deprive the owner thereof, he/she fails to take reasonable measures to restore the property to a person entitled to have it. Any person violating the provisions of this Section shall upon conviction thereof, be punished by the penalty prescribed in the next lower classification below the value of the item lost, mislaid, or delivered under mistake pursuant to Section 3-319. [TCR 86-79]

3-316 Theft of services; penalty.

1. A person commits theft if he/she obtains services which he/she knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. Services include labor, professional service, telephone service, electric service, other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.
2. A person commits theft if having control over the disposition of services of others, to which he/she is not entitled, he/she diverts such services to his/her own benefit or to the benefit of another not entitled thereto.
3. Any person who makes or possesses any device, instrument, apparatus, or equipment designed or which can be used to obtain telecommunications service fraudulently or to conceal from any supplier of telecommunications service or from any lawful authority the existence or place of origin or of destination of any telecommunication; or who sells, gives or otherwise transfers to another, or offers or advertises for sale, any such device, instrument, apparatus, or equipment, or plans or instructions for making or assembling the same, under circumstances evincing an intent to use or employ such device, instrument, apparatus, or equipment, or to allow the same to be used or employed, for a purpose described in this subsection, or knowing or having reason to believe that the same is intended to be used, or that the plans or instructions are intended to be used, for making or assembling such device, instrument, apparatus, or equipment is guilty of a Class II offense. [TCR 86-79]

3-317 Unauthorized use of a propelled vehicle; affirmative defense; penalty.

1. A person commits the offense of unauthorized operation of a propelled vehicle if he/she intentionally exerts unauthorized control over another's propelled vehicle by operating the same without the owners consent.
2. Propelled vehicle shall mean an automobile, airplane, motorcycle, motorboat, or other self-propelled vehicle.
3. It shall be an affirmative defense to a prosecution under this Section that the defendant reasonably believes the owner would have authorized the use had he/she known of it.
4. In addition to the penalty for a Class III offense, the offender shall be required to make restitution in the amount of damages sustained while the vehicle was in the custody, possession, or under the control of the offender. [TCR 86-79]

3-318 Theft by receiving stolen property. A person commits theft if he/she receives, retains, or disposes of stolen movable property of another knowing that it has been stolen, or believing that it has been stolen, unless the property is received, retained, or disposed with intention to restore it to the owner. [TCR 86-79]

3-319 Grading of theft offenses.

1. Theft constitutes a Class I offense when the value of the thing involved is over five thousand dollars ($5,000.00).
2. Theft constitutes a Class II offense when the value of the thing involved is one thousand dollars ($1,000.00) or more, but not over five thousand dollars ($5,000.00).

3. Theft constitutes a Class III offense when the value of the thing involved is less than one thousand dollars ($1,000.00). [TCR 86-79, 89-87]

3-320 Criminal mischief; penalty.

1. A person commits criminal mischief if he/she:
   A. Damages property of another intentionally or recklessly; or
   B. Intentionally tampers with property of another so as to endanger person or property; or
   C. Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat.
2. Criminal mischief is a Class I offense if the actor intentionally causes pecuniary loss in excess of five thousand dollars ($5,000.00), or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service.
3. Criminal mischief is a Class II offense if the actor intentionally causes pecuniary loss in excess of one thousand dollars ($1,000.00), but not over five thousand dollars ($5,000.00).
4. Criminal mischief is a Class III offense if the actor intentionally or recklessly causes pecuniary loss in an amount of one thousand dollars ($1,000.00) or less, or if his/her action results in no pecuniary loss. [TCR 86-79, 89-87]

3-321 Criminal trespass; penalty.

1. A person commits the offense of criminal trespass if, knowing that he/she is not licensed or privileged to do so, he/she enters or secretly remains in any building or occupied structure, or any separately secured or occupied portion thereof; or
2. If, knowing he/she is not licensed or privileged to do so, he/she enters or remains in any place as to which notice against trespass is given by:
   A. Actual communication to the actor; or
   B. Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
   C. Fencing or other enclosure manifestly designed to exclude intruders.
3. A person banished by the Tribal Council or Court Order who enters onto the Winnebago Reservation shall constitute criminal trespass:
   A. Unless such entry is made pursuant to a valid Limited Authorization issued by a duly authorized Approving Official and all conditions for said Limited Authorization are strictly followed;
   B. Prior to entry onto the Reservation, the banished person shall cause to be served on the Police Department and have on his/her person at all times while on the Reservation a copy of the Limited Authorization.
4. "Banishment" means a civil sanction imposed by the Tribal Council or Tribal Court that requires an individual to leave the Tribe's Reservation and prohibits that individual from returning, either permanently or for a specified period of time, absent authorization:
5. The Tribal Council Chairperson or his/ her designee is authorized for good cause to issue a Limited Authorization to enter the Reservation for specific purposes, locations, dates, and times; pursuant to policy and regulations the Council adopts, and
6. Criminal trespass is a Class III offense. [TCR 86-79, 89-87, 26-120]

3-322 REPEALED. [TCR 86-79, 89-87]

3-323 Criminal trespass; affirmative defenses. It is an affirmative defense to prosecution under Section 3-321 that:

1. A building or occupied structure involved in an offense under Section 3-321 was abandoned; or
2. The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or
3. The actor reasonably believed that the owner of the premises or other person empowered to license access thereto would have licensed him/her to enter or remain; or
4. The actor was in the process of navigating or attempting to navigate with a non-powered vessel any stream or river on this reservation and found it necessary to portage or otherwise transport the vessel around any fence or obstructions in such stream or river. [TCR 86-79]

3-324 Littering of public and private property; penalty.

1. Any person who deposits, throws, discards, or otherwise disposes of any litter on any public or private property, or in any waters, commits the offense of littering unless:
   A. Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or
   B. Such person is authorized by the owner of the private property to use such property for such purpose.
2. The word litter as used in this Section shall mean all waste material susceptible of being dropped, deposited, discarded, or otherwise disposed of by any person upon any property on the reservation, but does not include wastes of primary processes of farming or manufacturing. Waste material as used in this subsection shall mean any material appearing in a place or in a context not associated with that material's function or origin.
3. Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle or watercraft in violation of this Section, the operator of such motor vehicle or watercraft commits the offense of littering.
4. Littering is an infraction. [TCR 86-79, 89-87]

3-325 Forgery; terms defined. As used in Sections 3-325 to 3-334, unless the context otherwise requires:

1. "Written instrument" shall mean any paper, document, or other instrument containing written or printed matter used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, trade-mark, or any evidence or symbol of value, right, privilege, or identification which is capable of being used to the advantage or disadvantage of some person;
2. "Complete written instrument" shall mean a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof;
3. Incomplete written instruments shall mean one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
4. "To falsely make written instruments" shall mean to make or draw a written instrument, whether complete or incomplete, which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, he/she did not authorize the making or the drawing thereof;
5. "To falsely complete a written instrument" shall mean to transform an incomplete written instrument into a complete one by adding, inserting, or changing matter without the authority of anyone entitled to grant such authority, so that the complete written instrument falsely appears or

purports to be in all respects an authentic creation of or fully authorized by its ostensible maker;

6. "To falsely alter a written instruments" shall mean to change a written instrument without the authority of anyone entitled to grant such authority, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or by any other means, so that such instrument in its thus altered form falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker;
7. "Forged instrument" shall mean a written instrument which has been falsely made, completed, endorsed or altered. The terms forgery and counterfeit and their variants are intended to be synonymous in legal effect as used in this Article;
8. "Possess" shall mean to receive, conceal, or otherwise exercise control over; and
9. "Utter" shall mean to issue, authenticate, transfer, sell, transmit, present, use, pass, or deliver, or to attempt or cause such uttering. [TCR 86-79]

3-326 Forgery, first degree; penalty. A person commits forgery in the first degree if, with intent to deceive or harm, he/she falsely makes, completes, endorses, alters, or utters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

A. Part of an issue of money, stamps, securities, or other valuable instruments issued by a government or governmental agency; or
B. Part of an issue of stock, bonds, bank notes, or other instruments representing interests in or claims against a corporate or other organization or its property. [TCR 86-79, 89-87]

3-327 Forgery, second degree; forgery penalties.

1. Whoever, with intent to deceive or harm, falsely makes, completes, endorses, alters, or utters any written instrument which is or purports to be, or which is calculated to become or to represent if completed, a written instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, commits forgery in the second degree.
2. Forgery is a Class I offense when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is more than five thousand dollars ($5,000.00).
3. Forgery is a Class II offense when the face value or amount of proceeds exceeds one thousand dollars ($1,000.00) but is not over five thousand dollars ($5,000.00).
4. Forgery is a Class III offense when the face value or amount of proceeds is one thousand dollars ($1,000.00) or less. [TCR 86-79, 89-87]

3-328 Criminal possession of a forged instrument; penalty.

1. Whoever, with knowledge that it is forged and with intent to deceive or harm, possesses any forged instrument covered by Section 3-326 or 3-327 commits criminal possession of a forged instrument shall be penalized according to Section 3-327 and the value of the instrument or proceeds of a purported instrument. [TCR 86-79, 89-87]

3-329 Criminal possession of forgery devices; penalty.

1. A person commits criminal possession of forgery devices when:
   A. He/she makes or possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments; or
   B. He/she makes or possesses any device, apparatus, equipment, or article capable of or

adaptable to a use specified in subsection (1)(A) of this Section, with intent to use it him/herself, or to aid or permit another to use it, for purposes of forgery; or

C. Illegally possesses a genuine plate, die or other device used in the production of written instruments, with intent to deceive or harm.

2. Criminal possession of forgery devices is a Class II offense. [TCR 86-79]

3-330 Criminal simulation; penalty.

1. A person commits a criminal simulation when:
   A. With intent to deceive or harm, he/she makes, alters, or represents an object in such fashion that it appears to have an antiquity, rarity, source or authorship, ingredient, or composition which it does not in fact have; or
   B. With knowledge of its true character and with intent to use to deceive or harm, he/she utters, misrepresents, or possesses any object so simulated.
2. Criminal simulation is a Class II offense. [TCR 86-79]

3-331 Criminal impersonation; penalty.

1. A person commits the crime of criminal impersonation if he/she:
   A. Assumes a false identity and does an act in his/her assumed character with intent to gain a pecuniary benefit for him/herself or another, or to deceive or harm another; or
   B. Pretends to be representative of some person or organization and does an act in his/her pretended capacity with the intent to gain a pecuniary benefit for him/herself or another, and to deceive or harm another; or
   C. Carries on any profession, business, or any other occupation without a license, certificate, or other authorization required by law.
2. Criminal impersonation is a Class I offense. [TCR 86-79]

3-332 Issuing a bad check; penalty.

1. Whoever obtains property, services, or present value of any kind by issuing or passing a check or similar signed order for the payment of money, knowing that he/she has no account with the drawee at the time the check or order is issued, or, if he/she has such an account, knowing that he/she does not have sufficient funds in, or credit with, the drawee for the payment of such check or order in full upon its presentation, commits the offense of issuing a bad check.
2. Upon request of the depositor and the payment of seven dollars ($7.00) for each check, draft, order or assignment of funds, the Tribal prosecutor shall mail notice to the person issuing the check or order at his/her last known address that such check or order has been returned to the depositor. The seven dollar ($7.00) payment shall be payable to the Tribal Court.
3. In any prosecution where the person issuing the check has an account with the drawee, he/she shall be presumed to have known that he/she did not have sufficient funds in, or credit with, the drawee for the payment of such check or order in full upon its presentation, if, within thirty days after issuance of the check or order, he/she has been notified that the drawee refused payment for lack of funds and he/she has failed within ten days after such notice to make the check good or has failed to make the check good within ten days of notice by mail from the Tribal prosecutor.
4. Offenses under this Section shall be classified as follows:
   A. Issuing a bad check is a Class I offense when the value of the insufficient amount is over five thousand dollars ($5,000.00).
   B. Issuing a bad check is a Class II offense when the value of the insufficient amount is one thousand dollars ($1,000.00) or more, but not over five thousand dollars ($5,000.00).

C. Issuing a bad check is a Class III offense when the value of the insufficient amount is less than one thousand dollars ($1,000.00).

5. Any person convicted of violating this Section may, in addition to being fined or imprisoned, be ordered to make restitution to the party injured for the value of the check, draft, order, or assignment of funds and any costs of filing with the Tribal prosecutor. If the court shall in addition to sentencing any person to imprisonment under this Section also enter an order of restitution, the time permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

6. The fact that restitution to the party injured has been made shall be a mitigating factor in the imposition of punishment for any violation of this Section. [TCR 86-79, 89-87]

3-333 False statement or book entry; destruction or secretion of records; penalty; organization, defined.

1. A person commits a Class I offense if he/she:
   A. Willfully and knowingly subscribes to, makes, or causes to be made any false statement or entry in the books of an organization; or
   B. Knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such organization; or
   C. Makes, states, or publishes any false statement of the amount of the assets or liabilities of any such organization; or
   D. Fails to make true and correct entry in the books and records of such organization of its business and transactions; or
   E. Mutilates, alters, destroys, secrets, or removes any of the books or records of such organization, without the consent of the executive director of the organization.
2. Organization as used in this Section shall mean:
   A. Any organization chartered by the Winnebago Tribe of Nebraska; or
   B. Any organized group of persons performing community activities as approved by the Winnebago Tribe of Nebraska; or
   C. The various committees authorized to conduct specified projects on behalf of the Winnebago Tribe of Nebraska. [TCR 86-79]

3-334 Commercial bribery and breach of duty to act disinterestedly; penalty.

1. A person commits a Class I offense if he/she solicits, accepts, or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he/she is subject as:
   A. Agent or employee; or
   B. Trustee, guardian, or other fiduciary; or
   C. Lawyer, physician, accountant, appraiser, or other professional advisor; or
   D. Officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or
   E. Duly elected or appointed representative or trustee of a labor organization or employee of a welfare trust fund; or
   F. Arbitrator or other purportedly disinterested adjudicator or referee.
2. A person who holds him/herself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, property, or services, commits a Class I offense if he/she solicits, accepts, or agrees to accept any benefit to alter, modify, or change his/her selection, appraisal, or criticism.
3. A person commits a Class I offense if he/she confers or offers or agrees to confer any benefit the acceptance of which would be an offense under subsection (1) or (2) of this Section. [TCR 86-79]

3-335 Fraudulent use of a credit card; penalty.

1. It shall be unlawful to use a credit card for the purpose of obtaining property or services with knowledge that:
   A. The card is stolen; or
   B. The card has been revoked or canceled; or
   C. For any other reason his/her use of the credit card is unauthorized by either the issuer or the person to whom the card has been issued.
2. Fraudulent use of a credit card is a Class I offense. Restitution shall be required. [TCR 86-79]

3-336 Deceptive business practices; penalty.

1. It shall be unlawful, in the course of business, to intentionally:
   A. Use or possess for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or
   B. Sell, offer, or expose for resale, or deliver less than the represented quality or quantity of any commodity or service; or
   C. Take or attempt to take more than the represented quantity of any commodity or service when as buyer he/she furnishes the weight or measure; or
   D. Sell, offer or expose for sale adulterated or mislabeled commodities:
      i. "Adulterated" means varying from the standard of composition or quality prescribed by law or commercial usage;
      ii. "Mislabeled" means varying from the standard of truth of disclosure in labeling prescribed by law or commercial usage; or
   E. Make a substantial false or misleading statement in any advertisement addressed to the public or a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or
   F. Make a false or misleading statement for the purpose of obtaining property or credit; or
   G. Make a false or misleading written statement for the purpose of promoting the sales of securities, or omit information required by law to be disclosed in written documents relating to securities.
2. Deceptive business practices is a Class II offense.
3. It is an affirmative defense that the defendants conduct was not knowingly or recklessly deceptive. [TCR 86-79]

3-337 Defrauding creditors; penalty.

1. It shall be unlawful to:
   A. Destroy, remove, conceal, encumber, transfer, or otherwise deal with property subject to a security interest with the intent to hinder enforcement of that interest; or
   B. Deal with property with the intent to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or knowingly falsify any writing or record relating to the property; 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 could be legally required to furnish in relation to such administration.
2. Defrauding creditors is a Class II offense. [TCR 86-79]

3-338 Securing execution of documents by deception; penalty.

1. It shall be unlawful to intentionally, and by deception, cause another to execute any instrument affecting or likely to affect the pecuniary interest of another.
2. Securing execution of documents by deception is a Class II offense. [TCR 86-79]

3-339 Criminal usury; penalty.

1. It shall be unlawful to intentionally provide financing or make loans at a rate of interest higher than the following:
   A. If the amount to which the interest applies is less than one hundred dollars ($100.00) or the period of the loan for financing is less than one year, or both, the rate of interest shall not exceed a twenty four percent per annum simple interest rate.
   B. If the amount to which the interest applies is greater than one hundred dollars ($100.00) or the period of the loan for financing is greater than one year, or both, the rate of interest shall not exceed an eighteen percent per annum simple interest rate.
2. Criminal usury is a Class II offense. The victim shall be entitled to restitution for double the actual amount of interest which was actually paid and cancellation of all interest owing for the term of the financing. [TCR 86-79]

3-340 Unlawful dealing with property by a fiduciary; penalty.

1. It shall be unlawful to knowingly deal with property that has been entrusted to one in a fiduciary capacity, or property of the Tribe, of government or of a financial institution, in a manner which he/she knows is a violation of his/her fiduciary duty, or which involves a substantial risk of loss to the owner or to a person for whose benefit the property was entrusted.
2. As used in this Section, "fiduciary" includes a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.
3. Unlawful dealing with property by a fiduciary is a Class I offense. [TCR 86-79]

3-341 Making a **false credit report; penalty.**

1. It shall be unlawful to knowingly make a materially false or misleading statement to obtain property or credit for oneself or another or to keep some other person from obtaining credit.
2. Making a false credit report is a Class II offense. [TCR 86-79]

3-342 Computers; terms defined. For purposes of Sections 3-342 to 3-346, unless the context otherwise requires:

1. "Access" shall mean to instruct, communicate with, store data in, retrieve data frame, or otherwise use the resources of a computer or computer network;
2. "Computer" shall mean a high-speed data processing device or system which performs logical arithmetic data storage and retrieval, communication, or control functions and includes any input, output, data storage processing, or communication facilities directly related to or operating in conjunction with any such device or system;
3. "Computer networks" shall mean the interconnection of communication links with a computer or an interconnection of computers which communicate with each other;

4. "Computer programs" shall mean a set of instructions, statements, or related data that directs or is intended to direct the computer to perform certain specified functions;
5. "Data" shall mean a representation of information, facts, knowledge, concepts, or instructions prepared in formalized or other manner and intended for use in a computer or computer network;
6. "Property" shall mean any tangible or intangible thing of value and shall include, but not be limited to, financial instruments, data, computer programs, information, computer-produced or stored data, supporting documentation, or data in transit, whether in human or computer readable form; and
7. "Service" shall mean use of a computer or computer network including but not limited to data processing and storage function, computer programs, or data. [TCR 86-79]

3-343 Depriving or obtaining property or services; penalty. Any person who intentionally accesses or causes to be accessed, directly or indirectly, any computer or computer network without authorization or who, having accessed any computer or computer network with authorization, knowingly and intentionally exceeds the limits of such authorization shall be guilty of a Class I offense if he/she intentionally:
1. Deprives another of property or services; or
2. Obtains property or services of another. [TCR 86-79]

3-344 Unlawful acts; harming or disrupting operations; penalties. Any person who accesses or causes to be accessed any computer or computer network without authorization or who, having accessed any computer or computer network with authorization, knowingly and intentionally exceeds the limits of such authorization shall be guilty of a Class I offense if he/she intentionally:
1. Alters, damages, deletes, or destroys any computer, computer network, computer program, data, or other property; or
2. Disrupts the operations of any computer or computer network. [TCR 86-79]

3-345 Unlawful acts; obtaining confidential public information; penalties. Any person who intentionally accesses or causes to be accessed any computer or computer network without authorization, knowingly and intentionally exceeds the limits of such authorization, and thereby obtains information filed by the public with the Tribe or any department or committee of the Tribe which is required by statute or ordinance to be kept confidential shall be guilty of a Class II offense. For any second or subsequent offense under this Section, such person shall be guilty of a Class I offense. [TCR 86-79, 93-84]

3-346 Unlawful acts; access without authorization; exceeding authorization; penalties. Any person who intentionally accesses any computer, computer program or data without authorization and with knowledge that such access was not authorized or who, having accessed any computer or computer network with authorization, knowingly or intentionally exceeds the limits of such authorization shall be guilty of a Class II offense. For any second or subsequent offense under this Section, such person shall be guilty of a Class I offense. [TCR 86-79, 89-87]

TITLE 3
ARTICLE 4
CRIMES AGAINST THE PERSON

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3-401 Compounding a criminal offense, defined; penalty.

1. A person is guilty of compounding a criminal offense if he/she accepts or agrees to accept any pecuniary benefit or other reward or promise thereof, as consideration for:
   A. Refraining from seeking prosecution of an offender; or
   B. Refraining from reporting to law enforcement authorities the commission of any criminal offense or information relating to a criminal offense.
2. It is an affirmative defense to prosecution under this Section that the benefit received by the defendant did not exceed an amount which the defendant reasonably believed to be due him/her as restitution for harm caused by the crime.
3. Compounding a criminal offense is a Class II offense. [TCR 86-79]

3-402 Homicide; terms defined. As used in Sections 3-402 to 3-406 unless the context otherwise requires:

1. Homicide shall mean the killing of a person by another.
2. Person, when referring to the victim of a homicide, shall mean a human being who had been born and was alive at the time of the homicidal act; and
3. Premeditation shall mean a design formed to do something before it is done. [TCR 86-79]

3-403 Murder in the first degree; penalty. A person commits murder in the first degree if he/she kills another person:

1. Purposely and with deliberate and premeditated malice; or
2. In the perpetration of or attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary; or

3. By administering poison or causing the same to be done; or if by willful and corrupt perjury or subornation of the same he/she purposely procures the conviction and execution of any innocent person.
4. Murder in the first degree is a Class I offense. [TCR 86-79]

3-404 Murder in the second degree; penalty.

1. A person commits murder in the second degree if he/she causes the death of a person intentionally, but without premeditation.
2. Murder in the second degree is a Class I offense. [TCR 86-79]

3-405 Manslaughter; penalty.

1. A person commits manslaughter if he/she kills another without malice, either upon a sudden quarrel, or causes the death of another unintentionally while in the commission of an unlawful act.
2. Manslaughter is a Class I offense. [TCR 86-79]

3-406 Motor vehicle homicide; penalty.

1. A person who causes the death of another unintentionally while engaged in the operation of a motor vehicle in violation of a Tribal law or in violation of any federal law commits the offense of motor vehicle homicide.
2. A person is guilty of motor vehicle homicide if, while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or any drug, to a degree which renders the person incapable of safely driving a vehicle, he/she causes the death of another by operating a motor vehicle in a reckless, negligent, or careless manner.
3. The presumptions established in the Nebraska Code regarding blood alcohol content are adopted by reference and shall be applicable to this Section. Any chemical test administered to a defendant shall be admissible in accordance with the rules of evidence.
4. Any person who operates or has in his/her actual physical control a motor vehicle upon a public highway on this reservation shall be deemed to have given his/her consent to submit to a chemical test of his/her blood, urine, or breath, for the purpose of determining the amount of alcohol content in his/her body fluid.
5. For purposes of this Section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, water craft, aircraft or snowmobile.
6. Motor vehicle homicide is a Class I offense. [TCR 86-79, 95-27]

3-407 Assisting suicide, defined; penalty.

1. A person commits assisting suicide when, with intent to assist another person in committing suicide, he/she aids and abets him/her in committing or attempting to commit suicide.
2. Assisting suicide is a Class I offense. [TCR 86-79]

3-408 Assault in the first degree; penalty.

1. A person commits the offense of assault in the first degree if he/she:
   A. Intentionally or knowingly causes serious bodily injury to another person; or

B. Intentionally or knowingly causes bodily injury to another person with a dangerous instrument.

2. Assault in the first degree is a Class I offense. [TCR 86-79]

3-409 Assault in the second degree; penalty.

1. A person commits the offense of assault in the second degree if he/she:
   A. Recklessly causes bodily injury to another; or with a dangerous instrument; or
   B. Recklessly causes serious bodily injury to another person;
   C. While during confinement or in legal custody of the Tribal or Bureau of Indian Affairs police or in any jail, unlawfully strikes or wounds another.
2. Assault in the second degree is a Class II offense. [TCR 86-79, 89-87]

3-409.5 Simple assault; penalty.

1. A person commits the offense of simple assault if he/she:
   A. Recklessly attempts to cause bodily injury to another, whether or not such injury results; or
   B. Threatens another in a menacing manner.
2. Simple assault is a Class III offense. [TCR 86-79, 89-87]

3-410 Terroristic threats; penalty.

1. A person commits terroristic threats if:
   A. He/she threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person; or
   B. He/she intentionally makes false statements with the intent of causing the evacuation of a building, place of assembly, or facility of public transportation.
2. Terroristic threats are a Class I offense. [TCR 86-79]

3-411 Restrain, abduct; defined. As used in Sections 3-411 to 3-414, unless the context otherwise requires:

1. Restrain shall mean to restrict a person's movement in such a manner as to interfere substantially with his/her liberty:
   A. By means of force, threat, or deception; or
   B. If the person is under the age of eighteen years or incompetent, without the consent of the relative, person or institution having lawful custody of him/her.
2. Abduct shall mean to restrain a person with intent to prevent his/her liberation by:
   A. Secreting or holding him/her in a place where he/she is not likely to be found; or
   B. Endangering or threatening to endanger the safety of any human being. [TCR 86-79]

3-412 Kidnapping; penalty.

1. A person commits kidnapping if he/she abducts another or, having abducted another, continues to restrain him/her with intent to do the following:
   A. Hold him/her for ransom or reward; or
   B. Use him/her as a shield or hostage; or
   C. Terrorize him/her or a third person; or

D. To facilitate commission of any offense or flight thereafter; or
E. Interfere with the performance of any government or political function.

2. Kidnapping is a Class I offense. [TCR 86-79}

3-413 False imprisonment in the first degree; penalty.

1. A person commits false imprisonment in the first degree if he/she knowingly restrains or abducts another person:
   A. Under terrorizing circumstances or under circumstances which expose the person to the risk of serious bodily injury; or
   B. With intent to hold him/her in condition of involuntary servitude.
2. This Section does not apply to protective custody as authorized under Section 3-712.
3. False imprisonment in the first degree is a Class I offense. [TCR 86-79]

3-414 False imprisonment in the second degree; penalty.

1. A person commits false imprisonment in the second degree if he/she knowingly restrains another person without legal authority.
2. In any prosecution under this Section, it shall be an affirmative defense that the person restrained:
   A. Was on or in the immediate vicinity of the premises of a retail mercantile establishment and he/she was restrained for the purpose of investigation or questioning as to the ownership of any merchandise; and
   B. Was restrained in a reasonable manner and for not more than a reasonable time; and
   C. Was restrained to permit such investigation or questioning by a police officer, or by the owner of the mercantile establishment, his/her authorized employee or agent; and
   D. That such police officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft of merchandise on the premises; provided, nothing in this Section shall prohibit or restrict any person restrained pursuant to this Section from maintaining any applicable civil remedy if no theft has occurred.
3. This Section does not apply to protective custody as authorized under Section 3-712.
4. False imprisonment in the second degree is a Class III offense. [TCR 86-79, 89-87]

3-415 Violation of custody; penalties.

1. Any person, including a natural or foster parent, who, knowing that he/she has no legal right to do so or, heedless in that regard, takes or entices any child under the age of eighteen years from the custody of its parent having legal custody, guardian, or other lawful custodian commits the offense of violation of custody.
2. Violation of custody is a Class III offense for a first offense. For all subsequent offenses violation of custody shall be a Class II offense. [TCR 86-79, 89-87]

3-416 Sexual assault; legislative intent. It is the intent of the Winnebago Tribe of Nebraska to enact laws dealing with sexual assault and related criminal sexual offenses which will protect the dignity of the victim at all stages of judicial process, which will insure that the alleged offender in a criminal sexual offense case have preserved the constitutionally guaranteed due process of law procedures, and which will establish a system of investigation, prosecution, punishment, and rehabilitation for the welfare and benefit of the residents of this reservation as such system is employed in the area of criminal sexual offenses. [TCR 86-79]

3-417 Sexual assault; terms defined. As used in Sections 3-416 to 3-422, unless the context otherwise requires:

1. "Actor" shall mean a person accused of sexual assault;
2. "Intimate parts" shall mean the genital area, groin, inner thighs, buttocks, or breasts;
3. "Past sexual behavior" shall mean sexual behavior other than the sexual behavior upon which the sexual assault is alleged;
4. "Serious personal injury" shall mean great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;
5. "Sexual contact" shall mean the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party;
6. "Sexual penetration" shall mean sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victims body which can be reasonably construed as being for non-medical or non-health purposes. Sexual penetration shall not require emission of semen; and
7. Victim shall mean the person alleging to have been sexually assaulted. [TCR 86-79]

3-418 Sexual assault; first degree; penalty.

1. Any person who subjects another person to sexual penetration; and
   A. Overcomes the victim by force, threat of force, express or implied, coercion, or deception;
   B. Knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his/her conduct; or
   C. The actor is eighteen years of age or older and the victim is less than eighteen years of age is guilty of sexual assault in the first degree.
2. Sexual assault in the first degree is a Class I offense. The sentencing judge shall consider whether the actor shall have caused serious personal injury to the victim in reaching his/her decision on the sentence. [TCR 86-79, 89-87]

3-419 Sexual assault; second degree; penalty.

1. Any person who subjects another person to sexual contact; and
   A. Overcomes the victim by force, threat of force, express or implied, coercion, or deception; or
   B. Knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his/her conduct is guilty of sexual assault in the second degree; or
   C. Any person who subjects an unemancipated minor to sexual penetration is guilty of sexual assault in the second degree.
2. Sexual assault in the second degree is a Class II offense. [TCR 86-79, 89-87]

3-420 Sexual assault; in camera hearing. Upon motion to the court by either party in a prosecution in a case of sexual assault, an in camera hearing shall be conducted in the presence of the judge, under guidelines established by the judge, to determine the relevance of evidence of the victim's or the defendant's past sexual conduct. [TCR 86-79]

3-421 Sexual assault; evidence of past sexual behavior; when admissible; procedure.

1. If the defendant intends to offer evidence of specific instances of the victim's past sexual behavior, notice of such intention shall be given to the Tribal prosecutor and filed with the Court not later than fifteen days before trial.
2. Upon motion to the Court by either party in a prosecution in a case of sexual assault, an in camera hearing shall be conducted under guidelines established by the Winnebago Rules of Evidence, Rule 1A-412, to determine the relevance of evidence of the victim's or the defendant's past sexual behavior. Evidence of a victim's past sexual behavior shall not be admissible unless such evidence is:
   A. Evidence of past sexual behavior with persons other than the defendant, offered by the defendant upon the issue of whether the defendant was or was not, with respect to the victim, the source of any physical evidence, including but not limited to, semen, injury, blood, saliva, and hair; or
   B. Evidence of past sexual behavior with the defendant when such evidence is offered by the defendant on the issue of whether the victim consented to the sexual behavior upon which the sexual assault is alleged if it is first established to the Court that such activity shows such a relation to the conduct involved in the case and tends to establish a pattern of conduct or behavior on the part of the victim as to be relevant to the issue of consent. [TCR 86-79, 93-85]

3-422 Sexual assault; evidence against another person; when admissible. Specific instances of prior sexual activity between the victim and any person other than the defendant shall not be admitted into evidence in prosecution under the Tribal Criminal Code unless consent by the victim is at issue, when such evidence may be admitted if it is first established to the Court at an in-camera hearing conducted under guidelines established by Winnebago Rules of Evidence, Rule 1A-412 that such activity shows such a relation to the conduct involved in the case and tends to establish a pattern of conduct or behavior on the part of the victim as to be relevant to the issue of consent. [TCR 86-79, 93-85]

3-423 Confined person; offenses against another person; penalty; sentence.

1. Any person who is legally confined in a jail and who commits:
   A. Assault in the first or second degree, as defined in Sections 3-408 to 3-409;
   B. Terroristic threats as defined in Section 3-410;
   C. Kidnapping as defined in Section 3-412; or
   D. False imprisonment in the first or second degree as defined in Sections 3-413 to 3-414, against any person for the purpose of compelling or inducing the performance of any act by such person or any other person shall be guilty of a Class I offense.
2. Sentences imposed under subsection (1) of this Section shall be served consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this Section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this Section. [TCR 86-79]

3-424 Robbery; penalty.

1. A person commits robbery if, with the intent to steal, he/she forcibly or by violence, or by putting in fear takes from the person of another any money or personal property of any value whatsoever.
2. Robbery is a Class I offense. [TCR 86-79]

3-425 "Stalking" Any person who, directly or indirectly, willfully and repeatedly follows, harasses, or engages in conduct that poses a credible threat to another and is likely to place that person in reasonable fear of their safety or the immediate safety of their family shall be guilty of stalking and may be punished as provided in this Title. Under this Article, stalking behavior can include, but is not limited to:

a. Vandalism;
b. Annoying or threatening phone calls;
c. Following or other violations of an order for protection;
d. Actual assaults;
e. Sending unwanted letters or electronic communications;
f. Sending unwanted messages or threats through third parties;
g. Showing up at a victim's residence or place of employment;
h. Leaving gifts for the victim;
i. Disabling or otherwise tampering with the victim's vehicle;
j. Taking mail from the victim's mailbox;
k. Entering the victim's residence whether the victim is or is not present;
l. Parking near or driving by the victim's residence or place of employment for no legitimate reason; or

The use of agencies or law enforcement that constitutes a pattern of conduct consistent with retaliation by initiating investigations, restrictions, or sanctions against the victim. Stalking is a Class I Offense.

3-426 "Strangling" means intentionally, knowingly, or recklessly impeding 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 the victim. Strangling is a Class I offense.

3-427 "Suffocating" means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim. Suffocating is a Class I offense.

3-428 "Domestic Violence" sometimes referred to as intimate partner violence, is a subcategory of Family Violence. It means the occurrence of one or more of the following acts by a current or former intimate partner, as defined at Title 12, Article 2, Domestic and Family Violence Act, of the victim:

a. Attempting to cause or causing physical harm to a current or former intimate partner;
b. Placing a current or former intimate partner member in fear of physical harm;
c. Causing a current or former intimate partner to engage involuntarily in sexual activity by force or duress;
d. Intentionally engaging in a course of conduct directed at a specific person that

would cause a reasonable person under the same circumstances to fear bodily injury to or the death of himself or herself or a member of his or her family or household.

Domestic Violence is a Class II Offense.

3-429 **"Family Violence"** means the occurrence of one or more of the following acts by a family or household member, as defined at Title 12, Article 2, Domestic and Family Violence Act, but does not include acts of self- defense:

a. Attempting to cause or causing physical harm to another family or household member;

b. Placing a family or household member in fear of physical harm;

c. Causing a family or household member to engage involuntarily in sexual activity by force or duress;

d. Intentionally engaging in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to fear bodily injury to or the death of himself or herself or a member of his or her family or household.

Family Violence is a Class II Offense.

3-430 **"Crime Involving Domestic or Family Violence"** occurs when a Family or Household Member commits a crime against another Family or Household Member, or a current or former intimate partner commits a crime against another current or former intimate partner, which is a crime under tribal law, with the purpose of or having the effect of, inflicting physical harm or bodily injury, or placing the victim in apprehension of imminent physical harm or bodily injury shall constitute a Crime Involving Domestic or Family Violence and trigger the application of Title 12, Article 2, 12-203 and increasing the penalty for the underlying crime.

TITLE 3
ARTICLE 5
INCHOATE CRIMES

3-501 Criminal attempt; conduct; penalty.
3-502 Conspiracy, defined; penalty.
3-503 Conspiracy; renunciation of criminal intent.
3-504 Accessory to crime; defined; penalty.
3-505 Aiding consummation of crime; penalty.
3-506 Prosecuting for aiding and abetting.

3-501 Criminal attempt; conduct; penalty.

1. A person shall be guilty of an attempt to commit a crime if he/she:
   A. Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he/she believes them to be; or
   B. Intentionally engages in conduct which, under the circumstances as he/she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his/her commission of the crime.
2. When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he/she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.
3. Conduct shall not be considered a substantial step under this Section unless it is strongly corroborative of the defendants criminal intent.
4. Criminal attempt is:
   A. A Class I offense when the crime attempted is a Class I offense.
   B. A Class II offense when the crime attempted is a Class II offense.
   C. A Class III offense when the crime attempted is a Class III offense. [TCR 86-79]

3-502 Conspiracy, defined; penalty.

1. A person shall be guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a criminal offense:
   A. He/she agrees with one or more persons that they or one or more of them shall engage in the conduct or shall cause the result specified by the definition of the offense; and
   B. He/she or another person with whom he/she conspired commits an overt act in pursuance of the conspiracy.
2. If a person knows that one with whom he/she conspires to commit a crime has conspired with another person or persons to commit the same crime, he/she is guilty of conspiring to commit such crime with such other person or persons whether or not he/she knows their identity.
3. If a person conspires to commit a number of crimes, he/she is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.
4. Conspiracy is a crime of the same class as the most serious offense which is an object of the conspiracy. A person prosecuted for a criminal conspiracy shall be acquitted if such person proves by a preponderance of the evidence that his/her conduct occurred in response to an entrapment. [TCR 86-79]

3-503 Conspiracy; renunciation of criminal intent. In a prosecution for criminal conspiracy, it shall be an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his/her criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the conspiracy. [TCR 86-79]

3-504 Accessory to crime; defined; penalty.

1. A person is guilty of being an accessory to crime if with intent to interfere with, hinder, delay, or prevent the discovery, apprehension, prosecution, conviction, or punishment, of another for an offense, he/she:
   A. Harbors or conceals the other; or
   B. Provides or aids in providing a weapon, transportation, disguise, or other means of effecting escape or avoiding discovery or apprehension; or
   C. Conceals or destroys evidence of the crime or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence; or
   D. Warns the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law; or
   E. Volunteers false information to a peace officer; or
   F. By force, intimidation, or deception, obstructs anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.
2. Accessory to crime is a crime of the same class as the most serious offense to which the accused served as an accessory. [TCR 86-79, 89-87]

3-505 Aiding consummation of crime; penalty.

1. A person is guilty of aiding consummation of crime if he/she intentionally aids another to secrete, disguise, or convert the proceeds of a criminal offense or otherwise profit from a crime.
2. Aiding consummation of crime is a crime of the same class as the most serious offense to which the accused aided in the consummation. [TCR 86-79, 89-87]

3-506 Prosecuting for aiding and abetting. A person who aids, abets, procures, or causes another to commit any offense may be prosecuted and punished as if he were the principal offender. [TCR 86-79]

TITLE 3
ARTICLE 6
CRIMES AGAINST PUBLIC JUSTICE

3-601 Obstructing government operations; penalty.
3-602 Physical injury related to criminal offense; report by health care provider; sexual assault; duties of health care provider; law enforcement agency; duties; violation; penalty.
3-603 Refusing to aid a peace officer; penalty.
3-604 Resisting arrest; penalty; affirmative defense.
3-605 Consumption of liquor on public property, public roads, streets, alleys, forbidden; penalty.
3-606 Obstructing a peace officer; penalty.
3-607 False reporting; penalty.
3-608 Interfering with a fireman on official duty; penalty; fireman, defined.
3-609 Abuse of public record; penalty; public record, defined.
3-610 Escape; official detention, defined; knowingly permitting escape; penalty; defense to prosecution.
3-611 Providing contraband; penalty.
3-612 Loitering about jail; penalty.
3-613 Assault on an officer in the first degree; penalty.
3-614 Assault on an officer in the second degree; penalty.
3-615 Repealed.
3-616 Perjury; subornation of perjury; penalty.
3-617 Juror, testimony and official proceedings; defined.
3-618 Bribery; penalty.
3-619 Bribery of a witness; penalty; witness receiving bribe; penalty.
3-620 Bribery of a juror; penalty; juror receiving bribe; penalty.
3-621 Tampering with witnesses, informants, or jurors; penalty.
3-622 Jury tampering; penalty.
3-623 Tampering with physical evidence; penalty; physical evidence, defined.
3-624 Simulating legal process; penalty.
3-625 Employee; penalized due to jury service; prohibited; penalty.
3-626 Impersonating a peace officer.
3-627 Impersonating a public servant.
3-628 Official misconduct; penalty.
3-629 Oppression under color of office; penalty.
3-630 Misusing public money.
3-631 Improper influence in official matters.
3-632 Retaliation for past official action.
3-633 Improper gifts to public servants.
3-634 Special influence.
3-635 Doing business without a license.
3-636 Tampering with public property.
3-637 Injuring public property.
3-638 Bail jumping.
3-639 Failure to obey a lawful order of the Court.
3-640 Repealed.
3-641 Neglecting to serve a warrant; penalty; forfeiture of office.
3-642 Mutilating a flag; penalty; flag, defined.
3-643 Illegal solicitation.
3-644 Repealed.
3-645 Failure to appear; penalty.
3-646 Sell or exchange of property for promise to vote prohibited.

3-601 Obstructing government operations; penalty.

1. A person commits the offense of obstructing government operations if he/she intentionally obstructs, impairs, or perverts the administration of law or other governmental functions by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this Section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.
2. Obstructing governmental operations is a Class III offense. [TCR 86-79]

3-602 Physical injury related to criminal offense; report by health care provider; sexual assault; duties of health care provider; law enforcement agency; duties; violation; penalty.

1. Except as provided in subsection (2) of this section, every health care provider on this reservation shall immediately report to law enforcement every case in which the health care provider is consulted for medical care for physical injury which appears to have been received in connection with, or as a result of, the commission of a criminal offense. Such report shall include the name of the victim, a brief description of the victim's physical injury, and, if ascertainable, the victim's residential address and the location of the offense. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as compliance with this Section is concerned.
2. When a health care provider is consulted for medical care for physical injury which reasonably appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault and the victim was nineteen (19) years of age or older at the time of such actual or attempted sexual assault, the health care provider shall:
    A. Provide the victim with information detailing the reporting options available under subdivision (2)(b) of this section;
    B. Ask the victim to select one of the below reporting & specimen collection options:
        (i) Full Law Enforcement Report with Evidence Collection - To provide written consent to report such actual or attempted sexual assault as provided in subsection (1) of this section. If the victim provides such written consent, the health care provider shall make the report required by subsection (1) of this section and submit to law enforcement a sexual assault evidence collection kit if one has been obtained; or
        (ii) Partial Report with Evidence Collection - To provide written consent for the healthcare provider obtaining of a sexual assault evidence collection kit for the purpose of forensic testing and providing their name to identify the specimen, but not reporting to law enforcement for purposes of current prosecution or participating in an investigation; or
        (iii) Anonymous Reporting with Evidence Collection - To sign a written acknowledgment that such actual or attempted sexual assault will not be reported except as provided in subsection (3) or (4) of this section, but that the health care provider will submit to law enforcement a sexual assault evidence collection kit, if one has been obtained, using an anonymous reporting protocol. A health care provider may use the anonymous reporting protocol developed by the Nebraska Attorney General under Nebraska Revised Statute 84-218 or may use a different anonymous reporting protocol. Victims who have experienced serious bodily injury or if a weapon was used during the assault are not eligible for anonymous reporting.
3. Regardless of the victim's decision under subdivision (2)(b) of this section, if the victim is suffering from a serious bodily injury, or any bodily injury where a deadly weapon was used to inflict such injury, which appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault, the health care provider shall report such injury to law enforcement as provided in subsection (1) of this section; and unless declined by the victim, refer him or her to an advocate.
4. The victim (or victim's legally-recognized surrogate decisionmaker if the victim is a minor or ward) shall always have the right to refuse evidence collection with respect to the sexual assault evidence collection kit.
5. Victims who are under the age of nineteen (19) and have reported or have suspected sexual assault has occurred must be reported to law enforcement under subsection (1) of this section. The healthcare provider will submit a sexual assault evidence collection kit to law enforcement if one has been obtained; Subsection (2) rights do not apply.

6. A law enforcement agency receiving a sexual assault evidence collection kit under this section shall preserve such kit for twenty years after the date of receipt or as otherwise ordered by a court.
7. Any health care provider who knowingly fails to make any report required by subsection (1) of this section is guilty of an infraction. If multiple health care providers are involved in the consultation of a person in a given occurrence, this section does not require each health care provider to make a separate report, so long as one of such health care providers makes the report required by this section.
8. For purposes of this section:
   A. **Advocate** means any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor's office, whose primary purpose is assisting domestic violence and sexual assault victims;
   B. **Anonymous reporting protocol** means a reporting protocol that allows the identity of the victim, his or her personal or identifying information, and the details of the sexual assault or attempted sexual assault to remain confidential and undisclosed by the health care provider, other than submission to law enforcement of any sexual assault evidence collection kit, unless and until the victim consents to the release of such information;
   C. **Health care provider** means any of the following individuals who are licensed, certified, or registered to perform specified health services consistent with Federal, Tribal or otherwise applicable Nebraska law: A physician, physician assistant, nurse, or advanced practice registered nurse;
   D. **Law enforcement** means the Winnebago Police Department (that is, the law enforcement agency in which the consultation occurred);
   E. **Serious bodily injury** means bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body; and
   F. **Victim** means the person seeking medical care. [TCR 86-79, 89-87, 25-156]

3-603 Refusing to aid a peace officer; penalty.

1. A person commits the offense of refusing to aid a peace officer if, upon request by a person known to him/her to be a peace officer, he/she unreasonably refuses or fails to aid such peace officer in:
   A. Apprehending any person charged with or convicted of any offense against any of the laws of the Tribe or of the United States; or
   B. Securing such offender when apprehended; or
   C. Conveying such offender to the Tribal jail.
2. Refusing to aid a peace officer is a Class III offense. [TCR 86-79, 89-87]

3-604 Resisting arrest; penalty; affirmative defense.

1. A person commits the offense of resisting arrest if, a peace officer, acting under color of his/her official authority, from effecting an arrest of the actor or another, he/she:
   A. Uses or threatens to use physical force or violence against the peace officer or another; or
   B. Uses any other means which creates a substantial risk of causing physical injury to the peace officer or another; or
   C. Employs means requiring substantial force to overcome resistance to effecting the arrest.
2. It is an affirmative defense to prosecution under this Section if the peace officer involved was out of uniform and did not identify him/herself as a peace officer by showing his/her credentials to the person whose arrest is attempted.
3. Resisting arrest is a Class II offense. [TCR 86-79]

3-605 Consumption of liquor on public property, public roads, streets, alleys; forbidden; penalty.

1. It shall be unlawful for any person to consume alcoholic liquors in the public streets, alleys, parking areas, roads, or highways, or inside vehicles; or upon property owned by the Winnebago Tribe of Nebraska, the state or the United States unless authorized by the governing bodies having jurisdiction over such properties.
2. It shall be unlawful for any person to have in his/her possession or actual control (including possession within the interior of any motor vehicle) any alcohol liquor in an open, unsealed, uncovered, agape, or ajar container of whatever form in or on the public streets, alleys, parking areas, roads, or highways, or inside vehicles; or upon property owned by the Winnebago Tribe of Nebraska, the state or the United States unless authorized by the governing bodies having jurisdiction over such properties.
3. Consumption of liquor on public property, both sections (1) and (2), is an infraction. [TCR 86-79, 89-87, 89-139]

3-606 Obstructing a peace officer; penalty.

1. A person commits the offense of obstructing a peace officer, when, by using or threatening to use violence, force, physical interference, or obstacle, he/she intentionally obstructs, impairs, or hinders the enforcement of the penal law or the preservation of the peace by a peace officer or judge acting under color of his official authority.
2. Obstructing a peace officer is a Class II offense. [TCR 86-79, 89-87]

3-607 False reporting; penalty.

1. A person commits the offense of false reporting if he/she:
   A. Furnishes information he/she knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or to impede the investigation of an actual criminal matter; or
   B. Furnishes information he/she knows to be false alleging the existence of any emergency to which human life or property are in jeopardy to any hospital, ambulance company, or other person or governmental agency which deals with emergencies involving danger to life or property, including the Winnebago Fire Protection District; or
   C. Furnishes any information he/she knows to be false concerning the location of any explosive in any building or other property to any person.
2. False reporting is a Class I offense. [TCR 86-79]

3-608 Interfering with a fireman on official duty; penalty; fireman, defined.

1. A person commits the offense of interfering with a fireman if at any time and place where any fireman is discharging or attempting to discharge any official duties, he/she willfully:
   A. Resists or interferes with the lawful efforts of any fireman in the discharge or attempt to discharge an official duty; or
   B. Disobeys the lawful orders given by any fireman while performing his/her duties; or
   C. Engages in any disorderly conduct which delays or prevents a fire from being extinguished within a reasonable time; or
   D. Forbids or prevents others from assisting or extinguishing a fire or exhorts another person, as to when he/she has no legal right or obligation to protect or control, not to assist in

extinguishing a fire.

2. As used in this Section, fireman shall mean any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the Tribal government, the State of Nebraska, or the State of Iowa whether such person is a volunteer or partly-paid or fully-paid, while he/she is actually engaged in firefighting, fire supervision, fire suppression, fire prevention, or fire investigation.
3. Interfering with a fireman on official duty is a Class II offense. [TCR 86-79, 89-87]

3-609 Abuse of public record; penalty; public record, defined.

1. A person commits abuse of public record, if:
   A. He/she knowingly makes a false entry in or falsely alters any public record; or
   B. Knowing he/she lacks the authority to do so, he/she intentionally destroys, mutilates, conceals, removes, or impairs the availability of any public record; or
   C. Knowing he/she lacks the authority to retain the record, he/she refuses to deliver up a public record in his/her possession upon proper request of any person lawfully entitled to receive such record; or
   D. He/she makes, presents, or uses any record, document, or thing, knowing it to be false, and with the intention that it be taken as a genuine part of the public record.
2. As used in this Section, the term public record includes all official books, papers, or records created, received, or used by or in any governmental office or agency.
3. Abuse of public record is a Class II offense. [TCR 86-79]

3-610 Escape; official detention, defined; knowingly permitting an escape; penalty; defense to prosecution.

1. A person commits escape if he/she unlawfully removes him/herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. Official detention shall mean arrest, detention in or transportation to any facility for custody of persons under charge or conviction of crime or contempt or for persons alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but official detention does not include supervision of probation or parole or constraint incidental to release on bail.
2. Escape is a Class I offense.
3. A public servant concerned in detention commits an offense if he/she knowingly permits an escape. Any person who knowingly causes or facilitates an escape commits a Class I offense. [TCR 86-79]

3-611 Providing contraband; penalty.

1. A person commits an offense if he/she unlawfully introduces within a detention facility, or unlawfully provides an inmate with alcoholic beverage, drugs, weapon, tool, or other thing which may be useful for escape. An inmate commits an offense if he/she unlawfully procures, makes, or otherwise provides him/herself with, or has in his/her possession, any such item or implement of escape. Unlawfully means surreptitiously or contrary to law, regulation, or order, of the detaining authority.
2. Providing contraband is a Class II offense. [TCR 86-79]

3-612 Loitering about jail; penalty.

1. Any person who loiters about any jail on this reservation and engages in an unauthorized conversation with or passes any unauthorized message or messages to any inmate of such jail, or fails or refuses to leave the immediate vicinity of any jail when ordered to do so by any peace officer, commits the offense of loitering about jail.
2. Loitering about the jail shall be an infraction. [TCR 86-79, 89-87]

3-613 Assault on an officer in the first degree; penalty.

1. A person commits the offense of assault on an officer in the first degree if he/she intentionally or knowingly causes serious bodily injury to a peace officer or employee of the Winnebago Tribe of Nebraska or of the Bureau of Indian Affairs or of the state while such officer or employee is engaged in the performance of his/her official duties.
2. Assault on an officer in the first degree is a Class I offense. [TCR 86-79]

3-614 Assault on an officer in the second degree; penalty.

1. A person commits the offense of assault on an officer in the second degree if he/she:
   A. Intentionally or knowingly causes bodily injury to a peace officer or employee of the Winnebago Tribe of Nebraska, of the Bureau of Indian Affairs, or of the state, while such officer or employee is engaged in the performance of his/her official duties; or
   B. Recklessly causes bodily injury to a peace officer or employee of the Winnebago Tribe of Nebraska, or the Bureau of Indian Affairs or of the state, while such officer or employee is engaged in the performance of his/her official duties.
2. Assault on an officer in the second degree is a Class II offense. [TCR 86-79, 03-193]

3-615 Repealed. [TCR 86-79, 89-87]

3-616 Perjury; subornation of perjury; penalty.

1. A person commits perjury if, having given his/her oath or affirmation in any judicial proceeding or to any affidavit on undertakings, bonds, or recognizances or in any other matter where an oath or affirmation is required by law, he/she disposes, affirms or declares any matter to be fact, knowing the same to be false, or denies any matter to be fact, knowing the same to be true.
2. A person commits subornation of perjury if he/she persuades, procures or suborns any other person to commit perjury.
3. Perjury is a Class I offense. [TCR 86-79]

3-617 Juror, testimony and official proceedings; defined. As used in Sections 3-617 to 3-624 unless the content otherwise requires:

1. Juror shall mean any person who is a member of any jury impaneled by the Court of the Winnebago Tribe of Nebraska or by any public servant authorized by law to impanel a jury. The word juror also includes any person who has been drawn or summoned to attend as a prospective juror;
2. Testimony shall mean oral or written statements, documents, or any other evidence that may be offered by or through a witness in an official proceeding; and
3. Official proceeding shall mean a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding. [TCR 86-79]

3-618 Bribery; penalty.

1. A person commits bribery if:
   A. He/she offers, confers, or agrees to confer any benefit upon a public servant or peace officer with the intent to influence that public servant or peace officer to violate his/her public duty, or oath of office, thereby influencing the public servant's or peace officer's vote, opinion, judgment, exercise of discretion, or other action or inaction in his/her official capacity; or
   B. While a public servant or peace officer**,** he/she solicits, accepts, or agrees to accept any benefit upon an agreement or understanding that he/she will violate his/her public duty or oath of office by changing or amending his/her vote, opinion, judgment, exercise of discretion, or other action or inaction as a public servant or peace officer.
2. It is no defense to prosecution under this Section that the person sought to be influenced was not qualified to act in the desired way, whether because he/she had not yet assumed office, lacked jurisdiction, or for any other reason.
3. Bribery is a Class I offense. [TCR 86-79]

3-619 Bribery of a **witness; penalty; witness receiving bribe; penalty.**

1. A person commits bribery of a witness if he/she offers, confers, or agrees to confer any benefit upon a witness or a person he/she believes is about to be called as a witness in any official proceeding with intent to:
   A. Influence him/her to testify falsely or unlawfully withhold any testimony; or
   B. Induce him/her to avoid legal process summoning him/her to testify; or
   C. Induce him/her to absent him/herself from an official proceeding to which he/she has been legally summoned. Bribery of a witness is a Class I offense.
2. A person who is a witness or has been called as a witness in any official proceeding commits a Class I offense if he/she accepts or agrees to accept any benefit from any other person for the purposes set forth in subsection (1) of this Section. [TCR 86-79]

3-620 Bribery of a juror; penalty; juror receiving bribe; penalty.

1. A person commits bribery of a juror if he/she offers, confers, or agrees to confer any benefit upon a juror with intent to influence the juror's vote, opinion, decision, or other action as a juror.
2. Bribery of a juror is a Class I offense.
3. A juror commits a Class I offense if he/she accepts or agrees to accept any benefit from another person for the purpose of influencing his/her vote, opinion, decision, or other action a juror. [TCR 86-79]

3-621 Tampering with witnesses, informants, or jurors; penalty.

1. A person commits an offense if, believing that an official proceeding or investigation of a criminal matter is pending or about to be instituted, he/she attempts to induce or otherwise cause a witness, informant, or juror to:
   A. Testify or inform falsely; or
   B. Withhold any testimony, information, document, or thing; or
   C. Elude legal process summoning him/her to testify or supply evidence; or
   D. Absent him/herself from any proceeding or investigation to which he/she has been legally summoned.

2. Tampering with witnesses, informants, and jurors is a Class I offense. [TCR 86-79]

3-622 Jury tampering; penalty.

1. A person commits jury tampering if with intent to influence a juror's vote, opinion, decision, or other action in a case, he/she attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.
2. Jury tampering is a Class I offense. [TCR 86-79]

3-623 Tampering with physical evidence; penalty; physical evidence, defined.

1. A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he/she:
   A. Destroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding; or
   B. Knowingly makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.
2. Physical evidence, as used in this Section, shall mean any article, object, document, record, or other thing of physical substance.
3. Tampering with physical evidence is a Class I offense. [TCR 86-79]

3-624 Simulating legal process; penalty.

1. A person commits the offense of simulating legal process if he/she sends, delivers, or mails or in any manner shall cause to be sent, delivered, or mailed, any paper or document simulating or intended to simulate a summons, complaint, writ, or other court process of any kind to any person, firm, company, or corporation, for the purpose and intent of forcing payment of any alleged claim, debt, or legal obligation.
2. Simulating legal process is a Class II offense. [TCR 86-79]

3-625 Employee; penalized due to jury service; prohibited; penalty.

1. Any person who is summoned to serve on jury duty shall not be subject to discharge from employment, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty, as a result of his/her absence from employment due to such jury duty, upon giving reasonable notice to his/her employer of such summons. No employer shall subject an employee to discharge, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty on account of his/her absence from employment by reason of jury duty.
2. Any person violating this provision commits an infraction. [TCR 86-79, 89-87]

3-626 Impersonating a peace officer.

1. A person commits the offense of impersonating a peace officer if he/she falsely pretends to be a peace officer and performs any act in that pretended capacity.
2. Impersonating a peace officer is a Class II offense. [TCR 86-79]

3-627 Impersonating a public servant.

1. It shall be unlawful to falsely pretend to hold a position in the public service with the purpose to induce another to submit to such pretended official authority, or otherwise to act in reliance upon that pretense to his/her prejudice.

2. It shall be unlawful to exercise or attempt to exercise any of the functions of a police officer when one has not been elected or appointed to office.
3. Impersonating a public servant is a Class II offense. [TCR 86-79]

3-628 Official misconduct; penalty.

1. A public servant commits official misconduct if he/she knowingly violates any statute or lawfully adopted rule or regulation relating to his/her official duties.
2. A public servant commits official misconduct if he/she solicits, accepts or agrees to accept any financial benefit as compensation for having, as a public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his/her favor, or for having violated his/her duty; or offer, confer or agree to confer compensation acceptance of which is prohibited by this Section.
3. A public servant commits official misconduct if he/she knowingly commits an unauthorized act which purports to be an act of his/her office, or knowingly refrains from performing a nondiscretionary duty imposed on him/her by law, or a public servant commits official misconduct if he/she knowing that official action is contemplated or in reliance on information which he/she has acquired by virtue of his/her office or from another public servant, which information has not been made public, he/she:
   A. Acquires or divests him/herself of a pecuniary 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 to do any of the foregoing; or
   C. Aids, advises or encourages another to do any of the foregoing with intent to confer on any person a special pecuniary benefit.
4. Official misconduct is a Class I offense. [TCR 86-79]

3-629 Oppression under color of office; penalty.

1. Any public servant or peace officer who, by color of or in the execution of his/her office, shall designedly, willfully or corruptly injure, deceive, harm, or oppress any person, or shall attempt to injure, deceive, harm, or oppress any person, commits oppression under color of office, and shall be answerable to the party so injured, deceived, or harmed or oppressed in treble damages.
2. Oppression under color of office is a Class I offense. [TCR 86-79]

3-630 Misusing public money.

1. It shall be unlawful for a person charged with the receipt, safekeeping, transfer or disbursement of public monies to:
   A. Without lawful authority appropriate the money or any portion of it to his/her own use or the use of another; or
   B. Lend the money or any portion thereof without lawful authority; or
   C. Fail to keep the money in his/her possession until lawfully disbursed or paid out according to law; or
   D. Deposit the money in an unauthorized bank or with a person not lawfully authorized to receive such; or
   E. Knowingly keep any false account, or make a false entry or erasure in any account of or relating to the money; or
   F. Fraudulently alter, falsify, conceal, destroy, or obliterate any such account; or
   G. Knowingly refuse or omit to pay over on lawful demand by competent authority any public

monies in his/her hands; or

H. Knowingly omit to transfer money when transfer is required by proper authority; or

I. Make a profit for him/herself or another when not lawfully entitled to such, or in an unlawful manner, out of public monies; or

J. Fail to pay over to the proper account or authority any fines, forfeitures, or fees received by him/her; or

K. Otherwise handle public money in a manner not authorized by law for his/her own benefit; or

L. Handle public money in a reckless manner as a result of which a risk of loss of such money is significant.

2. "Public money" includes all money, bonds, and evidences of indebtedness or their equivalent, belonging to, or received or held by the Tribe or any other government, or any account or money held by the Tribe or government for any individual or group.

3. Misuse of public monies is a Class I offense. [TCR 86-79]

3-631 Improper influence in official matters.

1. It shall be unlawful to:

A. Threaten unlawful harm to any person with intent to influence another's decision, opinion, recommendation, vote or other exercise or discretion as a public servant, party official, or voter; or

B. Threaten harm to any public servant or relative of a public servant with the intent to influence his/her decision, opinion, recommendation, vote or other exercise of discretion in a judicial, legislative, or administrative proceeding; or

C. Threaten harm to any public servant or official or relative of either with the intent to influence him/her to violate his/her duty; or

D. Privately address any public servant who has or will have an official discretion in a judicial or administrative proceeding and making thereby any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.

2. 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/she had not yet assumed office, or lacked jurisdiction, or for any other reason.

3. Improper influence in official matters is a Class I offense. [TCR 86-79]

3-632 Retaliation for past official action.

1. It shall be unlawful to harm any person by any unlawful act in retaliation for anything lawfully done by another person in his/her capacity as a public servant.

2. Retaliation for past official action is a Class I offense. [TCR 86-79]

3-633 Improper gifts to public servants.

1. It shall be unlawful to knowingly confer or offer or agree to confer any benefit to a public servant with the intent to induce an exercise of his/her discretion in an unlawful manner, or to undermine official impartiality.

2. This Section shall not apply to:

A. Fees prescribed by law to be received by a public servant, or any benefit for which the recipient gives lawful consideration or to which he/she is otherwise entitled; or

B. Gifts or other benefits conferred on account of kinship, traditional ceremonies, or other

personal, professional or business relationship independent of the official status of the receiver; or

C. Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

3. Improper gifts to public servants is a Class I offense. [TCR 86-79]

3-634 Special influence.

1. It shall be unlawful to solicit, receive, or agree to receive any financial benefit as consideration for exerting special unlawful influence upon a public servant, in order to influence that public servant to violate the law or to exercise his/her discretion in a particular fashion or procuring another to do so; or to offer, confer or agree to confer any financial benefit receipt of which is prohibited by this Section.
2. Special influence is a Class I offense. [TCR 86-79]

3-635 Doing business without a license.

1. It shall be unlawful to commence or carry on any business, trade, profession, or calling the transaction or carrying on of which is required by law to be licensed, without having an appropriate license.
2. Doing business without a license is an infraction. [TCR 86-79, 89-87]

3-636 Tampering with public property.

1. It shall be unlawful to:
   A. Steal, deface, mutilate, alter, falsify, or remove all or part of any record, map, book, document or thing, or any court documents or records, placed or filed in any public office, or with any public officer, or to permit another to do so; or
   B. Knowingly injure, deface or remove any signal, monument or other marker placed or erected as part of an official survey of the Tribal, state or federal government without authority to do so; or
   C. Intentionally deface, obliterate, tear down, or destroy any copy or transcript or extract from any law or any proclamation, advertisement, or notice set up or displayed by any public officer or court, without authority to do so and before the expiration of the time for which the same was to remain set up.
2. Tampering with public property is a Class III offense. [TCR 86-79, 89-87]

3-637 Injuring public property.

1. It shall be unlawful to:
   A. Intentionally breakdown, pull down or otherwise injure or destroy any jail or other place of confinement; or
   B. Intentionally and without authority dig up, remove, displace or otherwise injure or destroy any public roadway, highway or bridge or private road or bridge or other public building or structure; or
   C. Remove or injure any milepost or road or highway sign or marker or any inscription on them while such is erected along a road or highway; or
   D. Knowingly and without authority to do so, remove, injure, deface, or destroy any public building or structure, or any personal property belonging to the Winnebago Tribe of Nebraska or to any other government or government agency.

2. Injuring public property is a Class I offense. [TCR 86-79]

3-638 Bail jumping.

1. It shall be unlawful to purposely or knowingly fail to obey an order, subpoena, warrant or command duly made, issued, or given by a Court of the Winnebago Tribe of Nebraska or any officer thereof or otherwise issued according to law, without just cause.
2. This Section shall not apply to a failure to appear as a party in a civil action where default or a similar remedy is available to the other party.
3. Bail jumping is Class I offense. [TCR 86-79]

3-639 Failure to obey a lawful order of the Court.

1. It shall be unlawful to purposely or knowingly fail to obey an order, subpoena, warrant or command duly made, issued, or given by a Court of the Winnebago Tribe or any officer thereof or otherwise issued according to law, without just cause.
2. Failure to obey a lawful order of the Court is a Class I offense. [TCR 86-79]

3-640 Repealed. [TCR 86-79, 89-87]

3-641 Neglecting to serve a warrant; penalty; forfeiture of office.

1. When any warrant legally issued by any judge of the Winnebago Tribal Court in any criminal case shall be delivered into the hands of any constable, sheriff, or other officer, to be executed, whose duty it shall be to execute such warrant, it is hereby made the duty of such constable, sheriff, or other officer to serve the same immediately, and if such constable, sheriff, or other officer shall neglect or delay to serve any such warrant, delivered to him/her as aforesaid, when in his/her power to serve the same, either alone or by calling upon assistance according to law, he/she commits the offense of neglecting to serve a warrant.
2. Neglecting to serve a warrant is a Class II offense. [TCR 86-79, 89-87]

3-642 Mutilating a flag; penalty; flag, defined.

1. A person commits the offense of mutilating a flag if such person intentionally casts contempt or ridicule upon a flag by mutilating, defacing, defiling, burning, or trampling upon such flag.
2. Flag as used in this Section shall mean any flag, ensign, banner, standard, colors, or replica or representation thereof which is an official or commonly recognized symbol of the United States.
3. Mutilating a flag is an infraction. [TCR 86-79, 89-87]

3-643 Illegal solicitation.

1. It shall be unlawful for any person, officer or employee of the Winnebago Tribe of Nebraska or any Tribal member to solicit funds, equipment, home furnishings, food and other items such as tickets to entertainment activities on behalf of the Winnebago Tribal membership or the Winnebago Tribe of Nebraska, without the express written authorization of the Winnebago Tribe of Nebraska. To secure proper authorization to solicit in the name of the Winnebago Tribe of Nebraska or its members: the Chairman of the Winnebago Tribe may issue an express letter of approval, certified by a notary, a copy to be placed on file with the treasurer of the Winnebago Tribe of Nebraska. Such letter shall describe a specific time limitation for the authorization, name the person(s) doing the solicitation, and describe the items and quantity of items being solicited.
2. This provision does not apply to:

A. Tribally administered programs soliciting donations of such items or fund-raising efforts for the express purpose of implementing program activities for program participants.
B. Projects created for special purposes by organized recreational, social, welfare, committees of the Council specially sanctioned in writing by the Tribal Council to implement specified community events.
C. Organized church groups implementing fund-raising activities for church sponsored programs.
D. Educational programs of the local schools implementing fund-raising activities for school sponsored programs.
E. Organized athletic groups implementing fund-raising activities for athletic events and purchase of athletic equipment and uniforms.
F. Local chapters of national organizations such as scouting groups, veterans groups, implementing fundraising activities for chapter sponsored activities or nationally sponsored activities.

3. Illegal solicitation is a Class II offense. [TCR 86-79, 89-87]

3-644 Repealed. [TCR 86-79, 89-87]

3-645 Failure to appear; penalty. Whoever is charged with an offense under this Code and is released from custody under bail, recognizance, or a conditioned release and willfully fails to appear before the Court granting such release when legally required or to surrender himself within three days thereafter, shall be guilty of a Class II offense, in addition to any other penalties or forfeitures provided by law. [TCR 86-79, 86-106]

3-646 Sell or exchange of property for promise to vote prohibited. It is unlawful for any candidate for public office to give, or promise to give, any item of personal property, including alcohol, in exchange for the promise of the grantee to vote for the candidate in any public election. Violation of this provision is a Class I offense. [TCR 98-64]

TITLE 3
ARTICLE 7
CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE
(As revised December 12, 2025)

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3-702 Incestuous marriages; declared void.
3-703 Incest; penalty.
3-704 Child abuse; penalty.
3-705 [REPEALED by TCR 15-133]
3-706 [REPEALED by TCR 15-133]
3-706.1 [REPEALED by TCR 15-133]
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3-708 [REPEALED by TCR 15-133]
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TITLE 3
ARTICLE 7
CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE
(continued)

3-759 Assault of a Human Embryo or Fetus in the second degree; penalty
3-760 Assault of a Human Embryo or Fetus in the third degree; penalty.
3-761 Indecent liberties; penalty.
3-762 Video Recording and Distribution of Criminal Assaults

3-701 Bigamy; penalty; exception.

1. If any married person, having a husband or wife living, shall marry any other person, he/she shall be deemed guilty of bigamy, unless as an affirmative defense it appears that at the time of the subsequent marriage:
   A. The accused reasonably believes that the prior spouse is dead; or
   B. The prior spouse had been continually absent for a period of five years during which the accused did not know the prior spouse to be alive; or
   C. The accused reasonably believed that he/she was legally eligible to remarry.
2. Any unmarried person who knowingly marries a person who is married commits bigamy.
3. Bigamy is a Class I offense. [TCR 86-79]

3-702 Incestuous marriages; declared void. Incestuous marriages are marriages between parents and children, grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, aunts and nephews. Incestuous marriages are declared to be absolutely void. [TCR 86-79]

3-703 Incest; penalty.

1. Any person who shall knowingly intermarry or engage in sexual penetration with any person who fails within the degrees of consanguinity set forth in Section 3-702, or any person who engages in sexual penetration with his/her minor stepchild commits incest.
2. Incest is a Class I offense.
3. For purposes of this Section, the definitions found in Section 3-417 shall be used.
4. The testimony of a victim shall be entitled to the same weight as the testimony of victims of other crimes under this Code. [TCR 86-79]

3-704 Child abuse; penalty.

1. A person commits child abuse if he/she knowingly, intentionally, or negligently causes or permits a minor child to be:
   A. Placed in a situation that endangers his/her life or health, or
   B. Cruelly confined or cruelly punished; or
   C. Deprived of necessary food, clothing, shelter, or care.
2. The privilege between patient and physician and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this Section.
3. Child abuse is a Class I offense. [TCR 86-79]

3-705 [REPEALED] [TCR 86-79, 91-14, 15-133]

3-706 [REPEALED] [TCR 86-79, 91-14, 15-133]

3-706.1 [REPEALED] [TCR 86-79, 91-14, 15-133]

3-707 [REPEALED] [TCR 86-79, 91-14, 15-133]

3-708 [REPEALED] [TCR 86-79, 91-14, 15-133]

3-709 Privileged communication; patient and physician; husband and wife; not ground for excluding evidence. The privileged communication between patient and physician, and between husband and wife, shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to Sections 3-704 to 3-705. [TCR 86-79]

3-710 Abandonment of spouse, child or dependent stepchild; penalty; child, defined.

1. Any person who abandons and neglects or refuses to maintain or provide for his/her spouse, or his/her child, or dependent stepchild, whether such child be born in or out of wedlock, commits abandonment of spouse, child, or dependent stepchild; provided however, that such abandonment results in undue hardship to such spouse, child or dependent stepchild.
2. For the purpose of this Section, child shall mean an individual under the age of sixteen years.
3. When any person abandons and neglects to provide for his/her spouse, or his/her child, or dependent stepchild for three consecutive months or more, it shall be prima facie evidence of intent to violate the provisions of subsection (1) of this Section.
4. Abandonment of spouse, child, or dependent stepchild is an infraction. [TCR 86-79, 89-87]

3-711 Criminal nonsupport; penalty; exception.

1. Any person who intentionally fails, refuses, or neglects to provide proper support which he/she knows or reasonably should know he/she is legally obliged to provide to a spouse, minor child, minor stepchild, or other dependent, commits criminal nonsupport.
2. Support includes but is not limited to food, clothing, medical care, and shelter.
3. This Section does not exclude any applicable civil remedy.
4. Criminal nonsupport is a Class III offense. [TCR 86-79]

3-712 Protective custody; penalty. A person who, as a result of severe intoxication, lacks the ability to perform normal physical functions or presents a clear and immediate danger to him/herself or others may be taken into protective custody and held in protective custody for a period not to exceed seventy two hours; provided that such individual shall be released without unnecessary delay upon achieving sobriety. Nothing in this Section shall be construed as constituting a criminal offense and no warrants, complaints or summons shall issue pursuant to this Section. However, under this Section and the authority vested in law enforcement officers pursuant to Rule IB-302.2, Article 3, "Proceedings Before Trial" of Title IA, "Criminal Procedure" of the Winnebago Tribe of Nebraska Law and Order Code, officers may issue a citation in lieu of arrest. The officer must then make available to the authorized personnel at the detention or health care facility a copy of such citation for the individual's file. The facility personnel may then use the citation to inform the individual of his/her protective custody status. [TCR 86-79, 87-114, 88-07]

3-713 Failure to send child to school and educational neglect of a minor; truancy; penalties.

1. A person is guilty of failure to send a child to school and educational neglect of a minor, if, being the parent, guardian or other person having a child in his/her custody and care, he/she, without good cause, neglects or refuses to send such child to school in accordance with the requirements of Title 7, Article 8, of the Winnebago Tribal Code.
2. It shall be unlawful for any minor under the age of nineteen, but over the age of seven, to be absent from school without good cause.
3. A violation of this Section is a Class III Offense.
4. For the first offence, the penalty shall be five (5) days in custody; the second offense shall be ten (10) days in custody; and the third offense shall be thirty (30) in custody. [TCR 86-79, 89-87, 05-03, 06-49, 26-48]

3-714 Curfew; penalty.

1. It shall be unlawful for a parent, guardian or other person having physical charge of a minor to allow said minor to be away from his/her place of residence in a public place, or a private place other than the place where he/she intends to spend the night with the permission of the owner of such place, or in a vehicle driving about, after the hour of ten o' clock p.m. local time, until six o'clock a.m., unless accompanied by a parent or guardian having physical charge of said minor or in attendance at or returning directly home from an organized school, church, Tribal or public function (with permission of his/her guardian or parent); or
2. Any minor shall not be away from his/her place of residence in a public place, or a private place other than the place where he/she intends to spend the night with the permission of the owner of such place, or in a vehicle driving about, after the hour of ten o'clock p.m., local time, until six o'clock a.m. The minor is excused from a violation of this curfew statute if accompanied by a parent or guardian or in attendance at or returning directly home from an organized school, church, Tribal or public function (with the permission of his/her guardian or parent).
3. Violation of this curfew Section is an infraction.
4. Juveniles picked up after curfew shall be returned to their home; if there is not an adult present in the home, placement shall be made at the Tribal jail or facility available to law enforcement until the parent or Court takes custody of the child. The cost of such detention may be assessed to the parent or guardian by the Court.
5. The curfew shall be extended for a period of time every year to eleven o'clock p.m. for any minor under the age of eighteen, but over the age of fourteen. The first day of the extended curfew shall be Memorial Day and the last day of the extended curfew shall be the day before Labor Day. [TCR 86-79, 89-87, 11-163]

3-715 Contributing to the delinquency of a child; definitions; procuring alcohol for a minor; penalties.

1. Any person who, by any act, encourages, causes, or contributes to the delinquency or need for supervision of a child under eighteen years of age, so that such child becomes, or will tend to become, a delinquent child, or a child in need of supervision, commits the offense of contributing to the delinquency of a child.
2. The following definitions shall be applicable to this Section:
   A. "Delinquent child" shall mean any child under the age of eighteen years who has violated any law of the Tribe, of the state, or any city or village ordinance; and
   B. "Child in need of supervision" shall mean any child under the age of eighteen years (i) who, by reason of being wayward or habitually disobedient, is uncontrolled by his/her parent, guardian, or custodian, (ii) who is habitually truant from school or home; or (iii)

who deports him/herself so as to injure or endanger seriously the morals or health of him/herself or others.

3. Any person who gives, sells or otherwise provides alcoholic liquor to a person under the age of twenty-one commits the offense of procuring alcohol for a minor.
4. Contributing to the delinquency of a child is a Class III offense.
5. Procuring alcohol for a minor is a Class II offense and shall be subject to a mandatory minimum penalty of thirty (30) days imprisonment and a five hundred dollar ($500.00) fine. [TCR 86-79, 89-87, 14-47]

3-716 Minor in possession; penalty.

1. No person under the age of twenty-one may sell or dispense or have in his/her possession or physical control any alcoholic liquor in any tavern or in any other place including public streets, alleys, roads, highways, upon property owned by the Winnebago Tribe of Nebraska, the United States, the state or inside any vehicle while in or on any other place including but not limited to the public streets, alleys, roads, highways, or upon property owned by the Winnebago Tribe of Nebraska, the United States, or the state.
2. Minor in possession is a Class III offense. [TCR 86-79, 88-53]

3-717 Tobacco; minor in possession; sale to minors; smoking in Tribal building prohibited; penalties; exemption.

1. No person under the age of eighteen may sell or dispense or have in his/her possession or physical control any tobacco in any form whatsoever (including cigarette paper) in any place unless exempted by subsection 4 of this Section.
   A. Minor in possession of tobacco is an infraction as defined by Rule 1B-706(D).
   B. In addition to the fine authorized by Rule 1B-706(D), a minor found to have violated this subsection may be required to:
      i. Attend an Environmental Tobacco Smoke/Tobacco Cessation class approved by the Tribal Health Department;
      ii. Prepare and submit a research paper on tobacco; and/or
      iii. Perform community service.
2. Whoever shall sell, give or furnish, in any way, any tobacco in any form whatsoever, or any cigarettes or cigarette paper, to any minor under eighteen years of age shall be guilty of an infraction as defined by Rule 1B-706(D). In addition to the fine authorized by Rule 1B-706(D), a person found to have violated this subsection may be required to perform community service.
3. Except as otherwise provided in subsection 4 of this Section, it is unlawful for any person to use tobacco inside or within fifty feet of all tribally operated buildings and recreation areas. Tribal vehicles are to be tobacco-free.
   A. Violation of this subsection is an infraction as defined by Rule 1B-706(D).
   B. A person charged with violating this subsection may voluntarily participate, at his or her own expense, in an Environmental Tobacco Smoke/Tobacco Cessation program approved by the Tribal Health Department, and such charge shall be dismissed upon successful completion of the program.
4. The provisions of this Section shall not apply to:
   A. Any traditional ceremonies or functions of the Winnebago Tribe;
   B. Designated smoking areas of the Winnebago Tribe's gaming operations;
   C. Areas outside of tribally operated building and recreation areas as designated by the Tribal Council as smoking areas. [TCR 86-79, 89-87, 08-99]

3-718 Trafficking in children; penalty.

1. It shall be unlawful to:
   A. Accept any compensation, in money, property or other thing of value, at any time, from the person or persons adopting a child, for services of any kind performed or rendered, or purported to be performed or rendered, in connection with such adoption; or
   B. Accept any compensation, in money, property or other thing of value, from any other person, in return for placing, assisting to place, or attempting to place a child for adoption or for permanent care in a foster home; or
   C. Offer to place, or advertise to place, a child for adoption or for care in a foster home, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a child.
2. "Child" means an unmarried or unemancipated person under the age of eighteen years.
3. This Section does not apply to attorneys or advocates licensed by the Tribal Courts receiving reasonable fee for legal services actually rendered in the course of lawful adoption proceedings, nor do subsections (1)(A) or (2)(A) apply to any bona fide social worker or government employee receiving his/her normal salary and making such placements as a part of his/her official duties.
4. Trafficking in children is a Class II offense. [TCR 86-79]

3-719 Welfare offense; penalty.

1. A person is guilty of welfare offense if:
   A. He/she gives false information to another for the purpose of obtaining or retaining welfare benefits; or
   B. He/she knowingly fails to correct misinformation which enables him/her to obtain or retain welfare benefits; or
   C. He/she continues to accept and use for his/her own benefit or the benefit of another, welfare benefits to which he/she knows he/she is not entitled; or
   D. He/she uses or expends money or commodities granted him/her as a welfare benefit in an improper manner or in a manner which does not proportionately benefit each of those persons intended to benefit by the grant; or
   E. He/she knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto.
2. Welfare offense is a Class III offense, except that trade using commodities as payment in kind shall be treated as an infraction under subsection (C). [TCR 86-79, 89-87]

3-720 Desecration; penalty.

1. It shall be unlawful to purposely desecrate any public monument or structure; or to purposely desecrate a place of worship or burial, or other sacred place.
2. Desecrate means to deface, disturb, damage, pollute, destroy, take or otherwise physically mistreat in a way that the actor knows, or believes, will outrage the sensibilities of persons likely to observe or discover his/her action. It includes grazing by livestock, farming, irrigation or other activity.
3. Desecration is a Class III offense. [TCR 86-79]

3-721 Disrupting a public or religious assembly.

1. It shall be unlawful to intentionally prevent or disrupt a lawful meeting or religious assembly, by doing any act tending to obstruct or interfere with it physically; or by making any utterance, gesture or display designed to outrage the sensibilities of the group or prevent the assembly from conducting its business.
2. Disrupting a public or religious assembly is a Class III offense. [TCR 86-79]

3-722 Violation of privacy; penalty.

1. It shall be unlawful, except as authorized by law, to:
   A. Trespass on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or
   B. Install in any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or use any such unauthorized installation; or
   C. Install or use outside of any private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or
   D. Divulge without the consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted, or if he/she learned of the message in the course of employment with an agency engaged in transmitting it.
2. Definitions:
   A. "Eavesdrop" means to overhear, record, amplify, or transmit any part of an oral or written communication of others without the consent of at least one party thereto by means of any electrical, mechanical or other device.
   B. "Private place" means a place where one can reasonably expect to be safe from casual or hostile intrusion or surveillance.
3. Violation of privacy is a Class III offense. [TCR 86-79]

3-723 Criminal defamation; penalty.

1. It shall be unlawful to knowingly and with malicious intent communicate to any person orally or in writing any information which one knows or should know to be false and knowing that the information tends to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, or who has not been deceased for a period exceeding twenty years, and thereby expose him/her to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown by way of defense.
2. Criminal defamation is a Class III offense. [TCR 86-79]

3-724 Harassment; penalty.

1. It shall be unlawful, with the purpose to annoy or alarm another, to insult, taunt, or challenge another, in a manner likely to provide a violent or disorderly response; or to make repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language.
2. Harassment is an infraction. [TCR 86-79, 89-87]

3-725 Disorderly conduct; penalty.

1. It shall be unlawful to purposely cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof, by:
   A. Engaging in fighting, or threatening to engage in violent or tumultuous behavior;
   B. Making unreasonable noise or offensively coarse utterances, gestures, displays, or addressing abusive language to any person present;
   C. Creating a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor;
   D. Appearing in public places in an intoxicated condition and doing any of the following:
      i. Passing out or falling or sleeping in a public place or on the property of another without permission; or
      ii. Bothering, disrupting or otherwise intruding upon another person or group of persons, or
      iii. Appearing or being found in an area set aside for religious or ceremonial activities which have traditionally, or by order of Tribal or conducting authorities, been set aside for use, free from alcoholic beverage consumption or the presence of intoxicated persons, during the period of such a religious or ceremonial public activity.
2. "Public" means affecting or likely to affect persons in a place to which the public or a substantial group of the public has access and includes apartment houses, and office buildings, transport facilities, businesses open to the public, and places of entertainment or amusement.
3. Disorderly conduct is a Class III offense. [TCR 86-79]

3-726 Prostitution; penalty; citation in lieu of arrest.

1. Any person who performs, offers, or agrees to perform any act of sexual penetration, as defined in subsection (6) of Section 3-417 with anyone commits prostitution. Any person violating this Section shall be issued a citation in lieu of arrest.
2. Prostitution is a Class III offense. [TCR 86-79, 89-87]

3-727 Pandering; penalty.

1. A person commits pandering if such person:
   A. Entices another person to become a prostitute; or
   B. Inveigles, entices, persuades, encourages, or procures any person to come onto or leave this reservation for the purpose of prostitution or debauchery; or
   C. Receives or gives or agrees to give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come onto this reservation or leave this reservation for the purpose of prostitution or debauchery.
2. Pandering is a Class I offense. [TCR 86-79]

3-728 Pandering; evidence.

1. Any person referred to in Section 3-727 shall be a competent witness in any prosecution thereunder to testify to any and all matters, including conversation with the accused, or by the accused with third persons, in his/her presence notwithstanding having married the accused either before or after

the violation of any of the provisions of such Section; and the act and state of marriage shall not be a defense to any violation of such Section.

2. Pandering shall be an exception to the husband-wife privilege. [TCR 86-79]

3-729 Keeping a place of prostitution; penalty.

1. Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.
2. Keeping a place of prostitution is a Class II offense. [TCR 86-79]

3-730 Prostitution cases; incrimination testimony; how treated. In all cases arising under Sections 3-726 to 3-730, no person shall be excused from testifying against another person by reason of such testimony tending to incriminate the person testifying, but testimony so given, unless voluntary, shall in no case be used against the person so testifying in any criminal prosecution or otherwise. [TCR 86-79]

3-731 Debauching a minor; penalty.

1. Any person not a minor commits the offense of debauching a minor if he/she shall debauch or deprave the morals of any unemancipated boy or girl under the age of eighteen years by:
   A. Lewdly inducing such boy or girl carnally to know any other person; or
   B. Soliciting any such boy or girl to visit a house of prostitution or other place where prostitution, debauchery, or other immoral practices are permitted or encouraged, for the purpose of prostitution or sexual penetration; or
   C. Arranging or assisting in arranging any meeting for such purpose between any such boy or girl and any female or male of dissolute character or any inmate of any place where prostitution, debauchery, or immoral practices are permitted or encouraged; or
   D. Arranging or aiding or assisting in arranging any meeting between any such boy or girl and any other person for the purposes of sexual penetration.
2. Debauching a minor is a Class II offense. [TCR 86-79, 89-87]

3-732 Public indecency; penalty.

1. A person eighteen years of age, or over, commits public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:
   A. An act of sexual penetration; or
   B. An exposure of the genitals of the body done with intent to affront or alarm any person; or
   C. A lewd fondling or caressing of the body of another person of the same or opposite sex.
2. Public indecency is a Class III offense. [TCR 86-79]

3-733 Obscenity; penalty.

1. It shall be unlawful to:
   A. Sell, deliver or provide, or offer or agree to sell, deliver or provide, any obscene writing, picture, record or other representation or embodiment that is obscene; or
   B. Present or direct an obscene play, dance, or performance, or participate in that portion thereof which makes it obscene; or
   C. Publish, exhibit or otherwise make available any obscene material;

D. Possess any obscene material for purposes of sale or other commercial dissemination; or

E. Sell, advertise, or otherwise commercially disseminate material, whether or not obscene, by representing or suggesting that it is obscene.

2. Material is obscene if, considered as a whole:

A. It lacks serious literary, artistic, political, or scientific value; and

B. It depicts or describes nudity, sex or excretion in a patently offensive manner that goes substantially beyond customary limits of candor in describing or representing such matter; and

C. If the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals predominantly to a morbid or unnatural interest in nudity, sex, or excretion.

3. A person who disseminates or possesses obscene material in the course of his/her business is presumed to do so knowingly or recklessly.

4. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.

5. Undeveloped photographs, molds, printing plates and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

6. It shall be defense to a prosecution under this Section that the dissemination of the obscene material was restricted to institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material.

7. Obscenity is a Class III offense. [TCR 86-79]

3-734 Rioting; penalty.

1. It shall be unlawful to simultaneously, with two or more other persons, engage in tumultuous or violent conduct in a public place which endangers persons or property, and thereby knowingly or recklessly create a substantial risk of causing public alarm; or to assemble with two or more persons with the purpose of engaging soon thereafter in the above described conduct.

2. Rioting is a Class I offense. [TCR 86-79]

3-735 Failure to disperse; penalty.

1. It shall be unlawful to refuse or knowingly fail to obey an order to dispense or leave the immediate vicinity given by a law enforcement officer or other public servant performing an enforcement function, at the scene of a riot, fire, or other public disorder or given in the course of the investigation of the commission of an accident, fire, offense or suspected offense.

2. Failure to disperse is a Class III offense. [TCR 86-79, 89-87]

3-736 Dangerous weapon, firearm, school zone, other terms; defined.

1. "Dangerous weapon" shall mean any firearm, knife, or other instrument, device, or object which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious bodily injury, including any object used to simulate such an instrument, firearms (loaded or unloaded), knives, dirks, daggers, blades, explosive or incendiary devices.

2. "Firearm" is defined as provided by federal law, including 18 U.S.C. § 921(a)(3), as amended.
3. "Knife" shall mean any dagger, dirk, knife, or stiletto with a blade over three- and one-half inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds.
4. "Knuckles and brass or iron knuckles" shall mean any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.
5. "School zone" shall mean:
   A. The grounds of, or any building, structure, or facility used for educational purposes; and
   B. The area within one thousand (1,000) feet from the grounds of a school, excluding residences, private business facilities, and federal, state and tribal highways and streets.
6. "School" shall mean any public, private, tribal, charter, parochial, or community-based educational institution, whether permanent, temporary, mobile, or satellite, including but not limited to:
   A. Early childhood education programs, including Head Start, Early Head Start, and preschool programs;
   B. Elementary and secondary schools;
   C. Alternative and continuation schools;
   D. Tribal schools and Bureau of Indian Education schools;
   E. Vocational, technical, and career training programs;
   F. Colleges, universities, and community colleges;
   G. Daycare facilities, childcare centers, and youth activity centers providing regular instructional or educational programming; and
   H. Any facility or location used for organized instructional, cultural, language, or youth programming.
7. A firearm or other weapon shall be deemed "loaded" when there is an unexpended cartridge, shell or projectile in the firing position except in the case of pistols and revolvers, in which case they shall be deemed loaded when the unexpended cartridge, shell or projectile to be fired is in the cylinder. [TCR 86-79, 26-61]

3-737 Unlawful carrying or possession of dangerous weapons; penalty.

1. No person shall knowingly carry, possess, or have under the person's custody or control any dangerous weapon within the exterior boundaries of the Winnebago Tribe of Nebraska Reservation in a manner prohibited by this Code or by lawful order or regulation of the Tribe.
2. Possession by prohibited persons. No person shall knowingly possess, carry, or control any dangerous weapon if that person:
   A. Has been convicted of a felony offense under tribal, federal, or state law;
   B. Has been convicted of a misdemeanor crime of domestic violence;
   C. Is subject to a valid domestic violence protection order or restraining order issued by a court of competent jurisdiction;
   D. Is under indictment or information for a felony offense; or is otherwise prohibited from possessing dangerous weapons under applicable tribal or federal law.
3. No person shall have a dangerous weapon in one's actual possession while being addicted to any narcotic drug; or after having been declared mentally incompetent; or while being intoxicated or otherwise under the influence of alcoholic beverages or other intoxicating substance, drug, or medicine; or while possessing the intent to unlawfully assault another; or while under the age of sixteen years and without the consent of one's parent or guardian.

4. No person shall carry a loaded firearm in a vehicle on a public road without lawful authority to do so; or to discharge any kind of firearm from a motor vehicle without lawful authority to do so, or to discharge a firearm from upon or across any public highway without lawful authority to do so.
5. Possession of dangerous weapons in restricted or sensitive locations prohibited. No person shall knowingly possess, carry, or control any dangerous weapon in a restricted or sensitive location designated by tribal law or regulation, including but not limited to:
   A. Tribal government buildings and offices;
   B. Tribal courts and court facilities;
   C. Detention, correctional, or law enforcement facilities;
   D. Facilities where Tribal Council meetings, hearings, or official proceedings are conducted;
   E. Cultural buildings, facilities, and places, including pow grounds, veterans' memorials, cemeteries;
   F. Places of worship;
   G. Any other location designated by the Tribal Council or appropriate tribal authority as necessary to protect public safety.
6. Possession of a dangerous weapon in a school zone prohibited. No person shall knowingly possess, carry, or have under the person's custody or control any dangerous weapon while in a school zone located within the exterior boundaries of the Winnebago Tribe of Nebraska Reservation, including all trust land, restricted fee land, and other lands subject to the Tribe's criminal jurisdiction.
7. Exceptions. This section does not apply to:
   A. Law enforcement or peace officers acting within the scope of official duties and authorized by the Tribe, the United States, or another government with lawful jurisdiction;
   B. Persons lawfully transporting an unloaded firearm in a locked container or locked firearms rack in a motor vehicle;
   C. Persons authorized in writing by the Tribe or by the governing authority of a restricted facility or school for lawful purposes, including safety, instruction, or ceremonial use; or
   D. Any other exception expressly recognized by tribal or federal law.
8. Criminal Penalties. A violation of this section constitutes a criminal offense under tribal law and shall be punished pursuant to Title 1B, Article 7, § 1B-706, as a Class I Offense, including fines, imprisonment, probation, exclusion, forfeiture, or any combination thereof as authorized by tribal law.
9. Civil Forfeiture.
   A. Any dangerous weapon possessed in violation of this section is declared contraband and subject to civil forfeiture to the Winnebago Tribe of Nebraska.
   B. Civil forfeiture proceedings are in rem, remedial in nature, and independent of any criminal prosecution or conviction.
   C. The Tribe may initiate forfeiture by filing a petition in Tribal Court describing the seized property and the basis for forfeiture.
   D. Any person claiming an ownership or possessory interest in the subject dangerous weapon shall be provided notice and an opportunity to be heard consistent with tribal due process.
   E. Upon forfeiture, the Tribal Court may order the property destroyed, retained for official use, or otherwise disposed of consistent with tribal law and public safety.
   F. No dangerous weapon shall be returned if possession would be unlawful under tribal or federal law.
10. Exclusion.
   A. In addition to criminal or civil penalties, the Tribal Court may order temporary or

permanent exclusion of any person who violates this section.

B. An exclusion order may apply to the Reservation as a whole or to specific facilities or zones, including school zones.

C. In determining exclusion, the Court may consider the seriousness of the offense, risk to public safety, prior violations, and protection of children and other vulnerable persons.

D. Violation of a valid exclusion order constitutes a separate offense.

11. Detention, Disarmament, and Transfer of Non-Indians.

A. When a person not subject to Tribal criminal jurisdiction is reasonably believed to have violated this section, tribal law enforcement officers may temporarily detain and disarm the individual and secure any firearm.

B. Detention shall be limited in scope and duration and exercised solely to protect public safety, investigate the violation, determine jurisdiction, and transfer custody.

C. Tribal law enforcement shall notify and transfer custody of the individual and any seized dangerous weapons or evidence to appropriate federal, state, or local authorities as soon as practicable.

D. Nothing in this subsection expands tribal criminal jurisdiction beyond that authorized by federal law.

E. "Person not subject to Tribal criminal jurisdiction" means a person who is not recognized as an Indian, citizen, or member by a federally recognized tribe or the federal government. [TCR 86-79, 89-87, 26-61]

3-738 Aggravated weapons offense; penalty.

1. Except as provided in subsection (2) of this Section, any person who carries a weapon or weapons concealed on or about his/her person such as a revolver, pistol, bowie knife, dirk or knife with a dirk blade attachment, brass or iron knuckles, or any other dangerous weapon, or threatens to use or exhibit the dangerous weapon in a dangerous and threatening manner, or use a dangerous weapon in a fight or quarrel commits the offense of carrying concealed weapons.
2. It shall be an affirmative defense that the defendant was engaged in any lawful business, calling or employment at the time he/she was carrying any weapon or weapons, and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons, for the defense of his/her person, property or family.
3. Aggravated weapon offense is a Class I offense. [TCR 86-79, 26-61]

3-739 Using firearms to commit a crime; penalty.

1. Any person who uses a firearm, knife, brass or iron knuckles, or any other dangerous weapon to commit any crime which may be prosecuted in a Tribal Court, or any person who unlawfully possesses a firearm, knife, brass or iron knuckles, or any other dangerous weapon during the commission of a crime which may be prosecuted in a Tribal Court commits the offense of using firearms to commit a crime.
2. Using firearms to commit a crime is a Class I offense. [TCR 86-79, 26-61]

3-740 Dangerous devices; penalty.

1. It shall be unlawful to:

A. Deliver or to cause to be delivered to any express, railway company or common carrier, or place in the mail or deliver to any person, or throw or place on or about the premises of

another or in any place where another may be injured thereby, a dangerous device, knowing it to be such, unless the threatened person is informed of the nature thereof and its placement is for some lawful purpose; or

B. Knowingly construct or contrive any dangerous device, or with the intent to injure another in his/her person or property, have a dangerous device in one's possession.

2. For purposes of this Section, a dangerous device is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or inflammable substance, chemical, or compound, or knife, loaded firearm or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts, unexpectedly when moved, handled, or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property.

3. Dangerous devices is a Class I offense. [TCR 86-79]

3-741 Fireworks offense; penalty.

1. It shall be unlawful to possess, buy, sell, distribute, transport, activate, ignite, or detonate or to allow any minor under one's physical or actual care, custody, or control to possess, buy, sell, distribute, transport, activate, ignite, or detonate any firecracker or other firework type device which is capable of or intended to explode, ignite, become self-propelled, give off any projectile, spark or other ignited or fused object or manifestation, or in any way give off sound or light by virtue of its burning or exploding.

2. It shall not be an offense under this Section:

A. To use or ignite hand-held sparkler type devices in such a manner that they burn openly and singly or to use toy caps and cap guns singly and in the intended fashion; or

B. To use or ignite fireworks at a patriotic, religious, or Tribal ceremony, gathering, or celebration in a safe manner provided that a permit to do so has been obtained from the Tribal Council or a lawfully authorized Tribal agency prior to the importation and use of such fireworks; or

C. To buy, possess, use, or ignite fireworks between June 15 and July 5 inclusive of each year, provided that such devices are handled safely with regard to the safety of others and their property, and provided further, that minors under the age of twelve years of age buying, possessing, using, or igniting fireworks must be under the actual direct physical supervision of some responsible adult over eighteen years of age for this exception to apply; and

D. To possess or sell fireworks between June 15and July 5**,** inclusive of each year provided that a permit to do so has been obtained from the Tribal Council or a lawfully authorized Tribal agency prior to such possession and sale, if that upon proof of a secure and safe facility, such permit may state a particular location for year round storage of fireworks by a business engaged in retail or wholesale of fireworks.

3. Fireworks is a Class III offense. [TCR 86-79, 89-87]

3-742 Inhaling or drinking certain compounds; penalty.

1. No person shall use, or induce or entice any person to breathe inhale or drink any compound, liquid or chemical containing acetate, acetone, benzene, butyl alcohol, cyclohexanone, ethyl acetate, ethyl alcohol, ethylene dichloride, ethylene tricworide, hexane, isopropanol, isopropyl alcohol, methyl alcohol, methyl cellosolve acetate, methyl ethyl ketone, methyl isobutyl ketone, pentachlorophenol, petroleum ether, toluene, toluol, trichloroathane, trichloroethylene, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, inebriation, excitement, or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual, mental or nervous processes. For the purposes of Sections 3-742 to 3-744, any such condition so induced shall be deemed an intoxicated condition.
2. Use of an inhalant or a compound as defined in this Section is a Class III offense. Inducement or enticement of a person to use an inhalant or a compound as defined in this Section is a Class II offense. [TCR 86-79, 89-87]

3-743 Selling and offering for sale certain compounds; use; knowledge of seller; unlawful.

1. No person shall knowingly sell or offer for sale, deliver or give to any person any compound, liquid or chemical or any other substance which will induce an intoxicated condition as defined in Section 3-742 when the seller, offerer or deliverer knows or has reason to know that such compound is intended for use to induce such condition.
2. Such inhalants used or kept in violation of this Section are hereby declared contraband.
3. Selling and offering for sale certain compounds is a Class II offense. [TCR 86-79]

3-744 Act, exceptions. The provisions of Sections 3-742 to 3-744 shall not apply to the use or sale of such substances, as defined in Sections 3-742 and 3-743, when such use or sale is administered or prescribed for medical or dental purposes, nor shall the provisions of Sections 3-742 to 3-744 apply to the use or sale of alcoholic liquors. [TCR 86-79]

3-745 [Reserved] [TCR 86-79, 89-87, 14-09]

3-746 Abandoning, or concealing a dead human body; penalty.

1. A person commits the offense of abandoning or concealing a dead human body if he/she:
   A. Throws away or abandons any dead human body, or any portion thereof, in any place other than a regular place for burial, or shall attempt to do the same or shall assist, initiate, or procure the same to be done;
   B. Receives, conceals, or disposes of any dead human body, or the remains thereof, knowing or having reason to know that the same had been dug up, disinterred or removed from its place of deposit or encourages another to do the same.
2. Abandoning or concealing a dead human body is a Class II offense. [TCR 86-79]

3-747 Concealing the death of another person; penalty. Any person who conceals the death of another person and thereby prevents a determination of the cause or circumstances of death commits a Class II offense. [TCR 86-79]

3-748 Intimidation by phone call; penalty; prima facie evidence.

1. A person commits the offense of intimidation by phone call if with intent to terrify, intimidate, threaten, harass, annoy, or offend he/she:
   A. Telephones another anonymously, whether or not conversation ensues, and disturbs the peace, quiet, and right of privacy of any person at the place where the calls are received; or
   B. Telephones another and uses indecent, lewd, lascivious, or obscene language or suggests any indecent, lewd or lascivious act; or
   C. Telephones another and threatens to inflict injury to any person or to the property of any person; or
   D. Intentionally fails to disengage the connection; or
   E. Telephones another and attempts to extort money or other thing of value from any person.
2. The use of indecent, lewd, or obscene language or the making of a threat or lewd suggestion shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy, or offend.
3. The offense shall be deemed to have been committed either at the place where the call was made or where it was received.
4. Intimidation by phone call is an infraction. [TCR 86-79, 89-87]

3-749 Interfering with a public service company; penalty.

1. A person commits the offense of interfering with a public service company if he/she willfully and purposely interrupts or interferes with the transmission of telegraph or telephone messages or the transmission of light, heat and power on this reservation.
2. Interfering with a public service company is a Class III offense. [TCR 86-79]

3-750 Maintaining a nuisance; penalty; abatement or removal.

1. A person commits the offense of maintaining a nuisance if he/she erects, keeps up or continues and maintains any nuisance to the injury of any part of the residents of this reservation.
2. The erecting, continuing, using, or maintaining of any building, structure, or other place for the exercise of any trade, employment, manufacture, or other business which, by occasioning noxious exhalation, noisome or offensive smells, becomes injurious and dangerous to the health, comfort, or property of individuals or the public; the obstructing or impeding, without legal authority, of the passage of any navigable river, harbor, or collection of water; or the corrupting or rendering unwholesome or impure of any water course, stream, or water; or unlawfully diverting any such watercourse from its natural course or state to the injury or prejudice of others, and the obstructing or encumbering by fences, building, structures or otherwise of any of the public highways, or streets or alleys of any city or village, shall be deemed nuisances.
3. A person guilty of erecting, continuing, using, maintaining or causing any such nuisance shall be guilty of a Class III offense.
4. The Court, in case of conviction of such offense shall order every such nuisance to be abated or removed. [TCR 86-79]

3-751 Disturbing the peace; penalty.

1. Any person who shall intentionally disturb the peace and quiet of any person, family, or neighborhood commits the offense of disturbing the peace.
2. Disturbing the peace is a Class III offense. [TCR 86-79]

3-752 Telecommunications violations; penalty. It shall be unlawful for any person to:

1. Willfully and without lawful authority cut, break, tap or make connection with any telegraph or telephone line, wire, cable or instrument, or read or copy, in any unauthorized manner, any message, communication or report passing over it, on this reservation; or
2. Willfully prevent, obstruct or delay, by any means or contrivance whatsoever the sending, transmission, conveyance or delivery on this reservation of any authorized message, communication or report by or through any telegraph or telephone line, wire or cable under the control of any telegraph or telephone company doing business on this reservation; or
3. Agree with, employ or conspire with any person or persons to unlawfully do or perform, or cause to be done, any of the above-mentioned acts; or
4. Occupy, use a line, or knowingly permit another to occupy or use a line, room, table, establishment or apparatus to unlawfully do or cause to be done any of the above-mentioned acts.
5. Telecommunications violation is a Class III offense. [TCR 86-79]

3-753 Animal, cruel mistreatment, cruel neglect, and abandon; defined. As used in Section 3-754, unless the context otherwise requires:

1. Animal shall mean a domesticated living creature and a wild living creature previously captured. Animal does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under Section 3-754;
2. Cruel mistreatment shall mean every act or omission which causes, or unreasonably permits the continuation of, unnecessary or unjustifiable pain or suffering;
3. Cruel neglect shall mean failure to provide food, water protection from the elements, opportunity to exercise, or other care normal, usual, and proper for an animal's health and well-being; and
4. Abandon shall mean the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care. [TCR 86-79]

3-754 Cruelty to animals; penalty; authorized or permitted conduct.

1. A person commits cruelty to animals if, except as otherwise authorized by law or recognized by law or recognized traditional Indian custom, he/she intentionally or recklessly:
   A. Subjects any animal to cruel mistreatment; or
   B. Subjects any animal in his/her custody to cruel neglect; or
   C. Wantonly kills or injuries any animal belonging to another; or
   D. Abandons any animal.
2. Cruelty to animals is a Class III offense if it involves a violation of subsections (A), (B), or (C); a violation of subsection (D) is an infraction. [TCR 86-79, 90-24]

3-755 Livestock offense; penalty.

1. It shall be unlawful for a person to:
   A. Knowingly or recklessly refuse or fail to mark or brand his/her livestock when such is required in the interest of livestock identification or directed by Tribal or government officials; or
   B. Alter, obliterate, or remove a brand or mark, or misbrand or mismark livestock with a purpose to deceive another for any reason; or
   C. Knowingly permit livestock to graze or trespass on the property of another or of the Tribe without permission to do so in excess of permitted time or amount; or

D. Knowingly fail to treat or dispose of a sick animal where there is a substantial danger of infecting other animals; or

E. Make a false report of livestock owned.

2. Except in cases in which the owner or person having custody of livestock believed to be in violation of this Section cannot be found, for subsections (A), (B), (C), (D) or (E), set forth above, no conviction may be sustained unless the owner or person having custody of the livestock involved is given forty eight hours written notice of his alleged violation.

3. Livestock found to be in violation of this Section may be impounded without prior notice to the owner if a Court so orders upon receipt of evidence that such animals seriously threaten the property of the Tribe or another or the health of other livestock and that immediate action is necessary to protect such interests from serious harm. A reasonable fee for the care of such animals may be collected prior to their release.

4. A livestock offense which is a violation of subsection (A), (C) or (E) shall be an infraction. Violation of subsection (B) of this Section shall be a Class II offense. A violation of subsection (D) or (E) of this Section is a Class III offense.

5. Livestock handled or kept in violation of this Section are hereby declared to be contraband. [TCR 86-79, 89-87]

3-756 Waters offense; penalty.

1. It shall be unlawful to:

A. Interfere with or alter the flow of water in any stream, river, ditch, or water system without lawful authority to do so, or express written authority of the Winnebago Tribe of Nebraska Tribal Council, and in violation of the right of any person; or

B. Knowingly break, injure, alter or destroy any bridge, dam, levee, embankment, reservoir, water tank, water line, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so; or

C. Pollute or befoul any water in any of the following ways:

i. Construct or maintain a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or

ii. Deposit, pile, unload or leave any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into the waters of any stream, well, spring or source of water used for domestic purpose; or

iii. Construct, establish, or maintain 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; or

iv. Knowingly cause or allow any substance harmful or potentially harmful to human life to enter into a source of water used for domestic purposes.

2. Waters offense is a Class II offense. [TCR 86-79, 89-87]

3-757 Assault of a Human Embryo or Fetus; terms defined; limitations.

1. As used in Sections 3-757 to 3-760, unless the context otherwise requires:

A. "Human embryo" or "fetus" shall mean any individual of the human species from fertilization until birth.
B. "Person" shall not include the pregnant woman.

2. Nothing contained in this Section, arising from the killing of an embryo or fetus, shall be construed to permit the prosecution:
   A. Of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which consent is implied by law;
   B. Of any person for any medical treatment of the pregnant woman or her embryo or fetus; or
   C. Of any woman with respect to her embryo or fetus; except as otherwise provided by law. [TCR 14-89]

3-758 Assault of a Human Embryo or Fetus in the first degree; penalty.

1. A person commits the offense of assault of a human embryo or fetus in the first degree if he/she during the commission of any criminal assault on a pregnant woman, intentionally or knowingly causes serious bodily injury to her human embryo or fetus.
2. Assault of a human embryo or fetus in the first degree is a Class I offense. [TCR 14-89]

3-759 Assault of a Human Embryo or Fetus in the second degree; penalty.

1. A person commits the offense of assault of a human embryo or fetus in the second degree if he/she, during the commission of any criminal assault on a pregnant woman, recklessly causes bodily injury to her human embryo or fetus.
2. Assault of a human embryo or fetus in the second degree is a Class II offense. [TCR 14-89]

3-760 Assault of a Human Embryo or Fetus in the third degree; penalty.

1. A person commits the offense of assault of a human embryo or fetus in the third degree if he/she, during the commission of any criminal assault on a pregnant woman, recklessly attempts to cause bodily injury to her human embryo or fetus, whether or not such injury results to her human embryo or fetus.
2. Assault of a human embryo or fetus in the third degree is a Class III offense. [TCR 14-89]

3-761 Indecent liberties; penalty

3. Any person not a minor commits the offense of indecent liberties if he/she, with lascivious intent:
   C. Knowingly causes another person to have sexual contact, as defined in section 3-417, with him or her or another without that person's consent; or
   D. Knowingly engages in lewd fondling or touching of him or herself in the presence of another person with the intent to arouse or satisfy the sexual desires of the other person, the offender or another, when that person is under the age of eighteen (19) or is deemed incapable of consent, without regard to whether that person consents; or
   E. Knowingly engages in lewd fondling or touching the body of another person who is under the age of eighteen (18) or is deemed in capable of consent, with the intent to arouse or satisfy the sexual desires of the person, the offender or another, without regard to whether that person consents; or
   F. Solicits a person who is under the age of eighteen (18) or is deemed incapable of consent to engage in any lewd fondling or touching of another with the intent to arouse or satisfy the

sexual desires of the person, the offender or another, without regard to whether that person consents.

4. A person is deemed incapable of consent if that person is impaired by reason of mental illness, mental incapacity, physical illness or disability, advanced age or other causes to the extent that the person lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his or her well-being.
5. In prosecuting violations of paragraph (1) of this section, the Tribe does not need to prove that the defendant knew the person was under the age of eighteen (18) or was incapable of giving consent.
6. In prosecuting violations of paragraph (1) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant believed that the other person had attained eighteen (18) years of age or that the other person was capable of consent.
7. Indecent liberties is a Class III offense. [TCR 14-88]

3-762 Video Recording and Distribution of Criminal Assaults

8. A person commits the offense of video recording and distribution of criminal assaults if he/she:
   A. Intentionally or knowingly films, records, or causes to be recorded a moving image to be displayed on a computer or other video screen that depicts a criminal assault; and
   B. Intends that such image will be distributed, including, but not limited to distribution by phone, social networking websites, user-generated content websites, and electronic mail, to another person other than law enforcement personnel for law enforcement purposes.
9. This section shall not apply to video recordings made by:
   A. Law enforcement personnel for law enforcement purposes; or
   B. Surveillance cameras used in the ordinary course of business.
10. Video Recording and Distribution of Criminal Assault is a Class III offense. [TCR 14-87]

TITLE 3
ARTICLE 8
CONTROLLED SUBSTANCES ACT
(As revised December 12, 2025)

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3-801 Definitions. As used in the Controlled Substances Act, of this Title:

1. "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means to the body of a patient or research subject by:
   A. A practitioner (or in his presence, by his/her authorized agent); or
   B. The patient or research subject at the direction and in the presence of a practitioner.
2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, dispenser, but does not include a common or contract employee of the carrier or warehouse keeper, carrier, public warehouse keeper.
3. "Control" means to add a drug, or other substance or immediate precursor to a schedule under this Article, whether by transfer from another schedule or otherwise.
4. "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of this Article 8. "Controlled substance" shall not include distilled spirits, wine, malt beverages, tobacco, or any non-narcotic substance if such substance may be included under the Federal Food, Drug and Cosmetic Act and the laws of this reservation, be lawfully sold over the counter without a prescription.
5. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person or persons who in fact manufactured, distributed or dispensed such substance and which thereby falsely purports or is represented to be the product of or to have been distributed by, such other manufacturer, distributor or dispenser.
6. "Deliver" or "Delivery" means the actual, constructive or attempted transfer of a controlled substance or a listed chemical whether or not there exists an agency relationship.

7. "Dispense" shall mean to deliver a controlled substance to an ultimate user or a research subject pursuant to the lawful order or prescription of a physician, dentist, veterinarian, or other medical practitioner licensed under the laws of this state to prescribe drugs, including the packaging, labeling, or compounding necessary to prepare the substance for such delivery. "Dispenser" shall mean the apothecary pharmacist, or other practitioner, duly licensed, who dispenses a controlled substance to an ultimate user or a research subject.
8. "Distribute" means to deliver other than by administering or dispensing a controlled substance.
9. "Distributor" means a person who distributes a controlled substance.
10. "Drug" means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them, substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals; and substances intended for use as a component of any article specified in this paragraph; but shall not include devices or their components, parts or accessories.
11. "Drug dependent person" means a person using a controlled substance and who is in a state of psychic or physical dependence, or, both, arising from administration of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.
12. "Drug manufacturing equipment" means any equipment, product, or material of any kind which is primarily intended or designed for use in planting, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repackaging, or storing a controlled substance, possession of which is unlawful under the Winnebago Tribal Code. It includes, but is not limited to:
    A. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of any plant which a controlled substance can be derived.
    B. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
    C. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance.
    D. Testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.
    E. Scales and balances used or intended for use in weighing or measuring controlled substances.
    F. Diluents and adulterants, such as quinine hydrochloride, manitol, mannite, dextrose and lactose, used or intended for use in cutting controlled substances.
    G. Separation gins and sifters used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining, marijuana.
    H. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances.
    I. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled substances.
13. "Drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Winnebago Tribal Code. It includes but is not limited to:
    A. Containers and other objects used or intended for use in parenterally injecting controlled substance into the human body.

B. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body.

C. 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:

i. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
ii. Water pipes;
iii. Carburetion tubes and devices;
iv. Smoking and carburetion masks;
v. 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;
vi. Miniature cocaine spoons and cocaine vials;
vii. Chamber pipes;
viii. Carburetor pipes; Electric pipes; Air-driven pipes;
ix. Chillums;
x. Bongs;
xi. Ice pipes or chillers;
xii. Wired cigarette papers; and
xiii. Cocaine freebase kits.

14. "Imitation controlled substance" means a substance that is not a controlled substance, which by dosage unit appearance, color, shape, size, marking or by representations made would lead a reasonable person to believe that the substance is a controlled substance.

15. "Immediate precursor" means a substance which is found to be and by regulation designated as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit such manufacture.

16. "Isomer" means the optical isomer, except as used in subsection C of section 3-804 of this article and paragraph 4 of subsection A of Section 3-806 of this Article, "Isomer" means the optical, positional or geometric isomer.

17. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

18. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

19. "Medical purpose" means an intention to utilize a controlled substance for physical or mental treatment, diagnosis, or for the prevention of a disease condition not in violation of any Tribal, state or federal law and not for the purpose of physiological or psychological dependence or other abuse.

20. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

A. Opium, opium poppy and poppy straw, coca leaves and opiates.

B. A compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates.
C. Cocaine, its salts, optical and geometric isomers and salts of isomers.
D. Ecgonine, its derivatives, their salts, isomers and salts of isomers.
E. A substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically equivalent to or identical with any of the substances referred to in subparagraphs a. through d. of this subdivision, except that the words "narcotic drug" as used in this title shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium.

21. "Opiate" means any substance having an addiction-forming or addiction sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include the dextrorotatory isomer of 3-methoxy-n-methyl-inorphimn and its salts. It does include its racemic and levorotatory forms.
22. "Opium poppy" means the plant of the species Papaver sonmiferam L., except the seeds thereof.
23. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
24. "Practitioner" means: A physician, dentist, podiatrist, veterinarian, pharmacist, pharmacy or hospital, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, or prescribe, conduct research with respect to, use for scientific purposes or administer a controlled substance in the course of professional practice or research in this reservation.
25. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.
26. "Synthetic controlled substance" means a substance that is not a controlled substance, but a substance that produces a like, or similar physiological or psychological effect of the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse.
27. "Tetrahydrocannabinols" means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marijuana.
28. "Ultimate consumer" means a person who lawfully possesses a controlled substance for his/her own use or for the use of a member of his/her household or for an animal owned by him/her or by a member of his/her household. [TCR 86-79, 14-09]

3-802 Prohibition of sales, transport, import, export, or possession of drug paraphernalia or drug manufacturing equipment.

1. It is unlawful for any person:
   A. to use, or to possess with intent to use, drug paraphernalia or drug manufacturing equipment to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act, Sections 3-801, et seq.;
   B. sell or offer for sale drug paraphernalia or drug manufacturing equipment knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of the Controlled Substances Act, Sections 3-801, et seq.;
   C. to use the mails or any other facility of commerce to transport drug paraphernalia or drug manufacturing equipment knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of the Controlled Substances Act, Sections 3-801, et seq.; or

D. to import or export drug paraphernalia or drug manufacturing equipment to or from the exterior boundaries of the reservation knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of the Controlled Substances Act, Sections 3-801, et seq.; or

2. Penalties.
   A. Anyone convicted of an offense under subsection 1(A), of this Section shall be guilty of a Class III offense.
   B. Anyone convicted of an offense under subsection 1(B), 1(C), or 1(D) of this Section shall be guilty of a Class II offense.
3. Seizure and forfeiture. Any drug paraphernalia or drug manufacturing equipment involved in any violation of subsection (a) of this Section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia or manufacturing equipment shall be confiscated by the Winnebago Police Department, who may order such paraphernalia or manufacturing equipment destroyed or may authorize its use for law enforcement or educational purposes by Tribal, federal, state, or local authorities.
4. Matters considered in determination of what constitutes drug paraphernalia or drug manufacturing equipment. In determining whether an item constitutes drug paraphernalia or drug manufacturing equipment, in addition to all other logically relevant factors, the following may be considered:
   A. instructions, oral or written, provided with the item concerning its use;
   B. descriptive materials accompanying the item which explain or depict its use;
   C. national and local advertising concerning its use;
   D. the manner in which the item is displayed for sale;
   E. whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as licensed distributor or dealer of tobacco products;
   F. direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;
   G. the existence and scope of legitimate uses of the item in the community; and
   H. expert testimony concerning its use.
5. Exemptions. This Section shall not apply to:
   A. any person authorized by Tribal, local, state or federal law to manufacture, possess, or distribute such items; or
   B. any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory. [TCR 86-79, 14-09]

3-803 Narcotics revolving fund. There is hereby created a revolving fund for the control of narcotics and dangerous drugs to be designated the "Narcotics Revolving Fund." The fund shall be a continuing fund not subject to fiscal year limitations, and shall consist of any monies received from the sale of surplus and confiscated property, fees and receipts collected. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Winnebago Police Department for the control of narcotics and illegal drugs. [TCR 86-79, 14-09]

3-804 Future controlled substances included. Any substances not listed in the following schedules which are subsequently determined to be "controlled substances" are included as controlled substances in this Article. [TCR 86-79]

3-805 Nomenclature in schedules. The schedules provided by this Article include the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

A. Establishment. There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this Section. The schedules established by this Section shall be updated and republished on a semiannual basis during the two year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

B. Placement on schedules; findings required. Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. [TCR 86-79]

3-806 Schedule I characteristics. Schedule I includes substances with the following characteristics:

1. High potential for abuse.
2. No accepted medical use in the United States; and the drug lacks accepted safety for use in treatment under medical supervision. [TCR 86-79]

3-807 Schedule II characteristics. Schedule II includes substances with the following characteristics:

1. High potential for abuse.
2. Currently accepted medical use in the United States, or currently accepted medical use with severe restrictions.
3. The abuse of the substance may lead to severe psychological or physical dependence. [TCR 86-79]

3-808 Schedule III characteristics. Schedule III includes substances with the following characteristics:

1. A potential for abuse less than the substances listed in Schedule I and II.
2. Currently accepted medical use in treatment in the United States.
3. Abuse may lead to moderate or low physical dependence or high psychological dependence. [TCR 86-79]

3-809 Schedule IV characteristics. Schedule IV includes substances with the following characteristics:

1. Low potential for abuse relative to substances listed in Schedule III.
2. Currently accepted medical use in treatment in the United States.
3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substance listed in Schedule III. [TCR 86-79]

3-810 Schedule V characteristics. Schedule V includes Substances with the following characteristics:

1. Low potential for abuse relative to the controlled substances listed in Schedule IV.
2. Currently accepted medical use in treatment in the United States.

3. Limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV. [TCR 86-79]

3-811 Schedule I.

A. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

1. Acetylmethadol.
2. Allylprodine.
3. Alphacetylmethadol.
4. Alphamedprodine.
5. Alpbamethadol.
6. Benzethidine.
7. Betacetylmethadol.
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Diampromide.
14. Diethylthiambutene.
15. Difenoxin.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethyhnethylthiambutene.
22. Etonitazene.
23. Etoxeridine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophcnacylmorphan.
29. Morpheridine.
30. Noracymethadol.
31. Norievorphanol.
32. Normethadone.
33. Norpipanone.
34. Phenadoxone.
35. Phenampromide.
36. Phenomorphan.
37. Phenoperidint.
38. PiritmWde.
39. Proheptazine.
40. Properidine.
41. Racemoranide.

42. Trimeperidine.

B. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
2. AcetyldihydroCodeine.
3. Benzylmorphine.
4. Codeine rnethylbromide.
5. Codeine-n-oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Etorphine.
10. Heroin.
11. Hydromorphinol.
12. Methyldesorphine.
13. Methylhydromorphine.
14. Morphine rnethylbromide.
15. Morphine methylsulfonate.
16. Morphine-n-oxide.
17. Myrophine.
18. NicoCodeine.
19. Nicomorphine.
20. Normorphine.
21. Phoclodine.
22. Thebacon.

C. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these isomers salts, isomers and salts of isomers is possible within the specific chemical designation:

1. 3, 4-methylenedioxy amphetamine.
2. 5-methoxy-3, 4-methylenediaxy amphetamine.
3. 3,4,5-trimethozy amphetamine.
4. Bufotenine.
5. Diethyltryptamine.
6. Dimethyltryptamine.
7. 4-methyl-2, 5-dimethoxyamphetamine.
8. Ibogaine.
9. Lysergic acid diethylamide.
10. Marijuana.
11. Mescaline.
12. N-ethyl-3-piperdyl benzilate.
13. N-methyl-3-piperidyl benzilate.
14. Psilocybin.
15. Psilocyn.
16. Tetrahydocannabinols.
17. 2, 5 dimenthoxyamphetimine.
18. 4 Bromo-2, 5-dimethoxyamphetamine.
19. 4 methoxyamphetamine.

20. Cyclohexamine.
21. Thiphene Analog of Phencyclidine. Also known as 1-(l-(2-thienyl) cyclohexl) piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP.
22. Phencyclidine (PCP).
23. Pyrrolidine Analog for Phencyclidine. Also known as 1-(Phenyclyclohexyl)-Pyrrolidine, PCPy, PHP.

D. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:
1. Fenethylline.
2. Mecloqualone.
3. N-ethylamphetamine.
4. Methaqualone. [TCR 86-79]

3-812 Schedule II. The controlled substances listed in this Section are included in Schedule II.

A. Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
1. Opium and opiate, and any salt, compound derivative, or preparation of opium or opiate.
2. Any salt, compound, isomer derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1, but not including the isoquinoline alkaloids of opium.
3. Opium poppy or poppy straw.
4. Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers and salts of isomers; ecgonine, its derivatives, their salts, isomers and salts of isomers; or any compound, mixture or preparation which contains any quantity of any of the substances referred to in this paragraph.

B. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, when the existence of these isomers esters, ethers and salts is possible within the specific chemical designation:
1. Alphaprodine.
2. Anileridine.
3. Bezitramide.
4. DihydroCodeine.
5. DihyroCodeine.
6. Fentanyl.
7. Isomethadone.
8. Levomethorphan.
9. Levorphanol.
10. Metazocine.
11. Methadone.
12. Methadone-Intermediate, 4-cyano-2-Dimethllamino-4, 4-diphenyl butane.
13. Moramide-Intermediate, 2-methyl-3morpholino-1, 1-diphenyl-propane carboxylic acid.
14. Pethidine. Meperidine.
15. Pethidine-Intermediate-A, 4-cyano-l-methyl-4-phenylpiperidine.
16. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.
22. Etorphine hydrochloride salt only.
23. Alfentanil hydrochloride.

C. Any substance which contains any quantity of:
1. Methamphetamine, including its salts, isomers, and salts of isomers.
2. Amphetamine, its salts, optical isomers, and salts of its optical isomers.

D. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having stimulant or depressant effect of the central nervous system:
1. Phenmetrazine and its salts.
2. Methylphenidate.
3. Amobarbital.
4. Pentobarbital.
5. Secobarbital.
6. Tetrahydrocannabinols. [TCR 86-79]

3-813 Schedule III. The controlled substances listed in this Section are included in Schedule III:

A. Unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substance or any other substance having potential for abuse associated with a stimulant or depressant effect of the central nervous system:
1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid unless specifically excepted or unless listed in another schedule.
2. Chlorhexadol.
3. Glutethimide.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonmethane.
9. Sulfomethane.
10. Benzephentarnine and its salts.
11. Chlorphentermine and its salts.
12. Clortermine.
13. Mazindol.
14. Phendimetrazine.
15. Phenlacetone (P2P).
16. 1 -Phenycyclohexylamine.
17. 1- Piperidinocychexanecarbo nitrile (PCC).

B. Nalorphine.

C. Unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
1. Not more than one and eight-tenths (1.8) grams of Codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

2. Not more than one and eight-tenths (1.8) grams of Codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
3. Not more than three hundred (300) milligrams of dihydroCodeinone or salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquix)oline alkaloid of opium;
4. Not more than three hundred (300) milligrams of dihydroCodeinone or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
5. Not more than one and eight-tenths (1.8) grams of dihydroCodeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
6. Not more than three hundred (300) milligrams of ethylmorphine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
7. Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
8. Not more than fifty (50) milligrams of morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts. [TCR 86-79]

3-814 Schedule IV. The controlled substances listed in this Section are included in Schedule IV:

A. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential. for abuse associated with a stimulant or depressant effect on the central nervous system:
1. Chloral betaine.
2. Chloral hydrate.
3. Ethchlorvynol.
4. Ethinamate.
5. Meprobamate.
6. Paraldehyde.
7. Petrichloral.
8. Diethylpropion.
9. Phentermine.
10. Pemoline.
11. Chlordiazepoxide.
12. Chlordiazepoxide and its salts, but not including cloradiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and water-soluble esterified estrogens.
13. Diazepam.
14. Oxazepam.
15. Clorazepate.
16. Flurazepam and its salts.
17. Clorazepam.
18. Barbital.
19. Mebutamate.
20. Methohexital.
21. Methylphenobarbital.

22. Phenobarbital.
23. Fenflurarnine.
24. Pe-ntaxocine.
25. Dextropropoxyphene.
26. Butorphanol.
27. Alprazolam.
28. Halazepam.
29. Lorazepam.
30. PrazePam.
31. Ternazepam.
32. Triazolam.
33. Methandrostellolone.
34. Stanozolol.
35. Ethylestrenol.
36. Nandrolene pbenpropionate.
37. Nandrolone deconoate.
38. Testosterone propionate.
39. Chlorionic gonadotropin.

B. In addition to the anabolic steroids listed in paragraphs 33 through 39 of subsection A of this Section, "anabolic steroids" shall include any salt, optical and geometric isomers, and salts of isomers, compound, or derivative include any salt, optical and geometric , or derivative which is a chemical analog to any of the substances listed in paragraphs 33 through 39 of subsection A of this Section. [TCR 86-79]

3-815 Schedule V. The controlled substances listed in this Section are included in Schedule V:

A. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one of more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone.
   1. Not more than two hundred (200) milligrams of Codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) gram.
   2. Not more than one hundred (100) milligrams of dihydroCodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams.
   3. Not more than one hundred (100) milligrams of ethylmorphine, or any of it salts, per one hundred (100) milliliters or per one hundred (100) gram,;.
   4. Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.
   5. Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams. [TCR 86-79]

3-816 Seizure without warrant; forfeitures; disposition; evidence; court costs and expenses.

1. The following shall be seized without warrant by an officer of the Winnebago Police Department or by any other peace officer and the same shall be subject to forfeiture:
   A. All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this Article 8;

B. All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, administering, delivering, importing, or exporting any controlled substance in violation of this Article 8;

C. All property which is used, or intended for use, as a container for property described in subsections (a) and (b) of this Section;

D. All drug paraphernalia and all drug manufacturing equipment defined in Section 3-802;

E. All books, records, and research, including but not limited to formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of this Article;

F. All conveyances including but not limited to aircraft, vehicles, or vessels which are used, or intended for use, in transporting any controlled substance with intent to manufacture, distribute, deliver, dispense, export, or import such controlled substance in violation of this Article.

2. Any property described in subsection (1)(f) of this Section which is used, or intended for use to transport any property described in subsection (1)(a) or (b) of this Section is hereby declared to be a common nuisance, and any peace officer having probable cause to believe that such property is so used, or intended for such use, shall make a search thereof with or without a warrant.

3. All money that a law enforcement agency proves was furnished by such agency shall be returned to the agency. All property seized without a search warrant shall not be subject to a replevin action and:

A. All property described in subsections (1)(a) to (1)(e) of this Section shall be kept by the law enforcement agency which employs the officer who seized such property for so long as it is needed as evidence in any trial; and

B. When no longer required as evidence, all property described in subsection (1)(e) of this Section shall be disposed of on order of the Tribal Court, in such manner as the Court in its sound discretion shall direct, and all property described in. subsection (1)(a), (b), (c), and (d) of this Section, that has been used or is intended to be used in violation of this Article, when no longer needed, its evidence shall be destroyed by the law enforcement agency holding the same except that the law enforcement agency may keep a small quantity of the property described in subsections (1)(a), (b), (c), and (d) for training purposes or use in investigations. Any large quantity of property described in subsections (1)(a), (b), (c), or (d) of this Section, whether seized under a search warrant or validly seized without a warrant, may be disposed of on order of the Tribal Court in such a manner as the Court in its sound discretion shall direct. Such an order may be given only after a proper laboratory examination and report of such property has been completed and after a hearing has been held by the Court after notice to the defendant of the proposed disposition of the property. The findings in such Court order as to the nature, kind, and quantity of property so disposed of may be accepted as evidence at subsequent court proceeding in lieu of the property ordered destroyed by the Court order.

4. When any property described in subsection (1)(f) or (g) of this Section is seized, the person seizing the same shall cause to be filed within ten days thereafter, in the Tribal Court in which seizure was made, petition for disposition of such property. The proceedings shall be brought in the name of the Tribe by the Tribal prosecutor of the jurisdiction in which the property was seized. The petition shall describe the property, state the name of the owner if known, allege the essential elements of the violation which is claimed to exist, and conclude with a prayer for disposition. The Tribal prosecutor shall have a copy of the petition served upon the owner of or any person having an interest in the property, if known, in person or by registered or certified mail at his or her last-known address. If the owner is unknown or there is a reasonable probability that there are unknown persons with interests in the property, the Tribal prosecutor shall provide notice of the seizure and petition for disposition by publication for four weeks in a newspaper of general

circulation in the jurisdiction of the seizure. At least five days shall elapse between each publication of notice. At any time after seizure and prior to Court disposition, the owner of record of such property may petition the Tribal Court in the jurisdiction in which seizure was made to release such property and the Court shall order the release of the property upon a showing by the owner that he or she had no knowledge that such property was being used in violation of this Article. Any person having an interest in the property proceeded against or any person against whom civil or criminal liability would exist if such property is in violation of this Article may, within thirty days after seizure, appear and file an answer or demurrer to the petition. The answer or demurrer shall allege the claimants interest in or liability involving such property. At least thirty but not more than ninety days after seizure, there shall be a hearing before the Court. If the claimant proves by a preponderance of the evidence that he or she:

A. Has not used or intended to use the property to facilitate an offense in violation of this Article;

B. Has an interest in such property as owner or lienor or otherwise acquired by him or her in good faith; and

C. At no time had any knowledge that such property was being or would be used in, or to facilitate, the violation of this Article, the Court shall order that such property or the value of the claimant's interest in such property be returned to the claimant. If there are no claims, if all claims are denied, or if the value of the property exceeds all claims granted and it is shown beyond a reasonable doubt that such property was used in violation of this Article, the Court shall order disposition of such property at such time as the property is no longer required as evidence in any criminal proceeding. The Court may order that property described in subsection (1)(f) of this Section be sold or put to official use by the confiscating agency for a period of not more than one year and that when such property is no longer necessary for official use or at the end of two years, whichever comes first, such property shall be sold. Proceeds from the sale of the property and any money described in subsection (1)(g) of this Section shall be placed into the narcotics revolving fund, pursuant to Section 3-803. Official use shall mean use directly in connection with enforcement of the provisions of this Article.

Any court costs and fees and storage and other proper expenses shall be charged against any person intervening as claimant or owner of the property unless such person shall establish his or her claim. If sale is ordered, the officer holding the sale shall make a return to the Court showing to whom the property was sold and for what price. [TCR 86-79, 14-09]

3-817 School property; distribution, dispensing or possession.

1. It shall be unlawful for any person to knowingly distribute, dispense, or possess with intent to distribute a controlled substance or imitation controlled substance, as defined by Section 3-801 while on any school property used for school purposes which is owned by any private school, public school district, or vocational-technical school district, or within one thousand (1,000) feet of any such school property or while on any school bus owned or operated by any private school, public school district. Any person convicted of violating this Section shall be guilty of a crime.
2. It shall be no defense to a prosecution for a violation of this Section that the violator of this Section was unaware that the prohibited conduct took place while on or within one thousand (1,000) feet of any school property.
3. Any person convicted of an offense under this Section shall be guilty of a Class I offense and subject to a mandatory minimum penalty of ninety (90) days imprisonment. [TCR 86-79, 14-09]

3-818 Prohibited acts; penalties.

1. Except as authorized by the Controlled Substances Act, Sections 3-801, et seq., of this Article, it shall be unlawful for any person to knowingly or intentionally:
   A. Create, distribute, or possess with intent to distribute, a counterfeit controlled substance; or
   B. Distribute any imitation controlled substance as defined by Section 3-801 of this Article, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance" the Court or authority concerned should consider in addition to all other factors, the following factors as related to "representation made" in determining whether the substance is an imitation controlled substance:
      i. Statements made by the owner or by any other person in control of the substance concerning the nature of the substance, or its use and effect;
      ii. Statements made to the recipient that the substance may be resold for inordinate profit;
      iii. Whether the substance is packaged in a manner normally used for illicit controlled substances;
      iv. Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;
      v. the proximity of the substance to controlled substances.
   C. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance.
   D. Erect, keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, aircraft, structure or other place used for the possession, manufacturing, storage, or distribution of a controlled substance.
   E. Omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act, or this Act.
   F. Refuse any entry into any premises or inspection authorized by this Act.
2. Any person who violates the provisions of this Section by using or soliciting the use of services of a person eighteen (18) years of age or under to distribute or dispense a controlled substance or by distributing a controlled substance to a person eighteen (18) years of age to distribute or dispense a controlled substance or by distributing a controlled substance to a person eighteen (18) years of age or under is subject to a mandatory minimum penalty of sixty (60) days.
3. Any person convicted of any offense described in this Section may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed. Such assessment shall be paid into a revolving fund for enforcement of controlled substances created pursuant to Section 3-803 of this Article.
4. Any person found guilty of larceny, burglary or theft of controlled substances is guilty of a crime.
5. Any person found guilty of robbery or attempted robbery of controlled dangerous substances from a practitioner, manufacturer, distributor or agent thereof as defined in Section 3-801 of this Article is guilty of a crime. [TCR 86-79, 14-09]

3-819 Prohibited acts; fraud, deceit.

1. No person shall obtain or attempt to obtain any preparation excepted from the provisions of the Controlled Substances Act or attempt to procure the administration of the controlled substance:
   A. By fraud, deceit, misrepresentation of a prescription or subterfuge;
   B. By the forgery or alteration of a prescription or of any written order;
   C. By the concealment of a material fact; or
   D. By the use of a false name or the giving of a false address.
2. Information communicated to a physician in an effort to unlawfully procure a dangerous controlled substance, or unlawfully to procure the administration of such drug, shall not be deemed a privileged communication.
3. Any person who violates this Section is guilty of crime. [TCR 86-79]

3-820 Certain substances causing intoxication; exemptions; penalties.

1. For the purpose of inducing intoxication or distortion or disturbance of the auditory, visual, muscular, or mental process, no person shall ingest, use or possess any compound, liquid, or chemical which contains butyl nitrite, isobutyl,nitrate, secondary butyl nitrate, tertiary butyl nitrate, aml nitrate, isopropyl nitrate, isopentyl nitrate, or mixtures containing butyl nitrate, isopropyl nitrate, isopetyl nitrate, or any of their esters, isomers, or analogues, or any other similar compound.
2. No person shall possess, buy, sell, or otherwise transfer any substance specified in this Article's schedules for the purpose of inducing or aiding any other person to inhale or ingest such substance or otherwise violate the provisions of this Section.
3. The provisions of this Section shall not apply to:
   A. The possession and use of a substance specified in Section 3-817 of this Article which is used as part of the treatment by a licensed physician of a disease, condition or injury or pursuant to a prescription of a licensed physician; and
   B. The possession of a substance specified in Section 3-817 of this Article which is used as part of a known manufacturing process or industrial operation when the possessor has obtained a valid permit from the proper authorities.
   C. It shall not be unlawful for any person to possess, use, or transfer peyote in any form if such possession, use, or transfer is in accordance with the practices of the Native American Church, or in such cases where the possession, use or transfer of peyote is strictly in accordance with bona fide medicinal purposes. All sales of peyote permitted under this Section are limited to those sales made by locally recognized members of the Native American Church to locally recognized members of the Native American Church. [TCR 86-79, 89-87, 94-132]
4. Any person convicted of violating any provision of this Section shall be guilty of a crime punishable by imprisonment of not more than one (1) year or by the imposition of a fine not to exceed five thousand dollars ($5,000.00) or by both such imprisonment and fine**.** Each violation shall be considered a separate offense. [TCR 86-79]

3-821 Endeavor and conspiracy. Any person who offers, solicits, attempts, endeavors, or conspires to commit any offense defined in Sections 3-801 et seq., of this Title shall be subject to the penalty prescribed for the offense, the commission of which was the object of the endeavor or conspiracy. [TCR 86-79]

3-822 General penalty clause. Any person who violates any provision of this Act not subject to a specific penalty provision is guilty of a crime punishable by confinement for not more than one (1) year, or by a fine of not more than five thousand dollars ($5,000.00) or both. [TCR 86-79]

3-823 Additional penalties. Any penalty imposed for violation of this Article shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. [TCR 86-79]

3-824 Severability. If any provision of this Title 3 or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Title 3 which can be given effect without the invalid provisions or applications, and to this end the provisions of this Title 3 are declared to be severable. [TCR 86-79]

3-825 Possession of a dangerous drug; penalty.

1. It shall be unlawful, except as authorized and controlled by federal law, to possess, a controlled substance as defined by Section 3-801(4) unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Controlled Substances Act, Sections 3-801, et seq. A violation of this Section is the offense of possession of a dangerous drug.
2. Any substance handled in violation of this Section is hereby declared to be contraband.
3. Any personal property used to transport, conceal, manufacture, cultivate, or distribute the controlled substance in violation of this Section shall be subject to forfeiture as contraband as set forth in Section 3-816.
4. Possession of a dangerous drug offense is a Class II offense.
5. Notwithstanding any other provisions of this Section, penalties for violations of this Section pertaining to marijuana in any form or derivative form shall be as follows:
   A. Possession of one ounce or less of marijuana shall be a Class III offense.
   B. Possession of more than one ounce of marijuana shall be a Class II offense.
6. Notwithstanding any other provisions of this Section, it shall not be unlawful for any person to possess, use, or transfer peyote in any form if such possession, use, or transfer is in accordance with the practices of the Native American Church, or in such cases where the possession, use, or transfer of peyote is strictly in accordance with bona fide medicinal purposes. All sales of peyote permitted under this Section are limited to those sales made by locally recognized members of the Native American Church to locally recognized members of the Native American Church.
7. Any person convicted of a Class II offense under this Section shall be subject to a mandatory minimum penalty of ten (10) days imprisonment. [TCR 86-79, 89-87, 14-09]

3-826 Dangerous drug offense; penalty.

1. It shall be unlawful, except as authorized and controlled by federal law, to manufacture, deliver, distribute, possess with intent to distribute, dispense, create, or cultivate a controlled substance as defined by Section 3-801(4) unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Controlled Substances Act, Sections 3-801, et seq. A violation of this Section is a dangerous drug offense.
2. Any substance handled in violation of this Section is hereby declared to be contraband.
3. Any personal property used to transport, conceal, manufacture, cultivate, or distribute the controlled substance in violation of this Section shall be subject to forfeiture as contraband as set forth in Section 3-816.

4. Dangerous drug offense is a Class I offense.
5. Notwithstanding any other provisions of this Section, it shall not be unlawful for any person to possess, use, or transfer peyote in any form if such possession, use, or transfer is in accordance with the practices of the Native American Church, or in such cases where the possession, use, or transfer of peyote is strictly in accordance with bona fide medicinal purposes. All sales of peyote permitted under this Section are limited to those sales made by locally recognized members of the Native American Church to locally recognized members of the Native American Church.
6. Any person convicted of an offense under this Section shall be subject to a mandatory minimum penalty of thirty (30) days imprisonment. [TCR 86-79, 89-87, 14-09]

3-827 Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine; penalty.

Notwithstanding any other provision of Title 3, any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, sell, give, or distribute a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers is guilty of a Class I offense punishable by a fine of not less than $5,000 and a mandatory minimum term of imprisonment of one year to be served consecutively with any other sentence. [TCR #23-125]

3-828 Methamphetamine lab cleanup costs; reimbursement.

Any person who is convicted of an offense for manufacture or use of methamphetamine pursuant to this law shall be liable at the time of sentencing to the property owner reimbursement of the expense in cleaning up any home, building or structure used for the manufacturing of methamphetamine related to the conviction. The amount charged shall not exceed the actual expenses associated with cleanup, removal or repair of the affected property or the replacement cost of personal protective equipment used. [TCR #23-125]

3-830 Short Title

This Chapter shall be known and may be cited as the "Vaping Prohibition and School Safety Code of the Winnebago Tribe of Nebraska." [TCR 26-49]

3-831 Purpose

The purpose of this Chapter is to protect the health, safety, and welfare of the Winnebago Tribal community by prohibiting the possession and use of vaping devices by minors, restricting vaping on school property and the premises where school-related sports, extracurricular activities, and public events are held for all persons, and preventing the supply of vaping devices to minors. [TCR 26-49]

3-832 Definitions

(a) "Vaping Device" means any electronic cigarette, electronic nicotine delivery system, vape pen, vaporizer, or similar device capable of aerosolizing or vaporizing a liquid, gel, or other substance for inhalation, regardless of the substance vaped. A vape device includes any component, part, or accessory of such a device, whether or not sold separately.
(b) "Vaping" means inhaling or exhaling vapor or aerosol produced by a vaping device.
(c) "Minor" means any person under the age of nineteen (19) years.[1]
(d) "Adult" means any person nineteen (19) years of age or older.

[1] To be consistent with Title 3-714 (2) requirement for school attendance.

(e) "School Property" means any building, structure, grounds, playground, athletic field, or vehicle owned, leased, or used by a public, private, or tribal school for instruction, extracurricular, or school-sponsored activities, including within one thousand (1,000) feet of such property.
(f) "School-sponsored event premises" means the premises within the Winnebago Reservation on which any event that the school promotes or consents to is held for students. [TCR 26-49]

3-833 Prohibition on Vaping on School Property by Minors

(a) No minor shall use a vaping device on school property.
(b) A minor who violates this section commits an infraction and, upon conviction, shall be subject to:[2]

(1) A fine not to exceed one hundred dollars ($100) for a first offense;
(2) A fine not to exceed two hundred dollars ($200) for a second or subsequent offense;
(3) Completion of a court-approved tobacco and nicotine education or controlled dangerous drug, including marijuana, cessation program; and
(4) Community service not to exceed twenty (20) hours, instead of or in addition to any fine. [TCR 26-49]

3-834 General Prohibition of possession of vaping device by Minors

(a) No minor shall use, possess, purchase, or attempt to purchase any vaping device within the jurisdiction of the Winnebago Tribe of Nebraska.
(b) A minor who violates this section commits an infraction and, upon conviction, shall be subject to:[3]

(1) A fine not to exceed one hundred dollars ($100) for a first offense;
(2) A fine not to exceed two hundred dollars ($200) for a second or subsequent offense;
(3) Completion of a court-approved tobacco and nicotine education or controlled dangerous drug, including marijuana, cessation program; and
(4) Community service not to exceed twenty (20) hours, instead of or in addition to any fine. [TCR 26-49]

3-835 Prohibition on Vaping on School Property by Adults

(a) No adult shall use or possess a vaping device on school property or at a school-sponsored event.
(b) A violation of this section constitutes a Class Three offense[4] and is punishable by:

(1) A fine not to exceed five hundred dollars ($500); and
(2) Imprisonment for a period not to exceed ninety (90) days, or both fine and imprisonment.
(3) For adults, exclusion from school property for a period not to exceed one (1) year, except for lawful purposes approved by school administration. [TCR 26-49]

3-836 Furnishing Vaping Devices to Minors

(a) No person shall sell, give, deliver, or otherwise furnish a vaping device to a minor
(b) A violation of this section constitutes a Class Two offense[5] and is punishable by:

(1) A fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000); and
(2) Imprisonment for a period not to exceed one hundred eighty (180) days, or both fine and imprisonment. [TCR 26-49]

[2] Rule 1B-706 (1) (d) Maximum fines and sentences; payment schedules; credit.
[3] Rule 1B-706 (1) (d) Maximum fines and sentences; payment schedules; credit.
[4] Rule 1B-706 (1) (c) Maximum fines and sentences; payment schedules; credit.
[5] Rule 1B-706 (1) (b) Maximum fines and sentences; payment schedules; credit.

3-837 Enforcement

(a) This Chapter shall be enforced by the Winnebago Tribal Police Department, school resource officers, and any other law enforcement authority recognized by the Tribe.
(b) All violations occurring on school property or school-sponsored event premises shall be reported to law enforcement by school officials.
(c) To sustain a conviction for possession, use, or distribution of a vape device, no evidence is necessary proving what the substance was in the vape device or what substance was intended to be vaped. [TCR 26-49]

3-838 Severability

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared severable. [TCR 26-49]

TITLE 3
ARTICLE 9

[Reserved]

TITLE 3
ARTICLE 10

[Reserved]

TITLE 3
ARTICLE 11

[Reserved]

TITLE 3
ARTICLE 12
ADULT AND ELDERLY PROTECTIVE SERVICES ACT

3-1200	Citation.	3-1210	Willful release of confidential information.
3-1201	Legislative intent.	3-1211	Abuse, neglect or exploitation of a vulnerable or elderly adult; Penalty.
3-1202	Definitions.	3-1212	Short-term protective services, temporary placement; Ex-parte order authorized.
3-1203	Duty to report abuse, neglect or exploitation.	3-1213	Subpoena of Medical and Financial Records.
3-1204	Duty of law enforcement to investigate; Role of the Department; Interference with investigation and retaliation; Penalty.	3-1214	Procedures for prosecution.
3-1205	Immunity from liability.	3-1215	Conditions of Release.
3-1206	Access to reports; Release of Information; When; Exceptions.	3-1216	Elder Protection Order and Time Limits.
3-1207	Evidence exclusions void.	3-1217	Violation of Protection Orders.
3-1208	No abuse, neglect or exploitation solely for reliance upon spiritual healing.	3-1218	Severability.
3-1209	Willful failure to report.		

3-1200 Citation. This Article shall be known and may be cited as the Adult and Elderly Protective Services Act. [TCR 86-79, 15-133]

3-1201 Legislative Intent. The Tribal Council recognizes the need for the investigation and provision of services to certain persons who are substantially impaired or are unable to protect themselves from abuse, neglect, or exploitation. Often such persons cannot find others able or willing to render assistance. The Tribal Council intends through the Adult and Elderly Protective Services Act to establish a program designed to fill its need and to assure the availability of the program to all eligible persons. It is also the intent of the Tribal Council to authorize the least restriction possible on the exercise of personal and civil rights consistent with the person's need for services. [TCR 86-79, 15-133]

3-1202 Definitions. For the purposes of the Adult and Elderly Protective Services Act, the definitions found below shall be used.

1. "Abuse" shall mean any knowing, intentional, or negligent act or omission on the part of a caregiver or any person which results in physical injury, unreasonable confinement, false imprisonment, cruel punishment, sexual abuse, exploitation, or neglect of essential services to a vulnerable or elderly adult.
2. "Adult protective services" shall mean those services provided by the Department for the prevention, correction, or discontinuance of abuse, neglect or exploitation. Such services shall be those necessary and appropriate under the circumstances to protect an abused, neglected, or exploited vulnerable or elderly adult, ensure that the least restrictive alternative is provided, prevent further abuse, neglect, or exploitation, and promote self-care and independent living. Such services shall include, but not be limited to: (1) Receiving and investigating reports of alleged abuse, neglect or exploitation; (2) developing social service plans; (3) arranging for the provision of services such as medical care, mental health care, legal services, fiscal management housing, or home health care; (4) arranging for the provision of items such as food, clothing, or shelter; and (5) arranging or coordinating services for caregivers.
3. "Caregiver" shall mean any person or entity which has assumed the responsibility for the care of a vulnerable or elderly adult voluntarily, by express or implied contract, or by order of a court of competent jurisdiction.

4. "Cruel punishment" shall mean punishment which intentionally causes physical injury to a vulnerable or elderly adult.
5. "Department" shall mean the tribal child and family services program, or such other program, department or agency designated by the Tribe to carry out adult protective services on behalf of the Tribe.
6. "Elderly adult" shall mean any person fifty-five (55) years of age or older.
7. "Essential services" shall mean those services necessary to safeguard the person or property of a vulnerable or elderly adult. Such services shall include, but not be limited to, sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for physical needs, and proper supervision.
8. "Exploitation" shall mean the taking of property of a vulnerable or elderly adult, including but not limited to the theft of medications, by any person by means of undue influence, breach of a fiduciary relationship, deception, extortion, or any unlawful means.
9. "Law enforcement agency" shall mean any police officer of the Winnebago Tribe of Nebraska, the United States, or the state, authorized to enforce laws within the boundaries of the Winnebago Indian Reservation.
10. "Least restrictive alternative" shall mean adult protective services provided in a manner no more restrictive of a vulnerable or elderly adult's liberty and no more intrusive than necessary to achieve and ensure essential services.
11. "Living independently" shall include, but not be limited to, using the telephone, shopping, preparing food, housekeeping, and administering medications.
12. "Neglect" shall mean any knowing or intentional act or omission on the part of a caregiver to provide essential services or the failure of a vulnerable or elderly adult, due to physical or mental impairments, to perform self-care of obtain essential services to such an extent that there is actual physical injury to a vulnerable or elderly adult or imminent danger of the vulnerable or elderly adult suffering physical injury or death.
13. "Permit" shall mean to allow a vulnerable or elderly adult over whom one has a proximate or direct degree of control to perform an act or acts or be in a situation which the controlling person could have prevented by the reasonable exercise of such control.
14. "Physical injury" shall mean damage to bodily tissue caused by non-therapeutic conduct including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, and shall include, but not be limited to, physical pain, illness, or impairment of physical function.
15. "Proper supervision" shall mean care and control of a vulnerable or elderly adult which a reasonable and prudent person would exercise under similar facts and circumstances.
16. "Self-care" shall include, but not be limited to, personal hygiene, eating, dressing, and obtaining adequate medical and dental care.
17. "Sexual Abuse" shall mean sexual contact and sexual penetration as described in Section 3-417 of the Winnebago Tribal Code.
18. "Substantial functional impairment" shall mean a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, investigation, or evaluation.
19. "Substantial mental impairment" shall mean a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, investigation, or evaluation.
20. "Unreasonable confinement" shall mean confinement that intentionally causes physical injury to a vulnerable or elderly adult.
21. "Vulnerable adult" shall mean any person eighteen years of age or older who, due to advanced age or otherwise, has a substantial mental or functional impairment or for whom a guardian has been appointed by a court of competent jurisdiction. [TCR 86-79, 15-133]

3-1203 Duty to report abuse, neglect or exploitation.

1. When any caregiver or employee of a caregiver, physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law enforcement personnel, operator or employee of a sheltered workshop, operator or employee of a senior center, adult protective services professional or paraprofessional, employee or elected official of the Tribe, or any human services professional or paraprofessional, not including a member of the clergy, or any other person has reasonable cause to believe that a vulnerable or elderly adult has been subjected to abuse, neglect or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect or exploitation, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency, or the Department, in the manner designated under subsection 3-1203(5).
2. Such report may be made by telephone, anonymously or with the caller giving his or her name and address, and, if requested by the Department, shall be followed by a written report within forty-eight (48) hours. To the extent available, the report shall contain: (a) The name, address, and age of the vulnerable or elderly adult; (b) the address of the caregiver or caregivers of the elderly or vulnerable adult; (c) the nature and extent of the alleged abuse or the conditions and circumstances which would reasonably be expected to result in such abuse; (d) any evidence of previous abuse including the nature and extent of the abuse; and (e) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse and the identity of the perpetrator or perpetrators.
3. Any law enforcement agency receiving a report of abuse shall notify the Department no later than the next working day by telephone or mail.
4. A report of abuse, neglect, or exploitation made to the Department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the Department no later than the next working day by telephone or mail.
5. The Department shall designate and publish a telephone number to be used by any person any hour of the day or night and any day of the week to make reports of abuse, neglect, or exploitation. [TCR 86-79, 15-133]

3-1204 Duty of law enforcement to investigate; Role of the Department; Interference with investigation and retaliation; Penalty.

1. The duty to investigate shall be held jointly between law enforcement and the Department.
2. Upon the receipt of a report concerning abuse, neglect or exploitation pursuant to Section 3-1203, it shall be the duty of the law enforcement agency (a) to make an investigation if deemed warranted because of alleged violations of Section 3-1211; (b) to take immediate steps, if necessary, to protect the elderly or vulnerable adult; and (c) to institute legal proceedings if appropriate. The law enforcement agency shall notify the Department if an investigation is undertaken. Such notification shall be made no later than the next working day following receipt of the report.
3. The law enforcement agency shall make written reports or a case summary to the Department and the Tribal prosecutor of investigated cases of abuse and action taken with respect to all such cases.
4. Upon the receipt of a report concerning abuse, neglect or exploitation pursuant to Section 3-1203, it shall be the duty of the Department to: (a) initiate an investigation within one (1) business day of receipt of a report; (b) conduct a needs assessment and offer services to the elderly or vulnerable adult; (c) prepare a written plan for the delivery of services which provide the least restrictive alternatives consistent with the elderly or vulnerable adult's needs; and (d) work in conjunction with law enforcement and the Prosecutors office in legal proceedings, including emergency intervention, as necessary.

5. The Department will inform the elderly or vulnerable adult the following:
   a. About the investigation;
   b. That before seeking entry into their home, the elderly or vulnerable adult has the right to refuse to allow an Department worker into their home; the Department shall also inform the elderly or vulnerable adult of the right of the Department worker to seek a warrant to gain access; and
   c. That the elderly or vulnerable adult has the right to refuse services.
6. Any person who knowing and intentionally interferes with a lawful investigation of suspected elder or vulnerable adult abuse, neglect or exploitation shall be guilty of a Class III offense
7. Any person who retaliates by any means against any person who has made a good faith report of suspected elder or vulnerable adult abuse, neglect or exploitation or who cooperates with any investigation of suspected elder or vulnerable adult abuse, neglect or exploitation shall be guilty of a Class III offense. [TCR 86-79, 15-133]

3-1205 Immunity from liability. Any person participating in an investigation or the making of a report pursuant to the Adult and Elderly Protective Services Act or participating in a judicial proceeding resulting therefrom shall be immune from any liability except (1) as otherwise provided in the Adult and Elderly Protective Services Act; or (2) for malfeasance in office or willful or wanton neglect of duty; or (3) for false statements of fact made with malicious intent. [TCR 86-79, 15-133]

3-1206 Access to Reports; Release of Information; When; Exceptions.

1. No person, official, or agency shall have access to the records relating to abuse except as follows:
   a. A law enforcement agency investigating a report of known or suspected abuse;
   b. A Tribal prosecutor;
   c. A physician who has before him or her a person whom he or she reasonably suspects may be abused;
   d. An agency having the legal responsibility or authorization to care for, treat or supervise an abused vulnerable or elderly adult;
   e. Defense counsel in preparation of the defense of a person charged with abuse;
   f. The General Counsel for the Winnebago Tribe of Nebraska; and
   g. The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000, as amended, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S C. 10801, as amended, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness.
2. The Department or appropriate law enforcement agency shall provide requested information to any person legally authorized by this subjection to have access to records relating to abuse, neglect or exploitation, when ordered by the Tribal Court, or upon compliance by such person with identification requirements established by the rules and regulations of such law enforcement agency. Such information shall not include the name and address of the person making the report. The name and other identifying data of any person requesting or receiving information from the law enforcement agency and dates and circumstances under which requests are made or information is released shall be entered into the records of the Department or law enforcement agency.
3. The name of the person who reports abuse, neglect or exploitation of an elderly or vulnerable adult as required by this Act is confidential and shall not be released to any person unless the reporter consents to the release or unless the release is ordered by the Court. The Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the vulnerable or elderly adult is found to be greater than the reporter's right to

confidentiality. The reporter's name shall be released only to the extent necessary to protect the vulnerable or elderly adult. [TCR 86-79, 15-133]

3-1207 Evidence exclusions void.

1. No rule of evidence or other provision of law concerning confidential communications shall apply to prevent reports made pursuant to the Adult and Elderly Protective Services Act unless otherwise specifically mentioned in the Act.
2. Evidence shall not be excluded from any judicial proceeding resulting from a report made pursuant to the Adult and Elderly Protective Services Act on the ground that it is a confidential communication protected by the privilege granted to husband and wife, patient and physician, or client and professional counselor. [TCR 86-79]

3-1208 No abuse, neglect or exploitation solely for reliance upon spiritual healing. No person shall be considered to be abused, neglected or exploited for the sole reason that such person relies upon spiritual means alone for treatment in accordance with the tenets and practices of a recognized church, religious denomination, or traditional Native American spiritual practices in lieu of medical treatment. [TCR 86-79, 15-133]

3-1209 Willful failure to report. Penalty. Any person who willfully fails to make any report required by the Adult and Elderly Protective Services Act shall be guilty of a Class III offense. [TCR 86-79]

3-1210 Willful release of confidential information. Penalty. Any person who knowingly releases information required to be kept confidential by the Adult and Elderly Protective Services, except as provided in the Act, shall be guilty of a Class III offense. [TCR 86-79]

3-1211 Abuse, neglect or exploitation of a vulnerable or elderly adult; Penalty.

1. A person commits abuse, neglect or exploitation of a vulnerable or elderly adult if he or she through a knowing and intentional act causes or permits a vulnerable or elderly adult to be:
   a. Physically injured;
   b. Unreasonably confined;
   c. Falsely imprisoned as defined in Sections 3-414 and 3-415 of the Winnebago Tribal Code;
   d. Sexually abused;
   e. Exploited;
   f. Cruelly punished; or
   g. Subject to neglect of essential services.
2. Abuse, neglect or exploitation of a vulnerable or elderly adult is a Class I offense. [TCR 86-79, 15-133]

3-1212 Short-term protective services, temporary placement; Ex parte order authorized.

1. The Tribal Court may issue an ex parte order authorizing the provision of short-term involuntary adult protective services or temporary placement for a vulnerable or elderly adult for up to seventy-two hours, excluding non-judicial days, pending the hearing for a need for continuing services, after finding on the record that:
   a. The person is a vulnerable or elderly adult;
   b. An emergency exists; and
   c. There are compelling reasons for ordering protective services or temporary placement.

2. An ex parte order shall be issued only if other protective custody services are unavailable or other services provide insufficient protection.
3. The Department shall contact the Tribal prosecutor to file an application for short-term involuntary adult protective services or temporary placement if an investigation indicates probable cause to believe that an emergency exists for a vulnerable adult. The Department shall not be given legal custody nor be made guardian of such vulnerable or elderly adult. A vulnerable or elderly adult shall be responsible for the costs of services provided either through his or her own income or other programs for which he or she may be eligible.
3. A law enforcement officer may enter the premises where the vulnerable or elderly adult is located after obtaining the court order and announcing his or her authority and purpose. Forcible entry may be made only after the Court order has been obtained unless there is probable cause to believe that the delay of such entry would cause the vulnerable or elderly adult to be in imminent danger of life-threatening physical injury or the neglect of essential services.
4. When, from the personal observations of a representative a law enforcement officer, it appears probable that the vulnerable or elderly adult is likely to be in imminent danger of life-threatening physical injury or the neglect of essential services if he or she is not immediately removed from the premises, the law enforcement agency shall, when authorized by the Court order, take into custody and transport the vulnerable or elderly adult to an appropriate medical or protective placement facility.
5. When action is taken under this Section, a hearing shall be held within seventy-two hours of the signing of the Court order, excluding non-judicial days, to establish probable cause for short term involuntary adult protective services or for protective placement. Unless the vulnerable or elderly adult has counsel of his or her own choice or has indicated a desire for an attorney of his or her own choice, the Court shall appoint an attorney to represent him or her in the proceeding, who shall have the powers and duties of a guardian ad litem.
6. Notice of the hearing shall be served personally on the vulnerable or elderly adult. Waiver of notice by the vulnerable or elderly adult shall not be effective unless he or she attends the hearing or such notice is waived by the guardian ad litem. Notice of the hearing shall be given to the following parties whose whereabouts can be readily ascertained: (a) The spouse of the vulnerable or elderly adult; (b) children of the vulnerable or elderly adult; and (c) any other party specified by the Court.
7. A judgment authorizing continuance of short term involuntary adult protective services shall prescribe those specific adult protective services which are to be provided, the duration of the services which shall not exceed sixty days, and the person or persons who are authorized or ordered to provide them. [TCR 86-79, 15-133]

3-1213 Subpoena of Medical and Financial Records. The Tribal Court may issue subpoenas for the release of medical records and financial records upon motion by the Tribal Prosecutor in order to facilitate investigations of reported elder or vulnerable adult abuse, neglect or exploitation. Upon hearing evidence, the Court must find reasonable grounds to believe that elder or vulnerable adult abuse, neglect or exploitation is occurring or has occurred in order to issue a subpoena. [TCR 15-133]

3-1214 Procedures for prosecution. The Tribal prosecutor shall follow the following procedures for the prosecution of elder or vulnerable adult abuse, neglect or exploitation to ensure the effective prosecution of such crimes and the protection and safety of victims.

1. The Tribal prosecutor will implement a “no drop” policy which prohibits victims from withdrawing charges.

2. The Tribal prosecutor will not offer diversion, deferred sentencing, or any other agreements not to prosecute to alleged perpetrators charged with crimes of elder or vulnerable adult abuse, neglect or exploitation.
3. No member of the prosecution office has the authority to order the release of an alleged perpetrator prior to the procedures described in Section 3-1215.
4. The Tribal prosecutor will not dismiss or reduce the charge in an elder or vulnerable abuse, neglect or exploitation case without prior consultation and review with the arresting officer and any case worker involved in the investigation despite a victim's desire to withdraw charges.
5. The Tribal prosecutor shall attempt to prepare the case so the victim is not required to act as the primary witness, except as a last resort. The Tribal prosecutor shall enlist any and all evidentiary avenues, including but not limited to photographs, other witnesses, excited utterances and other law enforcement testimony, medical records, and history of past abuse, in order to effectively prosecute the case. [TCR 15-133]

3-1215 Conditions of Release.

1. In making a decision concerning pretrial release of a person who is arrested for or charged with elder or vulnerable adult abuse, neglect or exploitation, or a crime involving elder abuse, neglect or exploitation, the Tribal Court shall review the defendant's previous records of convictions for elder abuse, neglect or exploitation and the facts of the arrest and detention of the person, in order to determine whether the person:
   a. Is a threat to the alleged victim;
   b. Is a threat to public safety; and
   c. Is reasonably likely to appear in court.
2. Before releasing a person arrested for or charged, the Tribal Court shall make findings on the record if possible concerning the determination made in accordance with subsection (1) and may impose conditions of release or bail on the person to protect the alleged victim and to ensure the appearance of the person at a subsequent court proceeding.
3. Notwithstanding any other provisions in this Code, all persons arrested for elder or vulnerable adult abuse, neglect or exploitation shall not be held for more than 120 hours, including weekends and holidays, without a hearing. [TCR 15-133]

3-1216 Elder Protection Order and Time Limits.

1. If the Court determines that there is reasonable cause to believe that a vulnerable or elderly adult is abused, neglected, or exploited, the Court shall issue an elder protection order which provides appropriate protection for the vulnerable or elderly adult. Such protection may include, but is not limited to the following.
   a. Removing the vulnerable or elderly adult from the place where the abuse, neglect, or exploitation has taken or is taking place.
   b. Removing the person who abused, neglected, or exploited the vulnerable or elderly adult from the victim's home immediately.
   c. Restraining the person who has abused, neglected, or exploited the vulnerable or elderly adult from continuing such acts.
   d. Placing the vulnerable or elderly adult under protective supervision, wherein the vulnerable or elderly adult is permitted to remain in the home, providing the Department or a designated agent provides supervision and assistance to correct the abuse, neglect or exploitation of the vulnerable or elderly adult.

e. Requiring the vulnerable or elderly adult's family or caretaker or any other person with a fiduciary duty to the vulnerable or elderly adult to account for the vulnerable or elderly adult's funds and property.

f. Requiring any person who has abused, neglected, or exploited a vulnerable or elderly adult to pay restitution to the vulnerable or elderly adult for damages resulting from that person's wrongdoing.

g. Appointing a representative or a guardian ad litem for the vulnerable or elderly adult.

h. Recommending that a representative payee be named.

i. Ordering the Department to prepare a plan for and deliver protective services which provide the least restrictive alternatives for services, treatment, or placement consistent with the vulnerable or elderly adult's needs.

2. No protection order shall be issued until three (3) days after the petition has been served on all parties, except for an emergency protection order.

3. An initial non-emergency vulnerable or elderly adult protection order shall be issued for a period not to exceed sixty (60 days).

4. The non-emergency protection order may be extended as many times as necessary to protect the vulnerable or elderly adult. An extension of a protection order can only be issued after a petition is filed by a party seeking an extension, notice, opportunity for hearing, and a determination based upon proof beyond a reasonable doubt that such an extension is necessary for the protection of the vulnerable or elderly adult. Each extension order shall be for a period not to exceed thirty (30) days. If modification or termination of a protection order is needed, a motion shall be filed by the party seeking the modification or termination.

5. Notice shall be provided for a modification or termination hearing. At the hearing the burden of proof will be on the motioning party to prove by clear and convincing evidence that such a modification or termination is in the best interests of the vulnerable or elderly adult, or that such modification is necessary for the protection of the vulnerable or elderly adult. [TCR 15-133]

3-1217 Violation of Protection Orders. Violation of Court ordered protection orders by a respondent may be punished by confinement in jail for as long as ninety (90) days or up to a $1,000 fine. [TCR 15-133]

3-1218 Severability. If any party or parts, or application of any part of this Act is held invalid, such holding shall not affect the validity of the remaining parts of this Act. [TCR 15-133]

TITLE 3
ARTICLE 13
VICTIMS' RIGHTS ACT
(Adopted May 3, 2024)

3-1301 Purpose and Findings.
3-1302 Definitions.
3-1303 Duties of Law Enforcement to Victims of Domestic or Family Violence; Required Notice.
3-1304 Rights Specific to Victims of Sexual Assault.
3-1305 Rights of All Victims of Crime; Duty of Prosecutor to Inform.
3-1306 Victim Advocate
3-1307 No Cause of Action.

3-1301 Purpose and Findings: While the criminal justice system is mainly focused on the perpetrator of crime and their civil rights, often the victims of crime are left to their own devices. The purpose of the Victims' Rights Act is to ensure that the victims of crime's rights are recognized and protected.

A victim of crime, or his or her guardian or representative shall have:

1. The right to be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal justice process.
2. The right to information about the status and outcome of the investigation of the alleged offence; location of proceedings and available services.
3. The right to protection by having their security and privacy considered during the investigation and by having reasonable and necessary measures taken to protect them from further victimization, retaliation, and intimidation.
4. The right of participation by being informed of all criminal court proceedings; the right to be present at trial unless the trial court finds sequestration necessary for a fair trial for the defendant; and the right to be informed of, be present at, and make an oral or written statement at sentencing, parole, pardon, commutation, and conditional release proceedings.
5. The right to be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, and the release or the escape of the defendant from custody.
6. The right to restitution by having the court consider a restitution order.

3-1302 Definitions

For the purpose of this Article, certain items are defined in this section.

1. "Crime" means a violation of the Tribal Code of the Winnebago
Tribe of Nebraska for which the offender, upon conviction, may be punished by imprisonment or fine.
2. "Defendant" means a person charged with or convicted of having committed a crime
3. against a victim.
4. "Final disposition" means the ultimate termination of the criminal prosecution of a
5. defendant including, but not limited to, dismissal, acquittal, or imposition of sentence by the Court.
6. "Person" means an individual, organization, partnership, corporation or governmental entity.
7. "Prosecutor" means the prosecuting attorney for the Winnebago Tribe of Nebraska.
8. "Victim", except for purpose of means any of the following:
    a. An individual who suffers direct or threatened physical, financial, or emotional harm as the result of the commission of a crime.
    b. The following relations of a deceased victim if the relation is not the defendant:

c. The spouse.
d. A child 15 years of age or older if (i) does not apply.
e. A parent if subparagraphs (i) and (ii) do not apply.
f. A sibling if subparagraphs (i) and (ii) do not apply.
g. A grandparent if subparagraphs (i) and (ii) do not apply.
h. A parent, guardian or custodian of a victim who is less than 18 years of age if the parent, guardian, or custodian so chooses.
i. A parent, guardian or custodian of a victim who is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process.

3-1303 Duties of Law Enforcement to Victims of Domestic or Family Violence; Required Notice.

1. A law enforcement officer responding to a call of Domestic Vi o l en ce or Family Violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

a. Taking any action necessary to provide for the safety of the victim and any family or household member;
b. Confiscating any weapon involved in the alleged Domestic or Family Violence;
c. Offering to provide or arrange for transportation of the victim and any child to a shelter and/or providing other support services;
d. Assisting the victim in removing any essential personal effects;
e. Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility;
f. Giving victims immediate and adequate notice of the rights of victims and of the remedies and services available to victims of Domestic or Family Violence.

2. As part of the notice required by paragraph (f) of subsection 1, the law enforcement officer shall give a written notice to the victim substantially as follows:

"Victims of Domestic or Family Violence have the right to physical safety under the protection of the law. You have the right to request the following:
a. *That the officer assist in providing for your safety.*
b. *An emergency order for protection.*
c. *Assistance in obtaining your essential personal effects.*
d. *Assistance from the Winnebago Victim Advocate.*
e. *Assistance in locating and transporting you to a safe environment such as a shelter, a family member's or a friend's residence, or a similar place of safety*.
f. *Medical emergency transportation and treatment*.
g. *A copy of the police report at no cost.*
h. *Sign a Release of Information for confidentiality protection.*
i. *File a Petition for Protection Order and request the prosecuting attorney to file a criminal complaint which may include any of the following orders:*
    i. *An order enjoining your abuser from threatening to commit or committing further acts of Domestic or Family Violence;*
    ii. *An order prohibiting your abuser or from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;*
    iii. *An order removing your abuser from your residence;*
    iv. *An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member;*
    v. *An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court;*
    vi. *An order granting you possession and use of the automobile and other essential*

personal effects;

vii. *An order granting you custody of your child or children;*

viii. *An order denying your abuser visitation;*

ix. *An order specifying arrangements for visitation, including requiring supervised visitation; and*

x. *An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.*

xi. *An order requiring a safety plan prior to communication between the parties.*

3. The written notice must not include the addresses of shelters.

3-1304 Rights Specific to Victims of Sexual Assault

In addition to the general victim rights outlined herein, below are rights specific to sexual assault victims.

1. A victim of any form of sexual assault has a right to receive a forensic medical exam. A forensic medical exam is used to identify injuries and evidence related to the sexual assault.

   a. The exam should be performed as soon as possible, preferably within five days, though it may still be beneficial after five days.
   b. A victim of sexual assault has a right to have an advocate of their choosing present during the medial exam.
   c. A victim of sexual assault has a right to a shower after the exam if such facilities are available.

2. A victim of sexual assault has the following reporting options:
   a. If a victim under 18 years old or has suffered serious bodily injury or a deadly weapon was used during the sexual assault, reporting is mandatory.
   b. If a victim is over 18 and neither received serious bodily injury nor was a deadly weapon was used, reporting options are
      i. making a full report. A full report to law enforcement allows the victim the option of working with law enforcement to investigate the crime.
      ii. making a partial report. A partial report may be made if the victim wants access to medical care but is undecided about whether they want to do a full report to law enforcement. A partial report would involve providing the victim's name and contact information to law enforcement and sending the sexual assault kit to the crime lab for testing. Law enforcement may contact the victim to provide information.
      iii. making an anonymous report. If the victim does not want to report any personal information to law enforcement, the victim may obtain medical assistance, obtain a forensic medical exam and medical assistance. The sexual assault kit will not be sent for testing, but will be kept, in the event the victim later wishes for the evidence to be tested.
3. A victim of sexual assault, in meetings with law enforcement, prosecutors or defense attorneys has the right to have an advocate present. When possible, law enforcement will find an interviewer of the same gender as the victim of the victim's choosing. A victim may also choose to have a private attorney present at their own cost.
4. A victim who is a minor or has special needs, they can choose to be interviewed at a Child Advocacy Center . At the conclusion of the case, the victim has the right to see or get a copy of certain law enforcement reports about the sexual assault.
5. A victim has the right to timely processing of evidence that was collected if they do not report anonymously. A victim can contact the investigating law enforcement agency for an update on the

process of analysis of the evidence. Evidence that is collected anonymously cannot be processed until a person comes forward to request the kit be tested. A victim may request to change from an anonymous report to a partial or full report at any time.

6. Additional Rights and Resources:
   a. Victims of sexual assault have the right not to participate in the criminal justice process and to refrain from having a forensic exam.
   b. A sexual assault victim should be provided with the contact information of agencies that can provide assistance and information required to request information regarding forensic evidence.
   c. All of the rights afforded to other victims of crime.
   d. Rights provided by the Winnebago Tribal code for determination of the relevance of evidence of past conduct.

3-1305 Rights of All Victims of Crime; Duty of Prosecutor to Inform.

1. A victim of crime is entitled to:
   a. Be informed of all hearing dates and continuances.
   b. Provide the court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm.
   c. Be present at sentencing and address the court.
   d. Advise the court of conditions of probation and/or parole required to ensure the safety of the victim and other family or household members.
   e. Restitution for losses sustained as a direct consequence of any criminal conduct by the alleged perpetrator.
   f. Receive notice from the Prosecutor in the event the Prosecutor has decided to decline prosecution of the crime or to dismiss the criminal charges filed against the defendant along with the specific reasons that a case will not be prosecuted.

2. The Prosecutor and/or the Victim Advocate shall notify the alleged victim of Domestic or Family Violence of any additional rights set forth herein and in Title 12, Domestic and Family Violence.

3. The Prosecutor and/or the Victim Advocate shall notify the alleged victim(s) of crime of the following:
   a. The crimes for which the defendant is charged, the defendant's bond, and the time and place of any scheduled court proceedings;
   b. The final disposition of the case;
   c. The crimes for which the defendant was convicted;
   d. The victim's right to make a written or oral impact statement to be used in the probation officer's preparation of a presentence investigation report concerning the defendant;
   e. The address and telephone number of the probation office which is to prepare the presentence investigation report;
   f. That a presentence investigation report and any statement by the victim included in such report will be made available to the defendant unless exempted from disclosure by order of the court; and
   g. The victim's right to submit a written impact statement at the sentencing proceeding or to read his or her impact statement which may include but shall not be limited to the following:
      i. An explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim;
      ii. An explanation of the extent of any economic loss or property damage suffered by the victim;

iii. An opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage;
iv. The victim's recommendation for an appropriate sentence.

h. To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;
i. To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, shall be returned to the person within ten days after being taken;
j. To be provided with appropriate employer intercession services to insure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances;
k. To be notified whenever the defendant in such case is released from custody.

3-1306 Victim Advocate.

1. The Winnebago Tribe of Nebraska shall make every effort to fund a Victim Advocate to assist victims of crime.

2. Winnebago Victim Advocate shall:
   a. Assist criminal justice agencies in giving more consideration and personal attention to victims and witnesses through the delivery of services to victims and witnesses of crimes;
   b. Sensitize law enforcement officials, communications technicians, and supervisors to the needs of victims of crime and encourage a concerned approach to such victims;
   c. Attempt to decrease the incidence of unreported crimes;
   d. Assure that victims and witnesses are informed of the progress of the case in which they are involved;
   e. Providing follow-up support services to victims of violent crime and their families to insure that they receive necessary assistance through available community resources;
   f. Providing elderly victims of crime with services appropriate to their special needs;
   g. Providing liaison and referral systems to special counseling facilities and community service agencies for victims;
   h. Providing transportation and household assistance to those victims and witnesses participating in the criminal justice process;
   i. Notifying friends, relatives, and the employer of a victim, if requested;
   j. Notifying witnesses prior to their being subpoenaed in criminal cases; and
   k. Notifying witnesses of changes in the court calendar to avoid unnecessary trips to the court or spending unnecessary time in court.
   l. Upon request of the Victim, notify the victim of the final disposition of the case.

3-1307 No Cause of Action.

Nothing in this Article shall be construed as creating a cause of action for damages against the Tribe or any of its agencies, or employees.

TITLE 3
ARTICLE 14
WINNEBAGO LAW ENFORCEMENT CODE

(As revised July 2025)

3-1401	Purpose	3-1408	Chief of Police
3-1402	Source of Authority	3-1409	Tribal Police Officers
3-1403	Repealer	3-1410	Powers of the Winnebago Tribal Police Department
3-1404	Definitions		
3-1405	Jurisdiction	3-1411	Cross-Deputization and Other Agreements
3-1406	Authority over Department	3-1412	Conflicts of Interest
3-1407	General Principles	3-1413	Severability

3-1401 Purpose. The purpose of this Article is to reaffirm the establishment of the Winnebago Tribal Police Department, to describe key powers and authorities of the Winnebago Tribal Police Department, and to maintain a fair, impartial and effective law enforcement system for the Winnebago Tribe of Nebraska. [TCR 25-193]

3-1402 Source of Authority. The Tribal Council is empowered to enact this Article pursuant to Article IV of the Winnebago Tribal Constitution which provides Tribal Council with the authority to:

1. safeguard and promote the peace, safety, morals and general welfare of the Tribe;

2. promulgate and enforce statutes governing the conduct of persons located within or passing through the Reservation and providing for maintenance of law and order and the administration of justice;

3. delegate to subordinate boards, or to tribal officials, or to cooperative associations which are open to all members of the Tribe, any of the foregoing powers reserving the right to review any actions taken by virtue of such delegated powers; and

4. subject to the express limitations in the Winnebago Tribal Constitution, or in federal law, to legislate or act upon any subject upon which the Tribe is empowered to act, now or in the future. [TCR 25-193]

3-1403 Repealer. All other Winnebago laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this Article are hereby repealed unless specifically re-enacted after adoption of this Article. [TCR 25-193]

3-1404 Definitions.

1. "Article" means this Winnebago Law Enforcement Code.

2. "Chief of Police" or "Police Chief" means the highest-ranking law enforcement officer of the Winnebago Tribal Police Department.

3. "Department" means the Winnebago Tribal Police Department.

4. "Winnebago Tribal Law Enforcement Manual" means the policy and procedure manual that is periodically updated to remain current and compliant with applicable laws and regulations and with which all members of the Department must comply.

5. "Special Law Enforcement Commission" ("SLEC") means that a member of the Department is certified by the Bureau of Indian Affairs to act as a special law enforcement officer empowered to enforce Federal laws.

6. "Commission" means the Winnebago Public Safety Commission.

7. "Personnel" means all civilian personnel of the Department.

8. "Tribal Council" means the Winnebago Tribal Council.

9. "Tribal Police" means the Winnebago Tribal Police Department.

10. "Tribe" means the Winnebago Tribe of Nebraska. [TCR 25-193]

3-1405 Jurisdiction.

1. The Tribe's jurisdiction is as set forth in Title 1, Article 1 of the Winnebago Tribal Code

2. The Tribe has the authority to enforce Tribal laws as provided in the Winnebago Tribal Code, Winnebago Tribal Court orders, and pursuant to compacts and agreements authorized by the Winnebago Tribal Council, and by Federal law. [TCR 25-193]

3-1406 Authority over Department. The Winnebago Public Safety Commission shall have the ultimate responsibility for the Winnebago Tribal Police Department as set forth in the Title 3, Article 16 of this Code, and such authority is hereby delegated to the Commission by the Tribal Council. [TCR 25-193]

3-1407 General Principles.

1. Law enforcement operations shall be as set forth in this Article.

2. Law enforcement operations shall be used primarily for the purposes of providing law enforcement within the Winnebago Tribe's jurisdiction, and to supplement external law enforcement services offered by other governments within the Winnebago Reservation by powers as set forth in compacts and agreements authorized by the Winnebago Tribal Council.

3. The Winnebago Tribe of Nebraska shall appoint and employ law enforcement personnel as it deems necessary for the purpose of detecting and preventing crime and enforcing the laws of the Winnebago Tribe, in addition to protection of persons, property, and premises.

4. The Winnebago Tribal Police Department may, as authorized and delegated by this Article and as approved by the Winnebago Tribal Council, enter into cross-deputation agreements and other law enforcement agreements with other jurisdictions.

5. The Winnebago Tribal Police Department is delegated all law enforcement authority of the Winnebago Tribe of Nebraska subject to the oversight of the Winnebago Public Safety Commission. [TCR 25-193]

3-1408 Chief of Police. The Winnebago Tribal Police Department shall be managed by a Chief of Police who shall have authority and supervision over the department officers, personnel, and the daily operations. The duties of the Chief of Police shall include but are not limited to the following:

1. To be responsible for the proper and efficient enforcement of all laws for which he/she has been given authority, and to be responsible for all Tribal Police functions and operations within the jurisdiction of the Tribe;

2. To be in command of the Department, all Officers and Personnel;

3. To make divisions of operations as necessary;

4. To be responsible for the efficient service and discipline of the Tribal Police Officers and other persons under his/her supervision;

5. To thoroughly investigate all complaints filed by any person against any personnel under his/her supervision including a written report of such complaint and the investigative action including his/her findings shall be reported to the Winnebago Public Safety Commission;

6. To coordinate investigative functions with state, county, or other applicable law enforcement officers and officials, special officers, and other federal officials whenever appropriate in promoting law enforcement on the Reservation;

7. To develop and maintain the Winnebago Tribal Law Enforcement Manual;

8. To follow the responsibilities and duties outlined in the Winnebago Tribal Law Enforcement Manual; and

9. To perform other law enforcement duties and activities as the Winnebago Public Safety Commission shall direct. [TCR 25-193]

3-1409 Tribal Police Officers. The Chief of Police shall hire Tribal Police Officers who shall abide by duties set forth herein and as provided in the Winnebago Tribal Law Enforcement Manual. The duties of a Tribal Police Officer shall include but are not limited to the following:

1. Promptly follow directives of the Chief of Police or the ranking officer;

2. Lend assistance to other officers;

3. Abstain from the use of narcotics or the excessive use of alcohol and refrain from engaging in any act which would reflect discredit on the Tribe or the Tribal police;

4. Refrain from the use of profane, vulgar, insolent, or offensive language;

5. Keep all equipment furnished by the Tribe in good repair and order and to immediately report the loss of any or all of such property;

6. Prevent a violation of applicable law;

7. Investigate and report on all violations of applicable law;

8. Wear a prescribed uniform, badge and to carry prescribed credentials;

9. Perform any other law enforcement related duties;

10. Complete all basic, annual, and mandatory training requirements.

11. Be diligently informed of and keeping current on all applicable laws and regulations; and

12. Diligently and faithfully serve and protect the Winnebago Tribe of Nebraska. [TCR 25-193]

3-1410 Powers of the Winnebago Tribal Police Department.

1. The Chief of Police of the Winnebago Tribal Police Department, acting in accordance with the Department's Law Enforcement Policy Manual, may charge employees of the Winnebago Tribal Police Department with law enforcement responsibilities and may authorize those Tribal Police Officers to:

    a. Carry firearms;

    b. Execute or serve warrants, summonses, or other orders issued under the laws of the Winnebago Tribe of Nebraska, the United States of America, or, if applicable, the State of Nebraska or a County thereof;

    c. Offer and pay a reward for services or information, including assisting in the detection or investigation of an offense committed on the Winnebago Reservation or in the arrest of an offender;

    d. Make inquiries of any person, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter relevant to the enforcement or carrying out of a law of the Winnebago Tribe of Nebraska, or applicable Federal or State law, or that has authorized the employee to enforce or carry out such laws;

    e. When requested or authorized, to assist any Tribal, Federal, State, or local law enforcement agencies in the enforcement or carrying out of applicable laws or regulations.

2. Detention and Arrest

    a. A Tribal Police Officer possesses the authority to search and temporarily detain any person located within the Winnebago Reservation, that the Tribal Officer reasonably believes may commit or has committed a violation of Tribal law, or of applicable Federal or State law, so that the suspect may be promptly turned over to the proper authorities.

    b. In accordance with the Winnebago Tribal Law Enforcement Policy Manual and any Memorandum of Understanding, Joint Powers Agreement, Cross-Deputation Agreement, or Commission, and applicable Tribal, Federal, and State laws, Tribal Police Officers may:

        a. initiate a detention of a person when there is an articulable, reasonable suspicion of a need to do so, and in accordance with the Winnebago Tribal Law Enforcement Policy Manual. A person, however, should not be detained longer than is reasonably necessary to resolve the Tribal Police Officer's suspicions;

        b. detain a suspect until the appropriate agency can assume custody of the individual or if another agency cannot respond to the Tribal Police Officer's location and the

Tribal Police Officer may secure the suspect and complete any investigation before transporting the suspect to the appropriate agency;

c. if weather or other circumstances beyond the control of the Tribal Police Officer prohibits immediate transportation of the suspect, the Officer may detain the suspect in a Tribal detention facility, once established, but only after the other agency has been notified and only until it is safe for the other agency to retrieve the suspect or transport the suspect to the other agency;

d. temporarily detain, convey to headquarters, and cite and release those individuals that Tribal Police Officers reasonably believe have violated any provisions of Tribal law or Winnebago Tribal Court orders, or applicable Federal or State law, of which enforcement by the Department is permitted under the Winnebago Tribal Code.

c. Certain Tribal Police Officers may carry out an arrest or detention as authorized by and pursuant to a Deputization Agreement with the United States, Department of the Interior, Bureau of Indian Affairs, Office of Justice Services, or agreement other agreement with another law enforcement agency. [TCR 25-193]

3-1411 Cross-Deputization and Other Agreements. Certain authority may be granted to a Tribal Police Officer by and through a valid deputization agreement, or other agreement, entered into between the Winnebago Tribe of Nebraska and any other law enforcement agency, including but not limited to state or local agencies, or federal agencies such as the Bureau of Indian Affairs who may issue Special Law Enforcement Commissions (SLECs) to certain officers. [TCR 25-193]

3-1412 Conflicts of Interest. No officer or employee of the Winnebago Tribal Police Department shall permit any member of his or her immediate family to interfere in any way with the performance of official duties nor shall the officer discuss or make available to his or her family or any other person any information that was obtained by his or official position that is not otherwise public record. This Section is in no way meant to prevent the officers or employees from releasing of such information to other law enforcement officers, courts, or other authorized persons. Failure to comply with this section shall be grounds for dismissal. [TCR 25-193]

3-1413 Severability. If any provision of this Article or its application to any person or circumstance is held invalid, the remainder of this Article to the extent it can be given effect, or the application of the provision to persons or circumstances other than those as to which is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable. [TCR 25-193]

TITLE 3
ARTICLE 15
CRIMINAL TRAFFIC OFFENSES

(As adopted September 24, 2003)

3-1500 Driving under influence of alcoholic liquor or drug; penalties; revocation of operator's license; applicable to violation of statutes or ordinances; probation; alcohol assessment; court; powers.
3-1501 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.
3-1502 Driving under influence of alcoholic liquor or drugs; test; additional test; refusal to permit; effect; results of test; available upon request.
3-1503 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn.
3-1504 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.
3-1505 Driving under influence of alcohol; operator's license; confiscation and revocation; procedures; appeal.
3-1506 Driving under influence of alcohol; revocation of impounded operator's license; procedure; reinstatement; fee; eligibility for employment driving permit and ignition interlock device.
3-1507 Operator's license revocation decision; notice; contents.
3-1508 License revocation; appeal.
3-1509 Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.
3-1510 Person under twenty-one years of age; prohibited acts; enforcement.
3-1511 Implied consent to submit to chemical test; when test administered; refusal; penalty.
3-1512 Impounded operator's license; sealing of record; when; operation of motor vehicle authorized.
3-1513 Ignition interlock device; court order authorized; issuance of restricted Class O license; prohibited act; violation; penalty.
3-1514 Careless driving, defined; penalty.
3-1515 Reckless driving, defined; penalty.
3-1516 Willful reckless driving, defined.
3-1517 Willful reckless driving; first offense; penalty.
3-1518 Reckless driving or willful reckless driving; second offense; penalty.
3-1519 Reckless driving or willful reckless driving; third and subsequent offenses; penalty.

3-1500 Driving under influence of alcoholic liquor or drug; penalties; revocation of operator's license; applicable to violation of statutes or ordinances; probation; alcohol assessment; court; powers.

1. It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:
   A. While under the influence of alcoholic liquor or of any drug;
   B. When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood;

C. When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

2. Any person who operates or is in the actual physical control of any motor vehicle while in a condition described in subdivision (1) of this Section shall be guilty of a crime and upon conviction punished as follows:

A. If such person (i) has not had a conviction under this Section in the eight years prior to the date of the current conviction or (ii) has not been convicted under a city or village ordinance enacted pursuant to this Section in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of six months from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. If the Court places such person on probation or suspends the sentence for any reason, the Court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle for any purpose for a period of sixty days from the date of the order unless otherwise authorized by an order issued pursuant to Section 3-1513. [TCR 04-09]

B. If such person (i) has had one conviction under this Section in the eight years prior to the date of the current conviction or (ii) has been convicted once under a city or village ordinance enacted pursuant to this Section in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of one year from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. [TCR 04-09]

C. If such person (i) has had two or more convictions under this Section in the eight years prior to the date of the current conviction, (ii) has been convicted two or more times under a city or village ordinance enacted pursuant to this Section in the eight years prior to the date of the current conviction, or (iii) has been convicted as described in subdivisions (i) and (ii) of this subdivision a total of two or more times in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of fifteen years from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. If the Court places such person on probation or suspends the sentence for any reason, the Court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of one year unless otherwise authorized by an order issued pursuant to Section 3-1513, and such order of probation shall include as one of its conditions confinement in jail for seven days.

3. For each conviction under this Section, the Court shall as part of the judgment of conviction make a finding on the record as to the number of the defendant's prior convictions under this Section and under a city or village ordinance enacted pursuant to this Section in the eight years prior to the date

of the current conviction. The defendant shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the Court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

4. For purposes of this Section, the eight-year period shall be computed from the date of the prior offense to the date of the offense which resulted in the current conviction and the terms conviction under this Section and prior conviction shall include any conviction under this Section as it existed at the time of such conviction regardless of subsequent amendments to such Section.
5. Any period of revocation or order not to drive imposed under this Section shall be reduced by any period imposed under Section 3-1506. Any period of revocation or order not to drive imposed under this Section shall not prohibit the operation of a motor vehicle under the terms and conditions of an employment driving permit issued pursuant to subsection (2) of Section 3-1506.
6. Any person operating a motor vehicle on the highways or streets of this jurisdiction while his or her operator's license has been revoked pursuant to subdivision (2)(c) of this Section shall be guilty of a Class I offense.
7. Any city or village may enact ordinances in conformance with this Section and Section 3-1501. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of this Section with respect to the operator's license of such person shall be applicable the same as though it were a violation of this Section.
8. Any person who has been convicted of driving while intoxicated for the first time or any person convicted of driving while intoxicated who has never been assessed for alcohol abuse shall, during a presentence evaluation, submit to and participate in an alcohol assessment. The alcohol assessment shall be paid for by the person convicted of driving while intoxicated. At the time of sentencing, the judge, having reviewed the assessment results, may then order the convicted person to follow through on the alcohol assessment results at the convicted person's expense in lieu of or in addition to any penalties deemed necessary. [TCR 86-31, 86-79, 95-06, 03-194, Same as Neb. Rev. Stat. 60-6196]

3-1501 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.

1. Any person who operates or has in his/her actual physical control a motor vehicle within the Winnebago Reservation shall be deemed to have given his or her consent to submit to a chemical test or tests of his/her blood, breath, or urine, for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.
2. Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this Tribe or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle upon a public highway in this jurisdiction while under the influence of alcoholic liquor or drugs in violation of Section 3-1500.
3. Any peace officer who has been duly authorized to make arrests for violation of traffic laws of this Tribe may require any person who operates or has in his/her actual physical control a motor vehicle within this Reservation to submit to a preliminary test of his/her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test

results indicate an alcohol concentration in violation of Section 3-1500 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of an infraction.

4. Any person arrested as provided in this Section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his/her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of Section 3-1500, the person shall be subject to the administrative revocation procedures provided in Sections 3-1506 to 3-1507 and upon conviction shall be punished as provided in Section 3-1500. Any person who refuses to submit to such test or tests required pursuant to this Section shall be subject to the administrative revocation procedures provided in Sections 3-1506 to 3-1507 and shall guilty of a crime and upon conviction punished as follows:

   A. If such person (i) has not had a conviction under this Section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction or (ii) has not been convicted under a city or village ordinance enacted pursuant to this Section as authorized by Section 3-1500 in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of six months from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. If the Court places such person on probation or suspends the sentence for any reason, the Court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of sixty days unless otherwise authorized by an order issued pursuant to Section 3-1513. [TCR 04-09]

   B. If such person (i) has had one conviction under this Section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction or (ii) has been convicted once under a city or village ordinance enacted pursuant to this Section as authorized by Section 3-1500 in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of one year from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. If the Court places such person on probation or suspends the sentence for any reason, the Court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of six months from the date of the order unless otherwise authorized by an order issued pursuant to Section 3-1513, and such order of probation shall include as one of its conditions confinement in jail for forty-eight hours. [TCR 04-09]

   C. If such person (i) has had two or more convictions under this Section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction; (ii) has been convicted two or more times under a city or village ordinance enacted pursuant to this Section as authorized by Section 3-1500 in the eight years prior to the date of the current conviction; or (iii) has been convicted as described in subdivisions (i) and (ii) of this subdivision a total of two or more times in the eight years prior to the

date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in this jurisdiction for any purpose for period of fifteen years from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. If the Court places such person on probation or suspends the sentence for any reason, the Court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of one year unless otherwise authorized by an order issued pursuant to Section 3-1513, and such order of probation shall include as one of its conditions confinement in jail for seven days. [TCR 04-09]

5. For each conviction under this Section, the Court shall, as part of the judgment of conviction, make a finding on the record as to the number of the defendant's prior convictions under this Section and under a city or village ordinance enacted pursuant to this Section or Section 3-1500 in the eight years prior to the date of the current conviction. The defendant shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the Court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.
6. For purposes of this Section, the eight-year period shall be computed from the date of the prior offense to the date of the offense which resulted in the current conviction and the terms conviction under this Section and prior conviction shall include any conviction under this Section as it existed at the time of such conviction regardless of subsequent amendments to such Section.
7. Any person operating a motor vehicle on the highways or streets of this jurisdiction while his/her operator's license has been revoked pursuant to subdivision (4)(c) of this Section shall be guilty of a Class I offense.
8. Any city or village within the Winnebago Reservation may enact ordinances in conformance with this Section. Upon conviction of any person of a violation of such city or village ordinance, the provisions of this Section with respect to the operator's license of such person shall be applicable the same as though it were a violation of this Section.
9. Any person involved in a motor vehicle accident within the jurisdiction of the Winnebago Tribe may be required to submit to a chemical test of his/her blood, breath, or urine by any peace officer if the officer has reasonable ground to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway on this jurisdiction while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this jurisdiction shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this jurisdiction. If the person refuses a test under this Section and leaves the jurisdiction for any reason following an accident, he or she shall remain subject to subsection (4) of this Section and Section 3-1506 upon return.
10. Any person who is required to submit to a preliminary breath test or to a chemical blood, breath, or urine test or tests pursuant to this Section shall be advised of (a) the consequences of refusing to submit to such test or tests and (b) the consequences if he or she submits to such test and the test discloses the presence of a concentration of alcohol in violation of subsection (1) of Section 3-1500. Refusal to submit to such test or tests shall be admissible in any action for a violation of Section 3-1500 or a city or village ordinance enacted pursuant to such Section. [TCR 86-31, 86-79, 95-06, 03-194, Neb. Rev. Stat. 60-6197]

3-1502 Driving under influence of alcoholic liquor or drugs; test; additional test; refusal to permit; effect; results of test; available upon request. The peace officer who required a chemical blood, breath, or urine test or tests pursuant to Section 3-1501 may direct whether the test or tests shall be of blood, breath, or urine. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests he or she deems appropriate in addition to and following the test or tests administered at the direction of the officer. If the officer refuses to permit such additional test to be taken, then the original test or tests shall not be competent as evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the officer shall be made available to him or her. [TCR 86-31, 86-79, 03-194, Neb. Rev. Stat. 60-6199]

3-1503 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn. Any person who is unconscious or who is otherwise in a condition rendering him/her incapable of refusal shall be deemed not to have withdrawn the consent provided by Section 3-1501 and the test may be given. [TCR 86-31, 86-79, 03-194, Neb. Rev. Stat. 60-6200]

3-1504 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.

1. Any test made under Section 3-1501, if made in conformity with the requirements of this Section, shall be competent evidence in any prosecution under a Tribal law or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.
2. Any test made under Section 3-1511, if made in conformity with the requirements of this Section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of Section 3-1509.
3. To be considered valid, tests of blood, breath, or urine made under Section 3-1501 or 3-1511 shall be performed according to methods approved by the Nebraska Department of Health and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed institution or facility or clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the Federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the Federal Social Security Act to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the Department shall be required for such person to withdraw blood pursuant to such an order. The Department may to be a health and safety hazard by driving with an excessive concentration of alcohol in his or her body and to deter others from driving while under the influence of alcohol. [TCR 03-194]

3-1505 Driving under influence of alcohol; operator's license; confiscation and revocation; procedures; appeal.

1. Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard (a) by driving with an excessive concentration of alcohol in his or her body; or (b) by driving while under the influence of alcohol.
2. All requirements and procedures under Neb. Rev. Stat. 60-498.01 regarding the confiscation and revocation of the operator's license of any person driving with an excessive concentration of

alcohol in his or her body or driving while under the influence of alcohol, are hereby incorporated by reference as though fully set forth herein. [TCR 86-31, 86-79, 89-87, 95-06, 03-194, Same as Neb. Rev. Stat. 60-498.01]

3-1506 Driving under influence of alcohol; revocation of impounded operator's license; procedure; reinstatement; fee; eligibility for employment driving permit and ignition interlock device. All requirements and procedures under Neb. Rev. Stat. 60-498.02 regarding revocation of impounded operator's license, reinstatement, fees, eligibility for employment driving permit and ignition interlock devices are hereby incorporated by reference as though fully set forth herein. [TCR 86-31, 86-79, 89-87, 95-28, 03-194, Same as Neb. Rev. Stat 60-498.02]

3-1507 Operator's license revocation decision; notice; contents. All requirements and procedures under Neb. Rev. Stat. 60-498.03 regarding operator's license revocation decisions, notice and contents are hereby incorporated by reference as though fully set forth herein. [TCR 86-31, 86-79, 89-87, 95-06, 03-194, Same as Neb. Rev. Stat. 60-498.02]

3-1508 License revocation; appeal. Any person who feels him/herself aggrieved because of such revocation may appeal therefrom to the Tribal Court. Such appeal shall not suspend the order of revocation unless a stay thereof is allowed by a judge of such Court pending a final determination of the review. If a stay is allowed and the final judgment of a court finds against the person so appealing, the period of revocation shall commence at the time of final judgment of the Court for the full period of the time of revocation. In all Sections of this Title which pertain to alcohol related offenses, the accused MUST, in order to prove intoxication, be given the opportunity to take a chemical test of his or her blood, urine, or breath, for the purpose of determining the amount of alcoholic content in his or her body fluid. [TCR 86-31, 86-79, 89-87, 95-06, 95-28, 98-86, 03-194, Same as Neb. Rev. Stat. 60-6,208]

3-1509 Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.

1. If the driver of a motor vehicle involved in an accident is transported to a hospital within or outside of this jurisdiction and a sample of the driver's blood is withdrawn by a physician, registered nurse, qualified technician, or hospital for the purpose of medical treatment, the results of a chemical test of the sample shall be admissible in a criminal prosecution under Section 3-1500 to show the alcoholic content of or the presence of drugs or both in the blood at the time of the accident regardless of whether (a) a peace officer requested the driver to submit to a test as provided in Section 3-1501 or (b) the driver had refused a chemical test.
2. Any physician, registered nurse, qualified technician, or hospital in this jurisdiction performing a chemical test to determine the alcoholic content of or the presence of drugs in such blood for the purpose of medical treatment of the driver of a vehicle involved in a motor vehicle accident shall disclose the results of the test (a) to a prosecuting attorney who requests the results for use in a criminal prosecution under Section 3-1500 and (b) to any prosecuting attorney in another jurisdiction who requests the results for use in a criminal prosecution for driving while intoxicated, driving under the influence, or motor vehicle homicide under the laws of the other jurisdiction if the other jurisdiction requires a similar disclosure by any hospital or person in such jurisdiction to any prosecuting attorney in this jurisdiction who requests the results for use in such a criminal prosecution under the laws of the Winnebago Tribe. [TCR 95-28, 03-194, Same as Neb. Rev. Stat. 60-6,210]

3-1510 Person under twenty-one years of age; prohibited acts; enforcement.

1. It shall be unlawful for any person under twenty-one years of age to operate or be in the actual physical control of any motor vehicle:
   A. When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood but less than the concentration prescribed under subdivision (1)(b) of Section 3-1500, or
   B. When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath but less than the concentration prescribed under subdivision (1)(c) of Section 3-1500.
2. Enforcement of this Section by law enforcement agencies shall be accomplished only as a secondary action when the driver of a motor vehicle has been cited for a violation of some other offense. [TCR 95-28, 03-194, Same as Neb. Rev. Stat. 60-6,211.01]

3-1511 Implied consent to submit to chemical test; when test administered; refusal; penalty.

1. Any person who operates or has in his/her actual physical control a motor vehicle in this jurisdiction shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath.
2. Any peace officer who has been duly authorized to make tests for violations of traffic laws of this jurisdiction or of ordinances of any city or village may require any person under twenty-one years of age who has been cited for some offense to submit to a chemical test or tests of his/her blood or breath when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this jurisdiction in violation of Section 3-1510. Such peace officer may require such person to submit to a preliminary breath test. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of Section 3-1510 shall be placed under arrest.
3. Any person arrested as provided in this Section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his/her blood or breath for a determination of the concentration of alcohol. If the chemical test discloses the presence of a concentration of alcohol in violation Section 3-1510, the person shall be found guilty of an infraction and upon conviction shall have his or her operator's license impounded by the Court for thirty days for each violation of Section 3-1510. Any person who refuses to submit to such test or tests required pursuant to this Section shall not have the tests taken but shall be found guilty of an infraction and upon conviction shall have his or her operator's license impounded by the Court for ninety days for refusal to submit to such tests required pursuant to this Section. [TCR 95-28, 03-194, Same as Neb. Rev. Stat. 60-6,211.02]

3-1512 Impounded operator's license; sealing of record; when; operation of motor vehicle authorized.

1. If a person whose operator's license has been impounded pursuant to Section 3-1511 has had no other violation of Section 3-1510 or 3-1511 during the time of impoundment of the operator's license, the record of such impoundment shall be sealed. The Court shall not report this infraction to the Nebraska Department of Motor Vehicles.
2. Any person whose operator's license is impounded pursuant to Section 3-1511 may be allowed by the Court to operate a motor vehicle in order to drive to and from his/her place of employment. [TCR 95-28, 03-194, Same as Neb. Rev. Stat. 60-6,207]

3-1513 Ignition interlock device; court order authorized; issuance of restricted Class 0 license; prohibited act; violation; penalty.

1. If an order of probation is granted under Section 3-1500 or 3-1501, the Court may order the defendant to install an ignition interlock device of a type approved by the Nebraska Director of Motor Vehicles on each motor vehicle operated by the defendant. Any order issued by the Court pursuant to this Section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (2) of Section 3-1506. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than the levels prescribed in Section 3-1500.
2. If the Court orders an ignition interlock device, the Court shall order the Department of Motor Vehicles to issue to the defendant a restricted Class O license as provided in Neb. Rev. Stat. 60-4,118 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device. The order shall remain in effect for a period of time as determined by the Court not to exceed the maximum term of revocation which the Court could have imposed according to the nature of the violation.
3. A person who tampers with or circumvents an ignition interlock device installed under a Court order while the order is in effect or who operates a motor vehicle which is not equipped with an ignition interlock device in violation of a Court order made pursuant to this Section shall be guilty of a Class II offense.
4. The director shall adopt and promulgate rules and regulations to approve ignition interlock devices and the means of installation of the devices. [TCR 95-28, 03-194, Same as Neb. Rev. Stat. 60-6,211.05]

3-1514 Careless driving, defined; penalty. Any person who drives any motor vehicle in this jurisdiction carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving. A violation of this Section shall be an infraction. [TCR 86-31, 86-79, 89-87, 03-194, Same as Neb. Rev. Stat. 60-6,212]

3-1515 Reckless driving, defined; penalty. Any person who drives any motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property shall be guilty of reckless driving. A violation of this Section shall be an infraction. [TCR 86-31, 86-79, 89-87, 03-194, Same as Neb. Rev. Stat. 60-6,213]

3-1516 Willful reckless driving, defined. Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be guilty of willful reckless driving. [TCR 86-31, 86-79, 03-194, Same as Neb. Rev. Stat. 60-6,214]

3-1517 Willful reckless driving; first offense; penalty. Every person convicted of willful reckless driving shall, upon a first conviction, shall be guilty of a Class III offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than thirty days nor more than one year from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The revocation shall not run concurrently with any jail term imposed. [TCR 86-31, 86-79, 03-194, Same as Neb. Rev. Stat. 60-6,216]

3-1518 Reckless driving or willful reckless driving; second offense; penalty. Upon a second conviction of any person for either reckless driving or willful reckless driving, the person shall be guilty of a Class II offense, and the Court shall order the person so convicted, as part of the judgment of conviction, not to drive a motor vehicle for any purpose for a period of not less than sixty days nor more than two years from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The revocation shall not run concurrently with any jail term imposed. If the motor vehicle which such person was operating in such reckless or willful reckless manner is registered in the name of such person, the motor vehicle shall be impounded in a reputable garage by the Court for a period of not less than two months nor more than one year at the expense and risk of the owner thereof, except that any motor vehicle so impounded shall be released to the holder of a bona fide lien thereon, executed prior to such impounding, when possession of such motor vehicle is requested in writing by such lienholder for the purpose of foreclosing and satisfying the lien. [TCR 86-31, 86-79, 03-194, Same as Neb. Rev. Stat. 60-6,217]

3-1519 Reckless driving or willful reckless driving; third and subsequent offenses; penalty. Upon a third or subsequent conviction of any person for either reckless driving or willful reckless driving, the person shall be guilty of a Class I offense. The Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of one year from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The revocation shall not run concurrently with any jail term imposed. [TCR 86-31, 86-79, 03-194, Same as Neb. Rev. Stat. 60-6,218]

TITLE 3
ARTICLE 16
WINNEBAGO PUBLIC SAFETY COMMISSION CODE
(As adopted July 15, 2025)

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3-1600 Establishment. The Winnebago Public Safety Commission is hereby established as the independent law enforcement oversight authority of the Winnebago Tribe of Nebraska. [TCR 25-194]

3-1601 Purpose and Policy. The purpose of the Commission is to provide performance and regulatory oversight of Tribal law enforcement and to act as the liaison between the community, law enforcement, and the Tribal government providing transparency, advice and advocacy for effective policies and protocols that will help reduce crime and increase safety and justice on Tribal Lands.

It shall be the policy of the Commission to:

1. Support the Winnebago Tribe of Nebraska's goal of self-sufficiency and sovereignty through the implementation and enforcement of Tribal laws and regulations;

2. Provide the community with a professional and effective law enforcement agency that is responsive and respectful while serving the community;

3. Strengthen the relationship between the community and the police by providing an accessible and credible complaint review process and increasing the community's confidence in the Department; and

4. Provide an open and independent forum for the community to express concerns about police conduct. [TCR 25-194]

3-1603 Source of Authority. The Winnebago Tribe of Nebraska (“Tribe”) has both constitutional and inherent sovereign authority to govern and provide for the health and safety of its members, residents, visitors and territory, and through that authority has enacted this code and created the Winnebago Public Safety Commission (“Commission”). [TCR 25-194]

3-1604 Definitions. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

1. “Chief of Police” shall mean the highest-ranking law enforcement officer of the Winnebago Police Department.

2. "Commission" shall mean the Winnebago Public Safety Commission.

3. "Commissioner" or "Member" shall mean a duly appointed member of the Winnebago Public Safety Commission.

4. "Department" shall mean the Winnebago Police Department.

5. "Law Enforcement Agency" shall mean an agency responsible for enforcing the laws of the Winnebago Tribe of Nebraska, and any other applicable law, including but not limited to the Winnebago Police Department.

6. "Personnel" shall mean all civilian personnel of the Department.

7. "Police Officer" or "Law Enforcement Officer" shall mean a qualified and sworn member of the Winnebago Police Department who meets all qualifications for a law enforcement officer, including accepted professional training and experience, state or federal certification, which includes but is not limited to, satisfactory background investigation, psychological evaluation, drug testing, and police firearms certification.

8. "Reasonableness Standard" means the standard of review which requires the Tribal Court to uphold the decision of the Commission if it falls within a range of acceptable or defensible outcomes; the court doesn't substitute its own judgement for that of the Commission, rather the Tribal Court assesses whether the agency's decision is justified, transparent and intelligible.

9. "Tribal Council" shall mean the Winnebago Tribal Council.

10. "Tribal Lands" shall mean all lands over which the Winnebago Tribe of Nebraska exercises jurisdiction.

11. "Tribal Police" shall mean the Winnebago Police Department.

12. "Tribe" shall mean the Winnebago Tribe of Nebraska. [TCR 25-194]

3-1605 Winnebago Public Safety Commission

The Winnebago Public Safety Commission shall be responsible for and empowered to do the following:

1. Appoint, discipline, or remove the Chief of Police of the Winnebago Police Department, however the Chief of Police shall manage the daily operations of the Department;

2. Adopt, modify, and repeal rules governing eligibility for appointment and promotion of Law Enforcement Officers;

3. Formulate, review and recommend for adoption by the Tribal Council policies, practices, orders, regulations and procedures for the government, discipline, administration and conduct of the Department and of its members;

4. Review all reports and audits conducted by the Department, Bureau of Indian Affairs, or any other entity's reports or audits that are submitted to the Chief of Police;

5. Hear formal disciplinary charges filed against the Chief of Police, make findings and determinations, and impose penalties, up to and including termination;

6. Adopt rules governing the Commission's management of its own activities, including but not limited to bylaws and hearing procedures;

7. Review and forward to the Winnebago Tribal Council for its approval agreements such as cross-deputization, dispatch function and mutual aid agreements which are made between the Department and other agencies;

8. Approve the Winnebago Tribal Law Enforcement Manual.

9. Review and recommend the Department's annual proposed budget to the Tribal Council;

10. Review all summaries of use of force incidents, after investigations are complete. The summary shall include badge numbers of officers involved, circumstances of incidents, such as an officer involved shooting, and final determinations of investigation. The Commission shall identify patterns and trends and adjust policies and procedures and training when appropriate based on this review;

11. Work towards increasing public awareness of the Commission and the Police Department to include providing public notice of its monthly meetings, provided that all hearings involving on-going investigations or internal department personnel matters shall be held in executive (closed) session;

12. Provide a monthly report to the Tribal Council to include but not be limited to statistics on the number of complaints and disciplinary actions it has heard, and any other issues the Commission or the Tribal Council may deem important and appropriate;

13. For any reason, may appoint an independent auditor to address a particular complaint or investigation;

14. Conduct a yearly evaluation of the Department and may hire an outside evaluator to assist with the review, and submit an annual report to the Tribal Council;

15. Conduct a yearly evaluation of the Chief of Police; and

16. May have the services of its own contract attorney, separate from the Tribe's Legal Counsel, during disciplinary hearings to avoid any conflict of interest. Payment for the services of any contract attorney shall be included in the Commission's annual budget.

17. Shall be paid a reasonable stipend as determined by Tribal Council. [TCR 25-194]

3-1606 Public Safety Commission Meetings

The Commission shall meet at least once a month. The public may participate in a portion of the monthly meeting, except when the Commission is in executive session. The public portion of any meeting may include but is not limited to the following:

1. A report by the Chief of Police, including statistics of the number of incidents responded to in the prior month, the types of calls, any public service performed by the Police Department, and the number of complaints filed and investigated.

2. Review of any policies and procedures;

3. Any comments from the public. [TCR 25-194]

3-1607 Appointment of Commissioners.

The Winnebago Tribal Council shall appoint five (5) members to the Winnebago Public Safety Commission for staggered five (5) year terms. Commissioners may serve no more than three (3) consecutive terms. The initial Commission shall be appointed as follows:

1. One (1) member shall be appointed for a five (5) year term.

2. One (1) member shall be appointed for a four (4) year term.

3. One (1) member shall be appointed for a three (3) year term.

4. One (1) member shall be appointed for a two (2) year term.

5. One (1) member shall be appointed for a one (1) year term.

Thereafter, each subsequent term shall be for a period of five (5) years, and each Commissioner shall serve until his/her successor is appointed by the Tribal Council. [TCR 25-194]

3-1608 Commissioner Requirements and Qualifications

The following are membership requirements for serving on the Winnebago Public Safety Commission:

1. Shall be a member of the Winnebago Tribe of Nebraska;

2. Must be 25 years of age or older;

3. Must complete a satisfactory background investigation. The following would prohibit any person from serving on the Winnebago Public Safety Commission:

    a. A felony conviction under 18 U.S. Code 1153, or an equivalent crime under the laws of any state;

    b. A felony arrest which results in a misdemeanor conviction due to a plea arrangement;

c. A conviction of a violation that could bring discredit to the Commission;

4. Must submit to drug testing prior to appointment and be subject to random drug testing.

5. Must not be an employee of the Winnebago Police Department;

6. Shall attend required meetings and training;

7. Must be a person of good standing in the community; and

8. Must be committed to the improvement and provision of police services for the Tribe. [TCR 25-194]

3-1609 Confidentiality. Commissioners shall not reveal any confidential information regarding personnel matters, investigations, and disciplinary hearings. Unauthorized sharing of confidential information shall result in the removal from the Commission. [TCR 25-194]

3-1610 Conflicts of Interest

In the event a Commissioner has a conflict of interest on a particular issue, he or she shall recuse himself or herself from the matter entirely, including deliberation and decision-making. If the Commissioner fails to recuse himself or herself and the conflict of interest is apparent to the remaining commissioners, they shall remove him or her from the meeting by majority vote and may recommend termination from the Commission to the Tribal Council. [TCR 25-194]

3-1611 Removal of Commissioners

1. The Commission may recommend termination of a member from the Commission to the Winnebago Tribal Council for:

   a. Failure to fulfill duties and responsibilities, including failure to recuse oneself in the case of a conflict of interest;

   b. Conduct which could jeopardize the reputation of the Winnebago Tribe of Nebraska, the Winnebago Public Safety Commission, or the Winnebago Tribal Police;

   c. Any change in status which would place the Commissioner in conflict with the qualifications specified herein; and

   d. Violation of the confidentiality of closed hearings or any other unauthorized disclosure of confidential information;

2. Commission recommendations for a member's termination from the Commission must be determined by a majority vote of members in attendance at a Commission meeting with quorum.

3. The Winnebago Tribal Council shall have the authority to remove a Commissioner by a majority vote of the Tribal Council. [TCR 25-194]

3-1612 Complaints

1. The Commission shall not solicit complaints from the public, however, it shall make complaint forms accessible to the public and ensure the public knows the complaint process and where to submit a complaint form.

2. Any person may file a written complaint against a Law Enforcement Officer with the Chief of Police, or his or her designee, who shall investigate the complaint.

    a. The Chief of Police, or his or her designee, may invite the Law Enforcement Officer to agree to an informal resolution to the complaint which shall be reduced to a writing that waives any right to an appeal and that outlines the discipline to be imposed.

    b. If the Chief of Police, or his or her designee, determines that an informal resolution is inappropriate, the Chief of Police or his or her designee, may bring formal disciplinary charges against the Law Enforcement Officer.

3. The Commission shall investigate any complaints against the Chief of Police and may bring formal disciplinary charges against the Chief of Police. If the Commission determines it is necessary, an independent investigator may be retained and appointed to assist in the investigation of complaints against the Chief of Police.

4. Law Enforcement Officers and Personnel may also make any complaints about working conditions to the Commission and no disciplinary action may be taken against a Law Enforcement Officer or Personnel for making such a complaint. [TCR 25-194]

3-1613 Commission Hearings

1. When formal disciplinary charges have been brought against the Chief of Police, the Commission shall conduct a hearing.

2. The Commission shall adopt hearing procedures to be used for the conduct of all hearings, and which shall be adopted by the Commission within thirty (30) days of the adoption of this Act.

3. The Commission may have legal counsel or a hearing examiner facilitate the conduct of any hearing.

4. The Commission shall arrange for a court reporter to record and transcribe all proceedings.

5. The Commission shall have the authority to subpoena witnesses.

6. The Commission shall render a decision by a majority vote.

7. The decision of the Commission may be appealed to the Tribal Court, which shall review the Commission’s decision based on a Reasonableness Standard.

8. The Chief of Police, when subject to a formal disciplinary charge, shall have the following rights:

a. The right to notice of the charge(s) that have been made, as well as actions or consequences if the charge is sustained;

b. The right to a hearing to respond to the charges;

c. The right to legal representation at his or her own expense; and

d. The right to present evidence and argue his or her view of the facts and circumstances of the case. [TCR 25-194]

3-1614 Severability. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions. [TCR 25-194]

3-1615 Repeal. All other Winnebago laws, codes, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this code are hereby repealed unless specifically re-enacted after adoption of this code. [TCR 25-194]